



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: February 09, 2022

TIME: 10:00 AM

WSR 22-05-050

Agency: Department of Ecology AO #21-07

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: In 2021, the legislature passed the Climate Commitment Act (CCA). The CCA establishes a cap and invest program to help Washington meet the greenhouse gas (GHG) emissions limits set in state law.

This rulemaking adopts amendments to Chapter 173-441 WAC (Reporting of Emissions of Greenhouse Gases) to expand the number and types of organizations subject to reporting and improve reporting requirements in order to align with new requirements from the CCA. Specifically, this rulemaking:

- Adds natural gas suppliers, carbon dioxide suppliers, and electric power entities to the existing GHG reporting program.
- Replaces the existing transportation fuel supplier program with a CCA-compatible fuel supplier program.
- Updates GHG reporting requirements to support the CCA and facilitates potential program linkage with other jurisdictions.
- Adds program elements to support the verification of GHG reporting data.
- Modifies administrative provisions such as deadlines and GHG reporting fees.
- Includes requirements necessary to support the above items, the overall objectives of the statute or chapter, or the goals of the CCA.
- Makes administrative changes for correction or clarification.

Citation of rules affected by this order:

New:
 Repealed:
 Amended: Chapter 173-441 WAC
 Suspended:

Statutory authority for adoption: RCW 70A.15.2200

Other authority: NA

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 21-20-137 on October 6, 2021 (date).
Describe any changes other than editing from proposed to adopted version:

WAC 173-441-020 Definitions

Subsection 020(1) Definitions specific to this chapter

We modified these definitions:

- 40 CFR Part 98: Revised the adoption by reference date from July 1, 2021, to February 9, 2022, to maintain consistency with the most recent version of the Environmental Protection Agency’s (EPA’s) rules. There were no changes to the federal rule in between these dates;
- Electric power entity: Updated to specify that term includes “asset controlling suppliers” rather than “first jurisdictional deliverers.” Commenters requested the use of the broader term;
- Operator: Changed to reflect the structure of electric power entities (EPEs) because of a commenter’s request; and
- Fuel supplier: Revised for clarity.

We added one new definition:

- Asset controlling supplier: Requested by commenters.

WAC 173-441-030 Applicability

Subsections 030(2) Supplier reporting and (3) Electric power entity reporting

We clarified when new reporting requirements begin in this section.

WAC 173-441-050 General monitoring, reporting, recordkeeping, and verification requirements

Subsection 050(3) Content of the annual report

We removed the requirement in (j) to describe any affiliation with other reporters. We made this change in response to public comments that the requirement lacked clarity and could be difficult to report.

We clarified requirements for facilities reporting self-generated electricity in (l).

We added text to (n)(i) explicitly allowing the reporting of more than one production metric because of a commenter's request.

Table 050-1 Updates

- NAICS code 321XXX: Updated production metric to provide more clarity, as requested by a commenter.
- NAICS code 3221XX: Updated production metric to provide more clarity and add additional production metric options for paper or paperboard produced, as requested by a commenter.
- NAICS code 322299: Updated production metric to provide more clarity, as requested by a commenter.
- NAICS code 324110:
 - Updated production metric as requested by a commenter to one already included in GHG reports.
 - Phased in the start of complexity weighted barrel reporting requirements to provide refineries with additional time to prepare to report this metric.
 - Moved 40 CFR Part 98 Subpart MM facility reporting from section 120 to Table 050-1 for clarity.
- NAICS code 334413: Updated production metric from "square meters of wafer produced" to "square meter of mask layer produced," as requested by a commenter.
- NAICS code 3364XX: Updated to include an additional production metric option: "square meters of external surface area of aircraft."

We added text to (n)(iv) requiring a facility to inform Ecology if they wish to change their reported production metric in Table 050-1. We made this change due to the modifications to Table 050-1 allowing additional production metrics.

Subsection 050(6) Recordkeeping

We modified (e)(iv) to ensure consistent record request requirements between the monitoring plan and other rule provisions.

Subsection 050(7) Annual GHG report revisions

We updated (e) to ensure the record retention period is consistent throughout the rule.

Subsection 050(8) Calibration and accuracy requirements

We removed the missing data requirements based on data capture rate from (h) due to conflicts with EPA reporting requirements.

WAC 173-441-085 Third-party verification

We modified this section by adding "reported in 2024" to clarify when third-party verification requirements begin.

WAC 173-441-090 Compliance and enforcement

We modified this section to include subsection (3), which details phased enforcement for some reporting elements for the 2022 emissions year. We made this change in response to public comments and to allow reporters to adapt to new reporting requirements and tools.

WAC 173-441-120 Calculation methods for facilities

Subsection 120(5) Emissions subject to reporting, but not subject to the reporting threshold

We moved the requirement to submit the existing facility level Subpart MM report for petroleum refineries from this section to subsection 050(n), the section containing information on supplemental product data reporting. We made this change to clarify requirements.

WAC 173-441-122 Calculation methods for suppliers

Subsection 122(1) General requirements

We added clarifying language to explain that a supplier cannot split operations into multiple sub-suppliers to get under the reporting threshold.

Subsection 122(2) Definitions specific to suppliers

We removed "For the purposes of this chapter" from (l) and changed "this chapter" to "Chapter 173-441 WAC" in (m) in response to a stakeholder request for clarity.

Subsections 122(4) Supplier of natural gas, and (5) Fuel suppliers other than suppliers of natural gas

We updated these subsections for term consistency with Chapter 173-446 WAC and the updated “fuel supplier” definition in section 020.

WAC 173-441-124 Calculation methods for electric power entities

Subsection 124(1) General requirements

We removed the word “source” in response to requests to clarify how EPEs are categorized. We also changed “Bonneville Power Administration” to “Asset Controlling Suppliers” in subsection (a)(iii) and clarified reporting methods for electric generating facilities in subsection (a)(iv).

Subsection 124(2) Definitions specific to electric power entities

We added definitions for “direct delivery of electricity,” “electricity generating facility,” and “generation providing entity” due to stakeholder requests.

We removed the following definitions since they are not used in the adopted rule:

- “Importer of record”;
- “Electricity generation provider”;
- “Particular end user” at the request of commenters; and
- “Substitute power” or “substitute electricity.”

We clarified who is the importer of Energy Imbalance Market (EIM) power in (c)(iii). We also made a minor clarification in (c)(v) and (vii) by changing “this program” to “this chapter.”

We added language in (c)(viii) and (ix) clarifying requirements for entities that do not have e-tags for all of their transactions. We made this change in response to stakeholder requests.

In (o), we added additional language describing “electricity exporters” at the request of commenters. We also removed the description of “EIM purchaser” from this subsection in response to comments.

We removed references to “wheeled electricity” throughout this section in response to comments.

At the request of commenters, we removed “first jurisdictional” from the term “first jurisdictional deliverer” in one case when the more generic form of the term was appropriate.

Subsection 124(3) Data requirements and calculation methods

In (a), we removed a sentence about substitute electricity reporting at the request of commenters. We also changed the term “imported electricity” to “delivered electricity” and clarified terminology in (a)(iv) at the request of commenters.

In (a)(v)(E), we added language for situations in which e-tags are not available, as requested by commenters.

We removed references to “wheeled electricity” throughout this section in response to comments.

We removed “including imported electricity under EIM” from (b)(ii)(B)(VI) at the request of commenters.

We corrected a typographical mistake to the multi-jurisdictional retail provider emissions formula (equation 124-9) and updated one term at the request of commenters.

We updated (g) to require registration of anticipated specified sources in the greenhouse gas report. We also removed text in (g)(ii) and (iii) because it was duplicative with other requirements. We removed text in (g)(iv) at the request of commenters, since the language is not applicable to Bonneville Power Administration.

We removed language relating to “substitute electricity” at the request of commenters since this concept is not applicable to Washington.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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Web site: <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-441>

Other: N/A

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	<u>2</u>	Amended	<u>13</u>	Repealed	<u>1</u>

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
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The number of sections adopted on the agency's own initiative:

New	___	Amended	___	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	<u>1</u>	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

Date Adopted: 2/9/2022

Name: Laura Watson

Title: Director

Signature:

