

Chapter 173-446a WAC

CRITERIA FOR EMISSIONS-INTENSITVE, TRADE-EXPOSED INDUSTRIES

WAC

173-441-010 Scope.

173-441-020 Definitions.

173-441-030 Applicability.

173-441-040 EITE classification.

173-441-050 Severability.

NEW SECTION

WAC 173-446a-010 Scope. This rule establishes objective criteria for both emissions' intensity and trade exposure for the purpose of identifying emissions-intensive and trade-exposed facilities.

NEW SECTION

WAC 173-446a-020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise. If this section provides no definition, the definition found in the definitions from Laws of 2021, Chapter 316 as described

in WAC 173-446 and from WAC 173-441 apply in this chapter in order of precedence.

- (1) "Potential to emit (PTE)" means the maximum capacity of a facility to emit a greenhouse gas (GHG) under its physical and operational design. Any physical or operational limitation on the capacity of the facility to emit a GHG, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, may be treated as part of its design only if the limitation or the effect it would have on emissions is enforceable.
- (2) "Manufacturing facility" means a facility, as defined in WAC 173-441-020, that produces a physical product as its primary activity.

NEW SECTION

WAC 173-446a-030 Emissions-intensive and trade-exposed

manufacturing facilities. The provisions of this chapter apply to manufacturing facilities that are covered entities under the Laws of

2021, Chapter 316 (the Climate Commitment Act) regarding classification as emissions-intensive and trade-exposed.

(1) **Facilities classified as emissions-intensive and trade-exposed**

Facilities engaged in one or more of the processes described by the industry descriptions and codes in the North American industry classification system (NAICS) in Table 030-1, as that code is reported under WAC 173-441, are classified as emissions-intensive and trade-exposed. Use the six digit NAICS codes when available in Table 030-1, otherwise use the shorter NAICS codes listed in Table 030-1 substituting the values in the full reported six digit NAICS code for "X".

Table 030-1: NAICS codes and descriptions for emissions-intensive and trade-exposed industries

NAICS Code	Industry Description
331XXX	Metals manufacturing, including iron and steel making, ferroalloy and primary metals manufacturing, secondary aluminum smelting and alloying, aluminum sheet, plate, and foil manufacturing, and smelting, refining, and alloying of other nonferrous metals

322XXX	Paper manufacturing, including pulp mills, paper mills, and paperboard milling
3364XX	Aerospace product and parts manufacturing
321XXX	Wood products manufacturing
327XXX	Nonmetallic mineral manufacturing, including glass container manufacturing
325XXX	Chemical manufacturing
334XXX	Computer and electronic product manufacturing, including semiconductor and related device manufacturing
311XXX	Food manufacturing
327310	Cement manufacturing
324110	Petroleum refining
324121	Asphalt paving mixtures and block manufacturing from refined petroleum
324122	Asphalt shingle and coating manufacturing from refined petroleum
324199	All other petroleum and coal products manufacturing from refined petroleum

(2) Facilities with NAICS codes reported under WAC 173-441 which are not listed in Table 030-1 may petition ecology to be classified as emissions-intensive and trade-exposed according to the process in section (040) of this chapter.

NEW SECTION

WAC 173-446a-040 Process to determine emissions-intensive and trade-exposed classification. An owner or operator of a manufacturing facility that is not classified as emissions-intensive and trade-exposed according to section (030) of this chapter may petition ecology to be classified as emissions-intensive and trade-exposed by following the process described in this section. An owner or operator may submit a petition and Ecology may issue a determination before emissions year 2027, and use that determination for allowance allocations for the second compliance period, but no determination under this section is effective for the owner or operator of that facility until emissions year 2027. The following requirements apply to the submission, review, and approval or denial of a petition:

(1) **Petition submittal.** An owner or operator must submit a petition, electronically in a format specified by ecology, that

meets the following conditions before ecology may review the petition and issue a determination.

- (a) An owner or operator must submit a complete petition no later than one hundred eighty calendar days prior to January 1 of the first emissions year the owner or operator wishes the facility to be classified as emissions-intensive and trade-exposed.
- (b) The petition must include sufficient information, as described in (c) of this subsection, for ecology to determine whether the petitioner meets the criteria for classification as emissions-intensive and trade-exposed. Ecology will notify the owner or operator within thirty calendar days of receipt of a petition of any additional information ecology requires to review the petition. A facility is not classified as emissions-intensive and trade-exposed until the petition is approved by ecology.
- (c) The petition must include, at a minimum, the following information:
 - i. The name, address, email address, telephone number, and facsimile transmission number (if any) of the person submitting the petition;

- ii. Identifying information as specified in WAC 173-441-050(3) (a, c, i, j) of the facility that the owner or operator is petitioning to be classified as emissions-intensive and trade-exposed;
- iii. Annual total production data for each primary product manufactured by the facility. The quantity of each primary product manufactured at the facility as well as the quantity exported outside of Washington state must be submitted.
 - (A) For existing facilities, submit annual total production data for each product for the five years immediately preceding the petition submission date. If the facility has been operational for fewer than five years, submit annual total production data for each product since the facility has been operational.
 - (B) For proposed facilities, submit production estimates corresponding to the facility's potential to emit.

iv. The facility's annual on-site GHG emissions data:

(A) For existing facilities, submit annual on-site GHG emissions data for the five years immediately preceding the petition submission date as reported per WAC 173-441-120. If the facility has been operational for fewer than five years, submit annual on-site GHG emissions data as reported per WAC 173-441-120 since the facility has been operational.

(B) For proposed facilities, submit the potential to emit for each GHG emissions source using methods from 40 CFR Part 98 as adopted in WAC 173-441-120.

v. The facility's electricity purchases, in kWh:

(A) For existing facilities, submit annual electricity purchases for the five years immediately preceding the petition submission date. If the facility has been operational for fewer than five years,

submit annual electricity purchases since the facility has been operational. Itemize purchases by the supplying utility or, if not obtained from a utility, from the supplying electric power entity for each different source of electricity. Total annual purchases must be reported separately for each supplying utility or electric power entity. Self-generated electricity should be itemized separately.

(B) For proposed facilities, submit the potential to emit for purchased electricity utilized by the facility.

vi. Submit information on the location of the facility relative to overburdened communities. Using the Washington State Department of Health's Environmental Health Disparities Map, submit the total environmental health disparities ranking for the census tract in which the facility is located. Indication if the census tract in which the facility is

located is covered or partially covered by tribal lands must also be submitted;

- vii. Any other supporting data or information as requested by ecology; and
- viii. The person completing the petition must sign and date the petition.

(2) **Ecology review of the petition.** Ecology must approve the petition before the manufacturing facility is classified as emissions-intensive and trade-exposed. Ecology will issue a determination within ninety calendar days after receiving a complete petition.

(a) To be classified as emissions-intensive and trade-exposed, the facility must:

- i. Be a manufacturing facility located in Washington state;
- ii. Be covered under Laws of 2021, Chapter 316 (the Climate Commitment Act) or projected to be covered under Laws of 2021, Chapter 316 (the Climate Commitment Act);

- iii. Not be classified as emissions-intensive and trade-exposed under section (030) of this chapter; and
- iv. Meet the criteria for emissions-intensive and trade-exposed pursuant to section (040) (2) (b) of this chapter.

(b) Ecology must apply the following criteria when evaluating a petition:

- i. Emissions' intensity of the facility.
 - (A) Use equation 040-1 to determine the emissions' intensity of the facility. If the annual average emissions' intensity is greater than 10,000 MT CO₂e/year, the facility is deemed emissions-intensive.

$$EI = AE + (EP \times UCO_2e) \quad \text{Eqn 040-1}$$

Where:

EI = Average emissions intensity (MT CO₂e/year)

AE = Average emissions (MT CO₂e/year)

from on-site GHG emissions data

submitted pursuant to section

040(1)(b)(iv) of this chapter.

EP = Average electricity purchases

(kWh/year) submitted pursuant to section

040(1)(b)(v) of this chapter.

UCO₂e = Unspecified electricity emission

factor (MT CO₂e/kWh electricity) per WAC

173-444-040(4) equation 4.

ii. Trade exposure of the facility.

(A) Use equation 040-2 to determine the trade share of the facility. If the trade share is greater than or equal to 15%, the facility is deemed trade-exposed.

$$TS = \frac{\textit{Import+Export}}{\textit{Shipment+Import}} \quad \text{Eqn 040-2}$$

Where:

TS = Trade share (%)

Import = Average value of total physical arrivals of merchandise from foreign countries, whether such merchandise enters the U.S. customs territory immediately or is entered into bonded warehouses or free trade zones under Customs and Border Protection (Customs) custody, for the facility's six-digit NAICS code submitted pursuant to section (040) (c) (ii), taken from the U.S. International Trade Commission DataWeb, for the five years immediately preceding the date of petition submittal, as available (U.S. Dollars)

Export = Average value of goods physically moved out of the U.S. to foreign countries that are grown, produced, or manufactured in the U.S. and commodities of foreign origin that have been changed in the U.S., for the facility's six-digit NAICS code submitted pursuant to section (040) (c) (ii), taken from

the U.S. International Trade Commission
DataWeb, for the five years immediately
preceding the date of petition submittal, as
available (U.S. Dollars)

Shipment = Average value of products at the
national level sold by manufacturing
establishments based on net selling values,
free on board plant, after discounts and
allowances are excluded, for the facility's 6-
digit level NAICS code submitted pursuant to
section (040) (c) (ii), taken from the Annual
Manufacturing Survey compiled by the U.S.
Census Bureau for the five years immediately
preceding the date of submission of the
petition, as available (U.S. Dollars)

(3) **Appeal of determination.** An approval or denial issued by
ecology in response to a written petition filed under this subsection
is a determination appealable to the pollution control hearings board
per RCW 43.21B.110 (1) (h) .

NEW SECTION

WAC 173-446a-050 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.