

# POLICY BRIEF

# WASHINGTON STATE'S CLIMATE COMMITMENT ACT



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## THE CLIMATE COMMITMENT ACT — A PRIMER

**T**he [Climate Commitment Act \(Senate Bill 5126\)](#) is designed to deliver certainty of emission reductions at the scale and pace required to address climate change while achieving co-benefits that foster a more prosperous, equitable, and resilient Washington State. In 2020, the Washington State Legislature adopted a limit on greenhouse gases (GHGs) emitted in the state to align with recommendations of the Intergovernmental Panel on Climate Change for limiting likely global temperature rise to no more than 1.5 degrees Celsius. Under the [Climate Pollution Limits bill](#), the limit was updated to

45% below 1990 levels by 2030, 70% below 1990 levels by 2040, and 95% below 1990 levels as well as net-zero emissions by 2050. The emissions limit for 2030 equates to roughly a 50% reduction relative to the most recent, pre-pandemic emission levels of 2018 and 2019.

In order to stay within this limit, Washington state is implementing a newly established, economy-wide cap & invest system created by the Climate Commitment Act, which was signed into law in May 2021. With enforceable emission reductions starting in 2023, the Climate Commitment Act caps and reduces emissions





*We made environmental justice part of our mission, part of our goal, and we deliver. There are real measurable goals that you can take back to overburdened communities and say we are not just creating a policy that is lip service, we're not just creating a policy that says we hope things get better and we wish you luck.*

**PAULA SARDINAS**, CEO of Washington Build Back Black Alliance, [How Washington may \(finally\) be leading on Climate Action \(KNKX\)](#)



from large emitters while unlocking unprecedented investments for accelerating the transition to a prosperous, equitable, and resilient net-zero emissions state by 2050. Washington is only the second state to have a declining, enforceable, economy-wide limit on climate pollution, and is now the only state to have a program in place with a long-term limit that extends to net-zero emissions by mid-century.

An economy-wide cap-and-invest program provides the greatest possible certainty of meeting science-based greenhouse gas reduction targets. Supported by sector-specific policies like the [Clean Energy Transformation Act](#) to decarbonize electricity, a comprehensive cap on greenhouse gas emissions can be both a leading signal and provide the “backstop” to ensure that the climate goals are achieved.

## Washington's Climate Commitment Act features 3 overarching commitments:

**EQUITABLE CLIMATE ACTION:** Climate change and air pollution are [proven causes of major inequities](#) experienced by communities of color and Tribal Nations. The Climate Commitment Act integrates biennial environmental justice review with the [Healthy Environment for All \(HEAL\) Act \(Senate Bill 5141\)](#) to ensure design and implementation are done with robust community input. The Climate Commitment Act is organized around the principle that as we transition to a clean energy economy the widespread benefits must prioritize those who are on the frontlines of pollution and climate change. This includes deploying comprehensive air quality monitoring networks by 2023, directing state and local air agencies to adopt new emissions standards for criteria pollutants, investing in the Air Pollution and Health Disparities Improvement Account, and mandating a minimum of 35% of investments specifically to communities overburdened by air pollution along with a minimum 10% for Tribal Nation-supported projects. For the first time, this program dedicates revenue to help relocate tribal communities threatened by sea-level rise.

**GREATER AMBITION AND IMPACT:** The Climate Commitment Act builds on similar programs elsewhere and applies lessons learned from those programs to create a [nation-leading model](#) for other regions seeking an economically beneficial and equitable approach to meeting their emissions limits. This includes a steeper rate of decline in emissions, enhanced certainty in delivering local air quality improvements, and stronger commitments with and to frontline communities. By addressing local air pollution alongside greenhouse gas pollution, in the same policy framework, Washington has taken a significant step forward in the evolution of climate policy.

As a cap & invest program, the Climate Commitment Act not only caps and reduces emissions, but also invests in accelerating the transition to a thriving, globally-competitive clean energy economy, with mechanisms built in that can start to heal inequities in pollution exposure, participation, and health impacts. The Climate Commitment Act integrates with an array of climate-jobs-and health centric policies passed by the legislature, including the Clean Energy Transformation Act (CETA) program to achieve a zero emissions power sector and a new [Clean Fuels Standard](#) that unifies the Pacific West Coast.

**LARGE EMITTER RESPONSIBILITY:** Large emitters are legally obligated to comply with the emissions reduction targets of the Climate Commitment Act. This includes nearly 75% of Washington state’s current emissions. Compliance is enforced, and a failure to comply is subject to penalties. Large emitters purchase allowances from a limited and declining supply and later turn them in for compliance. These purchases generate revenue for both state-led and private investments to accelerate greenhouse gas emissions, boost climate resilience, and achieve other priority co-benefits. At the same time, the law incentivizes innovation in the private sector by encouraging businesses to reduce emissions at the lowest possible costs. It also protects manufacturing businesses in the state while still requiring them to make deep emissions reductions; these businesses are uniquely at risk due to being “emissions-intensive and trade-exposed,” and the



Climate Commitment Act gives them fair treatment in order to prevent emissions from moving elsewhere and to protect jobs and the economic vitality of Washington’s communities.

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## CLIMATE COMMITMENT ACT — A SYNOPSIS

There are five key elements to the Climate Commitment Act’s (The Act) Cap & Invest system:

### THE CCA: KEY ELEMENTS

#### 1: Cap

Nearly three-quarters of statewide emissions

#### 2: Reduce

Increased certainty in achieving emissions limits, a 50% reduction between 2019 and 2030

#### 3: Heal

Integrates with the HEAL Act, provides measurable outcomes, and promotes robust overburdened community participation

#### 4: Invest

Directs billions of dollars to benefit residents

#### 5: Comply

Large emitters enforceably and collectively meet the cap



*Finally, we have a bill that addresses climate change and reduces air pollution while enjoying support from much of the state’s business community, organized labor, environmental groups, tribes, social justice organizations, farmers, and religious leaders.*

**DENIS HAYES**, founder of Earth Day, [Op-Ed: Pass the Climate Commitment Act on Earth Day](#)



# CAP

The Act establishes an initial limit, or cap, on nearly three-quarters of greenhouse gas (GHG) pollution in the state. This cap is steadily reduced over time to match emissions limits. Those emissions limits are relative to 1990 levels, including 45% reduction by 2030, 70% reduction by 2040, and 95% reduction with net-zero emissions by 2050. Coverage and enforcement occur on large emitting sources or fuel distributors (e.g. refineries selling gasoline and diesel within the state) responsible for at least 25,000 metric tons of GHGs, equal to nearly 3 million gallons of gasoline. These are known as “covered entities”.

The cap is set and maintained by the distribution and auctioning of a controlled volume of allowances, each equal to a metric ton of carbon dioxide equivalent GHG pollution (tCO<sub>2</sub>e). When covered entities purchase allowances at auction, revenue is generated and directed towards investments in local communities throughout the state. The Department of Ecology enforces this declining cap by issuing fewer allowances each year and through the retirement of instruments turned in for compliance.

There are approximately 100 covered entities across four main categories: Power Utilities (~23% of covered

baseline emissions), Natural Gas Utilities (~13% of covered baseline emissions), Emissions-Intensive Trade-Exposed (EITE) entities (~13% of covered baseline emissions), and all remaining covered entities, the largest category of which is on-road transportation fuels (~51% of covered baseline emissions).

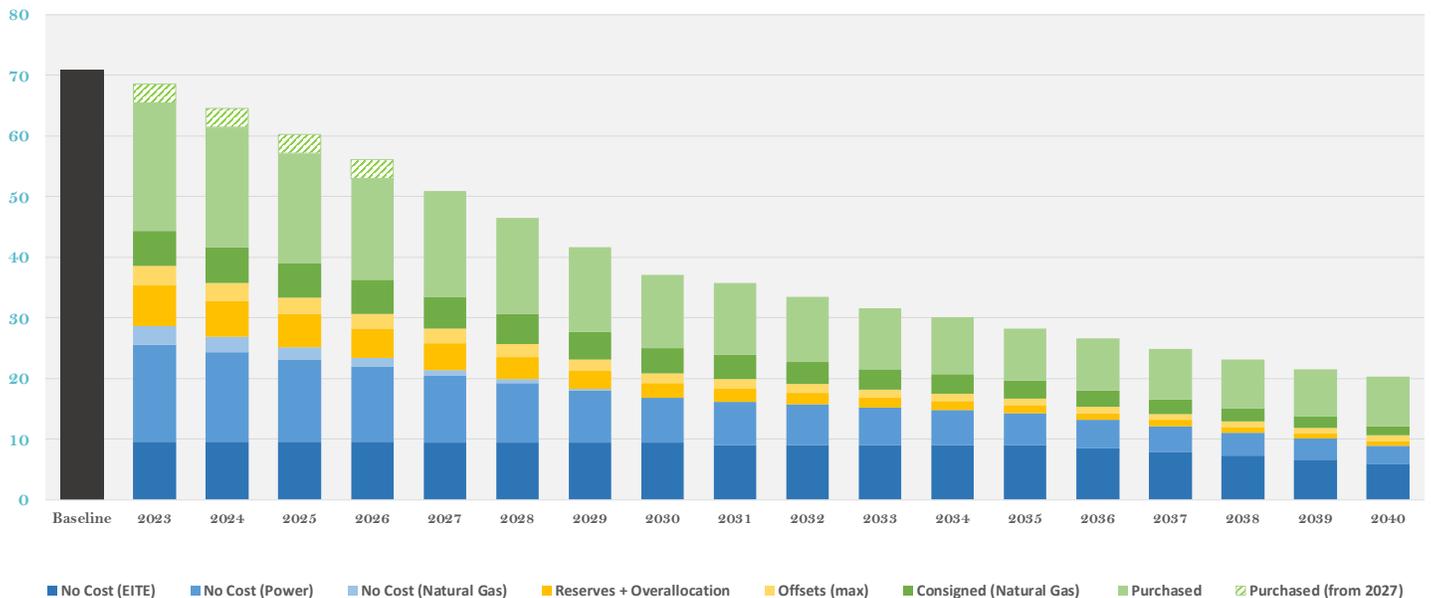
To improve air quality in designated overburdened communities, The Act directs that some of these covered entities (those located in overburdened communities and directly contributing to low air quality) be further designated as high priority emitters based on their contribution to and overall trends in criteria pollutant emissions. These high priority emitters would be subject to more stringent requirements in reducing local criteria pollution if their contribution to the issue is significant and improvement in criteria pollution is not occurring. These requirements will act alongside the Climate Commitment Act’s other air quality measures to reduce disproportionate pollution burdens.

# REDUCE

The average rate of required emissions reductions is projected to be between 7% and 12% per year through 2030, depending on a covered entity’s initial year of compliance. From 2030 through 2040, the

## THE CCA: IN ACTION

Million metric tons of CO<sub>2</sub> emissions (as cap compliance instruments)

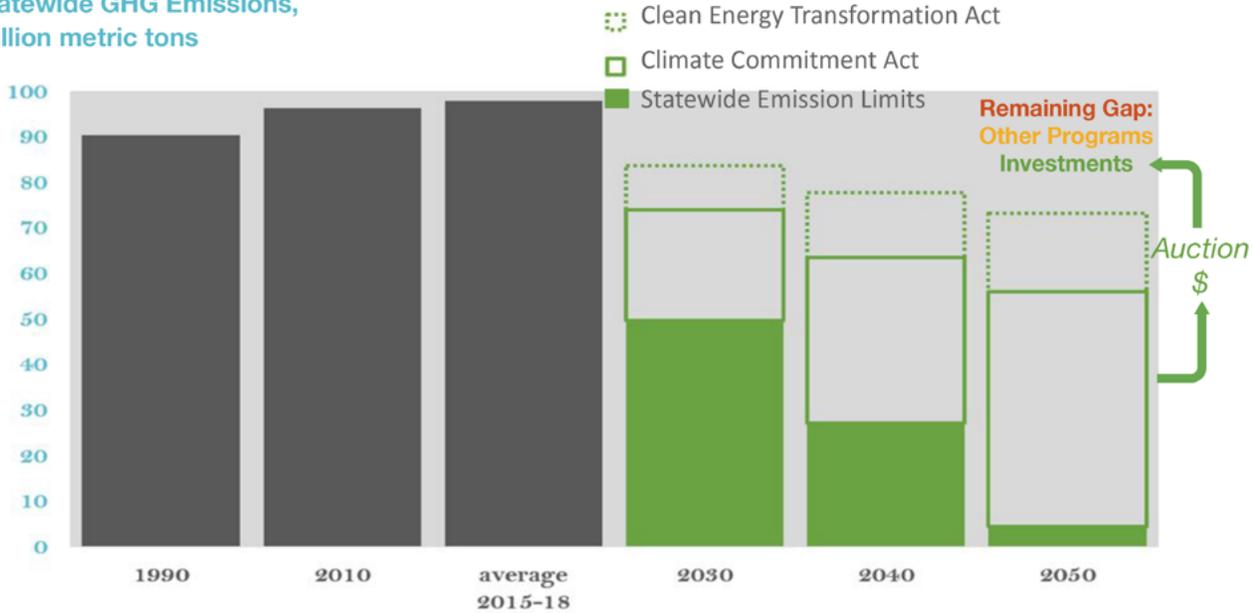


Graphic reproduced from Clean and Prosperous Washington’s webinar [A New Standard for Climate Action](#) (Slide 15).

<sup>1</sup>These rates of emission reductions are based on the reduction pathways projected in the [Fiscal Note for The Act](#) as it passed the legislature (note 1 on page 120).

# THE CCA: AMBITION

Statewide GHG Emissions, Million metric tons



Graphic reproduced from Clean and Prosperous Washington’s webinar [A New Standard for Climate Action](#) (Slide 14).

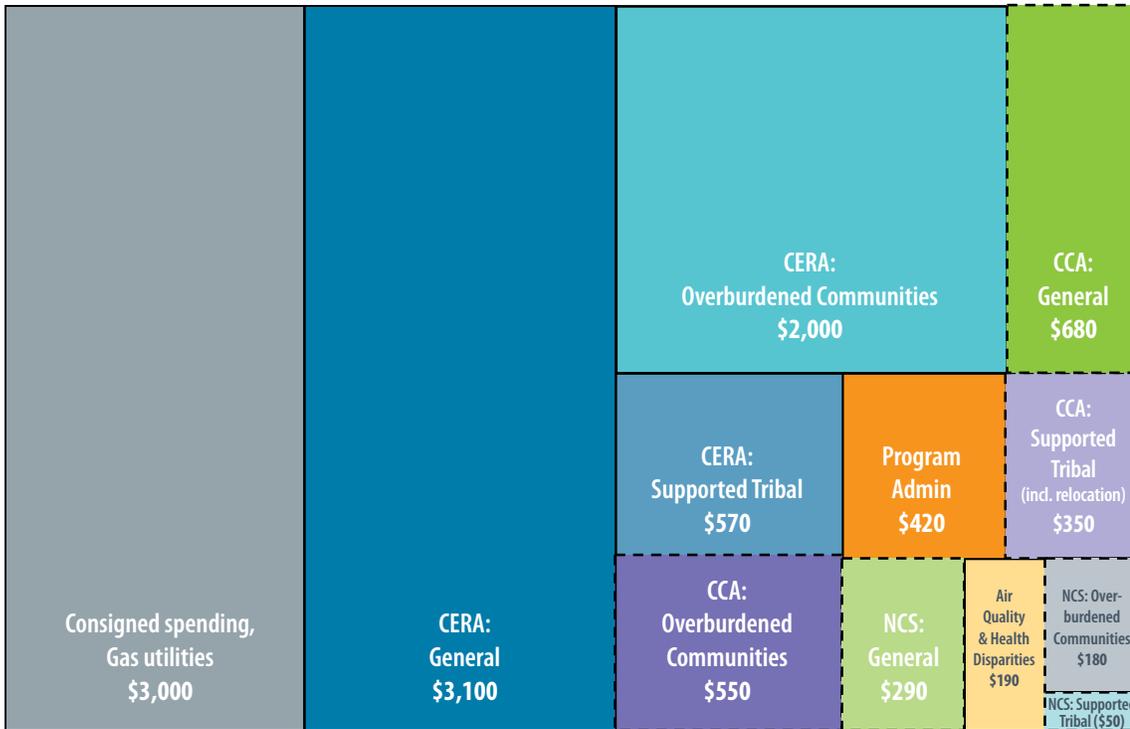


rate of emissions reduction is around 6% of 2030 emissions per year.<sup>1</sup> Power utilities, based on the pre-existing requirements of the Clean Energy Transformation Act, and EITEs, due to the possibility for emissions and jobs moving out of state known as “leakage”, will have separate reduction requirements. The enforceable emissions reductions will continue until the 2050 goals of 95% below 1990 levels as well as net-zero emissions are met.

This is a collective rate of emissions reductions and, aside from additional criteria that could be imposed upon high priority emitters or potential further restrictions on the use of a limited volume of offsets, emissions caps are not enforced at the individual covered party. However, compliance is required at the individual covered entity by surrendering one “compliance instrument” (an allowance or offset) for each ton of GHGs emitted.

The Climate Commitment Act contains provisions to maintain the environmental integrity of the cap-and-invest program, which is essential to ensuring that Washington’s greenhouse gas reductions are actually aligned with emission limits. The program will use an “Emissions Containment Reserve” that withholds allowances when auction prices are low in order to secure additional emissions reductions. The program requires Ecology to adjust the volume of allowances offered at auction to reflect the quantity of offsets used for compliance. This adjustment ensures that offsets displace available allowances, thereby being within the cap rather than in addition to the cap, which maintains [the stringency of the cap](#). Ecology maintains discretion throughout the program to adjust new allowance supply or limit linking to programs in other jurisdictions in order to ensure that emissions limits are being achieved by the covered entities and to ensure that air quality improves in communities overburdened by air pollution.

# THE CCA: PROJECTED REVENUE & ALLOCATION



Projected revenue and allocation (\$, millions), through 2040, from the Climate Commitment Act based on [the Fiscal Note](#). Solid borders indicate first priority allocation of revenue, dashed borders indicate allocations based on a percentage of the remaining funds. CERA = Carbon Emissions Reduction Account. CCA = Climate Commitment Account. NCS = Natural Climate Solution Account. Graphic reproduced from Clean and Prosperous Washington's webinar [A New Standard for Climate Action](#) (Slide 16).

## INVEST

The Act creates significant opportunities for climate investments in Washington through the purchase of allowances. Purchases are primarily made through the auctions offered by the state at least 4 times per year. These auctions, which include a minimum sale price or price floor as well as a maximum sale price or price ceiling (collectively known as a “price collar”), generate revenue managed by the state treasury. The investments are to be used such that at least 35% provide direct and meaningful benefits to vulnerable populations and at least 10% go to projects supported by a tribal resolution. The funds are stored in accounts defined as follows:

### CARBON EMISSIONS REDUCTION ACCOUNT (CERA)

for emission reduction programs in the transportation sector, including but not limited to alternative fuel infrastructure to reduce vehicle miles traveled and programs for freight transportation and maritime and port activities. Funds may not be spent for highway purposes other than as specified in the Act. This account is capped at \$5.2 billion through fiscal year (FY) 2037, averaging over \$350M per year from FY

2024 through FY 2037. From FY 2038, this account receives half of any auction proceeds.

The remainder of auction proceeds are split between the Climate Investment Account and the Air Quality and Health Disparities Improvement Account.

**CLIMATE INVESTMENT ACCOUNT** for projects and programs designed to achieve the purposes of the Cap and Invest program, including to fight climate change while addressing disproportionate and historic pollution burdens on low-income communities and communities of color. Within the Climate Investment Account, 75% is initially allocated to the Climate Commitment Account (CCA) and 25% is initially allocated to the Natural Climate Solutions (NCS) Account. Projects or activities receiving funding must meet high labor standards and achieve the purposes of this Act.

### AIR QUALITY AND HEALTH DISPARITIES IMPROVEMENT ACCOUNT

for reduced criteria pollutants, improved air quality monitoring, and improved health outcomes that reduce health disparities in overburdened communities. At least \$20 million per biennium is intended for this account, beginning in FY 2022.



In addition, natural gas utilities may control revenue associated with their allowance purchases under an arrangement known as “consignment”. Consignment requires re-investment of the revenue for a specified set of purposes. Otherwise, this revenue would be directed to the accounts listed above. Program administration is limited to 5% of the auction proceeds.

## HEAL

The Act empowers, formally embeds, and prioritizes recommendations from and consultation with stakeholders representing vulnerable populations and overburdened communities.<sup>2</sup> The Act relies on the overburdened designations and other definitions from the Environmental Justice Council formed within the HEAL Act (Senate Bill 5141), which implements [recommendations](#) by the [Environmental Justice Task Force](#). Among the key features of the Act that seek to address inequities in pollution exposure, participation, and health impacts are:

- Oversight authority for the Environmental Justice Council in all phases of program design and revenue allocation, including any plans to create program linkages to California or elsewhere;

- Environmental Justice review including air quality monitoring and, as necessary, additional authority to improve local air quality to meet identified limits;
- Minimum investment share of 35% for “direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities”, and 10% for projects formally supported by a resolution of a tribe including priority for those directly administered or proposed by a tribe.

The Act also creates opportunities for formalized community engagement, including capacity grants for participation, an Assistance Program for Offsets on Tribal Lands, and a Small Forestland Owners Work Group.

Furthermore, The Act directly addresses low-income utility cost impacts and fuel use through bill assistance, rebates, energy efficiency and other demand and emissions reduction approaches – a process known as “consignment”. The Act will also form a Residential Heating Assistance Program to mitigate cost burdens for households using home heating fuels other than electricity and natural gas. Throughout these programs, first priority use is given to low-income customers to help reduce cost burdens and ensure equitable access to clean energy.

<sup>2</sup>The [HEAL Act](#) defines vulnerable populations as including, but not limited to: Racial or ethnic minorities, Low-Income populations, Populations disproportionately impacted by environmental harms, and; Populations of workers experiencing environmental harms.



## COMPLY

To comply with the cap-and-invest program, covered entities must turn in one compliance instrument (an allowance or an offset) for each ton of greenhouse gases emitted. Covered entities obtain instruments through the direct allocation of allowances, the purchase of allowances at auction or from other entities on a secondary market, or through the purchase of approved offsets. The initial volume of allowances is based on a baseline of recent, historical emissions between 2015 and 2019, with the volume of allowances in 2023 below that historical baseline and on a trajectory to meet a proportional share of the 2030 emissions limits.

### Allowances

Program compliance comes mainly through the use of a declining volume of allowances. Each allowance represents a ton of emissions from covered entity emissions. Allowances enter the system either through

auction or through direct no-cost allocation. Initially, around half the allowances are purchased through auction and half are directly allocated.

**DIRECTLY-ALLOCATED ALLOWANCES** are provided at no-cost to certain covered entities. The three main sources receiving directly-allocated allowance are Electric Utilities, Natural Gas Utilities, and Emissions-Intensive Trade-Exposed (EITE) facilities who receive a decreasing share of these allowances and have certain limitations on offset use. Allowances are directly-allocated for various reasons, including to work with pre-existing regulations such as the power sector's Clean Energy Transformation Act or to limit risk of "leakage" from the transferring of EITE productions to other regions. Preventing leakage is important to retain jobs in Washington, and at the same time protects against the possibility that climate pollution could be shifted elsewhere. With respect to electric and natural gas utilities, the purpose of direct allocation of allowances is also to protect ratepayers from potential price increases on their utility bills, with prioritization for low-income ratepayers.

The Act provides for adjustments of annual allowance budgets to ensure that actual emissions are aligned to emission reduction limits. Allowance budgets are also adjusted to account for the use of offsets to prevent expansion of the cap with excess instruments. Allowances are held in both price containment and emissions containment reserves to insulate against unanticipated price shocks or new emissions sources. Allowances that have been purchased or received but not retired may be “banked” for subsequent use in later years. Banking has the potential to incentivize early emissions reduction which can reduce the cumulative impact of GHGs emissions under the program.

## Offsets

Offsets are a compliance instrument generated by projects that reduce emissions outside the scope of the emissions covered under The Act. When utilized in Washington’s program, offsets displace allowances as a compliance instrument—an important evolution from the California program in which offsets add above allowance volumes under the assumption that the offset projects will result in equivalent emissions reductions that counterbalance the emissions being offset. To have environmental integrity, offsets must represent reductions that are real, additional, permanent, and verifiable. Offsets are generally a cheaper compliance option than allowances purchased

through auction or trade, and therefore represent a form of cost-containment for covered entities.

Under the Climate Commitment Act, the usage of offsets is subject to limits.

**DURING THE FIRST COMPLIANCE PERIOD (2023 - 2026)**, offsets are limited to 5 percent of a covered party’s compliance obligations and 50 percent of these must provide direct environmental benefits in Washington state. Up to an additional 3 percent of the compliance obligation may be met through offset projects on tribal lands, for a maximum offset usage of up to 8 percent of a covered entity’s emissions.

**STARTING WITH THE SECOND COMPLIANCE PERIOD IN 2027**, offsets are limited to 4 percent of a covered party’s compliance obligation and 75% of these must provide direct environmental benefits within Washington state. Up to an additional 2 percent of the compliance obligation may be met through offset projects on tribal lands, for a maximum offset usage of 6 percent of a covered entity’s emissions.

Ecology will be responsible for determining what offset protocols will be accepted, and working with tribes, small forestland owners, and others to help develop strong protocols that can create a sufficient supply of high-quality offsets. The Act establishes both an *Assistance Program for Offsets on Tribal Lands and a Small Forestland Owner Work Group* to identify and scale those opportunities.





Offsets in Washington’s system are under the cap, unlike those in California’s program, providing a pathway to greater emissions reductions from other sources without compromising how much pollution declines from the sources covered by the cap. Additionally, offset usage may be further limited in certain situations such as for high priority emissions sources in overburdened communities that are not reducing local criteria pollutants. Offsets, therefore, represent: 1) a limited quantity of lower cost compliance instruments, and 2) the potential bonus of generating additional emissions reductions from sectors that are not covered by the cap, such as from natural and working lands.

## Trading

Once allowances have been purchased or distributed, covered entities may buy and sell allowances on a secondary market. This allows entities who have excess allowances, such as those unlocked by faster reduction of their own emissions, to sell to entities who require additional allowances to remain in compliance. This market broadens participation across the economy to reward innovation and investment and accelerate reductions in GHG emissions by incentivizing early emission reductions, which are most beneficial to the climate. The ability to trade allows for the most cost-effective reductions to be captured first, which provides important climate benefits by encouraging emission reductions sooner and faster.

The trading mechanism can be extended to include linking with jurisdictions that have similar, compatible programs. Washington’s program is intended to eventually link with the California and Quebec [Western Climate Initiative](#), and potentially expand to additional systems with similar ambition in the future. Certain conditions will need to be met before linking can occur. Linking broadens the overall size of the program and increases the likelihood that emissions limits can be more broadly and cost-effectively achieved while minimizing leakage risk and achieving administrative and implementation efficiencies. The Act requires an in-depth assessment of the impacts of linking on overburdened communities and achievement of emissions reduction limits before a linking agreement can be pursued.

## Enforcement

Penalties for non-compliance include penalty allowance submissions, daily fines, and plans for coming into compliance overseen by the Department of Ecology. On initial violation, a covered entity may be required to submit a penalty of four allowances for each missing compliance instrument within six months. If the covered entity fails to submit these penalty allowances, it may be fined up to \$10,000 per day per violation. There are additional penalties that guard against bidder collusion and market manipulation in the allowance auction process.

# THE ROAD AHEAD: INTERIM MILESTONES AND RULEMAKING

With the first auction and distribution of allowances scheduled for quarter one of 2023, a parallel rulemaking process is underway. More detail about that Ecology-led rulemakings are available on the [Ecology website](#). The proposed rulemaking timeline centers on three separate rulemakings with distinct timelines ahead of the January 1, 2023 program launch.

- [Reporting emissions of greenhouse gases](#), announced on July 7, 2021 with a proposed rule expected in Fall 2021 and a rule adopted in early 2022. The first rounds of stakeholder meetings have already commenced and are expected to extend through Fall 2021. Focal points of this rulemaking are to:

- Add natural gas suppliers, carbon dioxide suppliers, and electric power entities to the existing greenhouse gas reporting program.
- Replace the transportation fuel supplier program with a program that is compatible with the Climate Commitment Act.
- Update greenhouse gas reporting requirements to support the Climate Commitment Act and facilitate program linkage with other jurisdictions.
- Add program elements to support the verification of greenhouse gas reporting data.
- Modify administrative provisions, such as deadlines and greenhouse gas reporting fees.
- Include requirements necessary to support the above items, the overall objectives of the statute or chapter, or the goals of the Climate Commitment Act.
- Make administrative changes for correction or clarification.



*...the Climate Commitment Act could be a tipping point to catalyze action across the United States – both in slashing climate emissions but doing it in a way that addresses localized pollution as well. This could be the new gold standard for other states to follow.*

**KATELYN ROEDNER**

**SUTTER**, Senior Manager, U.S. Climate, Environmental Defense Fund, [The Climate Commitment Act could be game-changing for Washington state and the country: Here's what you should know](#)



● [Criteria for emissions-intensive trade-exposed industries](#), announced in early August with a proposed rule expected in Winter 2021 and a rule adopted in Summer 2022. The first round of stakeholder meetings are expected to occur in Summer and Fall 2021. This rulemaking must be completed, including passage by the legislature of Ecology-request legislation, prior to April 1, 2023 in order for investments to be appropriated and distributed. Key rulemaking topics are:

- Establishing criteria to identify emissions-intensive, trade-exposed (EITE) industries that will be eligible for no-cost allowances.
- Considering the locations of potential EITEs in relation to overburdened communities while developing the criteria.
- Including requirements necessary to support the above items, the overall objectives of the statute or chapter, or the goals of the Climate Commitment Act.

● [Cap-and-invest program rules](#), announced in early August with a proposed rule expected in Spring 2022 and a rule adopted in Fall 2022. The first round of stakeholder meetings are expected to run from Summer 2021 through Winter 2022. This rulemaking will concern the overarching structure and rules governing the cap participation and enforcement, including but not limited to:

- Program registration requirements
- Methods and procedures for allocating allowances
- Allowance budgets for the first compliance period (2023-2026)
- Auction registration requirements
- Auction floor price
- Emissions containment reserve
- Procedures and protocols for establishing offset projects
- Enforcement provisions
- Transfer and sale of allowances and recognition of compliance instruments
- Other elements to support the operation and function of the cap-and-invest program



## QUESTIONS

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