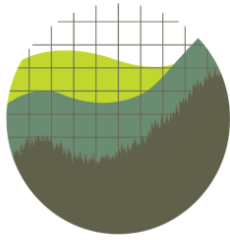


Institute for Policy Integrity at NYU School of Law (Erin Shortell)

Please see the attached comments of the Institute for Policy Integrity at NYU School of Law.



September 5, 2025

To: Department of Ecology, State of Washington

Re: Reporting of Emissions of Greenhouse Gases Rule (Chapter 173-441 WAC)

The Institute for Policy Integrity at New York University School of Law (Policy Integrity)¹ respectfully submits the following comments to the Department of Ecology of the State of Washington regarding its draft revisions to the Reporting of Emissions of Greenhouse Gases Rule (Chapter 173-441 WAC) (the Reporting Rule). Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy. Policy Integrity has published research on carbon markets,² and has previously commented on Washington's cap-and-invest market linkage³ and on the state's forest offsets protocol.⁴ Policy Integrity has also commented on the design of greenhouse gas reporting and carbon trading programs in other states.⁵

Under the Reporting Rule, owners and operators of Washington-based facilities that emit 10,000 metric tons of carbon dioxide equivalent or more per calendar year from applicable source categories must report their greenhouse gas emissions.⁶ Certain entities with carbon dioxide equivalent emissions that equal or exceed 25,000 metric tons per calendar year are subject to Washington's cap-and-invest program.⁷ To improve the cap-and-invest program's implementation,

¹ This document does not purport to present the views, if any, of New York University School of Law.

² See Erin Shortell & Chris Holt, *Demystifying the Voluntary Carbon Market: An Overview of the Market's Inner Workings*, INST. FOR POL'Y INTEGRITY (Feb. 2025), <https://policyintegrity.org/publications/detail/demystifying-the-voluntary-carbon-market>; Erin E. Shortell & Donald L.R. Goodson, *Regulating the Voluntary Carbon Market: Existing Sources and Limitations of CFTC, SEC, and FTC Authority*, INST. FOR POL'Y INTEGRITY (July 2025), <https://policyintegrity.org/publications/detail/regulating-the-voluntary-carbon-market>.

³ See Inst. for Pol'y Integrity, Comment Letter on Cap-and-Invest Program: Linkage Agreement (Mar. 31, 2025), <https://policyintegrity.org/projects/update/comments-to-the-wa-dept-of-ecology-on-cap-and-invest-market-linkage>.

⁴ See Inst. for Pol'y Integrity, Comment Letter on Proposed Revisions to U.S. Forest Protocol (Aug. 18, 2025), <https://policyintegrity.org/projects/update/comments-to-the-washington-state-department-of-ecology-about-proposed-revisions-to-u.s-forest-offset-protocol>.

⁵ See, e.g., Inst. for Pol'y Integrity, Comment Letter on Proposed Mandatory Greenhouse Gas Reporting Regulation (July 1, 2025), <https://policyintegrity.org/projects/update/comments-to-ny-dec-on-the-mandatory-ghg-reporting-rule>; Inst. for Pol'y Integrity and Guarini Ctr. on Env't, Energy, and Land Use Law, Comment Letter on New York Cap-and-Invest Program (Mar. 15, 2025), <https://policyintegrity.org/projects/update/comments-to-new-york-state-dec-and-nyserda-on-new-york-cap-and-invest-program>.

⁶ See WAC 173-441-030(1).

⁷ See WAC 173-446-030.

the Department has proposed revisions to the Reporting Rule and requested public comment on the Reporting Rule's language.⁸

Policy Integrity recommends that the Department avoid continuing to incorporate by reference federal rules or resources, which could be changed or withdrawn. By independently promulgating an amended Reporting Rule that stands on its own, together with all resources that regulated entities will need to meet the amended Reporting Rule's requirements, the Department can mitigate or avoid inconveniences or other challenges that could arise if incorporated-by-reference federal materials were to be withdrawn or become unavailable. A standalone rule that does not incorporate by reference federal materials that may be withdrawn or changed would also serve as a useful resource for other jurisdictions seeking to adopt similar emissions-reporting requirements.

In particular, the Reporting Rule relies heavily on, and incorporates by reference, the existing mandatory greenhouse gas reporting rule, 40 CFR Part 98, of the U.S. Environmental Protection Agency (EPA) (the Federal Reporting Rule).⁹ In light of recent developments discussed below, the Department should not rely on the continued existence of the Federal Reporting Rule.

To begin with, EPA has signaled that it may rescind the Federal Reporting Rule. In March 2025, EPA announced that “the agency is reconsidering the mandatory Greenhouse Gas Reporting Program.”¹⁰ It further stated that the funds currently spent complying with that program “could be better used to improve and upgrade environmental controls or other items at these facilities” potentially signaling that the agency’s “reconsideration” could consist of eliminating the program.¹¹ EPA’s “Reconsideration of the Greenhouse Gas Reporting Program” reached the Office of Information and Regulatory Affairs for review in June 2025 and remained pending review as of early September 2025.¹²

In addition, in May 2025, the House of Representatives included in its reconciliation bill a “Regulations from the Executive in Need of Scrutiny (REINS) Act” provision that would automatically sunset federal rules that are not specifically affirmed by Congress.¹³ Although Congress did not ultimately pass a REINS Act provision as part of this year’s reconciliation

⁸ See *Cap-and-Invest Program Updates and Linkage Rulemaking Informal Comment Period*, STATE OF WASH. DEP’T OF ECOLOGY, <https://perma.cc/YN6X-C47Y>. The Department also seeks comment on its Climate Commitment Act Program Rule (Chapter 173-446 WAC), see *id.*; this comment letter focuses only on the Reporting Rule.

⁹ See *Draft Proposed Changes to the Reporting of Emissions of Greenhouse Gases Rule for the Cap-and-Invest Program Updates and Linkage Rulemaking*, STATE OF WASH. DEP’T OF ECOLOGY (July 28, 2025), <https://perma.cc/2JVL-UP6X>, which mentions “40 C.F.R. Part 98” or “40 C.F.R. § 98” 110 times.

¹⁰ See *Trump EPA Announces Reconsideration of Burdensome Greenhouse Gas Reporting Program*, U.S. ENV’T PROT. AGENCY (Mar. 12, 2025), <https://perma.cc/W5SF-REW7>.

¹¹ See *id.*

¹² See *List of Regulatory Actions Currently Under Review*, OFFICE OF INFO. AND REGUL. AFFS., <https://perma.cc/43KT-X76A>.

¹³ Jessie Arnell & Max Sarinsky, *Destabilizing Regulatory Reform Tests the Limits of Reconciliation*, INST. FOR POL’Y INTEGRITY 1 (May 2025), <https://policyintegrity.org/publications/detail/destabilizing-regulatory-reform-tests-the-limits-of-reconciliation>.

process,¹⁴ the Department should note federal lawmakers’ interest in adopting one. Indeed, some lawmakers have continued to pursue avenues for passing a REINS provision, such as by including one in spending legislation for fiscal year 2026 or in future reconciliation processes.¹⁵ If enacted, such a provision could “wip[e] entire chapters out of the Code of Federal Regulations that safeguard public health, safety, and welfare.”¹⁶

To fully insulate the Department from any impediments that could arise from the withdrawal, lapsing, or modification of the Federal Reporting Rule, or any other federal language on which the Reporting Rule relies, the Department should include in its own Reporting Rule any currently-existing federal language on which it relies. **That is, the Department should promulgate rules that state all required language word-for-word, rather than incorporating it by reference.**

Expressly providing all relevant language and resources in rules and supporting documents that the Department controls (and to which the Department can ensure uninterrupted access) will allow the Department to implement its own Reporting Rule more smoothly in the event of any changes in federal laws or regulations. Taking these steps will also better enable the State of Washington to provide leadership and resources for other U.S. jurisdictions in their own efforts to adopt and implement sound climate policies. By exercising such leadership, the Department will advance the legislative purposes articulated in the Climate Commitment Act.¹⁷

Sincerely,

Erin Shortell, Legal Fellow
Elizabeth B. Stein, State Policy Director
erin.shortell@nyu.edu

¹⁴ Amelia Davidson, *GOP renews deregulation push despite megalaw loss*, E&E DAILY (July 29, 2025), <https://subscriber-politicopro-com.proxy.library.nyu.edu/article/eenews/2025/07/29/gop-renews-deregulation-push-despite-megalaw-loss-00477137> (last visited Sept. 4, 2025).

¹⁵ *Id.*

¹⁶ See Arnell & Sarinsky, *supra* note 13, at 2.

¹⁷ See RCW 70A.65.005(6) (highlighting “exercising a leadership role in addressing climate change” as a goal).