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Climate Commitment Act Program**

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**Chapter 173-446 WAC
Climate Commitment Act Program**

GENERAL REQUIREMENTS

WAC 173-446-010 Purpose.

The purpose of this chapter is to implement the provisions of the greenhouse gas reduction program established in RCW 70A65.060 - .210. This program establishes a declining cap on greenhouse gas emissions from covered entities consistent with the limits established in RCW 70A.45.020, and a program to track, verify, and enforce compliance with the cap through the use of compliance instruments.

WAC 173-446-020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

Ecology will pull definitions from the statute and add new definitions as needed.

WAC 173-446-030 Applicability

All covered emissions from all covered entities are subject to Washington's Cap-and-Invest Program.

(1) Beginning with the first compliance period (emissions years 2023 through 2026) and for all subsequent compliance periods covered entities are:

(a) Any owner or operator of a facility with covered emissions for any calendar year from 2015 through 2019 equal to or exceeding 25,000 metric tons of carbon dioxide equivalent;

(i) a landfill used by a city or county solid waste management program, or

(ii) a waste to energy facility used by a city or county solid waste management program.

(b) Any first jurisdictional deliverer that generates electricity in Washington State and whose covered emissions associated with this generation equal or exceed 25,000 metric tons of carbon dioxide equivalent per year;

(c) Any first jurisdictional deliverer that imports electricity into the state, and whose cumulative annual total of covered emissions associated with this

imported electricity, whether from specified or unspecified sources, exceeds 25,000 metric tons of carbon dioxide equivalent per year;

(d) Any supplier of fossil fuel other than natural gas when 25,000 metric tons or more of covered emissions of carbon dioxide equivalent per year would result from the full combustion or oxidation of that fuel. Covered emissions do not include emissions from fuel products that are produced or imported with a documented final point of delivery outside of Washington and combusted outside of Washington;

(e) Any supplier of natural gas when more than 25,000 metric tons of covered emissions of carbon dioxide equivalent per year would result from the full combustion or oxidation of that natural gas. Covered emissions do not include emissions from fuel products

(i) that are produced or imported with a documented final point of delivery outside of Washington and combusted outside of Washington;

(ii) supplied to covered entities under (a) through (d) of this subsection; and

(iii) delivered to opt-in entities.

(f) Any person who is not a natural gas company and has a tariff with a natural gas company to deliver to an end-use customer in the state an amount of natural gas whose covered emissions if fully combusted or oxidized would exceed 25,000 metric tons of carbon dioxide equivalent per year. Covered emissions do not include emissions from natural gas:

(i) supplied to covered entities under (a) through (d) of this subsection; and

(ii) delivered to opt-in entities.

(g) Any end-use customer in Washington who directly purchases natural gas from a person that is not a natural gas company and has the natural gas delivered through an interstate pipeline to a distribution system owned by the purchaser in amounts that, if fully combusted or oxidized, would result in covered emissions of more than 25,000 metric tons of carbon dioxide equivalent per year. Covered emissions do not include emissions from natural gas: (i) supplied to covered entities under (a) through (d) of this subsection; and

(ii) delivered to opt-in entities.

(2) Beginning with the second compliance period (emissions years 2027 through 2030) and for all subsequent compliance periods, covered entities also include any owner or operator of a waste to energy facility used by a county or city solid waste management program with covered emissions from 2023 through 2025 equal to or exceeding 25,000 metric tons of carbon dioxide equivalent per year.

(3) Beginning with the third compliance period (emissions years 2031 through 2034) and for all subsequent compliance periods, covered entities also include:

(a) any owner or operator of a landfill used by a county or city solid waste management program whose covered emissions equal or exceed 25,000 metric tons of carbon dioxide equivalent per year for the years 2027 through 2029; Except landfills that meet both of the following requirements:

(i) the landfill captures at least 75 percent of the landfill gas generated by the decomposition of waste as reported under WAC 173-441; and

(ii) the landfill operates a program, individually or through partnership with another party, that results in the production of renewable natural gas or electricity from landfill gas generated by the facility.

(b) any railroad company, as defined in RCW 81.04.010, whose covered emissions equal or exceed 25,000 metric tons of carbon dioxide equivalent per year for the years 2027 through 2029.

WAC 173-446-040 Covered Emissions

(1) **Reported emissions.** Covered emissions are GHG emissions reported under WAC 173-441 except as modified in subsections (2) through (4) of this section. Covered emissions:

(a) are always calculated on a calendar year basis,

(b) include emissions of all GHGs included in WAC 173-441-040,

(c) are reported in units of carbon dioxide equivalent (CO₂e) as calculated using WAC 173-441, and

(d) must be based on any assigned emissions level under WAC 173-441-086.

(2) **Exemptions.**

(a) Covered emissions do not include the following reported emissions:

(i) Carbon dioxide emissions from the combustion of biomass or biofuels from any facility, supplier, or electric power entity;

(ii) GHG emissions from the following facilities:

(A) a coal-fired electric generation facility exempted from additional greenhouse gas limitations, requirements, or performance standards under RCW 80.80.110; or

(B) facilities with North American industry classification system code 92811 (national security).

(b) The following supplier emissions are not covered emissions if the supplier can demonstrate to ecology's satisfaction as specified under WAC 173-441-122 (5)(d)(xi) that the emissions originate from:

(i) The combustion of the following fuels, if demonstrated to Ecology's satisfaction that they are used for aviation purposes;

(A) kerosene-type jet fuel, and

(B) aviation gasoline.

(ii) Watercraft fuels supplied in Washington that are combusted outside of Washington, including;

(A) The following fuels may be assumed to be watercraft fuels combusted outside of Washington:

(I) Residual fuel oil No. 5 (Navy Special), and

(II) Residual fuel oil No. 6 (a.k.a. Bunker C).

(B) Suppliers must demonstrate to ecology's satisfaction both use in watercraft and combustion outside of Washington for all other fuels, including distillate No. 2 and distillate fuel oil No. 4, to qualify for this exemption.

(iii) Motor vehicle fuel or special fuel used exclusively for agricultural purposes by a farm fuel user as described in WAC 173-441-122 (5)(d)(xi)(c); or

(iv) Fuels used for transporting agricultural products on public highways if it meets the requirements in RCW 82.08.865 as described in WAC 173-441-122 (5)(d)(xi)(c). This exemption is in effect for emissions years 2023 through 2027 and is not available for emissions after 2027.

(3) Allocation of covered emissions. The facility, supplier, or electric power entity that reports the GHG emissions is accountable for the covered emissions it reports unless otherwise described in this subsection. This subsection provides details on allocation of covered emissions and provides direction when emissions may be reported by multiple facilities, suppliers, or electric power entities.

(a) Covered emissions for facilities.

(i) The following emissions are covered emissions for facility reporters.

(A) Emissions from the onsite combustion of natural gas, natural gas liquids, liquefied petroleum gas, compressed natural gas, or liquefied natural gas.

(B) Emissions from the onsite combustion of residual fuel oil No. 5 (Navy Special), and residual fuel oil No. 6 (a.k.a. Bunker C).

(C) Emissions from the onsite combustion of fuel products where the fuel product was generated or modified onsite and not purchased in its combusted form from a supplier. These fuel products may include, but are not limited to: refinery gas, still gas, fuel gas, black liquor, landfill gas, and biogas.

(D) Carbon dioxide collected and supplied offsite that does not meet the criteria specified in subsection (3)(a)(ii)(B) of this section.

(E) All other reported emissions under WAC 173-441-120 are covered emissions for the facility unless otherwise specified in subsection (2) or (3)(a)(ii) of this section.

(ii) The following emissions are not covered emissions for facility reporters.

(A) Emissions from the onsite combustion of any fuel product as described in WAC 173-441-122(5) except those described in subsection (3)(a)(i)(B) or (C) of this section.

(B) Carbon dioxide collected and supplied offsite that the facility owner or operator can demonstrate to Ecology's satisfaction meets either of the following criteria:

(I) The carbon dioxide is permanently removed from the atmosphere either through long term geologic sequestration or by conversion into long lived mineral form.

(II) The carbon dioxide is part of the covered emissions of another covered party under this chapter.

(b) Covered emissions assigned to suppliers of natural gas, natural gas liquids, liquefied petroleum gas, compressed natural gas, or liquefied natural gas.

(i) The following emissions are covered emissions for suppliers of natural gas, natural gas liquids, liquefied petroleum gas, compressed natural gas, or liquefied natural gas.

(A) Emissions from the onsite combustion of natural gas, natural gas liquids, liquefied petroleum gas, compressed natural gas, or liquefied natural gas at any facility that is not a covered entity under this chapter.

(B) All other reported emissions under WAC 173-441-122(4) are covered emissions for the supplier unless otherwise specified in subsection (2) or (3)(b)(ii) of this section.

(ii) The following emissions are not covered emissions for suppliers of natural gas, natural gas liquids, liquefied petroleum gas, compressed natural gas, or liquefied natural gas.

(A) Emissions from the onsite combustion of natural gas, natural gas liquids, liquefied petroleum gas, compressed natural gas, or liquefied natural gas at any facility that is a covered entity under this chapter.

(B) Any supplier of natural gas, natural gas liquids, liquefied petroleum gas, compressed natural gas, or liquefied natural gas, any person who is not a natural gas company and has a tariff with a natural gas company to deliver to an end-use customer

in the state, or any end-use customer in Washington who directly purchases natural gas from a person that is not a natural gas company and has the natural gas delivered through an interstate pipeline to a distribution system owned by the purchaser may exclude emissions that would result from the full combustion or oxidation of that gas:

(I) for fuel products that are produced or imported with a documented final point of delivery outside of Washington and combusted outside of Washington;

(II) supplied to other covered entities under; or

(III) delivered to opt-in entities.

(c) Covered emissions assigned to suppliers of petroleum products, biomass-derived fuels, and coal-based liquid fuels.

(i) The following emissions are covered emissions for suppliers of petroleum products, biomass-derived fuels, or coal-based liquid fuels.

(A) Emissions from the combustion of any petroleum product, biomass-derived fuel, or coal-based liquid fuel except those described in subsection (3)(a)(i)(B) or (C) of this section.

(B) All other reported emissions under WAC 173-441-122(5) are covered emissions for the supplier of petroleum products, biomass-derived fuels, or coal-based liquid fuels unless otherwise specified in subsection (2) or (3)(c)(ii) of this section.

(ii) The following emissions are not covered emissions for suppliers of petroleum products, biomass-derived fuels, or coal-based liquid fuels.

(A) Emissions from the combustion of fuel products described in subsection (3)(a)(i)(B) or (C) of this section.

(B) Emissions that would result from the combustion of fuel products that are produced or imported with a documented final point of delivery outside of Washington and combusted outside of Washington.

(C) The emissions are part of the covered emissions of another covered entity under this chapter.

(d) Covered emissions assigned to suppliers of carbon dioxide.

(i) The following emissions are covered emissions for suppliers of carbon dioxide.

(A) Carbon dioxide supplied that does not meet the criteria specified in subsection (3)(d)(ii) of this section.

(B) All other reported emissions under WAC 173-441-122(3) are covered emissions for the supplier of carbon dioxide unless otherwise specified in subsection (2) or (3)(d)(ii) of this section.

(ii) Carbon dioxide supplied that the supplier owner or operator can demonstrate to Ecology's satisfaction meets either of the following criteria are not covered emissions for suppliers of carbon dioxide:

(A) The carbon dioxide is permanently removed from the atmosphere either through long term geologic sequestration or by conversion into long lived mineral form.

(B) The carbon dioxide is part of the covered emissions of another covered party under this chapter.

(4) **Adjustments to covered emissions.** Ecology may adjust the covered emissions for any emissions year for a facility, supplier, or electric power entity based on new reported information, an assigned emissions level under WAC 173-441-086, or to compensate for a change in methodology as described in WAC 173-441-050(4).

WAC 173-446-050 Covered Entity Registration

(1) Any reporter under Chapter 173-441 WAC reporting at least 25,000 metric tons of covered CO₂e emissions per calendar year for 2015 or any year thereafter that meets the applicability conditions in WAC 173-446-030 or 060 is automatically registered as a covered entity in Washington State's cap and invest program.

(2) The owner or operator of any reporter under Chapter 173-441 WAC that is not a covered entity may ask Ecology to be registered in Washington State's cap and invest program as an opt-in entity. Upon receipt of such a request, Ecology will register the reporter in the cap and invest program as an opt-in entity. Opt-in entities incur compliance obligations as if they were covered entities.

(3) Any party who is not a reporter but is never-the-less responsible for greenhouse gas emissions in Washington State may also voluntarily participate in the cap and invest program as an opt-in entity. In order to participate, these persons must report greenhouse gas emissions to Ecology under the voluntary reporting requirements in Chapter 173-441 WAC, and must request to be registered in the cap-and-invest program as an opt-in entity. Opt-in entities incur compliance obligations as if they were covered entities.

(4) Ecology will email notice of registration to the designated representative and alternate designated representative of each newly-registered entity.

(5) Any covered entity receiving notice of registration that believes it was registered in error and should not be included in the program may provide a written request to Ecology explaining why it should be removed from registration.

WAC 173-446-055 General Market Participants Registration

(1) A party not identified as a covered entity or opt-in entity that intends to hold Washington State compliance instruments may apply to Ecology for approval as a general market participant.

(a) The following defines the parties that may qualify as general market participants:

(i) An individual, or a party that does not meet the requirements to be a covered entity or an opt-in entity, that intends to purchase, hold, sell, or voluntarily retire compliance instruments;

(ii) A party operating an offset project that is registered with Ecology pursuant to WAC 173-446-xxx (offsets). Parties qualifying as general market participants under this subparagraph may hold offsets without needing to fulfill the requirements of WAC 173-446-120. Parties qualifying as general market participants under this subparagraph may also hold allowances, but only after fulfilling the requirements of WAC 173-446-120.

(b) An individual registering as a general market participant must have primary residence in the United States.

(c) Registration and Consulting Activities. An individual who provides cap-and-invest consulting services as described in WAC 173-446-056

and also registers as a general market participant in the tracking system must disclose to Ecology the parties for which the individual is providing consulting services.

(i) The disclosure must be made when the individual registers as a general market participant, or within 30 days of initiating the consulting activity if the individual is already registered.

(ii) If the individual is associated with a party providing cap-and-invest consulting services so that in the course of the individual's duties the individual gains access to the market position of another registered entity, then the individual must provide a notarized letter from the party providing the cap-and-invest consulting services stating that it is aware of the individual's plans to apply as a general market participant in the Cap-and-Invest Program and that it has conflict of interest policies and procedures in place that prevent the individual from using information gained from the relationship with the party for personal gain in the Cap-and-Invest Program. Failure to provide such a letter by the applicable deadline described above in subsection (1)(c)(i) will result in suspension, modification, or revocation of the individual's tracking system account.

(d) An individual who is already registered in the tracking system and intends to provide cap-and-invest program advisory services to other registered entities must disclose the proposed relationship with the other registered entities to Ecology and comply with the requirements of subsection (1)(a)(ii) above prior to providing the advisory services. Failure to provide such a letter by the deadline will result in suspension, modification, or revocation of the individual's tracking system account.

(e) A party registering as a general market participant must be located in the United States, according to the registration information provided pursuant to subsection (3) of this section.

(f) Individuals identified by registered entities pursuant to section WAC 173-446-120(1)(c), (d), (h); WAC 173-446-130; WAC 173-446-140; or WAC 173-446-056, unless disclosed pursuant subsection (1)(c) of this section; are not eligible to register as general market participants.

- (g) An individual who is an employee of a party subject to the requirements of WAC 173-441 or the Cap-and-Invest Program is not eligible to register as a general market participant.
- (2) Restrictions on Other Registered Entities. The following entities do not qualify to hold compliance instruments and do not qualify as a Registered Entity:
 - (a) An offset verifier accredited pursuant to WAC 173-446-xxx (offsets).
 - (b) A verification body accredited pursuant to WAC 173-446-xxx(offsets).
 - (c) Offset Project Registries
 - (d) An emissions reporting verifier accredited pursuant to WAC 173-441.
- (3) General Market Participant Registration
 - (a) Any party wishing to register as a general market participant must provide the following information to Ecology:
 - (i) Name, physical and mailing addresses, contact information, party type, date and place of incorporation, and ID number assigned by the incorporating agency.
 - (ii) Names and addresses of the general market participant's directors and officers with authority to make legally binding decisions on behalf of the general market participant, and partners with more than 10 percent of control over the partnership, including any individual or party doing business as the limited partner or general partner;
 - (iii) Names and contact information for persons controlling more than 10 percent of the voting rights attached to all the outstanding voting securities of the party;
 - (iv) A business number, if one has been assigned to the party by a Washington State agency
 - (v) A government issued taxpayer or Employer Identification Number, or a U.S. Federal Tax Employer Identification Number, if assigned;
 - (vi) Disclosure of all other parties with whom the party has a direct corporate association or indirect corporate association that must be

reported pursuant to section WAC 173-446-120 and a brief description of the association. Parties qualifying as general market participants under subsection (1)(a)(ii) of this section must complete this disclosure before they may hold allowances.

(vii) Names and contact information for all employees of the party with knowledge of the party's market position (current and/or expected holdings of compliance instruments and current and/or expected covered emissions).

(viii) Information required pursuant to section WAC-173-446-056 for individuals serving as Cap-and-Invest Consultants and Advisors for registered entities participating in the Cap-and-Invest Program.

WAC 173-446-056 Cap-and-Invest Consultants and Advisors

(1) A "Cap-and-Invest Consultant or Advisor" is an individual or party that is not an employee of a registered entity, but is providing any of the following services for a party registered in the Cap-and-Invest Program, regardless of if the Consultant or Advisor is acting in the capacity of an offset or emissions verifier:

(a) Designing, developing, implementing, reviewing or maintaining an inventory or offset project information or data management system for air emissions or development of a forest management plan, or timber harvest plan, unless the review was part of providing GHG offset verification services; or, where applicable, designing, developing, implementing, reviewing or maintaining electricity or fuel transactions, unless the review was part of providing GHG verification services;

(b) Developing GHG emission factors or other GHG-related engineering analysis, including developing or reviewing a State Environmental Policy Act (SEPA) GHG analysis that includes offset project specific information;

(c) Designing energy efficiency, renewable power, or other projects which explicitly identify GHG reductions and GHG removal enhancements as a benefit;

(d) Designing, developing, implementing, internally auditing, consulting, or maintaining an offset project resulting in GHG emission reductions and GHG removal enhancements;

- (e) Owning, buying, selling, trading, or retiring shares, stocks, or Washington State offset credits, or registry offset credits from an offset project;
- (f) Dealing in or being a promoter of Washington State offset credits on behalf of an Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s), or where the credits are owned by or the offset project was developed by the reporting party;
- (g) Preparing or producing GHG-related manuals, handbooks, or procedures specifically for a reporting party or an Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s);
- (h) Appraisal services of carbon or GHG liabilities or assets;
- (i) Brokering in, advising on, or assisting in any way in carbon or GHG-related markets;
- (j) Directly responsible for developing any health, environment or safety policies for the Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s); or directly managing any health, environment or safety functions for a reporting party;
- (k) Bookkeeping or other services related to the accounting records or financial statements;
- (l) Any service related to information systems, including International Organization for Standardization 14001 Certification for Environmental Management (ISO 14001 Certification) and energy management systems, including those conforming to ISO 50001, unless those systems will not be part of an emissions verification process and will not be reviewed as part of the offset verification process;
- (m) Appraisal and valuation services, both tangible and intangible;
- (n) Fairness opinions and contribution-in-kind reports in which the verification body has provided its opinion on the adequacy of consideration in a transaction, unless the resulting services will not be part of the emissions verification process and the information reviewed in formulating the Offset Verification Statement will not be reviewed as part of the offset verification process;
- (o) Any actuarially oriented advisory service involving the determination of accounts recorded in financial statements and related accounts;

(p) Any internal audit service that has been outsourced by the reporting party or by the Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s) that relates to the Offset Project Operator's, Authorized Project Designee's, if applicable, and their technical consultant(s)' internal accounting controls, financial systems, or financial statements, unless the systems and data reviewed during those services, as well as the result of those services will not be part of the offset verification process;

(q) Acting as a broker-dealer (registered or unregistered), promoter or underwriter on behalf of a reporting party or an Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s);

(r) Any legal services; and

(s) Expert services to an emissions reporter or to the Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s) or a legal representative for the purpose of advocating the Offset Project Operator's, Authorized Project Designee's, if applicable, and their technical consultant(s)' interests in litigation or in a regulatory or administrative proceeding or investigation, unless providing factual testimony.

(2) A party employing Cap-and-Invest Consultants or Advisors must disclose to Ecology the following information for each Cap-and-Invest Consultant or Advisor:

(a) Information to identify the Cap-and-Invest Consultant or Advisor, including:

(i) Name;

(ii) Contact information

(iii) Physical work address of the Cap-and-Invest Consultant or Advisor; and

(iv) Employer, if applicable.

(b) The party must disclose the information required in section (a) above to Ecology:

(i) With the disclosures required under WAC 173-446-120

(ii) Within 30 days of entering into a contract with a Cap-and-Invest Consultant or Advisor;

- (iii) Within 30 days of a change to the information disclosed on Consultants and Advisors.

WAC 173-446-060 New or Modified Covered Entities

(1) Unless otherwise provided under WAC 173-446-030, any facility, supplier, or electric power entity beginning operation or modified after January 1, 2023 becomes a covered entity in the calendar year in which its emissions reach the thresholds listed in WAC 173-446-030, or upon formal notice from Ecology that the entity is expected to exceed those thresholds, whichever happens first. Covered entities meeting these criteria are required to transfer their first allowances on November 1 of the year following the year in which their covered emissions were equal to or exceeded 25,000 metric tons CO₂e per year.

(2) Any waste to energy facility that is used by a county or city solid waste management program and is newly constructed or modified after January 1, 2027 becomes a covered entity in the calendar year in which its emissions reach the thresholds listed in WAC 173-446-030, or upon formal notice from Ecology that the entity is expected to exceed those thresholds, whichever happens first. Covered entities meeting these criteria are required to transfer their first allowances on November 1 of the year following the year in which their covered emissions were equal to or exceed 25,000 metric tons CO₂e per year.

(3) Any facility, supplier, or electric power entity of the types described in WAC 173-446-030(1) that were in operation between 2015 and 2019 but were not required to report emissions for 2015 through 2019 becomes a covered entity in the calendar year following the year in which the entity's covered emissions equal or exceed 25,000 metric tons of carbon dioxide equivalent per year as reported under WAC 173-441, or upon formal notice from Ecology that the party's covered emissions are expected to exceed 25,000 metric tons of carbon dioxide equivalent per year for the first year the covered entity is required to report emissions, whichever happens first. Covered entities meeting these criteria are required to transfer their first allowances on November 1 of the year following the year in which their covered emissions were equal to or exceeded 25,000 metric tons CO₂e per year.

WAC 173-446-070 Curtailment and Closure

(1) When a covered entity reports covered emissions that are below 25,000 metric tons of carbon dioxide equivalent in any given calendar year during a compliance period, the covered entity continues to have a compliance obligation through the end of that compliance period.

(2) A covered entity may exit the program based on the following:

(a) Except as provided in (2)(b) of this subsection, when a covered entity reports covered emissions below 25,000 metric tons of carbon dioxide equivalent for each year during an entire compliance period, or has ceased all processes at the facility requiring reporting under WAC 173-441, the facility, supplier, or electric power entity is no longer a covered entity as of the beginning of the subsequent compliance period.

(b) A covered entity identified in subsection (2)(a) above will remain a covered entity if Ecology provides notice at least 12 months before the end of the compliance period that the facility, supplier, or electric power entity's covered emissions are within 10 percent of the 25,000 metric-ton threshold, and the covered entity must remain a covered entity to ensure equity among all covered entities.

(3) Whenever a covered entity ceases to be a covered entity, Ecology must notify the appropriate policy and fiscal committees of the legislature of the name of the facility, supplier, or electric power entity and the reason it is no longer a covered entity.

PROGRAM ACCOUNT REQUIREMENTS

173-446-100 Program Accounts Required

(1) Within 30 days after receiving a Registration Notice from Ecology, each registered entity must make corporate association disclosures and designate account representatives as outlined in WAC 173-446-105 through -140 below. Within 30 days after Ecology has received the required complete documents, Ecology will set up the required accounts for each registered entity.

(2) A registered entity that is a member of a direct corporate association may apply for a consolidated entity account to include other associated registered entities from within the direct corporate association. To do so, the applicant must identify each associated registered entity that will be assigned to its account, and each associated registered entity must provide an attestation signed by its officer or director to confirm

that it seeks to be added to the consolidated entity account. The applicant must be able to demonstrate that it has the controlling ownership or authority to act on behalf of all members of the direct corporate association. The applicant cannot be a party that is a subsidiary to or controlled by another associated entity within the direct corporate association

(3) A registered entity that is a member of a direct corporate association and seeks to apply for its own separate registered entity account, rather than apply for a consolidated entity account, must provide an allocation of the holding and purchase limits among the separate accounts established for any of its corporate associates per the requirements of WAC 173-446-120(1)(i). All members of a direct corporate association must separately confirm the allocation of holding and purchase limits.

WAC 173-446-105 Disclosure of Corporate Associations - Indicia of Corporate Association

(1) A corporate association exists when one party has an ownership interest in or control over a second party. The following indicia of control determine ownership or control:

- (a) Percent of ownership of any class of listed shares, the right to acquire such shares, or any option to purchase such shares of the other party;
- (b) Percent of common owners, directors, or officers of the other party;
- (c) Percent of the voting power of the other party;
- (d) In the case of a partnership other than a limited partnership, percent of the interests of the partnership;
- (e) In the case of a limited partnership, the percent of control over the general partner or the percent of the voting rights to select the general partner; and
- (f) In the case of a limited liability corporation, percent of ownership in the other party regardless of how the interest is held.

(2) An party has a direct corporate association with another party, regardless of whether the second party is registered in the Cap-and-Invest Program or in an external greenhouse gas emissions trading program to which Washington State is linked, if either one of these entities has any indicia of control described in section (1) above that is greater than 50 percent.

(3) A direct corporate association also exists when two entities are connected through a line of more than one direct corporate association.

(a) A party (A) has a direct corporate association with another party (B) if the two entities share a common parent and that parent has direct corporate association with each party (A and B) when applying the indicia of control contained in section WAC 173-446-105 (1).

(b) A party that has a direct corporate association with a second party also has a direct corporate association with any party with whom the second party has a direct corporate association.

(4) A party has an indirect corporate association with another party if:

(a) The two parties do not have a direct corporate association; and

(b) The controlling party's percentage of ownership or any indicia of control identified in section RCW 173-446-105 (1) of the controlled party is more than 20 percent but less than or equal to 50 percent. If the two entities are connected through a chain of more than one corporate association, the indicia of control identified in section RCW 173-446-105(1) is calculated by multiplying the percentages at each link in the chain of corporate associations starting with the last party that is in a direct corporate association. An indirect corporate association exists between the two entities if the total percentage of control is more than 20 percent but less than or equal to 50 percent when multiplying the percentage of control at each link in the chain of corporate associations.

(5) An electric utility that is the operator of an electricity generating facility in Washington State has a direct corporate association with the operator of another electricity generating facility in Washington if the same party operates both generating facilities. An electric utility that is the operator of an electricity generating facility in Washington State has a direct corporate association with an electricity importer if the same party operates the generating facility in Washington State and is the party importing electricity.

(6) An individual who has access to the market positions (current and/or expected holdings of compliance instruments and current and/or expected covered emissions) of two or more entities registered in the tracking system or registered in an external GHG ETS to which Washington State has linked is considered an individual who has shared roles. For the purposes of this requirement, Account Representatives are defined as having access to the market positions of the entities they serve.

(a) If any individual with shared roles is an employee of a registered entity for which the individual has a shared role, the registered entities for which the individual has the shared role will have a direct corporate association.

(b) If any individual is a Cap-and-Invest Consultant or Advisor for the registered entities for which the individual has a shared role, but is not disclosed pursuant to WAC 173-446-056, and the individual can use market position information obtained through the shared role without restriction, the registered entities for which the individual has shared roles will have a direct corporate association. It is the responsibility of the registered entity employing an individual as a Cap-and-Invest Consultant or Advisor to determine if the individual has access to the registered entity's market position.

WAC 173-446-110 Disclosure of Corporate Associations - Types of Disclosures Required

(1) Registered entities must disclose all direct and indirect corporate associations with entities registered in the Washington State Cap-and-Invest Program or in another external GHG ETS to which Washington State has linked.

(2) Registered entities must disclose all direct corporate associations with parties not registered in the Washington State Cap-and-Invest Program or in another external GHG ETS to which Washington has linked if those parties have the degree of ownership interest in or control over the registered entity to meet the requirements of having a direct corporate association.

(3) A registered entity that has a direct or indirect corporate association with another registered entity must disclose the identity of all parties involved in the line of direct or indirect corporate associations between the two registered entities, even if such parties are not registered.

(4) Registered entities that have direct corporate associations with unregistered parties in the United States or Canada that are otherwise not required to be disclosed must disclose those associations within 30 calendar days of a request by Ecology. The disclosing party may elect to disclose only those directly associated parties located in the United States or Canada that participate in a market related to the Cap-and-Invest Program.

(a) Parties participating in a market related to the Cap-and-Invest-Program include only those that purchase and sell greenhouse gas compliance

instruments, natural gas, oil, or electricity; or conduct exchange trades involving derivatives or swaps based on greenhouse gas compliance instruments, natural gas, oil, or electricity.

(b) The disclosure of parties in related markets may be accomplished through the submission of the most recent information submitted to another government agency in the United States using one or more of the following official governmental forms or documentation as needed to meet the required disclosure: (1) Exhibit 21 of the Form 10-K submitted to the Securities and Exchange Commission by the registrant or an affiliate of the registrant; (2) the application for market-based rate authority, or update to such application, submitted by the registrant or an affiliate of the registrant to the Federal Energy Regulatory Commission pursuant to 18 CFR Part 35 and Order 697; (3) the application for registration with the National Futures Association, or update to such application, submitted by the registrant or an affiliate of the registrant as required by the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act; (4) Form 40 or Form 40S filed by the registrant or an affiliate of the registrant in accordance with the Commodity Futures Trading Commission's reporting rules; and/or (5) Part 1A of a Form ADV filed with the Securities and Exchange Commission by a registered investment advisor responsible for managing the registrant.

(5) Registered entities that have direct corporate associations with other parties outside the United States and Canada that participate in a market related to the Cap-and-Invest Program that are not otherwise required to be disclosed must disclose those associations within 30 calendar days of a request by Ecology.

(a) Parties participating in a market related to the Cap-and-Invest Program include only those that purchase and sell greenhouse gas compliance instruments, natural gas, electricity, or oil; or conduct exchange trades involving derivatives or swaps based on greenhouse gas compliance instruments, natural gas, oil, or electricity.

(b) Registered entities may disclose these associations using the documentation options listed in RCW 172-446-110(4)(b).

(6) The following entities are exempt from the disclosure requirements:

(a) Any registered entity subject to affiliate compliance rules promulgated by state or federal agencies shall not be required to disclose information or take other action that violates those rules.

- (b) A party registering as a general market participant solely to hold offsets is not required to disclose any direct or indirect corporate associations.

WAC 173-446-120 Disclosure of Corporate Association - Information to be Submitted

(1) Registered entities disclosing direct or indirect corporate association must provide the following information for each reportable corporate association:

- (a) Name, contact information, and physical address of the party;
- (b) Tracking system entity identification number, if applicable;
- (c) Names and addresses of the party's directors and officers with authority to make legally binding decisions on behalf of the party, and partners with over 10 percent of control over the partnership, including any individual or entity doing business as the limited partner or general partner.

(d) Names and contact information for individuals or parties controlling over 10 percent of the voting rights attached to all the outstanding voting securities of the party.

(e) Business number, if one has been assigned by a Washington State agency.

(f) A government issued Taxpayer Identification Number or Employer Identification Number, or for parties located in the United States, a U.S. Federal Tax Employer Identification Number, if assigned;

(g) Place and date of incorporation, if applicable;

(h) Names and contact information for all employees of the party with knowledge of the party's market position (current and/or expected holdings of compliance instruments and current and/or expected covered emissions); and

(i) For direct corporate associations with registered entities only, the percentage share of the holding limit and purchase limit assigned to each party opting out of account consolidation pursuant to WAC 173-446-120; the sum of the shares must equal 100 percent.

(2) Registered entities that have disclosable corporate associations must identify whether the type of corporate association is direct or indirect.

(a) Registered entities identifying an indirect corporate association must provide a brief description of the association, including information

sufficient to explain the registered entity's evaluation of the indicia of control in WAC 173-446-100 (1) that was used to determine the type of corporate association disclosed for each associated party.

(b) Registered entities identifying a direct corporate association must identify the nature of the associated party as a parent, a subsidiary, or a party with a common parent, but need not include an evaluation of the indicia of control.

(3) All corporate association disclosures required by this section must be provided by doing xxx. – to come

(4) The registered entity must disclose the information required:

(a) Within 30 days after receiving Registration Notification from Ecology under WAC 173-446-050.

(b) Within 30 calendar days of the creation of a direct or indirect corporate association or of a change in the type of a corporate association involving registered entities pursuant to WAC 173-446-110(1) or WAC 173-446-100(6)(b); or registered and unregistered parties pursuant to section WAC 173-446-110(2) and (3).

(c) Within one year of a modification if the changes in information involve only unregistered parties disclosed pursuant to sections WAC 173-446-100(4) and (5).

(d) No later than 10 calendar days prior to the auction application deadline established in [the section of the rule on auctions] when disclosing a change related to another party registered in the Cap-and-Invest Program or to parties registered into other external GHG ETS to which Washington State has linked, if the disclosing entity intends to participate in the auction; and

(e) Within one year for all other changes.

WAC 173-446-130 Designation and Certification of Account Representatives

(1) Within 30 days after receiving Registration Notification from Ecology, every registered entity must designate at least 2 and at most 5 natural persons to act as account representatives to perform any operations within the Cap-and-Invest Program on its behalf. The registered entity must identify one primary account representative, who is the resource person to be contacted for any information concerning the registered entity.

For the purposes of the designations, the registered entity must provide Ecology with the following information and documents:

- (a) the name and contact information of the registered entity
- (b) the following information concerning each designated account representative:
 - (i) name and contact information at the individual's home address
 - (ii) the individual's date of birth
 - (iii) copies of at least 2 identity documents, including one with a photograph, issued by a government or one of its departments or agencies, bearing the individual's name and date of birth; along with an attestation from a notary completed less than 3 months prior to the application, stating that the notary has established the identity of the individual and verifying the authenticity of the copies of the identity documents;
 - (iv) the name and contact information of the individual's employer;
 - (v) confirmation from a financial institution located in the United States that the individual has a deposit account with the institution;
 - (vi) any conviction for a criminal offence declared in any jurisdiction during the previous five years constituting a felony under U.S. federal law or Washington State law, or the equivalent thereof. The disclosure must include the type of violation, jurisdiction, and year.
- (c) a declaration signed by a director or by any other officer, or a resolution of the board of directors of the registered entity attesting that the account representatives have been duly designated to act on behalf of the registered entity for the purposes of this program.
- (d) an attestation from a notary or attorney confirming the link between an account representative and the registered entity;
- (e) the following declaration signed by each of the account representatives, "I certify under penalty of perjury under the laws of the State of Washington that I was selected as the primary account representative or the alternate account representative, as applicable, by an agreement that is binding on

all parties who have an ownership interest with respect to compliance instruments held in the account. I certify that I have all the necessary authority to carry out the duties and responsibilities contained in WAC 173-446 on behalf of such parties and that each such party shall be fully bound by my representations, action, inactions, or submissions and by any order or decision issued to me by Ecology or a court regarding the account.”

(2) A registered entity must have at least 2 account representatives at all time, including a primary account representative.

(3) All representations, acts, errors or omissions made by the account representatives in the performance of their duties are deemed to be made by the registered entity.

(4) Each submission concerning the account shall be submitted, signed, and attested to by the primary account representative or any alternate account representative for the party that owns the compliance instruments held in the account. Each such submission shall include the following attestation statement made and signed by the primary account representative or any alternate account representative: “I certify under penalty of perjury under the laws of the State of Washington that I am authorized to make this submission on behalf of the party that owns the compliance instruments held in the account. I certify under penalty of perjury under the laws of the State of Washington that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify under penalty of perjury under the laws of the State of Washington that the statements and information submitted to Ecology are true, accurate, and complete. I consent to the jurisdiction of Washington State and its courts for purposes of enforcement of the laws, rules and regulations pertaining to WAC 173-446 and RCW 70A.65 and I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

(5) The duties of the account representatives terminate when a request for revocation is received from the registered entity and, when a registered entity has only 2 representatives, only after a new representative has been designated. The duties of the account representatives also terminate when all the accounts of the registered entity are closed.

(6) If the registered entity is a natural person, any act that must be performed by an account representative in this program must be performed by the registered entity.

(7) At the written request of a registered entity, Ecology may, before a request for revocation of mandate is sent to Ecology by the Registered Entity, where the urgency of the situation warrants it, withdraw access to the electronic system from one of its account representatives.

(8) Only an individual who resides in Washington State may be designated as the primary account representative of a registered entity.

(9) No individual designated as an account representative or authorized as an account viewing agent may have been found guilty, in the 5 years prior to the notice of designation or authorization, of fraud or any other criminal offence connected with the activities for which designation is requested.

WAC 173-446-140 Designation of Account Viewing Agents

(1) A primary account representative or alternate account representative for a registered entity may authorize up to 5 natural persons per account to act as account viewing agents who may view all information contained in the tracking system involving the registered entity's accounts, information, and transfer records (account viewing authority). The persons delegated shall not have authority to take any other action with respect to an account on the tracking system.

(2) To delegate account viewing authority, the primary account representative or alternate account representative, as appropriate, must submit to Ecology a notice of delegation that includes the following:

(a) The name, address, email address, and telephone number of each primary account representative or alternate account representative;

(b) The name, address, email address, and telephone number of each natural person delegated to be an account viewing agent;

(c) An attestation verifying the selection of the account viewing agent, signed by the officer of the registered entity who is responsible for the conduct of the account viewing agent, and is one of the officers disclosed pursuant to WAC 173-446-120(1)(c).

(3) A notice of delegation for an account viewing agent shall be effective with regard to the accounts identified in such notice, upon receipt of the notice by Ecology and

until receipt by Ecology of a superseding notice of delegation by the primary account representative or alternate account representative as appropriate. The superseding notice of delegation may replace any previously identified account viewing agent, add a new account viewing agent, or eliminate entirely any delegation of authority.

WAC 173-446-150 Accounts for Registered Entities

(1) Within 30 days after Ecology receives the required disclosures of corporate association and complete documents for the certification and designation of the primary and alternate account representatives, Ecology will set up two accounts for each covered entity and two accounts for each opt-in entity:

(a) A compliance account through which compliance instruments are transferred to Ecology for retirement. Compliance instruments in compliance accounts may not be sold, traded, or otherwise provided to another account or person.

(b) A holding account for allowances that may be bought, sold, transferred to another registered entity, or traded.

(2) Holding limits

(a) The maximum total number of allowances of the current or prior vintage, that a covered entity or an opt-in entity may hold in its holding account and, where applicable, its compliance account is the following:

$$HL_i = 0.1 \times 25,000,000 + 0.025 \times (C_i - 25,000,000)$$

HL_i = holding limit for year i

C = annual cap on emissions for year i

i = current year

(b) The maximum number of allowances of each vintage subsequent to the current year that a covered entity or opt-in entity may hold in its holding account and, where applicable, its compliance account, is the following:

$$HL_j = 0.1 \times 25,000,000 + 0.025 \times (C_j - 25,000,000)$$

HL_j = holding limit for year j

C = annual cap on emissions for year j

j = year subsequent to the current year

(c) The holding limits set in (2)(a) and (b) above do not apply to the allowances recorded in the compliance account of a covered entity or opt-in entity and needed to cover estimated GHG emissions for the current year or emissions for preceding years.

(d) A covered entity or an opt-in entity that reaches or exceeds one-half of its holding limit must, at Ecology's request, explain its strategy and the reason for holding the emission units concerned.

(e) When its holding limit is exceeded, a registered entity must, within 5 business days after the limit is exceeded, divest itself of the excess emission allowances, pay into its compliance account the allowances needed to cover its emissions for the current year or preceding years, or, in the case of consolidated entities, amend the distribution of the overall holding limit to become compliant. Upon a failure to comply, Ecology will take back the excess allowances and make them available for auction.

(3) Ecology will post information about the contents of each holding account, including but not limited to the number of allowances in the account, on Ecology's Cap-and-Invest public website. The website also includes a public roster of all covered entities, opt-in entities, and general market participants.

(4) Voluntary renewable reserve account to hold (and from which to retire) allowances for voluntary renewable electricity generation on behalf of voluntary renewable energy purchasers or end users. PLACE HOLDER

DIRECT DISTRIBUTION OF ALLOWANCES

173-446-200 Annual Allowance Budgets, Compliance Timelines and Distribution of Allowances – to come

ALLOWANCE AUCTIONS

173-446-300 Auctions of Allowances – to come

COMPLIANCE INSTRUMENT TRANSACTIONS

173-446-400 Compliance Instruments Transactions - General Information

(1) A compliance instrument authorizes a covered entity to emit one metric ton of carbon dioxide equivalent in one calendar year. A compliance instrument does not

expire, and may be held or banked. Once used, a compliance instrument must be retired and never used, traded, or transferred again.

(2) By the end of each compliance period, each covered entity must surrender to Ecology the number of compliance instruments equal to the number of metric tons of carbon dioxide equivalent emitted by the covered entity during the compliance period.

(3) Allowances may be obtained by direct distribution of no-cost allowances from Ecology, by purchase at auction, or by purchase, trade or transfer from other parties owning allowances

(4) Offset credits may be obtained as outlined in WAC 173-446-500.

(5) A compliance instrument may be traded only among covered entities, opt-in entities, and general market participants registered with Ecology or with an external GHG ETS to which Washington has linked.

(6) A covered entity or opt-in entity may only hold compliance instruments for its own use and may not hold compliance instruments on behalf of another party having an interest in or control of the compliance instruments.

(7) Only compliance instruments recorded in a holding account may be traded. Once in a compliance account, compliance instruments may not be traded or sold, but may only be transferred to Ecology to cover greenhouse gas emissions.

173-446-410 Transfers Among Registered Entities - Process

(1) Every registered entity wishing to trade compliance instruments with another party registered in Washington State's Cap-and-Invest Program or with a party registered in an external GHG ETS to which Washington has linked must follow the procedures outlined below.

(a) To initiate the transfer, a transferor's account representative must submit to Ecology and to all the transferor's other account representatives a transaction request containing the information outlined in WAC 173-446-430. A second transferor's account representative must submit confirmation of the transaction request to Ecology and to all the transferee's account representatives within two days after submission of the original request to Ecology.

(b) If the intended transferee wishes to accept the transfer, within three days after receiving confirmation of the transaction request referenced in

paragraph (1) above, a transferee's account representative must submit to Ecology and to the transferor confirmation of acceptance of the transfer.

(c) At each step in the transaction request, the account representative concerned must attest to holding due authorization to complete the transaction for the registered entity, and that the information contained in the transaction request is true, accurate and complete.

(2) Ecology will transfer the compliance instruments unless:

(a) the transfer would result in non-compliance with RCW 70A.65 or WAC 173-446.

(b) Ecology has reasonable grounds to believe that a violation has been committed under the Act in relation to the request; or

(c) the request contains errors, omissions, or is otherwise incomplete.

(3) (a) If Ecology refuses to transfer compliance instruments, Ecology shall provide notice of the reason for the refusal to all designated account representatives who have taken steps under this regulation with respect to the request.

(b) If Ecology refuses to transfer compliance instruments due to errors or omissions in the request, the notice shall identify the errors or omissions or shall include a description of how the request is otherwise incomplete.

173-446-420 Transfers to Ecology - Process

(1) Every registered entity wishing to transfer compliance instruments from the registered entity's holding account to its compliance account must send Ecology a request including:

(a) the registered entity's holding account number and its compliance account number; and

(b) the quantity, type, and, where applicable, vintage of the compliance instruments to be transferred.

(2) To initiate a transfer to Ecology, an account representative from the registered entity must submit the transfer request to Ecology and to all the registered entity's other account representatives. One of the other account representatives must confirm the transfer request within two days after its submittal to Ecology.

(3) Once the transfer has been confirmed, Ecology will send a notice to all the registered entity's account representatives. Unless otherwise indicated by one of the account representatives, or Ecology has serious grounds to believe that a violation under this rule has been committed, Ecology will transfer the compliance instruments from the registered entity's holding account to its compliance account.

(4) Account representatives who have sent a transfer request for compliance instruments must provide Ecology, on request and as soon as possible, any additional information concerning the transfer.

(5) When a transaction cannot be completed because of an error or omission in the information included in the request, or because the request does not meet the requirements of this section, or because an account does not contain enough compliance instruments or for any other reason, Ecology will send notice to the parties concerned within 5 working days following the failure to complete the transaction.

173-446-430 Transaction requests - Information Required by Ecology

(1) Each transaction request must contain the following information:

(a) the holding account number of the transferor;

(b) the holding account number of the transferee;

(c) the quantity, type and, where applicable, vintage of the compliance instruments to be traded;

(d) the settlement price of each type, and, where applicable, each vintage of compliance instruments, as well as the method used to determine the settlement price; Provided that a registered entity is not required to disclose the settlement price of transferred compliance instruments when the transaction is between related entities or is a bundled transfer.

(e) the type of trading agreement, the date of signing of the agreement and the agreed upon trading date;

(f) where applicable, all other transactions or products covered by the agreement, a description of those transactions or products, and the name and contact information of the parties involved.

(g) the following attestation statement made and signed by the primary account representative or any alternate account representative: "I certify under penalty of perjury under the laws of the State of Washington that I am authorized

to make this submission on behalf of the registered entity that owns the compliance instruments held in the account. I certify under penalty of perjury under the laws of the State of Washington that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify under penalty of perjury under the laws of the State of Washington that the statements and information submitted to Ecology are true, accurate, and complete. I consent to the jurisdiction of Washington and its courts for purposes of enforcement of the laws, rules and regulations pertaining to WAC 173-446 and I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

173-446-440 Compliance Instrument Transactions - Prohibited Actions

(1) No party holding privileged information on a compliance instrument may trade that compliance instrument, disclose the information or recommend that another party trade the compliance instrument, except if the party has reason to believe that the information is known to the public or to the other party in the transaction. However, the party may disclose the information or recommend that another party trade the compliance instrument if the party is required to disclose the information in the course of business, and if nothing leads the party to believe that the information will be used or disclosed in contravention of this section.

(2) No party prevented from trading compliance instruments pursuant to paragraph (1) above may use the privileged information in any other way, unless the party has reason to believe that the information is known to the public. In particular, the party may not carry out operations on futures contracts or other derivatives within the meaning of the Commodities Exchange Act, 7 U.S.C. Chapter 1 involving a compliance instrument.

(3) A party with knowledge of material order information may not carry out or recommend that another party carry out a transaction involving a compliance instrument, or disclose the information to any other party except if

(a) the party has reason to believe the other party is already aware of the information

(b) the party must disclose the information in the course of business, and nothing leads the party to believe that it will be used or disclosed in contravention of this section;

(c) the party carries out a transaction involving the compliance instrument concerned by the information in order to perform a written obligation that the party contracted before becoming aware of the information.

(d) for the purposes of this section, material order information is any information concerning an order to buy or an order to sell a compliance instrument that could have a major impact on the price of a compliance instrument.

(4) (a) No party may disclose false or misleading information or information that must be filed pursuant to WAC 173-446 before it is filed, in order to carry out a transaction, in particular when it could influence the price of a compliance instrument.

(b) For the purpose of this section, false or misleading information is any information likely to mislead on an important fact, as well as the simple omission of an important fact; an important fact is any fact that may reasonably be believed to have a significant impact on the price or value of a compliance instrument.

OFFSETS

173-446-500 Offsets - to come

COMPLIANCE AND ENFORCEMENT

173-446-600 Compliance Obligations (from 5126)

(1) All covered entities and opt-in entities must comply with all requirements for monitoring, reporting, participating in auctions, and holding and transferring compliance instruments, as well as all other provisions of this chapter.

(2) By November 1 of each year, each covered entity and opt-in entity must transfer to Ecology sufficient compliance instruments to cover at least 30% of its covered emissions for the previous calendar year.

(3) By November 1 of the year following the final year of each compliance period, each covered entity and each opt-in entity must have transferred to Ecology one compliance instrument for each metric ton of covered emissions of carbon dioxide equivalent emitted by that party during the compliance period.

(4) Compliance instruments to be transferred to Ecology must be in the complying party's compliance account. Once placed in a compliance account, compliance instruments cannot be removed by anyone except Ecology. Once Ecology has received all compliance instruments from a particular party for a particular compliance period, Ecology will permanently retire all the compliance instruments from that party's compliance account.

(5) A portion of each covered entity or opt-in entity's compliance obligation may be met by transferring to Ecology offset credits. Each offset credit is worth one metric ton of carbon dioxide equivalent.

(a) Unless modified by Ecology by rule, for the first compliance period (January 1, 2023 through December 31, 2026), no more than 5 percent of a covered entity's or opt-in entity's compliance obligation may be satisfied by providing Ecology with offset credits. At least 50 percent of these offset credits must be sourced from offset projects that provide direct environmental benefits in Washington State.

(b) Unless modified by Ecology by rule, for the second compliance period (January 1, 2027 through December 31, 2030), no more than 4 percent of a covered entity's or opt-in entity's compliance obligation may be satisfied by offset credits. At least 75 percent of these offset credits must be sourced from offset projects that provide direct environmental benefits in Washington State, unless Ecology determines there is not a sufficient supply of offsets in Washington to meet offset demand.

(c) Ecology may reduce the limits in (a) and (b) above (thus making them more stringent) for a specific covered entity or opt-in entity if Ecology, in consultation with the Environmental Justice Council, determines that the covered or opt-in entity has or is likely to:

(i) contribute substantively to cumulative air pollution burden in an overburdened community as determined by Ecology in consultation with the Environmental Justice Council.

(ii) violate any permits required by any federal, state, or local air pollution control agency where the violation may result in any increase in emissions.

(d) In addition to the offset credits cited in (a) above, during the first compliance period, a covered entity or opt-in entity may satisfy up to 3 percent of its compliance obligation using offset credits generated from offset projects on federally recognized tribal land.

(e) In addition to the offset credits cited in (b) above, during the second compliance period, a covered entity or opt-in entity may satisfy up to 2 percent of its compliance obligation using offset credits generated from offset projects on federally recognized tribal land.

173-446-610 Enforcement

(1) If a covered or opt-in entity does not submit sufficient compliance instruments to meet its compliance obligation by the specified transfer dates, a penalty of four allowances for every one compliance instrument that is missing must be submitted to Ecology within six months after the compliance deadline.

(2) When a covered entity or opt-in entity reasonably believes that it will be unable to meet a compliance obligation, the entity shall immediately notify Ecology. Upon receiving notification, Ecology will issue an order requiring the covered or opt-in entity to submit the penalty allowances.

(3) If a covered entity or opt-in entity fails to submit penalty allowances as required by subsection (1) of this section, Ecology must issue an order or issue a penalty of up to \$10,000 per day per violation, or both, for failure to submit penalty allowances as required by subsection (1) of this section. Each metric ton of CO₂e not covered by a compliance instrument constitutes a separate violation. An Ecology order may include a plan and schedule for coming into compliance.

(4) Ecology may issue a penalty of up to \$50,000 per day per violation if Ecology determines that a registered entity has:

- (a) Provided false or misleading facts;
- (b) Withheld material information that could influence a decision by Ecology concerning the registered entity's approval to participate in an auction;

- (c) Violated any part of the auction rules;
- (d) Violated registration requirements; or
- (e) Violated any rules regarding the conduct of the auction.

(5) Except as provided in subsections (3) and (4) of this section, any person that violates the terms of this chapter or an order issued under this chapter incurs a penalty of up to \$10,000 per day per violation for each day that the person does not comply. All penalties under subsections (3) and (4) of this section and this subsection must be deposited into the climate investment account.

(6) Violators are also subject to the sanctions authorized in Chapter 19.86 RCW, as appropriate.

(6) Orders and penalties issued under this chapter are appealable to the Pollution Control Hearings Board under chapter 43.21B RCW.

(7) For the first compliance period, Ecology may reduce the amount of the penalty by adjusting the monetary amount or the number of penalty allowances not timely provided.

(8) An electric utility or natural gas utility must notify its retail customers and the Environmental Justice Council in published form within three months after paying a monetary penalty under this section.