DRAFT PROPOSED CHANGES TO THE CLIMATE COMMITMENT ACT PROGRAM RULE FOR THE LINKAGE RULEMAKING

DATE: July 1, 2024

For Public Comment and Review
Chapter 173-446 WAC

Summary of draft amendments to Climate Commitment Act Program Rule – Chapter 173-446 WAC

*This list of amendments under consideration will change as Ecology gathers more information during the informal comment period. Items with * note the provisions included to implement Senate Bill 6058.*

WAC 173-446 rule section	Topic	Summary of change	Status of rule language
Throughout	Compliance period lengths*	Align compliance periods with California and Québec. Maintain emissions-intensive, trade-exposed facility (EITE) allocation schedule as 4-year periods.	California and Québec are considering changes to compliance period lengths. Ecology needs more information on those proposals before drafting amendments to the rule. The amendments related to EITE allocation and to revise some specific dates are drafted.
Throughout	Clarifications for a linked market	Clarify certain provisions only apply to entities registered in Washington's Cap-and-Invest program. Note where provisions apply to an entity registered in a linked jurisdiction's program.	Drafted
Throughout	Entity registration requirements	Current disclosure requirements during entity registration may need to be revised to align with California and Québec, including to support any adjustments in Corporate Association Group (CAG) rules.	California and Québec are considering changes to rules related to CAGs. Washington would need to be in alignment and adjust registration requirements to facilitate these changes. Ecology needs more information on those proposals before drafting amendments to the rule.

WAC 173-446 rule section	Topic	Summary of change	Status of rule language
173-446-020	Biofuels*	Change definition of biofuels to fuels with 30% lower lifecycle emissions (previously 40%) or to align with a linked jurisdiction, and other revisions.	Partially drafted
173-446-020, -52, -150, and -412	Exchange clearinghouses	Provide guidelines for exchange clearinghouses to participate in the program.	Drafted
173-446-030(1)(c), -050(1), -060	Electricity - coverage threshold for importers of unspecified electricity*	Require all importers of unspecified electricity to be covered entities, regardless of the amount of unspecified electricity they import (previously 25,000 MT CO_2e threshold). Maintain 25,000 MT CO_2e coverage threshold for electricity purchased from a federal power marketing administration.	Drafted
173-446-050, -056, -105, -110, and -120	Corporate associations	Current Corporate Association Group (CAG) rules may need to be updated to account for additional measures of control and ensure sufficient disclosures to avoid potential coordination.	Washington will need to align with California and Québec on CAG disclosure requirements and indicia of corporate associations. California and Québec are considering changes to rules related to CAGs. Ecology needs more information on those proposals before drafting amendments to the rule.
173-446-054, -425, and -426	Electricity - program participation by federal power marketing administrations*	Add provisions related to federal power marketing administrations voluntarily taking over the compliance obligations of its customers.	Partially drafted Ecology will consult with a federal power marketing administration on development of registration requirements and continue to revise these sections.

WAC 173-446 rule section	Topic	Summary of change	Status of rule language
173-446-150(2)	Vintage year allowance holding limit for general market participants*	If Washington links, removes provision that says a general market participant (GMP) may not own more than 10% of the total allowances *issued in any calendar year (vintage year).* Overall holding limit for GMPs remains in effect.	Drafted
173-446-300(2)	Consignment of allowances	Require electric and natural gas utilities to notify Ecology of number of allowances for consignment 75 days prior to auction.	Drafted
173-446-330(1)	Allowance purchase limits for covered entities*	Increase allowance purchase limit for covered entities from 10% to 25% per auction.	Drafted
173-446-335(2), -350	Currency reconciliation	Explain how prices are reconciled across currencies and clarify where prices are in U.S. dollars.	Drafted
173-446-365	Auction of future year allowances	Increase number of future vintage year allowance auctions to 4 times per year (currently 2 times per year) and adjust percentage to offer in each auction.	Drafted
173-446-600(7)	Offsets – credit issue dates	Clarify that offset credits used for compliance, including those issued by other jurisdictions, were issued for reporting periods wholly after July 25, 2021, or within two years prior to July 25, 2021.	Drafted
173-446-600(7)	Offsets – projects on Tribal lands*	Increase ability to use offset credits from projects on Tribal lands for compliance. Maintain overall limit on use of offset credits for compliance (8% in first compliance period, 6% in later compliance periods).	Drafted

WAC 173-446 rule section	Topic	Summary of change	Status of rule language
173-446-610(8)	Penalties*	If Washington links, removes Ecology's discretion to reduce penalties in the first compliance period.	Drafted
173-446-610(12)	Compliance obligation when ownership changes	Add provision to address compliance obligation when ownership of a registered entity changes.	Drafted

Amendments proposed in this linkage rulemaking are shown using double underline (additions), ~~double strikethrough~~ (deletions), red font, and with a horizontal line in the left margin.

For context, amendments proposed in a separate Climate Commitment Act rulemaking that impacts the same chapters - the electricity markets rulemaking, are shown in underline (additions), ~~strikethrough~~ (deletions), and green font.

Text highlighted in yellow are notes from Ecology staff, and not part of the rule language.

GENERAL REQUIREMENTS

173-446-010 Purpose.
173-446-020 Definitions.
173-446-030 Applicability.
173-446-040 Covered emissions.
173-446-050 Covered and opt-in entity registration.
173-446-052 *NEW* Exchange Clearing House Registration.
173-446-053 Electric utilities registration.
173-446-054 *NEW* Federal Power Marketing Administration registration.
173-446-055 General market participants registration.
173-446-056 Cap and invest consultants and advisors.
173-446-060 New or modified covered entities.
173-446-070 Exiting the program.
173-446-080 Allowances.

PROGRAM ACCOUNT REQUIREMENTS

173-446-100 Program accounts required.
173-446-105 Disclosure of corporate associations—Indicia of corporate association.
173-446-110 Disclosure of corporate associations—Types of disclosures required.
173-446-120 Disclosure of corporate association—Information to be submitted.
173-446-130 Designation and certification of account representatives.
173-446-140 Designation of account viewing agents.
173-446-150 Accounts for registered entities.

ALLOWANCE BUDGETS AND DISTRIBUTION OF ALLOWANCES

173-446-200 Total program baseline.
173-446-210 Total program allowance budgets.
173-446-220 Distribution of allowances to emissions-intensive and trade-exposed facilities.
173-446-230 Distribution of allowances to electric utilities.
173-446-240 Distribution of allowances to natural gas utilities.

173-446-250 Removing and retiring allowances.
173-446-260 Allowance distribution dates.

ALLOWANCE AUCTIONS

173-446-300 Auctions of current and prior year allowances.
173-446-310 Public notice.
173-446-315 Registration for an auction.
173-446-317 Auctions—Prohibited actions.
173-446-320 Suspension and revocation of registration.
173-446-325 Bid guarantee.
173-446-330 Purchase limits.
173-446-335 Auction floor price and ceiling price.
173-446-340 Emissions containment reserve trigger price.
173-446-345 Administration of auction—Lots.
173-446-350 Bids.
173-446-353 Determination of actual maximum bid value.
173-446-355 Maximum bid value in excess of bid guarantee.
173-446-357 Acceptance of bids.
173-446-360 Payment for purchases.
173-446-362 Summary of auction.
173-446-365 Auction of future year allowances.
173-446-370 Allowance price containment reserve account.
173-446-375 Emissions containment reserve account.
173-446-380 Price ceiling units.
173-446-385 Price ceiling unit sales.
173-446-390 Confidentiality.

COMPLIANCE INSTRUMENT TRANSACTIONS

173-446-400 Compliance instruments transactions—General information.
173-446-410 Transfers among registered entities—Process.
173-446-412 *NEW* Transactions involving exchange clearing houses.
173-446-415 Transaction requests—Information required by ecology.
173-446-420 Transfers to a compliance account—Process.
173-446-425 Transfers of no cost allowances from an electric utility to an electrical generating facility ~~or to a federal power marketing administration~~.
173-446-426 *NEW* Transfers of no cost allowances from an electric utility to a federal power marketing administration.
173-446-430 Transfers of no cost allowances from a utility's holding account to its limited use holding account for consignment to auction.
173-446-440 Compliance instrument transactions—Prohibited actions.

OFFSETS

[No changes to 173-446-500 through 173-446-595 are proposed through this rulemaking on linkage]

COMPLIANCE AND ENFORCEMENT

173-446-600 Compliance obligations.

173-446-610 Enforcement.
173-446-620 Contact information.

SEVERABILITY
173-446-700 Severability.

GENERAL REQUIREMENTS

WAC 173-446-010 Purpose.

[NO CHANGES TO THIS SECTION ARE PROPOSED AT THIS TIME]

WAC 173-446-020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise. For those terms not listed in this section, the definitions found in chapters 173-441 and 173-446A WAC apply in this chapter.

"Additional" means, in the context of the offset provisions of this rule, greenhouse gas emission reductions or removals that exceed any greenhouse gas reduction or removals otherwise required by law, regulation or legally binding mandate, and that exceed any greenhouse gas reductions or removals that would otherwise occur in a business-as-usual scenario.

"Adverse offset verification statement" means an offset verification statement rendered by a verification body attesting that the verification body cannot say with reasonable assurance that the submitted offset project data report is free of an offset material

misstatement, or that it cannot attest that the offset project data report conforms to the requirements of this chapter or applicable compliance offset protocol.

"Affiliated registered entities" means registered entities in a direct or indirect corporate association.

"Aggregation" means, in the context of offsets, a grouping of offset projects carried out according to the same compliance offset protocol and under the responsibility of the same offset project developer or operator.

"Allowance" means an authorization to emit up to one metric ton of carbon dioxide equivalent.

"Allowance price containment reserve" means an account maintained by ecology with allowances available for sale through separate reserve auctions at predefined prices to assist in containing compliance costs for Washington covered and opt-in entities in the event of unanticipated high costs for compliance instruments.

"Annual allowance budget" means the total number of GHG allowances allocated for auction and distribution for one calendar year by ecology.

"Asset controlling supplier" or "ACS" has the same meaning as in chapter 173-441 WAC.

"Auction" means the process of selling GHG allowances by offering them up for bid, taking bids, and then distributing the allowances to winning bidders.

"Auction floor price" means a price for allowances below which bids at auction are not eligible to be accepted.

"Auction purchase limit" means the limit on the number of allowances one registered entity or a group of affiliated registered entities may purchase from the share of allowances sold at an auction.

"Auction settlement price" means the price announced by ecology at the conclusion of each auction that all successful bidders pay for each allowance.

"Authorized project designee" means an entity authorized by an offset project operator to act on behalf of the offset project operator. The authorized project designee must be a primary account representative or alternate account representative on the offset project operator's holding account.

"Balancing authority" means the responsible party that integrates resource plans ahead of time, maintains load-interchange generation balance within a balancing authority area, and supports interconnection frequency in real time.

"Balancing authority area" means the collection of generation, transmission, and load within the metered boundaries of a balancing authority. A balancing authority maintains load-resource balance within this area.

"Banking" means the holding of compliance instruments from one compliance period for the purpose of sale or use for compliance in a future compliance period.

"Best available technology" or "BAT" means a technology or technologies that will achieve the greatest reduction in GHG emissions, taking into account the fuels, processes, and equipment used by facilities to produce goods of comparable type, quantity, and quality. Best available technology must be technically feasible, commercially available, economically viable, not create excessive environmental impacts, and be compliant with all applicable laws while not changing the characteristics of the good being manufactured.

"Biomass" means nonfossilized and biodegradable organic material originating from plants, animals, and microorganisms, including products, by-products, residues, and waste from agriculture, forestry, and related industries as well as the nonfossilized and biodegradable organic fractions of municipal wastewater and industrial waste,

including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material.

"Biomass-derived fuels," "biomass fuels," or "biofuels" means fuels derived from biomass that have at least ~~40~~30 percent lower GHG emissions based on a full life-cycle analysis when compared to petroleum fuels for which biofuels are capable as serving as a substitute.

"Bundled transaction" means the retail sale of two or more products, except real property or services to real property, where:

(a) The products are otherwise distinct and identifiable; and

(b) The products are sold for one nonitemized price.

A bundled transaction does not include the sale of any products in which the sale price varies or is negotiable, based on the selection by the purchaser of the products included in the transaction.

"Business-as-usual scenario" means, in the context of offsets, the set of conditions reasonably expected to occur within the offset project boundary in the absence of the financial incentives provided by offset credits, taking into account all current laws and regulations, as well as current economic and technological trends.

"Cap and invest consultant or advisor" means an individual or party that meets the criteria in WAC 173-446-056.

"Carbon dioxide equivalents" or "CO_2e" has the same meaning as in chapter 173-441 WAC.

"Carbon dioxide removal" or "greenhouse gas removal" means deliberate human activities removing carbon dioxide from the atmosphere and durably storing it in geological, terrestrial, or ocean reservoirs, or in products. "Carbon dioxide removal" includes existing and potential anthropogenic enhancement of biological or geochemical sinks and including, but not limited to, carbon mineralization and direct air capture and storage.

"Centralized electricity market" has the same meaning as in chapter 173-441 WAC.

"Closed electricity importer" means an electricity importer that has elected to permanently stop providing or importing electric power into Washington.

"Closed facility" means a facility in Washington at which the current owner or operator has elected to permanently stop production and will no longer be an emissions source.

"Closed supplier" means a supplier that has elected to permanently stop supplying any of the materials that trigger coverage as a supplier under chapter 70A.65 RCW and this chapter.

"Compliance instrument" means an allowance or offset credit issued by ecology or by an external GHG emissions trading program to which Washington has linked its cap and invest program. One compliance instrument is equal to one metric ton of carbon dioxide equivalent.

"Compliance obligation" means the requirement to submit to ecology the number of compliance instruments equivalent to a covered or opt-in entity's covered emissions during the compliance period.

"Compliance offset protocol" means an offset protocol adopted by ecology.

"Compliance period" means the four-year period for which the compliance obligation is calculated for covered entities. [Washington will align with California and Québec, per Senate Bill 6058]

"Conservative" means, in the context of offsets, utilizing project baseline assumptions, emission factors, and methodologies that are more likely than not to understate net GHG reductions or GHG removal enhancements for an offset project to address uncertainties affecting the calculation or measurement of GHG reductions or GHG removal enhancements.

"Cost burden" means the impact on rates or charges to customers of electric utilities in Washington for the incremental cost of electricity service to serve load due to the compliance cost for GHG emissions caused by the program. Cost burden includes administrative costs from the utility's participation in the program.

"Covered emissions" means the emissions described in WAC 173-446-040 for which a covered entity has a compliance obligation under this chapter.

"Covered entity" means a person that is designated by ecology as subject to this chapter as specified in WAC 173-446-030 or 173-446-060. Each facility, supplier, or first jurisdictional deliverer serving as an electricity importer is a separate covered entity.

"Crediting baseline" refers to the reduction of absolute GHG emissions below the business-as-usual scenario after the imposition of greenhouse gas emission reduction requirements or incentives.

"Crediting period" means the predetermined period of time for which an offset project will remain eligible to be issued ecology offset credits or registry offset credits for verified GHG emission reductions or GHG removal enhancements.

"Curtailed electric power entity" means an electric power entity at which the owner or operator has temporarily suspended operations

but for which the owner or operator maintains any necessary permits and retains the option to resume business if conditions become amenable.

"Curtailed facility" means a facility at which the owner or operator has temporarily suspended production but for which the owner or operator maintains operating permits and retains the option to resume production if conditions become amenable.

"Curtailed supplier" means a supplier at which the owner or operator has temporarily suspended operations but for which the owner or operator maintains any necessary permits and retains the option to resume business if conditions become amenable.

"Deemed market importer" has the same meaning as in WAC 173-441-124.

"Direct corporate association" means a group of parties that meet the requirements in WAC 173-446-105 to be a direct corporate association.

"Direct environmental benefits in the state" means, in the context of offsets, environmental benefits accomplished through the reduction or avoidance of emissions of any air pollutant in the state or the reduction or avoidance of the release of any pollutant that could have an adverse impact on land or waters of the state.

"Direct GHG emission reduction" means a reduction of GHG emissions from applicable GHG emission sources, GHG sinks, or GHG reservoirs that are under control of an offset project operator or authorized project designee.

"Direct GHG removal enhancement" means a GHG removal enhancement from applicable GHG emission sources, GHG sinks, or GHG reservoirs under control of the offset project operator or authorized project designee.

"Ecology" means the Washington state department of ecology or its agents, including the auction administrator and the financial services administrator retained by ecology pursuant to RCW 70A.65.100(3).

"Electric power entity" has the same meaning as in chapter 173-441 WAC.

"Electricity importer" has the same meaning as in chapter 173-441 WAC.

"Emissions containment reserve allowance" means a conditional allowance that is withheld from sale at an auction by ecology or its agent to secure additional emissions reductions in the event prices fall below the emissions containment reserve trigger price, or any other allowance placed into the emissions containment reserve.

"Emissions containment reserve trigger price" means the price below which allowances will be withheld from sale at an auction by ecology, as determined by ecology by rule unless ecology has suspended the emissions containment reserve trigger price.

"Emissions threshold" means the GHG emission level at or above which a person has a compliance obligation under this chapter.

"Emissions year" means the calendar year in which GHG emissions occur.

"Environmental benefits" means activities that:

(a) Prevent or reduce existing environmental harms or associated risks that contribute significantly to cumulative environmental health impacts;

(b) Prevent or mitigate impacts to overburdened communities or vulnerable populations from, or support community response to, the impacts of environmental harm; or

(c) Meet a community need formally identified to a covered agency by an overburdened community or vulnerable population that is consistent with the intent of chapter 70A.02 RCW.

"Environmental harm" means the individual or cumulative environmental health impacts and risks to communities caused by historic, current, or projected:

(a) Exposure to pollution, conventional or toxic pollutants, environmental hazards, or other contamination in the air, water, and land;

(b) Adverse environmental effects, including exposure to contamination, hazardous substances, or pollution that increase the risk of adverse environmental health outcomes or create vulnerabilities to the impacts of climate change;

(c) Loss or impairment of ecosystem functions or traditional food resources or loss of access to gather cultural resources or harvest traditional foods; or

(d) Health and economic impacts from climate change.

"Environmental impacts" means environmental benefits or environmental harms, or the combination of environmental benefits and harms, resulting or expected to result from a proposed action.

"Environmental justice council" means the council established in RCW 70A.02.110.

“Exchange clearing house” means a qualified entity providing clearing services in which the entity takes only temporary possession of compliance instruments for the purpose of clearing transactions between two entities registered either in Washington’s cap and invest program or in an external GHG ETS of a linked jurisdiction. A

qualified entity must be a derivatives clearing organization as defined in the Commodities Exchange Act (7 U.S.C. section 1a) that is registered with the U.S. Commodity Futures Trading Commission pursuant to the Commodities Exchange Act (7 U.S.C. section 7a-1).

"External GHG emissions trading program" or "external GHG ETS" means a government program, other than Washington's program created in this chapter, that restricts GHG emissions from sources outside of Washington and that allows emissions trading.

"Facility" has the same meaning as in chapter 173-441 WAC.

"Federal power marketing administration" means any of the four federal power marketing administrations that operate electric systems and sell the electrical output of federally owned and operated hydroelectric dams in the United States.

"First jurisdictional deliverer" means the owner or operator of an electric generating facility in Washington state or an electricity importer.

"Forest buffer account" means a holding account for ecology offset credits issued to forest offset projects. It is used as a general insurance mechanism against unintentional reversals, for all forest offset projects listed under a compliance offset protocol.

"Forest owner" means the owner of any interest in the real property on which a forest offset project is located, excluding government agency or other third-party beneficiaries of conservation easements. Generally, a forest owner is the owner in fee of the real property on which a forest offset project is located. In some cases, one party may be the owner in fee while another party may have an interest in the trees or the timber on the property, in which case all parties with interest in the real property are collectively considered the forest owners; however, a single forest owner must be identified as the offset project operator.

"General market participant" means a Washington registered entity that is not identified as a covered entity or an opt-in entity that is registered in the program registry and intends to purchase, hold, sell, or voluntarily retire compliance instruments.

"Greenhouse gas" or "GHG" has the same meaning as in chapter 173-441 WAC.

"Greenhouse gas emission reduction" or "GHG emission reduction" or "greenhouse gas reduction" or "GHG reduction" means a calculated decrease in GHG emissions relative to a project baseline over a specified period of time.

"Greenhouse gas emissions source" or "GHG emissions source" means, in the context of offsets, any type of emitting activity that releases greenhouse gases into the atmosphere.

"Greenhouse gas removal enhancement" or "GHG removal enhancement" means a calculated increase in GHG removals relative to a project baseline.

"Greenhouse gas reservoir" or "GHG reservoir" means a physical unit or component of the biosphere, geosphere, or hydrosphere with the capability to store, accumulate, or release a GHG removed from the atmosphere by a GHG sink or a GHG captured from a GHG emission source.

"Greenhouse gas sink" or "GHG sink" means a physical unit or process that removes a GHG from the atmosphere.

"Holding limit" means the maximum number of allowances that may be held for use or trade by a registered entity at any one time.

"Imported electricity" has the same meaning as in chapter 173-441 WAC.

"Indirect corporate association" means a group of parties that meet the requirements in WAC 173-446-105 to be an indirect corporate association.

"Initial crediting period" means the crediting period that begins with the first day of the first reporting period which receives a

positive offset or qualified positive offset verification statement and has that offset verification statement approved by ecology.

"Intentional reversal" means any reversal, except as provided below, which is caused by a forest owner's negligence, gross negligence, or willful intent, including harvesting, development, and harm to the area within the offset project boundary, or caused by approved growth models overestimating carbon stocks. A reversal caused by an intentional back burn set by, or at the request of, a local, state, or federal fire protection agency for the purpose of protecting forestlands from an advancing wildfire that began on another property through no negligence, gross negligence, or willful misconduct of the forest owner is not considered an intentional reversal but, rather, an unintentional reversal. Receiving adverse offset verification statements on two consecutive offset verifications after the end of the final crediting period will be considered an intentional reversal.

"Lead offset verifier" means a party that has met all the requirements in WAC 173-441-085(7) and who may act as the lead verifier of an offset verification team providing offset verification services or as a lead verifier providing an independent review of offset verification services rendered.

"Lead offset verifier independent reviewer" or "independent offset reviewer" means a lead offset verifier within a verification body who has not participated in conducting offset verification services for an offset project developer or authorized project designee for the current offset project data report and who provides an independent review of offset verification services rendered for an offset project developer or authorized project designee as required in WAC 173-446-530. The independent reviewer is not required to also meet the requirements for a sector specific or offset project specific verifier.

"Leakage" means a reduction in emissions of GHGs within the state that is offset by a directly attributable increase in GHG emissions outside the state and outside the geography of ~~another jurisdiction with~~ a linked~~age~~ jurisdiction ~~agreement with Washington~~.

"Limits" means the GHG emissions reductions required by RCW 70A.45.020.

"Linkage" means a bilateral or multilateral decision under a linkage agreement between GHG market programs to accept compliance instruments issued by a ~~participating~~ linked jurisdiction to meet the obligations of regulated entities in a ~~partner~~ linked jurisdiction and

to otherwise coordinate activities to facilitate operation of a joint market.

"Linkage agreement" means a nonbinding agreement that connects two or more GHG market programs and articulates a mutual understanding of how the participating jurisdictions will work together to facilitate a connected GHG market.

"Linked jurisdiction" means a jurisdiction with which Washington has entered into a linkage agreement.

"Market position" means the combination of the current and/or expected holdings of compliance instruments by a registered entity and the current and/or expected covered emissions of that registered entity.

"Market sensitive information" means information related to ~~registered~~ entities~~,~~ registered in Washington's program or in an external GHG ETS of a linked jurisdiction~~to which Washington has linked~~, or their participation in the cap and invest program or an external GHG ETS of a linked jurisdiction, that is not otherwise publicly available, and for which ecology determines that the public interest in disclosure is outweighed by the public interest served by maintaining the confidentiality of such information, on the basis that its disclosure would be reasonably expected to have an effect on the

price or value of allowances or offset credits and/or enable an ~~registered~~ entity registered in Washington's program on an external GHG ETS of a linked jurisdiction to engage in market manipulation such as bidder collusion, market cornering, or extortion of other market participant. "Market sensitive information" does not include data reported under chapter 173-441 WAC, except to the extent that the disclosure of such data for a particular emission year at any time prior to November 15th of the following calendar year would enable an ~~registered~~ entity registered in Washington's program or an external GHG ETS of a linked jurisdiction to engage in market manipulation. "Market sensitive information" also does not include anonymized information about the contents of registered entities' holding accounts that is publicly displayed pursuant to RCW 70A.65.090 (7)(b), except to the extent that the disclosure of such information that is less than 45 days old would enable an ~~registered~~ entity registered in Washington's program or an external GHG ETS of a linked jurisdiction to engage in market manipulation.

"Multijurisdictional consumer-owned utility" has the same meaning as in chapter 173-441 WAC.

"Multijurisdictional electric company" has the same meaning as in chapter 173-441 WAC.

"NERC e-tag" or "e-tag" has the same meaning as in chapter 173-441 WAC.

"Offset credit" means a tradable compliance instrument that represents an emissions reduction or emissions removal of one metric ton of carbon dioxide equivalent.

"Offset material misstatement" means a discrepancy, omission, misreporting, or aggregation of the three, identified in the course of offset verification services that leads an offset verification team to conclude that an offset project data report contains errors resulting in an overstatement of the reported total GHG emission reductions or GHG removal enhancements by greater than five percent. Discrepancies, omissions, or misreporting, or an aggregation of the three, that result in an understatement of total reported GHG emission reductions or GHG removal enhancements in the offset project data report is not an offset material misstatement.

"Offset project" means a project that reduces or removes GHG that are not covered emissions under this chapter.

"Offset project boundary" is defined by and includes all GHG emission sources, GHG sinks, and GHG reservoirs that are affected by an offset project and under control of the offset project operator or authorized project designee. GHG emissions sources, GHG sinks or GHG

reservoirs not under control of the offset project operator or authorized project designee are not included in the offset project boundary.

"Offset project data report" means the report prepared by an offset project operator or authorized project designee each reporting period that provides the information, documentation, and attestations required by this chapter or a compliance offset protocol. An unattested report is not a valid offset project data report, and therefore cannot be used to satisfy any deadlines regarding submittal of an offset project data report.

"Offset project listing" or "listing" means the information, documentation, and attestations required by this chapter or a compliance offset protocol that an offset project operator or authorized project designee has submitted to ecology or an offset project registry, and that has been reviewed for completeness by ecology and/or the offset project registry and publicly listed by ecology or the offset project registry for an initial or renewed crediting period. An offset project listing must include the attestations required by this chapter in order to be considered complete by ecology or the offset project registry.

"Offset project operator" means the party(ies) with legal authority to implement the offset project. Only a primary account representative or alternate account representative may sign listing documents, an offset project data report, a request for issuance, or attestations on behalf of the offset project operator.

"Offset project registry" means a party that meets the requirements of this chapter and is approved by ecology that lists offset projects, collects offset project data reports, facilitates verification of offset project data reports, and issues registry offset credits for offset projects being implemented using a compliance offset protocol.

"Offset protocols" means a set of procedures and standards to quantify GHG reductions or GHG removals achieved by an offset project.

"Offset verification" means a systematic, independent, and documented process for evaluation of an offset project operator's or authorized project designee's offset project data report against ecology compliance offset protocols and this chapter for calculating and reporting project baseline emissions, project emissions, GHG reductions, and GHG removal enhancements.

"Offset verification body" means a firm accredited or recognized by ecology, which is able to render an offset verification statement

and provide offset verification services for offset project operators or authorized project designees subject to providing an offset project data report under this chapter.

"Offset verification services" means services provided during offset verification, including reviewing an offset project operator's or authorized project designee's offset project data report, verifying its accuracy according to the standards specified in WAC 173-446-535 and the applicable compliance offset protocol, assessing the offset project operator's or authorized project designee's compliance with this chapter and applicable compliance offset protocol, and submitting an offset verification statement to ecology or an offset project registry.

"Offset verification statement" means the final statement rendered by a verification body attesting whether an offset project operator's or authorized project designee's offset project data report is free of an offset material misstatement, and whether the offset project data report conforms to the requirements of this chapter and applicable compliance offset protocol, and containing the attestations required pursuant to this chapter.

"Offset verification team" means all parties working for a verification body, including all subcontractors, to provide offset

verification services for an offset project operator or authorized project designee.

"Opt-in entity" means a party responsible for greenhouse gas emissions that is not a covered entity but voluntarily participates in the program as authorized under RCW 70A.65.090(3).

"Overburdened community" means a geographic area where vulnerable populations face combined, multiple environmental harms and health impacts or risks due to exposure to environmental pollutants or contaminants through multiple pathways, which may result in significant disparate adverse health outcomes or effects.

"Overburdened community" includes, but is not limited to:

(a) Highly impacted communities as defined in RCW 19.405.020;

(b) Communities located in census tracts that are fully or partially on "Indian country" as defined in 18 U.S.C. Sec. 1151; and

(c) Populations, including Native Americans or immigrant populations, who may be exposed to environmental contaminants and pollutants outside of the geographic area in which they reside based on the populations' use of traditional or cultural foods and practices, such as the use of resources, access to which is protected under treaty rights in ceded areas, when those exposures in conjunction with other exposures may result in disproportionately

greater risks, including risks of certain cancers or other adverse health effects and outcomes.

(d) Overburdened communities identified by ecology shall include the same communities as those identified by ecology through its process for identifying overburdened communities under RCW 70A.02.010.

"Party" means an individual, person, firm, association, organization, partnership, business trust, corporation, limited liability company, company, or government agency.

"Permanent" means, in the context of offsets, either that GHG reductions and GHG removal enhancements are not reversible, or when GHG reductions and GHG removal enhancements may be reversible, that mechanisms are in place to replace any reversed GHG emission reductions and GHG removal enhancements to ensure that all credited reductions endure for at least the length of time specified in the associated offset protocol.

"Person" includes: An owner or operator of a facility; a supplier; or an electric power entity.

"Point of delivery" has the same meaning as in chapter 173-441 WAC.

"Positive offset verification statement" means an offset verification statement rendered by a verification body attesting that

the verification body can say with reasonable assurance that the submitted offset project data report is free of an offset material misstatement and that the offset project data report conforms to the requirements of this chapter and applicable compliance offset protocol.

"Price ceiling unit" means a unit issued at a fixed price by ecology for the purpose of limiting price increases and funding further investments in GHG reductions.

"Program" means the GHG emissions cap and invest program created by chapter 70A.65 RCW and implemented pursuant to this chapter.

"Program registry" means the data system in which covered entities, opt-in entities, and general market participants are registered and in which compliance instruments are recorded and tracked.

"Project baseline" means, in the context of a specific offset project, a conservative estimate of business-as-usual GHG emission reductions or GHG removal enhancements for the offset project's GHG emission sources, GHG sinks, or GHG reservoirs within the offset project boundary.

"Qualified positive offset verification statement" means an offset verification statement rendered by a verification body

attesting that the verification body can say with reasonable assurance that the submitted offset project data report is free of an offset material misstatement, but the offset project data report may include one or more nonconformance(s) with this chapter and applicable compliance offset protocol which do not result in an offset material misstatement. Nonconformance, in this context, does not include disregarding the explicit requirements of this chapter or applicable compliance offset protocol and substituting alternative requirements not approved by ecology.

"Registered entity" means a Washington covered entity, Washington opt-in entity, or Washington general market participant that has completed the process for registration in the program registry.

"Registration applicant" means a Washington covered entity, Washington opt-in entity, or Washington general market participant that is applying to register in the program registry.

"Registry offset credit" means a credit issued by an offset project registry for a GHG reduction or GHG removal enhancement of one metric ton of CO_2e.

"Reporter" has the same meaning as in chapter 173-441 WAC.

"Reporting period" means, in the context of offsets, the period of time for which an offset project operator or authorized project

designee quantifies and reports GHG reductions or GHG removal enhancements covered in an offset project data report. An offset project's reporting period is established in the project listing documentation, but may be modified pursuant to WAC 173-446-525(11).

"Retail electric load" has the same meaning as specified in RCW 19.405.020.

"Retire" means to permanently remove a compliance instrument such that the compliance instrument may never be sold, traded, used for compliance, or otherwise used again.

"Retirement account" means the account to which ecology transfers compliance instruments that have been surrendered for compliance.

"Sector" means an area of the economy in which a grouping of sources of greenhouse gas emissions share the same or related activity, product, or service.

"Sequestration" means the removal of carbon dioxide from the atmosphere and storage of carbon in GHG sinks or GHG reservoirs through physical or biological processes.

"Specified source of electricity" or "specified source" has the same meaning as in chapter 173-441 WAC.

"Supplier" has the same meaning as in chapter 173-441 WAC.

"Tier 1 price" means the lower of the two prices set by ecology for allowances auctioned from the allowance price containment reserve.

"Tier 2 price" means the higher of the two prices set by ecology for allowances auctioned from the allowance price containment reserve.

"Total program baseline" means the total of covered greenhouse gas emissions from covered entities as established in WAC 173-446-200.

"Tribal lands" has the same meaning as defined in RCW 70A.02.010.

"Unintentional reversal" means any reversal, including wildfires or disease, that is not the result of the forest owner's negligence, gross negligence, or willful intent.

"Unspecified source of electricity" or "unspecified source" has the same meaning as in chapter 173-441 WAC.

"Vintage year" means the annual allowance allocation budget year to which an individual Washington GHG allowance is assigned.

"Voluntary renewable reserve account" or "voluntary renewable electricity reserve account" means a holding account maintained by ecology from which allowances may be retired for voluntary renewable electricity generation, which is directly delivered to the state and has not and will not be sold or used to meet any other mandatory requirements in the state or any other jurisdiction, on behalf of voluntary renewable energy purchasers or end users.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-020, filed 9/29/22, effective 10/30/22.]

WAC 173-446-030 Applicability. All facilities, suppliers, and first jurisdictional deliverers with covered emissions that meet the applicability requirements of this section are covered entities subject to this rule.

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

(a) An owner or operator of a facility, other than a waste to energy facility used by a city or county solid waste management program, whose covered emissions for any calendar year from 2015 through 2022 equal or exceed 25,000 metric tons of carbon dioxide equivalent per year;

(b) A first jurisdictional deliverer, other than a waste to energy facility used by a city or county solid waste management program, that generates electricity in Washington and whose covered emissions associated with this generation for any calendar year equal or exceed 25,000 metric tons of carbon dioxide equivalent per year;

(c) A first jurisdictional deliverer that imports electricity into Washington, and~~ whose~~:

(i) Whose cumulative annual total of covered emissions associated with this imported electricity for any calendar year~~, whether~~ from specified ~~or unspecified ~~sources~~,~~ equal or exceed 25,000 metric tons of carbon dioxide equivalent per year;

(ii) Whose cumulative annual total of covered emissions associated with imported electricity for any calendar year from unspecified sources exceeds 0 metric tons of carbon dioxide equivalent per year;

(iii) For electricity purchased from a federal power marketing administration pursuant to section 5(b) of the Pacific Northwest electric power planning and conservation act of 1980, P.L. 96-501, if Ecology determines such electricity is not from a specified source, the cumulative annual total of emissions associated with the imported electricity exceeds 25,000 metric tons of carbon dioxide equivalent.

(d) Except as noted in WAC 173-446-040, any supplier of fossil fuel other than natural gas when, for any calendar year from 2015 through 2022, 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 in Washington;

(e) Except as noted in WAC 173-446-040, any of the following:

(i) A party who supplies natural gas in amounts that would result in exceeding 25,000 metric tons of carbon dioxide equivalent covered emissions for any calendar year from 2015 through 2022 if fully combusted or oxidized.

(ii) A party who is not a natural gas company and has a tariff with a natural gas company to deliver natural gas to an end-use customer in the state in amounts that would result in exceeding 25,000 metric tons of carbon dioxide equivalent covered emissions for any calendar year from 2015 through 2022 if fully combusted or oxidized.

(iii) A party who is an end-use customer in the state who directly purchases natural gas from a party 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 would result in exceeding 25,000 metric tons of carbon dioxide equivalent covered emissions for any calendar year from 2015 through 2022 if fully combusted or oxidized.

(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 whose

covered emissions in any year from 2023 through 2025 equal or exceed 25,000 metric tons of carbon dioxide equivalent.

(3) Beginning with the third compliance period ~~(emissions years 2031 through 2034)~~ and for all subsequent compliance periods, covered entities also include a 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~~2028.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-030, filed 9/29/22, effective 10/30/22.]

WAC 173-446-040 Covered emissions. (1) Reported emissions. Covered emissions are GHG emissions reported under chapter 173-441 WAC except as modified in subsections (2) through (4) of this section. Covered emissions:

(a) Are calculated on a calendar year basis using chapter 173-441 WAC;

(b) Include emissions of all GHGs identified in WAC 173-441-040;

(c) Are expressed in units of CO_2e as calculated using chapter 173-441 WAC; 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 emissions reported under chapter 173-441 WAC:

(i) Carbon dioxide emissions from the combustion of biomass, renewable fuels of biogenic origin, or biofuels from any facility, supplier, or first jurisdictional deliverer. Emissions of other GHGs related to the combustion of biomass or biofuels are not exempt.

(ii) GHG emissions from the following facilities:

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

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

(C) Municipal solid waste landfills that are subject to, and in compliance with, chapter 70A.540 RCW.

(iii) Sequestered carbon dioxide when it can be demonstrated to ecology's satisfaction that it qualifies as permanent sequestration, as defined in WAC 173-407-110, either through long-term geologic sequestration or by conversion into long-lived mineral form.

(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 not combusted inside Washington or in waters under the jurisdiction of Washington:

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

(I) Residual fuel oil No. 5 (navy special); and

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

(B) For all other fuels, including distillate No. 2 and distillate fuel oil No. 4, to qualify for this exemption, suppliers must demonstrate to ecology's satisfaction both that the fuels are used in watercraft and that they are combusted outside of waters under the jurisdiction of Washington.

(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).

(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.

(v) Products listed in Table MM-1 of 40 C.F.R. Part 98 Subpart MM as adopted in chapter 173-441 WAC when the supplier can demonstrate to ecology's satisfaction that the product is not combusted or oxidized. All products listed in Table MM-1, except asphalt and road oil, are by default assumed to be combusted or oxidized unless demonstrated otherwise.

(3) Allotment of covered emissions to avoid double counting or including emissions that occur outside the program. The facility, supplier, or first jurisdictional deliverer that reports GHG emissions under chapter 173-441 WAC holds the compliance obligation for the covered emissions it reports unless otherwise provided in this subsection. This subsection provides details on allotment for covered emissions that are potentially attributable to multiple parties and

provides direction for allotment when such emissions may be reported by multiple facilities, suppliers, or first jurisdictional deliverers of electricity. This subsection only describes the process for determining which covered or opt-in entity is responsible for a given metric ton of covered emissions after the application of exemptions described in subsection (2) of this section, and does not expand the definition of covered emissions.

(a) Allotment of covered emissions for facilities.

(i) The following GHG emissions are covered emissions for facilities:

(A) Emissions from the on-site combustion of natural gas, natural gas liquids, liquefied petroleum gas, compressed natural gas, or liquefied natural gas;

(B) Emissions from the on-site combustion of residual fuel oil No. 5 (navy special), and residual fuel oil No. 6 (a.k.a. bunker C);

(C) Emissions from the on-site combustion of a fuel product where the fuel product was generated or modified on-site 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, landfill gas, and biogas;

(D) Carbon dioxide collected and supplied off-site that the facility owner or operator cannot demonstrate to ecology's satisfaction is part of the covered emissions of another covered or opt-in entity under this chapter.

(E) Emissions from an electric generating facility in Washington serving as a first jurisdictional deliverer derived from any of the means in (a)(i)(A) through (D) of this subsection except as exempted in subsection (2) of this section; and

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

(ii) The following GHG emissions are not covered emissions for facilities:

(A) Emissions from the on-site combustion of any fuel product as described in WAC 173-441-122(5) except those described in (a)(i)(A), (B) or (C) of this subsection;

(B) Carbon dioxide collected and supplied off-site that the facility owner or operator can demonstrate to ecology's satisfaction is part of the covered emissions of another covered or opt-in entity under this chapter.

(b) Allotment of covered emissions for suppliers of natural gas.

(i) The following GHG emissions are covered emissions for suppliers of natural gas:

(A) Emissions from the on-site combustion of natural gas, natural gas liquids, liquefied petroleum gas, compressed natural gas, or liquefied natural gas supplied to any facility or supplier of natural gas that is not a covered or opt-in 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) of this section or (b)(ii) of this subsection.

(ii) The following GHG emissions are not covered emissions for suppliers of natural gas:

(A) Emissions from the on-site combustion of natural gas, natural gas liquids, liquefied petroleum gas, compressed natural gas, or liquefied natural gas supplied to any facility, supplier of natural gas, or other party that is a covered or opt-in entity under this chapter.

(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) Allotment of covered emissions for suppliers of fossil fuels other than natural gas.

(i) The following GHG emissions are covered emissions for suppliers of fossil fuels other than natural gas:

(A) Emissions from the combustion of any fuel product, except those described in (a)(i)(B) or (C) of this subsection; or

(B) All other reported emissions under WAC 173-441-122(5) are covered emissions for the supplier of fossil fuel other than natural gas unless otherwise specified in subsection (2) of this section or (c)(ii) of this subsection.

(ii) The following GHG emissions are not covered emissions for suppliers of fossil fuels other than natural gas:

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

(B) Emissions from products listed in Table MM-1 of 40 C.F.R. Part 98 Subpart MM as adopted in chapter 173-441 WAC when the supplier is also a refiner and can demonstrate to ecology's satisfaction that the product is used as a noncrude feedstock at a refinery in Washington under their operational control. These noncovered emissions must meet the standards described in Subpart MM, and are calculated using provisions described in Sec. 98.393(b) and subtracted as described in Sec. 98.393(d), which is limited to modifications due to noncrude feedstocks. Emissions occurring at the refinery due to

processing the noncrude feedstock are part of the facility's covered emissions. Processed or unprocessed products associated with the previously excluded noncrude feedstocks leaving the refinery are no longer excluded and part of the supplier's covered emissions. Emissions covered under this provision are not also eligible for adjustments due to the product previously being delivered by a position holder or refiner out of an upstream WA terminal or refinery rack prior to delivery out of a second terminal rack.

(C) 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; or

(D) Emissions that are part of the covered emissions of another covered or opt-in entity under this chapter.

(d) Allotment of covered emissions for suppliers of carbon dioxide.

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

(A) Carbon dioxide emissions that the supplier cannot demonstrate to ecology's satisfaction are part of the covered emissions of another covered or opt-in entity under this chapter; or

(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) of this section or (d)(ii) of this subsection.

(ii) The following GHG emissions are not covered emissions for suppliers of carbon dioxide: Carbon dioxide emissions when the supplier can demonstrate to ecology's satisfaction that they are part of the covered emissions of another covered or opt-in entity under this chapter~~ are not covered emissions for the supplier of carbon dioxide~~.

(e) Allotment of covered emissions for first jurisdictional deliverers of imported electricity.

(i) GHG emissions associated with imported electricity are covered emissions for the first jurisdictional deliverer serving as the electricity importer for that electricity. The electricity importer is identified through the definition and procedures in chapter 173-441 WAC.

(ii) If the electricity importer is a federal power marketing administration over which the state of Washington does not have jurisdiction, and the federal power marketing administration has not voluntarily elected to comply with the program, then the party deemed

to be the electricity importer is the next purchasing-selling entity in the physical path on the NERC e-tag, or if there is no additional purchasing-selling entity over which the state of Washington has jurisdiction, then a utility that purchases electricity for use in the state of Washington from that federal power marketing administration or the generation balancing authority. Such a utility or generation balancing authority is a covered entity under this program and has the compliance obligation for the GHG emissions associated with that electricity.

(iii) If the electricity importer is a federal power marketing administration over which the state of Washington does not have jurisdiction, ((~~and~~)) the federal power marketing administration ((~~has~~)) may voluntarily ((~~elected~~)) elect to comply with the program((~~, then any utility that purchases electricity for use in the state of Washington from that federal power marketing administration may provide by agreement for the assumption of the compliance obligation by the federal power marketing administration. The department of ecology must be notified of such an agreement at least 12 months prior to the compliance period for which the agreement is applicable or, for the first compliance period, 12 months prior to the first calendar year to which the agreement is applicable~~)) in

accordance with the requirements of section 11, chapter 352, Laws of 2024, either for all sales into Washington, or for resources attributed into Washington in a centralized electricity market for which the federal power marketing administration is the deemed market importer. Upon the election taking effect ((~~of the agreement, the covered emissions for the utility are the responsibility of~~)), the federal power marketing administration ((~~as long as the agreement is in effect~~)) will assume the compliance obligation for covered emissions consistent with its election. If no ((~~agreement is in place for a utility that purchases electricity from~~)) such election has been made by that federal power marketing administration, then the requirements of subsection (e)(ii) of this section apply to the GHG emissions associated with that electricity.

(iv) For ((~~the first compliance period the electricity importer for electricity derived from the energy imbalance market is the energy imbalance market purchasing entity located or operating in Washington that receives the delivery of electricity transacted through the energy imbalance market. For electricity transferred through the energy imbalance market that is~~)) electricity generated by ((~~a first jurisdictional deliverer with a compliance obligation under this chapter, there is no~~)) an electric generating facility in Washington

where the owner or operator of that facility successfully offers electricity into a centralized electricity market and is assigned, designated, deemed, or attributed to be serving Washington electric load by the methodologies, processes, or decision algorithms put in place by the market operator of that centralized electricity market, the compliance obligation for ((~~that same electricity if it is delivered to an energy imbalance market purchasing entity in Washington~~)) the GHG emissions associated with that electricity is determined once, based on the emissions reported for that electricity under WAC 173-441-120.

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

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-040, filed 9/29/22, effective 10/30/22.]

WAC 173-446-050 Covered and opt-in entity registration. (1) Any reporter under chapter 173-441 WAC reporting at least 25,000 metric tons of CO_2e covered emissions per calendar year for 2015 or any year

thereafter other than a waste to energy facility or a railroad that meets the applicability conditions in WAC 173-446-030 or 173-446-060 will receive written notice from ecology that it must register as a covered entity in Washington's cap and invest program. ~~That~~In addition, any first jurisdictional deliverer of electricity that delivers any amount of unspecified electricity in the state will receive notice to register as a covered entity in the program. The Ecology notice will be sent to the designated representative and alternate designated representative as established under WAC 173-441-060 of each covered entity. To register, each covered entity must follow the registration process provided in subsection (5) of this section.

(2) The owner or operator of any reporter under chapter 173-441 WAC that is not a covered entity may request to be registered in Washington's cap and invest program as an opt-in entity. To register, the opt-in entity must follow the registration process provided in subsection (5) of this section. Upon registration, opt-in entities incur compliance obligations for the GHGs they emit and are subject to the same program requirements as covered entities.

(3) Any party who is not a reporter but is responsible for GHG emissions in Washington may voluntarily participate in the cap and

invest program as an opt-in entity. To participate, these opt-in entities must:

(a) Report their GHG emissions to ecology under the voluntary reporting requirements in WAC 173-441-030(5);

(b) Request to be registered in the cap and invest program as an opt-in entity;

(c) Follow the registration process provided in subsection (5) of this section;

(d) Incur compliance obligations for the GHGs they emit and ~~are~~be subject to the same program requirements as covered entities;

(e) Except as provided in (f) of this subsection, consent to regulation by ecology and the jurisdiction of the courts and administrative tribunals of the state of Washington with respect to any judicial or administrative enforcement action commenced by ecology to ensure compliance with the requirements of chapter 70A.65 RCW, RCW 70A.15.2200, chapter 173-441 WAC, and this chapter; and

(f) For federally recognized tribes who elect to participate as opt-in entities pursuant to RCW 70A.65.090(5), enter into a written agreement, negotiated on an individual basis between ecology and the tribal government, that establishes a dispute resolution process and/or other compliance mechanisms in order to ensure the

enforceability of all program requirements applicable to the tribe in its role as an opt-in entity.

(4) Any party receiving notice that it must register as a covered entity that believes it received the notice in error and should not be a covered entity in the program may, within 30 calendar days of receiving ecology's notice, provide a signed written request to ecology asking ecology to remove it from registration and explaining why. The final determination remains with ecology.

(5) To register, each covered or opt-in entity must comply with the requirements in WAC 173-446-105 through 173-446-130, and provide the following information to ecology electronically in a format specified by ecology:

(a) Name, contact information, and physical address of the party;

(b) Tracking system identification number, if applicable;

(c) Names and addresses and contact information 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 (an employee who has knowledge of both the party's current and/or expected holdings of compliance instruments and the party's current and/or expected covered emissions).

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-050, filed 9/29/22, effective 10/30/22.]

NEW SECTION

WAC 173-446-052 Exchange Clearing House Registration.

(1) An exchange clearing house for derivatives having an establishment in the United States may register in the program in order to clear transactions involving allowances. For that purpose the exchange clearing house must provide the following information to ecology electronically in a format specified by ecology:

(a) Name, contact information, and physical address of the exchange clearing house;

(b) Date and place of incorporation;

(c) Names and addresses and contact information of the exchange clearing house'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) A document issued by the Commodities Exchange Commission confirming that fact and giving the date on which the Commodities Exchange Commission began supervision of the exchange clearing house and the rules to be followed by the exchange clearing house;

(e) A declaration signed by a director or any other officer, or a resolution of the board of directors of the exchange clearing house that includes:

(i) a commitment to comply with all applicable requirements and conditions of chapter 70A.65 RCW and this chapter, and consent to the jurisdiction of the courts and administrative tribunals of the state of Washington for purposes of enforcement of such requirements and conditions; and

(ii) an attestation made under penalty of perjury that all information and documents provided are true, accurate, and complete, and that consent has been given for the exchange clearing house to communicate or otherwise transmit such information when necessary for the purposes of compliance with this program or the applicable regulations of a linked jurisdiction.

(2) If an application for registration meets the requirements of this section, Ecology will open a clearing house account for the exchange clearing house.

(3) Any change to the information or documents provided under subsection (1) of this section must be communicated to Ecology within 30 days of the change and, if the exchange clearing house is changing their account representative(s) or account viewing agent(s), it must notify Ecology of these changes immediately.

(4) The exchange clearing house must notify Ecology immediately if the clearing house's activities are suspended by the Commodities Exchange Commission or if supervision by the Commodities Exchange Commission ceases. No transaction may be carried out in the clearing house account until Ecology receives sufficient documentation establishing that suspension has been lifted by the Commodities Exchange Commission or that new supervision has been established by the Commodities Exchange Commission. If allowances are recorded in the account when supervision is suspended or ceases, they will be returned to the entity registered in Washington or in an external GHG ETS of a linked jurisdiction who transferred them into the account.

WAC 173-446-053 Electric utilities registration.

[NO CHANGES TO THIS SECTION ARE PROPOSED AT THIS TIME]

(1) All electric utilities in Washington that are not required to report GHG emissions under chapter 173-441 WAC or that report fewer than 25,000 MT CO_2e covered emissions per year must register to receive no cost allowances.

(2) To register, electric utilities must comply with the requirements of WAC 173-446-105 through 173-446-130 and provide the

following information to ecology electronically in a format specified by ecology:

(a) Name, physical and mailing addresses, contact information, utility type, date and place of incorporation, and ID number assigned by the incorporating agency;

(b) Names, addresses, and contact information of each of the utility's directors and officers with authority to make legally binding decisions on behalf of the utility, and any partners with more than 10 percent of control over the partnership, including any individual or party doing business as a limited partner or general partner;

(c) Names and contact information of all individuals or parties controlling more than 10 percent of the voting rights attached to all the outstanding voting securities of the utility;

(d) A business identification number, if one has been assigned to the utility by a Washington state agency;

(e) A government issued taxpayer or employer identification number, or a U.S. federal tax employer identification number, if one has been assigned to the utility;

(f) Disclosure of all other parties with whom the utility has a direct corporate association or indirect corporate association that

must be reported pursuant to WAC 173-446-120 and a brief description of the association(s);

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

(h) Information required pursuant to WAC 173-446-056 for individuals serving as cap and invest consultants and advisors for registered entities participating in the cap and invest program.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-053, filed 9/29/22, effective 10/30/22.]

NEW SECTION

WAC 173-446-054 Federal Power Marketing Administration registration.

(1) A federal power marketing administration may elect to voluntarily participate in the program by registering as an opt-in entity pursuant to the requirements of this section.

(2) In registering as an opt-in entity under this section, a federal power marketing administration may assume the compliance obligations associated with either:

(a) All electricity marketed in the state by the federal power marketing administration; or

(b) Only the electricity marketed by the federal power marketing administration in the state through a centralized electricity market.

(3) A federal power marketing administration that voluntarily elects to comply with the program must register with Ecology as an opt-in entity at least 90 days prior to January 1st of the calendar year in which the federal power marketing administration will assume the compliance obligations associated with federally marketed electricity in the state.

(4) If a federal power marketing administration registers as an opt-in entity under this section, then beginning January 1st of the calendar year in which the federal power marketing administration assumes the compliance obligations associated with federally marketed electricity in the state, a covered or opt-in entity must not include in its covered emissions the emissions associated with federally marketed electricity in the state for which the federal power marketing administration has assumed the compliance obligation.

[Ecology will consult with a federal power marketing administration on development of registration requirements and continue to revise this section]

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 compliance instruments may apply to ecology for approval to participate as a general market participant.

(a) The following parties may be 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) An offset project operator that is registered with ecology pursuant to WAC 173-446-520(1). Parties qualifying as general market participants under this subparagraph may hold offset credits 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 who registers as a general market participant in the

tracking system must disclose to ecology all 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 calendar 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 registered in Washington’s program or in an external GHG ETS of a linked jurisdiction, then the individual must provide a notarized letter from the associated 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 attesting 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 a letter with such assurances by the applicable deadline described above in (c)(i) of this subsection 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 registered in Washington's program or in an external GHG ETS of a linked jurisdiction, must disclose to ecology the proposed relationship with the other registered entities and comply with the requirements of (c)(ii) of this subsection prior to providing the advisory services. Failure to provide the letter required by (c)(ii) of this subsection 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, as documented in the registration information provided pursuant to subsection (3) of this section. For the purposes of this subsection, "located in the United States" means incorporated in the United States.

(f) Parties not eligible to be general market participants include individuals identified by registered entities pursuant to:

(i) WAC 173-446-120 (1)(c), (d), or (h);

(ii) WAC 173-446-130; WAC 173-446-140; or

(iii) WAC 173-446-056, unless disclosed pursuant to (c) of this subsection; and

(iv) An individual who is an employee of a party subject to the requirements of this chapter or chapter 173-441 WAC.

(2) Restrictions on other parties. The following parties do not qualify to hold compliance instruments and cannot be registered entities:

(a) An offset verifier accredited pursuant to WAC 173-446-535;

(b) An offset verification body accredited pursuant to WAC 173-446-535;

(c) Offset project registries; and

(d) An emissions reporting verifier accredited pursuant to chapter 173-441 WAC.

(3) General market participant registration.

(a) Any party wishing to register as a general market participant must comply with the requirements of WAC 173-446-105 through 173-446-130 and provide the following information to ecology in a format specified by ecology:

(i) Name, physical and mailing addresses, contact information, party type, date and place of business incorporation, and government ID numbers associated with the business;

(ii) Names, addresses, and contact information 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 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, directors and officers of the party that will have access to or 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 WAC 173-446-056 for individuals serving as cap and invest consultants and advisors for registered entities participating in the cap and invest program.

(b) Except as provided in (c) of this subsection, any party registering as a general market participant must consent to regulation by ecology and the jurisdiction of the courts and administrative tribunals of the state of Washington with respect to any judicial or administrative enforcement action commenced by ecology to ensure compliance with the requirements of chapter 70A.65 RCW and this chapter.

(c) For federally recognized tribes who elect to participate as general market participants pursuant to RCW 70A.65.090(5), the tribe must enter into a written agreement, negotiated on an individual basis between ecology and the tribal government, that establishes a dispute resolution process and/or other compliance mechanisms in order to ensure the enforceability of all program requirements applicable to the tribe in its role as a general market participant.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-055, filed 9/29/22, effective 10/30/22.]

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 providing any of the following services in relation to the cap and invest program or the GHG reporting program to an ~~registered~~ entity registered in Washington or in an external GHG ETS of a linked jurisdiction for which the individual or party is not an owner or employee 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 is part of providing GHG offset verification services; or, where applicable, designing, developing, implementing, reviewing, or maintaining electricity or fuel transactions, unless the review is part of providing GHG verification services;

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

(c) Designing energy efficiency, renewable power, or other projects that 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 ecology offset credits, or registry offset credits from an offset project;

(f) Dealing in or being a promoter of Washington 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) Providing 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) Being 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) Providing 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 provided by outside counsel hired by a registered entity and providing legal services related to any of the

other services described in this section. Also, any attorney providing nonlegal services, such as brokering, auditing, financial advice, bid strategy, or other services listed in this section; 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) Any ~~registered~~ entity registered in Washington or in an external GHG ETS of a linked jurisdiction 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;

(iv) Employer, if applicable; and

(v) Type of service provided.

(b) The party must disclose the information in (a) of this subsection to ecology:

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

(ii) Within 30 calendar days of entering into a contract with a cap and invest consultant or advisor; and

(iii) Within 30 calendar days of a change to the information disclosed on consultants and advisors.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-056, filed 9/29/22, effective 10/30/22.]

WAC 173-446-060 New or modified covered entities. (1) Any party that becomes a covered entity under the criteria set forth in any subsequent subsection of this section is required to transfer its first allowances to its compliance account by November 1st of the year following the year in which its covered emissions first equaled or exceeded 25,000 metric tons CO_2e per year, or the year following the year when it first imported unspecified electricity.

(2) Unless otherwise provided under WAC 173-446-030, any facility, supplier, or first jurisdictional deliverer 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 facility, supplier, or first jurisdictional deliverer is expected to exceed those thresholds, whichever happens first.

(3) 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 facility is expected to exceed those thresholds, whichever happens first.

(4) Any railroad company, as that term is defined in RCW 81.04.010, that is newly constructed after January 1, 2031, becomes a covered entity in the calendar year in which its emissions reach 25,000 metric tons of CO_2e per year, or upon formal notice from ecology that the company is expected to exceed those thresholds, whichever happens first.

(5) Any facility, supplier, or first jurisdictional deliverer of the types described in WAC 173-446-030(1) that were in operation between 2015 and 2019 but was not required to report emissions for 2015 through 2019, or whose covered emissions in those years were below 25,000 metric tons of CO_2e per year, becomes a covered entity in

the calendar year following the year in which its covered emissions first equaled or exceeded 25,000 metric tons of CO_2e per year or included unspecified imported electricity as reported under chapter 173-441 WAC, or upon formal notice from ecology that the facility, supplier, or first jurisdictional deliverer's covered emissions are expected to exceed 25,000 metric tons of CO_2e per year or include unspecified electricity for the first year the entity is required to report emissions, whichever happens first.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-060, filed 9/29/22, effective 10/30/22.]

WAC 173-446-070 Exiting the program.

[NO CHANGES TO THIS SECTION ARE PROPOSED AT THIS TIME]

(1) When a covered entity reports covered emissions that are below 25,000 metric tons of CO_2e in any given calendar year during a compliance period, the covered entity continues to have a compliance obligation for all of its covered emissions through the end of that compliance period.

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

(a) Except as provided in (b) of this subsection, when a covered entity reports covered emissions below 25,000 metric tons of CO_2e for

every year during an entire compliance period, or has permanently ceased all processes at the facility requiring reporting under chapter 173-441 WAC, the facility, supplier, or first jurisdictional deliverer is no longer a covered entity as of the beginning of the subsequent compliance period. Even though no longer a covered entity, the facility, supplier, or first jurisdictional deliverer must meet its compliance obligation for covered emissions occurring during any compliance period when it was a covered entity.

(b) A covered entity identified in (a) of this subsection 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 first jurisdictional deliverer's covered emissions are below the 25,000 metric ton threshold but still 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.

(c) Whenever a facility, supplier, or first jurisdictional deliverer ceases to be a covered entity, ecology will notify the appropriate policy and fiscal committees of the legislature of the name of the facility, supplier, or first jurisdictional deliverer and the reason it is no longer a covered entity.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-070, filed 9/29/22, effective 10/30/22.]

WAC 173-446-080 Allowances.

[NO CHANGES TO THIS SECTION ARE PROPOSED AT THIS TIME]

(1) Ecology shall create GHG allowances as required to cover the annual allowance budgets determined in WAC 173-446-210.

(2) Ecology shall assign each GHG allowance a unique serial number that identifies the annual allowance budget from which the allowance originates.

(3) Each allowance is of the vintage year of the annual allowance budget from which it comes.

(4) Older vintage allowances must be retired before newer vintage allowances.

(5) Allowances do not expire and may be banked.

(6) Except as provided in this chapter, a covered or opt-in entity may not use an allowance from a future allowance vintage year to meet a current or past compliance obligation.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-080, filed 9/29/22, effective 10/30/22.]

PROGRAM ACCOUNT REQUIREMENTS

WAC 173-446-100 Program accounts required. (1) Within 40 calendar days after receiving a notice to register from ecology, each registration applicant must make corporate association disclosures and designate account representatives as described in WAC 173-446-105 through 173-446-140. After ecology has received the required complete documents, ecology will authorize the required accounts for each registration applicant whose documentation meets the requirements of this chapter.

(2) A registered entity or registration applicant that is a member of a direct corporate association may apply for a consolidated entity account to include other associated registered entities or registration applicants (whether registered in Washington's program or in an external GHG ETS of a linked jurisdiction) from within the direct corporate association. To do so, the applicant must identify each associated registered entity or registration applicant that will be assigned to its account, and each associated registered entity or registration applicant must provide an attestation signed by its officer or director confirming 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 consolidated entity account. The applicant cannot

be subsidiary to or controlled by another associated entity within the consolidated entity account.

(3) A registration applicant 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 direct corporate associates per the requirements of WAC 173-446-120 (1)(i). All members of a direct corporate association must independently confirm the allocation of holding and purchase limits.
[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-100, filed 9/29/22, effective 10/30/22.]

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 criteria 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) A 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 GHG ETS of a ~~to which Washington is~~ linked jurisdiction, if either one of these parties has any criterion in subsection (1) of this section that is greater than 50 percent.

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

(a) A party (#1) has a direct corporate association with another party (#2) if the two parties share a common parent and that parent

has direct corporate association with each party (#1 and #2) when applying the indicia of control contained in subsections (1) and (2) of this section.

(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 subsection (1) of this section, of the controlled party is more than 20 percent but less than or equal to 50 percent. If the two parties are connected through a chain of more than one corporate association, the indicia of control identified in subsection (1) of this section 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 parties 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 has a direct corporate association with the operator of another electricity generating facility in Washington if the same party operates both generating facilities.

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

(7) 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 parties registered in the tracking system or registered in an external GHG ETS ~~to which Washington has~~ of a linked jurisdiction 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 registered 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, all registered entities in Washington and in an external GHG ETS of a

linked jurisdiction 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, all registered entities ~~for~~in Washington and in an external GHG ETS of a linked jurisdiction 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.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-105, filed 9/29/22, effective 10/30/22.]

WAC 173-446-110 Disclosure of corporate associations—Types of disclosures required. (1) Registered entities and registration applicants must disclose all direct and indirect corporate associations with other entities registered in the cap and invest

program or in another external GHG ETS ~~to which Washington has~~of a linked jurisdiction.

(2) Disclosure of parent companies. Registered entities and registration applicants must disclose all direct corporate associations with other parties not registered in the cap and invest program or in another external GHG ETS ~~to which Washington has~~of a linked jurisdiction, if those parties have the degree of ownership interest in or control over the registered entity or registration applicant to meet the requirements of having a direct corporate association.

(3) A registered entity or registration applicant that has a direct or indirect corporate association with another entity registered in the program in Washington or in an external GHG ETS of a linked jurisdiction must disclose the identity of all parties involved in the line of direct or indirect corporate associations between the registered entity and the registration applicant or between the two registered entities, even if such parties are not registered entities.

(4) Registered entities and registration applicants 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 parties that purchase or sell GHG compliance instruments, natural gas, oil, or electricity; or parties that conduct exchange trades involving derivatives or swaps based on GHG 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 disclosure requirements: (i) Exhibit 21 of the Form 10-K submitted to the Securities and Exchange Commission by the registrant or an affiliate of the registrant; (ii) 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 C.F.R. Part 35 and Order 697; (iii) 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, 7 U.S.C. 1; (iv) 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 (17 C.F.R. section 18.04); and/or (v) 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 and registration applicants 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 for disclosure by ecology.

(a) Parties participating in a market related to the cap and invest program include only those parties that purchase or sell GHG compliance instruments, natural gas, electricity, or oil; or parties that conduct exchange trades involving derivatives or swaps based on GHG compliance instruments, natural gas, oil, or electricity.

(b) Registered entities and registration applicants may disclose these associations using the documentation options listed in subsection (4)(b) of this section.

(6) The following registered entities or registration applicants are exempt from the disclosure requirements of this chapter:

(a) If a registered entity or registration applicant can demonstrate to ecology's satisfaction that the registered entity or registration applicant is subject to affiliate compliance rules promulgated by state or federal agencies, the registered entity or registration applicant shall not be required to take any action or make any disclosures that would violate those rules.

(b) An offset project operator registering as a general market participant solely to hold offset credits is not required to disclose any direct or indirect corporate associations.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-110, filed 9/29/22, effective 10/30/22.]

WAC 173-446-120 Disclosure of corporate association—Information to be submitted. (1) All registered entities and registration applicants must provide the following information for each disclosable corporate association:

(a) Name, contact information, and physical address of the party;

(b) Tracking system identification number, if applicable;

(c) Names and addresses and contact information 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 (an employee who has knowledge of both the party's current and/or expected holdings of compliance instruments and the party's current and/or expected covered emissions);

(i) For direct corporate associations with ~~registered~~ entities ~~only~~registered in Washington or in an external GHG ETS of a linked jurisdiction, the percentage share of the holding limit and purchase limit assigned to each party opting out of account consolidation pursuant to this section; the sum of the shares must equal 100 percent; and

(j) Any further information requested by ecology concerning the corporate association.

(2) Registered entities and registration applicants that have any disclosable corporate associations must identify whether each corporate association is direct or indirect.

(a) Registered entities and registration applicants 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 173-446-105(1) that was used to determine the type of corporate association disclosed for each associated party.

(b) Registered entities and registration applicants 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 to ecology electronically in a format specified by ecology.

(4) The registered entity or registration applicant must disclose the information required by the following deadlines:

(a) Within 40 calendar days after receiving a notification to register from ecology under WAC 173-446-050;

(b) Within 10 business days after receiving a request for further information from ecology;

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

(d) Within one year after a modification if the changes in information involve only unregistered parties disclosed pursuant to WAC 173-446-110 (4) and (5).

(e) No later than 10 calendar days prior to the auction application deadline established in WAC 173-446-315 when disclosing a change related to another party registered in the cap and invest program or to parties registered in an external GHG ETS ~~to which~~

~~Washington has~~ of a linked jurisdiction, if the disclosing entity intends to participate in the auction; and

(f) Within one year for all other changes.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-120, filed 9/29/22, effective 10/30/22.]

WAC 173-446-130 Designation and certification of account representatives.

[NO CHANGES TO THIS SECTION ARE PROPOSED AT THIS TIME]

(1) Within 40 calendar days after receiving a notice to register from ecology, every registration applicant must designate at least two and at most five individuals to act as its account representatives to perform any operations within the cap and invest program on its behalf. Each registration applicant must identify one primary account representative, who is the resource person to be contacted for any information concerning the registration applicant. For the purposes of the account representative designations, the registration applicant must provide ecology with the following information and documents electronically in a format specified by ecology:

(a) The name and contact information of the registration applicant;

(b) The following information for each designated account representative:

(i) Name and contact information of the individual to include all information including the individual's home address and email address;

(ii) Copies of at least two identity documents, including at least one with a photograph, issued by a government or one of its departments or agencies, bearing the individual's name and date of birth; and at least one document that is customarily accepted by the state of Washington as evidence of the primary residence of the individual; along with an attestation from a notary completed less than three 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;

(iii) The name and contact information of the individual's employer;

(iv) Confirmation from a financial institution located in the United States that the individual has a deposit account with the institution; and

(v) Any conviction for a criminal offense declared in any jurisdiction during the five years prior to designation as an account representative, or while designated as an account representative,

constituting a felony under U.S. federal law or Washington 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 registration applicant attesting that all of the account representatives have been duly designated to act on behalf of the registration applicant for the purposes of this program; and

(d) 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 an 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 chapters 70A.65 RCW and 173-446 WAC on behalf of such parties and that each such party shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by ecology or a court or the pollution control hearings board regarding the account."

(2) Each registered entity must have at least two account representatives at all times, including a primary account representative.

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

(4) Each submission concerning the registered entity's 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.

(a) Except as provided in (b) of this subsection, each such submission shall include the following attestation statement made and signed by the primary account representative or the alternate account representative making the submission: "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, its courts, and the pollution control hearings board for purposes of enforcement of the laws, rules, and regulations pertaining to chapters 173-446 WAC and 70A.65 RCW. 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."

(b) For federally recognized tribes who elect to participate as opt-in entities or general market participants pursuant to RCW 70A.65.090(5), each such submission shall include the following attestation statement made and signed by the primary account representative or the alternate account representative making the submission: "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 tribal government 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. The tribal government on whose behalf I am authorized to make this submission has entered into a written agreement, negotiated on an individual basis between ecology and the tribal government, that establishes a dispute resolution process and/or other compliance mechanisms in order to ensure the enforceability of all program requirements applicable to the tribe in its role as an opt-in entity or a general market participant, as applicable. 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 representative terminates when the account representative resigns, when a request for revocation is received from the registered entity or, when a registered entity has only two designated account representatives, only after a new representative has been designated. The duties of an account

representative also terminates when all the accounts of the registered entity by whom the account representative was designated are closed.

(6) If the registered entity is an individual, 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 the designation of an account representative 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) A primary account representative or at least one alternate account representative must be a resident of Washington unless the covered entity or opt-in entity has an agent who resides in Washington or the covered or opt-in entity has previously filed a foreign registration statement pursuant to RCW 23.95.510.

(9) A registration applicant or a registered entity may not designate a party as an account representative under subsection (1) of this section or authorize a party as an account viewing agent under WAC 173-446-140, if that party was convicted, in the five calendar years prior to the notice of designation or authorization, of a criminal offense involving fraud, dishonesty, deceit, or

misrepresentation, or any other criminal offense connected with the activities for which designation or authorization is requested.

(10) A registered entity must revoke designation as an account representative or account viewing agent if while acting as an account representative or an account viewing agent a party is convicted of a criminal offense involving fraud, dishonesty, deceit, or misrepresentation, or any other criminal offense connected with the activities undertaken as account representative or account viewing agent.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-130, filed 9/29/22, effective 10/30/22.]

WAC 173-446-140 Designation of account viewing agents.

[NO CHANGES TO THIS SECTION ARE PROPOSED AT THIS TIME]

(1) A primary account representative or alternate account representative designated by a registered entity under WAC 173-446-130 may authorize up to five individuals 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 individuals

delegated shall not have authority to take any other action with respect to an account in the tracking system.

(2) To delegate account viewing authority, the primary account representative or alternate account representative, as appropriate, must submit to ecology electronically in a format specified by 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 individual delegated to be an account viewing agent;

(c) Copies of at least two identity documents, including at least one with a photograph, issued by a government or one of its departments or agencies, bearing the individual's name and date of birth; and at least one document that is customarily accepted by the state of Washington as evidence of the primary residence of the individual; along with an attestation from a notary completed less than three 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;

(d) The name and contact information of the individual's employer;

(e) Confirmation from a financial institution located in the United States that the individual has a deposit account with the institution;

(f) Any conviction for a criminal offense declared in any jurisdiction during the five years prior to designation as an account representative, or while designated as an account representative, constituting a felony under U.S. federal law or Washington law, or the equivalent thereof. The disclosure must include the type of violation, jurisdiction, and year; and

(g) 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 who 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.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-140, filed 9/29/22, effective 10/30/22.]

WAC 173-446-150 Accounts for registered entities. (1) Creation of accounts.

(a) 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:

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

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

(b) For each electric utility and each natural gas utility registering in the program, ecology will also set up a limited use holding account. Electric utilities and natural gas utilities must

transfer their no cost allowances to the limited use holding account in order to consign them to auction for the benefit of ratepayers as described in WAC 173-446-300 (2)(b).

(c) For each exchange clearing house, a clearing house account.

(d) 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 a holding account for each general market participant.

(2) Holding limits.

(a) Except as provided in (c) and (d) of this subsection, the maximum total number of allowances of the current vintage, prior vintage, or that have no vintage, that a registered entity may hold in its holding account, its compliance account, or combination of both, is determined by the following:

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

Where:

HL_i = holding limit for year i

C_i = annual allowance budget for year i, consisting of the combined allowance budgets of Washington and all external GHG ETS of linked jurisdictions.

i = current year

(b) Except as provided in (c), (d) and (de) of this subsection, the maximum number of allowances of each vintage subsequent to the

current year that a registered entity may hold in its holding account, its compliance account, or a combination of both, is determined by the following:

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

Where:

HL_j = holding limit for year j

C_j = annual allowance budget for year j, consisting of the combined allowance budgets of Washington and all external GHG ETS of linked jurisdictions.

j = year subsequent to the current year

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

(d) The holding limits set in (a) and (b) of this subsection do not apply to allowances held in a limited use holding account that are to be consigned to auction.

(e) The holding limits set in (a) and (b) of this subsection do not apply to allowances held in a clearing house account.

(f) In addition to the holding limits described above, until Washington links with a jurisdiction that does not have this limit, a general market participant may not in aggregate hold more than 10 percent of the total number of allowances of any vintage year.

(~~f~~g) A registered entity that reaches or exceeds one-half of its holding limit must, within 10 business days of a request from ecology, explain its strategy and the reason for holding the allowances.

(~~g~~h) When its holding limit is exceeded, a registered entity must, within five business days after the limit is exceeded, divest itself of the excess emission allowances, transfer into its compliance account the number of 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. If a registered entity fails to comply with this requirement, ecology will withdraw the excess allowances and make them available for auction.

(3) Ecology will post anonymized 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. Ecology will also maintain on its website a public roster of all covered entities, opt-in entities, and general market participants.

(4) When the ownership of a registered entity changes, the following information must be submitted to ecology within 30 calendar days of finalization of the ownership change:

(a) A description of the merger or acquisition and the effective date of the change of ownership, including whether the merger or acquisition is the purchase of a registered entity or entities from another party or the purchase of a party that owns a registered entity or entities;

(b) Both the legal and operating names and the tracking system IDs of the parties owning the registered entity or entities prior to the change in ownership;

(c) The legal name, operating name, and the tracking system ID of the purchasing party, if any;

(d) Written direction regarding whether the purchased registered entity or entities will be added to a consolidated entity account or whether the purchased registered entity or entities will be associated with a party that will opt out of account consolidation;

(e) Documentation with signatures (original or electronic) by a director or officer from the seller of the registered entity or entities, the registered entity or entities, and from the purchasing party, notifying ecology of the change of ownership;

(f) Any changes to disclosures or new disclosures required under WAC 173-446-110, 173-446-120, and 173-446-130;

(g) Direction regarding the disposition of compliance instruments that must be transferred by ecology to the purchasing party. Compliance instruments can be transferred. Any administrative transfers required may be requested as a one-time occurrence scheduled to occur within five business days after the facility or facilities are transferred in the tracking system to the purchasing party;

(h) It is the responsibility of the parties participating in the change of ownership to transfer any compliance instruments from tracking system holding accounts that they control prior to closure. Prior to closure, ecology may transfer compliance instruments from a registered entity's compliance account to its holding account upon request by the registered entity. If a party no longer owns or operates any active registered entity in its tracking system account due to a change in ownership, then that party may exit the program and close its tracking system accounts within five business days after the registered entity or entities are transferred in the tracking system to the purchasing party.

[Statutory Authority: Chapter 70A.65 RCW. WSR 24-05-080 (Order 23-02), § 173-446-150, filed 2/21/24, effective 3/23/24. Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-150, filed 9/29/22, effective 10/30/22.]

ALLOWANCE BUDGETS AND DISTRIBUTION OF ALLOWANCES

WAC 173-446-200 Total program baseline.

(1) **Total program baseline and subtotal baselines.** Ecology must use the following methods for establishing a total program baseline for this chapter.

(a) Subtotal baselines are calculated individually for each reporter or sector on an annual basis as described in subsection (2) of this section. The total program baseline is the sum of the subtotal baselines. The total program baseline is given in Table 200-1. Ecology may only adjust the total program baseline through rule making as described in subsections (3) and (4) of this section.

(b) Ecology may combine information from multiple sources and use professional judgment to adjust data sets and conform to this chapter when calculating subtotal baselines. Ecology may use the following data sources when calculating subtotal baselines depending on data availability, quality, applicability, and the agency's best professional judgment.

(i) Data reported to ecology under chapter 173-441 WAC;

(ii) Data provided or described in subsections (2) through (4) of this section;

(iii) Data voluntarily provided by covered parties; or

(iv) Data or estimates obtained or made by ecology.

(2) **Subtotal baselines for sectors entering the program in the first compliance period.** Ecology must use the following methods for establishing subtotal baselines for facilities, suppliers, or first jurisdictional deliverers described under WAC 173-446-030(1) that would meet applicability requirements based on covered emissions from 2015 through 2019. Subtotal baselines are the annual average of covered emissions for each reporter or sector on a mass basis as established in WAC 173-446-040 from emissions years 2015 through 2019. All emissions years are included in the average, including years with periods of closure or curtailment, and years when covered emissions from a covered entity were under the thresholds in WAC 173-446-030(1) as long as at least one emissions year from 2015 through 2019 would have exceeded the applicability requirements described under WAC 173-446-030(1) for the given facility, supplier, or first jurisdictional deliverer. Ecology may elect not to apply all methods in WAC 173-446-040(3) when calculating subtotal baselines since the total program baseline is the sum of the subtotal baselines. For example, when calculating subtotal baselines, ecology may attribute fuel product combustion described in WAC 173-446-040 (3)(a)(ii)(A) to facilities instead of reallocating those emissions to fuel suppliers. Ecology must apply WAC 173-446-040(3) to make sure that each metric ton of

emissions is included in the total program baseline and avoid double counting. Ecology must fully apply WAC 173-446-040(3) any time emissions calculations are specific to a given covered party, such as calculating compliance obligations or allocation baselines.

(a) Facilities that are not EITEs. Ecology must calculate subtotal baselines for facilities that are not EITEs, including electric generating facilities reporting under WAC 173-441-120, based on the facility's covered emissions as established in WAC 173-446-040.

(b) EITE facilities. Ecology must calculate subtotal baselines for EITE facilities based on the facility's covered emissions as established in WAC 173-446-040.

(c) Suppliers of natural gas. Ecology must calculate subtotal baselines for suppliers of natural gas based on the supplier's covered emissions as established in WAC 173-446-040. Ecology must use the supplementary reports defined in WAC 173-446-240 for calculations whenever available and adjust covered emissions to account for large customers as described in WAC 173-446-040 (3)(b)(ii).

(d) Suppliers of fossil fuel other than natural gas. Ecology must calculate subtotal baselines for suppliers of fossil fuel other than natural gas based on the supplier's covered emissions as established in WAC 173-446-040. Ecology must use the existing department of

licensing based transportation fuel supplier reports previously submitted to ecology for calculations. Ecology may adjust covered emissions from the transportation fuel supplier reports to subtract GHG emissions estimated to be associated with aviation and add emissions associated with fuel products combusted at facilities as described in WAC 173-446-040 (3)(c).

(e) Carbon dioxide suppliers. Ecology must calculate subtotal baselines for carbon dioxide suppliers based on the supplier's covered emissions as established in WAC 173-446-040.

(f) Electric power entities. Ecology must calculate subtotal baselines for electricity importers based on their covered emissions as established in WAC 173-446-040. Ecology will use fuel mix disclosure reports generated by the department of commerce in accordance with RCW 19.29A.060 to identify and catalog all contracted and unclaimed power and methods from WAC 173-444-040 to estimate GHG emissions. Subtotal baselines for electric generating facilities reporting under WAC 173-441-120 will be calculated as specified under (a) of this subsection and are not part of the electric power entity subtotal baseline.

(3) **Subtotal baselines for sectors entering the program in the second compliance period.** Subtotal baselines for facilities in sectors

described under WAC 173-446-030(2) must be calculated based on the facilities' covered emissions as established in WAC 173-446-040 averaged from emissions years 2023 through 2025. Ecology must adjust the total program baseline in Table 200-1 of this section by adding the subtotal baseline for facilities under WAC 173-446-030(2) in a future rule making by October 1, 2026.

(4) **Subtotal baselines for sectors entering the program after the second compliance period.** Subtotal baselines for facilities in sectors described under WAC 173-446-030(3) must be calculated based on the facilities' covered emissions as established in WAC 173-446-040 averaged from emissions years 2027 through ~~2029~~2028. Ecology must adjust the total program baseline in Table 200-1 of this section by adding the subtotal baseline for facilities under WAC 173-446-030(3) in a future rule making by October 1, 2028.

(5) **Subtotal baseline adjustments for new or modified covered reporters.** Ecology will not adjust the total program baseline in Table 200-1 of this section for any new covered reporter joining the program under WAC 173-446-060.

Table 200-1: Total Program Baseline Values

Emissions Years	Total Program Baseline (annual MT CO_2e)
2023-2026	68,052,220
2027-2030	Set by rule by October 1, 2026, according to subsection (3) of this section
2031 and subsequent years	Set by rule by October 1, 2028, according to subsection (4) of this section

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-200, filed 9/29/22, effective 10/30/22.]

WAC 173-446-210 Total program allowance budgets. (1) **Calculating the total program allowance budget.**

[NO CHANGES TO THIS SECTION ARE PROPOSED AT THIS TIME]

Ecology must use the following methods for setting the total program allowance budget for each year. The total program allowance budget for each year must be in units of MT CO_2e on a mass basis.

(a) Emissions years 2023 through 2026.

(i) The total program allowance budget for emissions year 2023 is equal to 93 percent of the total program baseline described in WAC 173-446-200 Table 200-1 for 2023 through 2026.

(ii) The total program allowance budget for each year from 2024 through 2026 decreases annually relative to the previous year by an additional seven percent of the total program baseline in WAC 173-446-200 Table 200-1 for 2023 through 2026.

(b) Emissions years 2027 through 2030.

(i) The total program allowance budget for emissions year 2027 is equal to the 2026 total program allowance budget plus the adjustment to the total program baseline described in WAC 173-446-200(3) reduced by an additional seven percent of the total program baseline in WAC 173-446-200 Table 200-1 for 2027 through 2030.

(ii) The total program allowance budget for each year from 2028 through 2030 decreases annually relative to the previous year by an additional seven percent of the total program baseline in WAC 173-446-200 Table 200-1 for 2027 through 2030.

(c) Emissions years 2031 through 2042.

(i) The total program allowance budget for emissions year 2031 is equal to the 2030 total program allowance budget plus the adjustment to the total program baseline described in WAC 173-446-200(4) reduced by an additional one and eight tenths percent of the total program baseline in WAC 173-446-200 Table 200-1 for 2031 and subsequent years.

(ii) The total program allowance budget for each year from 2032 through 2042 decreases annually relative to the previous year by an additional one and eight tenths percent of the total program baseline in WAC 173-446-200 Table 200-1 for 2031 and subsequent years.

(d) Emissions years 2043 through 2049. The total program allowance budget for each year from 2043 through 2049 decreases

annually relative to the previous year by an additional two and six tenths percent of the total program baseline in WAC 173-446-200 Table 200-1 for 2031 and subsequent years.

(2) **Total program allowance budget.** Table 210-1 displays the total program allowance budget for each year calculated using the method established in subsection (1) of this section.

Table 210-1: Total program allowance budget for each year of the first compliance period using the methods established in subsection (1) of this section.

Emissions Year	Total Covered Emissions ($MT\ CO_2e$)
2023	63, 288, 565
2024	58, 524, 909
2025	53, 761, 254
2026	48, 997, 598

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-210, filed 9/29/22, effective 10/30/22.]

WAC 173-446-220 Distribution of allowances to emissions-intensive and trade-exposed facilities. (1) **Allocation baselines for EITE facilities.** Ecology will use the following data sources, methods,

and criteria to review and approve allocation baselines submitted by EITE facilities.

(a) Owners or operators of any EITE facility who wish to be allocated no cost allowances must submit their proposed allocation baseline with the following supporting information that facilitates ecology's review to ecology electronically in a format specified by ecology. The information must include all emissions years beginning with 2015 and ending with the most recent emissions year. Owners or operators requesting no cost allowances for emissions year 2023 must submit the information by September 15, 2022. Owners or operators requesting no cost allowances beginning with emissions years after 2023 must submit the information concurrent with their petition as established in WAC 173-446A-040(1) or March 31st of the emissions year for which they request no cost allowances, whichever is earlier.

(i) The reported GHG emissions under chapter 173-441 WAC, including fuel use as specified in WAC 173-441-050 (3)(m), and covered emissions under WAC 173-446-040 for the facility which serves as the facility's amount of carbon dioxide equivalent emissions.

(ii) The facility specific measure of production, which is all applicable total annual facility product data, units of production, specific product, and supporting data described in WAC 173-441-050

(3)(n). If multiple product data metrics are listed for the facility in Table 050-1 in chapter 173-441 WAC, the same product data metric must be used for all calculations, including annual GHG reports. A facility reporting a primary North American industry classification system (NAICS) code of 324110 must use the sum of barrels of crude oil and intermediate products received from off site that are processed at the facility as the product data metric.

(iii) The EITE facility's primary NAICS code as reported under WAC 173-441-050 (3)(i), or other information demonstrating the facility is classified as emissions-intensive and trade-exposed under chapter 173-446A WAC.

(iv) The EITE facility's proposed allocation baseline, including:

(A) A carbon intensity baseline calculated by dividing the 2015 through 2019 average of covered emissions from (a)(i) of this subsection by the 2015 through 2019 average of total annual product data from (a)(ii) of this subsection.

(B) Optionally, if requesting alternate years for the carbon intensity baseline average, the owner or operator may also include a separate calculation that uses averages for the requested years and the method from (a)(iv)(A) of this subsection.

Any owner or operator of an EITE facility requesting the use of alternate years for their carbon intensity baseline average must submit information supporting that there were abnormal periods of operation that materially impacted the facility during one or more years in the normal baseline period of 2015 through 2019. The owner or operator must also submit information supporting the claim that the proposed alternate years are reflective of normal operation. A minimum of three full years and a maximum of five full years must be used in the baseline average. At least three years used in the baseline average must be consecutive. If an owner or operator requests to include an emissions year prior to 2015 in the facility's allocation baseline, the submission must include all information for that year. An emissions year prior to 2012 is not eligible for use as an alternate year.

(C) Any owner or operator of an EITE facility may also submit a mass-based baseline. An owner or operator requesting a mass-based baseline must submit information supporting the claim that the owner or operator is not able to feasibly determine a carbon intensity baseline based on unique circumstances of the facility. The mass-based baseline is calculated as the 2015 through 2019 average covered emissions from (a)(i) of this subsection. If requesting alternate

years for the facility's baseline average, the owner or operator may also include a separate calculation that uses averages for the requested years.

(b) Ecology must use the following criteria to review and approve an allocation baseline by November 15, 2022, for any EITE facility submitting complete information under (a) of this subsection by September 15, 2022. Ecology must complete this process within 90 calendar days of a complete submission to any EITE facility that submitted complete information under (a) of this subsection after September 15, 2022. The allocation baseline will be reviewed by ecology using the following method and approved based on the criteria described in this subsection.

(i) Ecology may combine information from multiple sources and use professional judgment to adjust data sets and conform to this chapter when reviewing carbon intensity or mass-based baselines. Ecology may use the following data sources when reviewing a baseline depending on data availability, quality, applicability, and the agency's best professional judgment.

(A) Information submitted under (a) of this subsection;

(B) Information reported under chapter 173-441 WAC;

(C) An assigned emissions level under WAC 173-441-086; or

(D) Other sources of information deemed significant by ecology. Ecology will rely on data provided in (b)(i)(A) through (C) of this subsection whenever possible.

(ii) Ecology's review of the submission must include calculating a mass-based baseline for each EITE facility by averaging the 2015 through 2019 covered emissions determined using data from the data sources listed in (b)(i) of this subsection. If approving alternate years for the mass-based baseline average under (b)(iv) of this subsection, ecology must also include a separate calculation that uses averages for the approved years.

(iii) Ecology's review of the submission must include calculating a carbon intensity baseline for each EITE facility by dividing the 2015 through 2019 average of covered emissions using the data sources listing in (b)(i) of this subsection by the 2015 through 2019 average total annual product data determined using the data sources listing in (b)(i) of this subsection unless ecology determines it is not feasible to determine product data for the facility based on the facility's unique circumstances. If approving alternate years for the carbon intensity baseline average under (b)(iv) of this subsection, ecology must also include a separate calculation that uses averages for the

approved years. It is feasible to determine product data for any facility:

(A) That reports product data as specified in WAC 173-441-050 (3)(n); or

(B) For which ecology is capable of determining product data as specified in WAC 173-441-050 (3)(n) using any of the data sources specified in (b)(i) of this subsection.

(iv) Ecology may allow the use of alternate years for an EITE facility's carbon intensity or mass-based baseline average if ecology determines there were abnormal periods of operation that materially impacted the facility during one or more years in the normal baseline period of 2015 through 2019. A minimum of three full years and a maximum of five full years must be used in the baseline average. At least three years used in the baseline average must be consecutive. An emissions year prior to 2012 is not eligible for use as an alternate year.

(v) Ecology must use the following criteria when approving allocation baselines. The EITE facility's allocation baseline is equal to its carbon intensity baseline as calculated under (b)(iii) of this subsection unless ecology is unable to perform the review calculation in that subsection. If ecology is unable to determine a carbon

intensity baseline, then the allocation baseline is the mass-based baseline calculated in (b)(ii) of this subsection. If ecology approves alternate years for the allocation baseline average under (b)(iv) of this subsection, the allocation baseline must be based on the separate calculation described in (b)(ii) or (iii) of this subsection, as applicable, that accounts for alternate years if ecology approves alternate years.

(A) Ecology must use the following methods, in order of precedence starting with (I), to review and approve an allocation baseline for any EITE facility joining the program after emissions year 2023 under WAC 173-446-060. Ecology must use 2015 through 2019 emissions years whenever possible based on the data sources listed in (b)(i) of this subsection and may not use an emissions year prior to 2012. Ecology may exclude emissions years that contain abnormal periods of operation, for example, the first year the facility begins operations. Ecology must consider the products and criteria pollutants produced by the facility, as well as the local environmental and health impacts associated with the facility when setting the allocation baseline. For a facility built on tribal lands or determined by ecology to impact tribal lands and resources, ecology must consult with the affected tribal nations.

(I) Use the carbon intensity baseline whenever GHG emissions and product data are available for three or more full years under normal operation.

(II) If at least three full years of GHG emissions data under normal operation are available but three full years of product data are not available, use the mass-based baseline for the available years until three years of GHG emissions and product data are available. Switch to the carbon intensity baseline as described in (b)(v)(A)(I) of this subsection based on the three or more available data years once the data are available. This switch should not occur until the next compliance period.

(III) If less than three full years of GHG emissions data under normal operation are available, ecology must estimate a mass-based baseline for the EITE facility until ecology is able to calculate a carbon intensity baseline for the facility as described in (b)(v)(A)(I) of this subsection. This switch cannot occur until the next compliance period. Ecology may base the mass-based baseline on ecology's GHG emissions estimates for the facility, GHG emissions from a best-in-class facility in the same sector, or actual GHG emissions from the facility, but the mass-based baseline must not exceed the

maximum measured actual GHG emissions from the operating facility if those measurements exist.

(B) Except as described in (b)(v)(A) of this subsection, the owner or operator of an EITE facility using a mass-based baseline, must submit a request to ecology if wanting to later convert to a carbon intensity baseline.

(C) Ecology may not convert the EITE facility to a carbon intensity baseline during the first three compliance periods except as described in (b)(v)(A) of this subsection or when the EITE facility reports a primary NAICS code beginning with 3364 under chapter 173-441 WAC. A facility reporting a primary NAICS code beginning with 3364 under chapter 173-441 WAC that uses a mass-based baseline may not convert to a carbon intensity baseline until the next compliance period after the facility applies for such conversion.

(D) Prior to the beginning of a new compliance period, ecology may make an upward or downward adjustment in the allocation baseline for an EITE facility effective starting in the next compliance period. Any adjustment must be based on significant changes to emissions or product data from:

(I) Revised reports under WAC 173-441-050(7) for any emissions year used in determination of the allocation baseline;

(II) A new assigned emissions level under WAC 173-441-086 for any emissions year used in determination of the allocation baseline; or

(III) A change in reporting method as described in WAC 173-441-050(4) relative to the method used for reports from emissions years used in determination of the allocation baseline.

(2) **Total no cost allowances allocated to EITE facilities.** No cost allowances allocated to an EITE facility for a given emissions year are determined using the methods in this subsection.

(a) EITE facilities are awarded no cost allowances according to the following reduction schedule: Allowances to cover 100 percent of the facility's allocation baseline for each year during the first compliance period, allowances to cover 97 percent of the facility's allocation baseline for each year during the second ~~compliance~~four-year period, and allowances to cover 94 percent of the facility's allocation baseline for each year during the third ~~compliance~~four-year period.

(b) For a facility using a carbon intensity allocation baseline, the distribution of no cost allowances for a given emissions year is determined using Eq. 220-1. The product data metric used to determine no cost allowances must be the same metric used in the carbon intensity baseline determined as described in subsection (1)(a)(ii) of

this section. Initial no cost allowances in Eq. 220-1 are vintage year *t*+1 in emissions year 2023 and are vintage year *t* in subsequent years. True-up allowances in Eq. 220-1 are vintage year *t*+2.

$$NoCostAllowances_t\ (MT\ CO_2e) = InitialNoCostAllowances_t + TrueUp_t \qquad \text{Eq. 220-1}$$

Where:

$NoCostAllowances_t$ = number of allowances allocated for emissions year *t*

$InitialNoCostAllowances_t$ = number of allowances initially allocated for emissions year *t*. This number is calculated using data from emissions year *t*-2, according to Eq. 220-2.

$TrueUp_t$ = number of allowances allocated to account for actual production from emissions year *t*, determined according to Eq. 220-3.

t = emissions year for which the allocation occurs.

$$InitialNoCostAllowances_t\ (MT\ CO_2e) = CarbonIntensityAllocationBaseline \times Production_{t-2} \times ReductionSchedule_t \qquad \text{Eq. 220-2}$$

Where:

CarbonIntensityAllocationBaseline = carbon intensity baseline determined pursuant to subsection (1)(b) of this section

$Production_{t-2}$ = total annual facility product data for the emissions year two years prior to year *t* from subsection (1)(a)(ii) of this section

ReductionSchedule = reduction percentage corresponding to the compliance period for emissions year *t*, as provided in (a) of this subsection.

t = emissions year for which the allocation occurs.

$$TrueUp_t\ (MT\ CO_2e) = (CarbonIntensityAllocationBaseline \times Production_t \times ReductionSchedule_t) - InitialNoCostAllowances_t \qquad \text{Eq. 220-3}$$

Where:

CarbonIntensityAllocationBaseline = carbon intensity baseline determined pursuant to subsection (1)(b) of this section.

$Production_t$ = total annual facility product data for the emissions year *t* from (a)(ii) of this subsection.

$ReductionSchedule_t$ = reduction percentage corresponding to the ~~compliance~~ four-year period for emissions year *t*, as provided in (a) of this subsection.

$InitialNoCostAllowances_t$ = determined according to Eq. 220-2

t = Emissions year for which the allocation occurs.

(i) The calculation in Eq. 220-3 will be done after receipt and verification of an EITE facility's production for year *t* through the process in WAC 173-441-085. If the result of the calculation in Eq. 220-3 is greater than zero, the resulting number of allowances will be allocated to the applicable EITE facility.

(ii) If the result of the calculation in Eq. 220-3 is negative, the resulting number of allowances will be subtracted from the number of allowances allocated to the facility for the next emission year.

(iii) If the result of the calculation in Eq. 220-3 is zero, no further action will be taken.

(c) For a facility using a mass-based allocation baseline, the distribution of no cost allowances for a given emissions year is determined using Eq. 220-4.

$$NoCostAllowances_t \text{ (MT } CO_2e) = \text{Mass-based allocation baseline} \times ReductionSchedule_t \quad \text{Eq. 220-4}$$

Where:

Mass-based allocation baseline = determined pursuant to subsection (1)(b) of this section.

$ReductionSchedule_t$ = reduction percentage corresponding to the ~~compliance~~ four-year period for the given emissions year, as provided in (a) of this subsection.

t = Emissions year for which the allocation occurs.

(d) Adjustments to the number of no cost allowances calculated for an EITE facility according to Eq. 220-1 and Eq. 220-4 may be made by ecology according to the following:

(i) Ecology will adjust no cost allowance allocation and credits to an EITE facility to avoid duplication with any no cost allowances transferred pursuant to WAC 173-446-230 and 173-446-240, if applicable.

(ii) Prior to the beginning of either the second, third, or subsequent compliance periods, ecology may make an upward adjustment in the next compliance period's reduction schedule for an EITE

facility based on the owner's or operator's demonstration to ecology that additional reductions in carbon intensity or mass emissions are not technically or economically feasible. Ecology may not adjust the reduction schedule to levels above the first compliance period reduction level. Owners or operators of any EITE facility that wish to have an upward adjustment of their reduction schedule must submit the following information to ecology electronically in a format specified by ecology. The information must be submitted by March 31st of the year prior to the start of the compliance period in which the facility wishes to have an upward adjustment under this subsection. Ecology will make a determination on adjustments based on information contained in the facility's submission and information listed in subsection (1)(b)(i) of this section. Ecology may base the upward adjustment applicable to an EITE facility in the next compliance period on the facility's best available technology analysis. The submission must include information demonstrating to ecology that at least one of the following conditions is met:

(A) There is a significant change in the emissions use or emissions attributable to the manufacture of an individual good or goods by the EITE facility based on a finding by the department that

an adjustment is necessary to accommodate for changes in the manufacturing process that have a material impact on emissions.

(B) There are significant changes to the EITE facility's external competitive environment that result in a significant increase in leakage risk.

(C) There are abnormal operating periods when the EITE facility's carbon intensity has been materially affected so that these abnormal operating periods are either excluded or otherwise considered in the establishment of the compliance period carbon intensity benchmarks.

(iii) Ecology may allocate additional no cost allowances to a facility with a primary North American industry classification system code beginning with 3364 reported under chapter 173-441 WAC that is using a mass-based allocation baseline in order to accommodate an increase in production that increases its emissions above the baseline on a basis equivalent in principle to those awarded to entities utilizing a carbon intensity allocation baseline. Owners or operators of an EITE facility who wish to be allocated additional no cost allowances under this subsection must submit the following information to ecology electronically in a format specified by ecology. The information must be submitted by March 31st of the year following the emissions year for which the facility wishes to be allocated

additional allowances under this subsection. Ecology will make a determination on adjustments based on information contained in the facility's submission and information submitted in subsection (1)(b)(i) of this section.

(A) Data from the facility showing an increase in production that increases its emissions above baseline.

(B) Projected production data if the facility wishes to be allocated ongoing additional no cost allowances.

(iv) Ecology will withhold or withdraw the relevant share of no cost allowances allocated to a facility that ceases production in the state and becomes a closed facility. Any allowances withheld or withdrawn under this subsection must be transferred to the emissions containment reserve.

(v) A facility that curtails all production and becomes a curtailed facility may retain no cost allowances allocated to the facility, but the allowances cannot be traded, sold, or transferred and the facility is still subject to the emission reduction requirements specified in this section. An owner or operator of a curtailed facility may transfer the allowances to a new operator of the facility that will be operated under the same North American industry classification system code(s). If the curtailed facility

becomes a closed facility, then all unused allowances will be transferred to the emissions containment reserve. A curtailed facility is not eligible to receive free allowances during a period of curtailment. Any allowances withheld or withdrawn under this subsection must be transferred to the emissions containment reserve.

(e) An EITE facility must provide timely and accurate verified reports under WAC 173-441-050 and this chapter in order to timely receive no cost allowances. In case of noncompliance, no cost allowances will be withheld until the facility is in compliance, at which time the appropriate number of no cost allowances will be issued to the EITE facility.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-220, filed 9/29/22, effective 10/30/22.]

WAC 173-446-230 Distribution of allowances to electric utilities.

(1) **Total no cost allowances allocated to electric utilities.** Allowances will be allocated to qualifying electric utilities for the purposes of mitigating the cost burden of the program based on the cost burden effect of the program. Only electric utilities subject to

chapter 19.405 RCW, the Washington Clean Energy Transformation Act, qualify for no cost allowances.

(2) The cost burden effect recognizes that compliance with the program requires the submission of compliance instruments and in the absence of possessing the required compliance instruments procurement of those instruments has an associated cost that would be translated into consumer electricity prices without the mitigation of that cost burden as provided by this program. Those potential costs, along with the administrative costs of the program, comprise the cost burden of the program. Provision of some or all of the allowances necessary to address this deficit, through the means established in this section, is the method by which this cost burden is mitigated. Under this framework, ecology will use the following methods to determine the cost burden effect and the allocation of allowances to each qualifying electric utility.

(a) Ecology will use utility-specific demand forecasts that provide estimates of retail electric load. Demand forecasts should represent the best estimate of the most likely electricity demand scenario during the compliance period.

(b) Ecology will use utility-specific resource supply forecasts to determine the resource fuel types that are forecasted to be used to

provide the retail electric load predicted by the demand forecast for the utility. Resource supply forecasts should represent the best estimate of the most likely electricity resource mix scenario during the compliance period including, but not limited to, using an assumption of average hydroelectric conditions.

(c) These forecasts will be derived from the following sources, which will be relied upon in the rank order listed below as necessary to most accurately determine the supply and demand forecasts that best predict the manner in which each electric utility will comply with the Clean Energy Transformation Act, chapter 19.405 RCW:

(i) A forecast of supply or a forecast of demand, along with any supporting information, which has been approved by the utilities and transportation commission in the case of an investor-owned utility or approved by the governing board of a consumer-owned utility in the case of a consumer-owned utility. Any such forecast must also be consistent with the clean energy implementation plan that is submitted pursuant to the Clean Energy Transformation Act, chapter 19.405 RCW.

(ii) The forecasts of supply and forecasts of demand that are part of the clean energy implementation plan, or supporting materials for that plan, for a utility that is submitted pursuant to chapter 19.405 RCW, the Washington Clean Energy Transformation Act.

(iii) An integrated resource plan, or supporting materials for that plan, that complies with chapter 19.280 RCW and is consistent with or serves as the basis for the clean energy implementation plan submitted pursuant to chapter 19.405 RCW, the Washington Clean Energy Transformation Act.

(iv) Another source that provides a utility's supply or demand forecast that is, based on ecology's analysis, consistent with an existing forecast approved by the appropriate governing board or the utilities and transportation commission.

(v) For multijurisdictional electric companies, a multistate resource allocation methodology that has been approved by the utilities and transportation commission may be used in the relevant forecasts.

(d) Ecology will use the following emission factors to determine the emissions associated with the projected electricity resource supply mix. These factors are to be applied to the amount of electrical load in megawatt-hours (MWh) that comprises the proportion of the forecasted demand served by that resource type.

(i) For the proportion of load that is projected to be served by natural gas resources, the factor will be 0.4354 MT CO_2e/MWh.

(ii) For the proportion of load that is projected to be served by coal resources, the factor will be 1.0614 MT CO_2e/MWh, unless the source of the load is coal transition power, as defined in RCW 80.80.010, in which case the factor is zero.

(iii) For the proportion of load identified as being served by a nonemitting or a renewable resource in the clean energy implementation plan, use an emission factor of zero.

(iv) For any load from which the fuel or resource type serving that load is unknown or unknowable, and for unspecified market purchases, use the unspecified emission factor using the procedures identified in WAC 173-444-040.

(v) For load from a source or supplying entity that has established an asset controlling supplier emission factor pursuant to chapter 173-441 WAC, use the most recent emission factor established by that procedure.

(e) The cost burden effect from the emissions for each utility is calculated according to Eq. 230-1. In cases where no retail electric load is attributable to the resource category for that term of the equation, the relevant term should be treated as zero. The resulting total of emissions represents the cost burden effect for the utility.

$$\text{Cost Burden Effect} = (Load_{NG} \times EF_{NG}) + (Load_{Coal} \times EF_{Coal}) + (Load_{NE,RE} \times 0) + (Load_{Remaining} \times EF_{Unspecified}) + (Load_{ACS} \times EF_{ACS})$$

Eq. 230-1

Where:

$Load_{xxx}$ = Amount of retail electric load served by natural gas (NG), coal, and nonemitting and renewable resources (NE, RE), sources which has a designated asset controlling supplier (ACS) emission factor, and remaining load for which generation source is unknown or unspecified.

EF = Emission factor for natural gas (NG), coal, asset controlling suppliers (ACS), and unspecified electricity.

(f) One allowance will be initially allocated for each metric ton of emissions associated with the cost burden effect for each qualifying electric utility for each emissions year as projected through this process. The final total of allocated allowances will be subject to further adjustments as detailed in this subsection.

(g) The initial allocation of allowances will be adjusted as necessary to account for any differential between the applicable reported greenhouse gas emissions for the prior years for which reporting data are available and verified in accordance with chapter 173-441 WAC and the number of allowances that were allocated for the prior year through this process.

(h) An additional number of allowances will be allocated to account for the administrative costs of the program. Administrative costs of the program are limited solely to those costs associated with establishing and maintaining compliance accounts, tracking compliance, managing compliance instruments, and meeting the reporting and verification requirements of this chapter and Chapter 173-441 WAC. Program costs, such as those related to energy efficiency or renewable

energy programs, are not qualifying administrative costs, including any administrative requirements of those programs. The number of allowances allocated for this purpose will be determined by ecology based on documented and verified administrative costs derived from audited financial statements from utilities. The mean allowance auction price from the time period for which administrative costs are documented will be used to translate administrative costs into the appropriate number of allowances. To ensure consistency, ecology will consult with the utilities and transportation commission in its calculations for the administrative costs for investor-owned utilities.

(i) The number of allowances to be allocated to qualifying utilities will be published on the ecology website no later than October 1st in the calendar year prior to each compliance period. Public notice of the availability of this information will also be made available concurrently with publishing of this information on the website.

(j) The schedule of allowances will be updated by October 1st of each calendar year as necessary to accommodate the requirements of the adjustment processes described in this subsection. In addition, if a revised forecast of supply or demand is approved in a form and manner

consistent with the requirements of this section by July 30th of the same calendar year, then ecology may adjust the schedule of allowances to reflect the revised information provided by an updated forecast.

(3) Total allowances allocated for the purposes of recognizing voluntary renewable electricity purchases. Ecology will allocate allowances to a voluntary renewable electricity reserve account pursuant to RCW 70A.65.090 (9) and (11). The number of allowances allocated to the voluntary renewable electricity reserve account for the first compliance period will be 0.33 percent of the total annual allowance budget for each year as provided in Table 210-1.

(4) If a facility is identified by ecology as EITE under chapter 173-446A WAC, and if allowances have not been otherwise allocated for the electricity-related emissions for that facility under other provisions of this chapter, then ecology will allocate allowances at no cost to the electric utility or power marketing administration that is providing electricity to the EITE facility in an amount equal to the forecasted emissions for electricity consumption for the facility for the compliance period.

(5) A consumer-owned utility that is party to a contract that meets the following conditions will be issued allowances under this

section for emissions associated with imported electricity, in order to prevent impairment of the value of the contract to either party.

(a) The contract does not address compliance costs imposed upon the consumer-owned utility by the program created in this chapter;

(b) The contract was in effect as of July 25, 2021, and expires no later than the end of the first compliance period; and

(c) The consumer-owned utility notifies ecology of the existence of the qualifying contract no later than December 16, 2022, in a format as specified by ecology.

(6) Allowances allocated at no cost to electric utilities may be consigned to auction for the benefit of ratepayers, transferred at no cost to an electric generating facility as described in WAC 173-446-425, deposited for compliance, or a combination of these uses. While no cost allowances may be held for future use, they may not be traded or transferred other than as authorized to WAC 173-446-425. The utilities and transportation commission retains oversight and jurisdiction over the use of revenues collected from an investor-owned utility through the consignment and auction of no cost allowances for the benefit of ratepayers.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-230, filed 9/29/22, effective 10/30/22.]

WAC 173-446-240 Distribution of allowances to natural gas utilities. (1) **Allocation baselines for natural gas utilities.** Ecology will use the following data sources and methods to facilitate the allocation of no cost allowances to natural gas utilities~~.~~ supplying natural gas to consumers in Washington.

(a) Ecology will assign an allocation baseline to each natural gas utility using the methods for subtotal baselines established in WAC 173-446-200 (2)(c) for emissions years 2015 through 2019. Allowance allocation is based on the allocation baseline for the natural gas utility.

(b) A natural gas utility that is a covered entity under WAC 173-446-030(1) must submit a complete GHG report as specified in WAC 173-441-122(4) for each emissions year 2015 through 2021 by March 31, 2022, in order to qualify for no cost allowances. A natural gas utility that becomes a covered entity under WAC 173-446-030(1) or 173-446-060 after 2023 must submit a complete GHG report as specified in WAC 173-441-122(4) for each emissions year 2015 through the current reporting year by the reporting deadline in WAC 173-441-050 for the year it becomes a covered entity in order to qualify for no cost allowances.

(c) Prior to the beginning of a new compliance period, ecology may make an upward or downward adjustment in the allocation baseline for a natural gas utility effective starting in the next compliance period. Any adjustment must be based on significant changes to emissions from:

(i) Revised reports under WAC 173-441-050(7) for emissions years used in determination of the allocation baseline;

(ii) A new assigned emissions level under WAC 173-441-086 for emissions years used in determination of the allocation baseline; or

(iii) A change in reporting method as described in WAC 173-441-050(4) relative to the method used for reports from emissions years used in determination of the allocation baseline.

(2) **Total no cost allowances allocated to natural gas utilities.** The following method establishes the total no cost allowances allocated to a given natural gas utility for a given emissions year.

(a) Emissions years 2023 through 2030.

(i) The total number of no cost allowances distributed to a natural gas utility for emissions year 2023 is equal to 93 percent of the utility's allocation baseline.

(ii) The total number of no cost allowances for 2024 through 2030 distributed to a natural gas utility decreases annually relative to

the previous year by an additional seven percent of the utility's allocation baseline.

(b) Emissions years 2031 through 2042.

(i) The total number of no cost allowances distributed to a natural gas utility for emissions year 2031 is equal to their 2030 allowance budget reduced by an additional one and eight tenths percent of their allocation baseline.

(ii) The total number of no cost allowances distributed to a natural gas utility for 2032 through 2042 decreases annually relative to the previous year by an additional one and eight tenths percent of the utility's allocation baseline.

(c) Emissions years 2043 through 2049.

(i) The total number of no cost allowances distributed to a natural gas utility for emissions year 2043 is equal to their 2042 allowance budget reduced by an additional two and six tenths percent of their allocation baseline.

(ii) The total number of no cost allowances distributed to a natural gas utility for 2044 through 2049 decreases annually relative to the previous year by an additional two and six tenths percent of the utility's allocation baseline.

(d) A natural gas utility must continue to be in compliance with chapter 173-441 WAC and this chapter to continue receiving no cost allowances. No cost allowances are not provided during periods of closure or curtailment.

(3) No cost allowances allocated to natural gas utilities may be consigned to auction for the benefit of ratepayers, deposited for compliance, or a combination of both. No cost allowances allocated to natural gas utilities may not be traded, transferred, or sold. The utilities and transportation commission retains jurisdiction over the use of the revenues collected by investor-owned utilities from allowances consigned for the benefit of ratepayers.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-240, filed 9/29/22, effective 10/30/22.]

WAC 173-446-250 Removing and retiring allowances.

[NO CHANGES TO THIS SECTION ARE PROPOSED AT THIS TIME]

(1) **Adjustments for the use of offsets as compliance instruments.** Ecology will use the following process to remove and retire allowances to account for the use of offset credits used for compliance in accordance with RCW 70A.65.170(5). This process will be completed by December 15th of each year.

(a) The calculation to determine the number of offset credits to be removed is as follows:

$$\text{Offset credits used} = \text{Offsets} - \text{Invalidations} \qquad \text{Eq. 250-2.}$$

Where:

Offsets = number of offset credits used as compliance instruments for compliance obligations from the prior year.

Invalidations = number of offset credits invalidated by ecology (if any).

(b) If the number of offset credits calculated by Eq. 250-2 is greater than zero, a number of allowances equal to that number of offset credits will be removed from the next year's annual allowance budget and retired.

(2) **Adjustments to ensure consistency with proportional GHG emission limits.** To ensure consistency with the requirements of RCW 70A.65.060 and 70A.65.070, ecology may remove and retire allowances from the next year's allowance budget if the analysis of the state's progress toward the greenhouse gas limits required in RCW 70A.45.020 indicates insufficient progress toward those limits for the proportion of covered emissions in the program relative to total statewide greenhouse gas emissions.

(a) This determination will be made within two months after the submittal of the progress report required by RCW 70A.45.020(2) to the legislature, or the program progress report required by RCW 70A.65.060(5).

(i) For each determination, ecology will provide notice to the public of ecology's analysis of the state's progress toward the greenhouse gas limits and ecology's preliminary determination on whether or not to remove and retire allowances and how many allowances to remove if any.

(ii) Ecology will allow 30 calendar days for public comment on the preliminary determination before making a final determination.

(b) If this determination finds that Washington is meeting or exceeding the expected proportionate progress toward the limits based on the covered emissions in the program, then no further action will be taken.

(3) **Adjustments for voluntary renewable electricity.** Ecology will remove and retire allowances from the voluntary renewable electricity reserve account in recognition of the generation of renewable electricity that is directly delivered to Washington and used for the purposes of voluntary renewable electricity programs by using the following methods.

(a) Electricity generation eligible to be considered voluntary renewable electricity generation for the purposes of this section must:

(i) Be directly delivered to a point of delivery in Washington.

(ii) Meet the definition of renewable resource in RCW 19.405.020.

(iii) Meet at least one of the following criteria:

(A) Be registered in the Western renewable energy generation system (WREGIS); or

(B) Be capable of creating renewable energy credits in the WREGIS system though aggregation or other means; or

(C) Have through some other means received approval from ecology.

(iv) Have associated contract or settlement documentation demonstrating the sale to and purchase of the renewable energy credits associated with the generation of the electricity to the voluntary renewable electricity end-user or entity purchasing on behalf of the end-user.

(b) Renewable energy credits for eligible voluntary renewable generation must:

(i) Represent generation that occurred during the year for which allowance retirement is requested;

(ii) Be retired for the purposes of voluntary renewable energy before the submittal of the request to retire allowances; and

(iii) Not be sold or used to meet any other mandatory requirements in Washington or any other jurisdiction, including renewable portfolio standards or clean electricity standards in

Washington (RCW 19.285.040 and chapter 19.405 RCW, respectively), or similar laws or regulations in any other jurisdiction.

(c) A request for the retirement of allowances may be initiated, using a method and form approved by ecology, by any of the following:

(i) The owner or operator of the eligible voluntary renewable generation;

(ii) The owner or purchaser of the renewable energy credit associated with the eligible generation; or

(iii) The end-user that claims the voluntary renewable electricity generated by eligible generation.

(d) A request for the retirement of allowances in recognition of voluntary renewable electricity generation must also be accompanied by the following attestations:

(i) A signed attestation to ecology stating: "I certify under penalty of perjury under the laws of the state of Washington that I have not authorized use of, or sold, any renewable electricity credits or any claims to the emissions, or lack of emissions, for electricity for which I am seeking Ecology allowance retirement, in any other voluntary or mandatory program." and

(ii) Except as provided in (d)(iii) of this subsection, a signed attestation to ecology stating: "I understand I am voluntarily

participating in the Washington state Greenhouse Gas Cap and Invest Program under chapter 70A.65 RCW and this chapter, and by doing so, I am now subject to all regulatory requirements and enforcement mechanisms of this voluntary renewable electricity program and subject myself to the jurisdiction of Washington state as the exclusive venue to resolve any and all disputes."

(iii) For federally recognized tribes who elect to participate as opt-in entities or general market participants pursuant to RCW 70A.65.090(5), a signed attestation to ecology stating: "I understand I am voluntarily participating in the Washington state Greenhouse Gas Cap and Invest Program under chapter 70A.65 RCW and this chapter. The tribal government on whose behalf I am authorized to make this submission has entered into a written agreement, negotiated on an individual basis between ecology and the tribal government, that establishes a dispute resolution process and/or other compliance mechanisms in order to ensure the enforceability of all program requirements applicable to the tribe in its role as an opt-in entity or a general market participant, as applicable."

(e) Allowances will be retired annually from the voluntary renewable electricity reserve account for the preceding year's eligible generation in order of increasing vintage year until the

account has been exhausted. For the year in which available allowances are exhausted, allowance retirement will be prorated among all eligible generation.

(f) The number of allowances retired from the voluntary renewable electricity reserve account for eligible generation in a given year is calculated as follows:

$$VRE_{retired} = MWh_{VRE} \times EF_{unspecified}$$

Where:

"$VRE_{retired}$" is the number of allowances to be retired from the voluntary renewable electricity reserve account for the eligible generation rounded down to the nearest whole ton;

"MWh_{VRE}" is the amount of voluntary renewable electricity, in MWh, that is generated in the previous year by the eligible generation; and

"$EF_{unspecified}$" is the default CO_2e emissions factor for unspecified power, based on the methods provided in WAC 173-444-040(4) using the data required in WAC 173-441-124 (3)(b).

(g) Any allowances from an allowance budget year that have been allocated to the voluntary electricity reserve account and not retired that year will be held in the reserve account to be available for retirement in subsequent budget years.

(h) If the surplus in the voluntary electricity reserve account grows for three or more consecutive years, and if forecasts of voluntary renewable electricity purchases project a decrease or lesser increase of voluntary renewable electricity purchases than the corresponding increase in the account, then ecology may remove surplus of allowances from the reserve account, and retire them.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-250, filed 9/29/22, effective 10/30/22.]

WAC 173-446-260 Allowance distribution dates.

[NO CHANGES TO THIS SECTION ARE PROPOSED AT THIS TIME]

(1) Ecology will distribute vintage 2023 no cost allowances to mass-based EITE facilities, natural gas utilities, and electric utilities that have authorized accounts by the following dates:

(a) For mass-based EITE facilities: By September 1, 2023.

(b) For natural gas utilities:

(i) By July 1, 2023, a total of 35 percent of vintage 2023 no cost allowances will be allocated, based on ecology's best estimate of the final total as of this date.

(ii) By September 1, 2023, the remaining vintage 2023 no cost allowances will be allocated, taking into account the quantity of no cost allowances already allocated.

(c) For investor-owned electric utilities, within 60 days of the utilities and transportation commission approval of the forecasts of supply and demand to be used for the purposes of WAC 173-446-230, or by July 1, 2023, if the utilities and transportation commission takes no action.

(d) For consumer-owned electric utilities, within 60 days of the governing board of the consumer-owned utility approval of the forecasts of supply and demand to be used for the purposes of WAC 173-446-230, or no later than July 1, 2023, if the governing board takes no action.

(2) By September 1, 2023, ecology will make a preliminary distribution of vintage 2023 no cost allowances to intensity-based EITE facilities that have authorized accounts in the electronic compliance instrument tracking system. Distributions to intensity-based EITE facilities shall be based on 2021 production data reported to ecology and verified in 2022.

(3) By October 24th of 2023, and by October 24th of each year thereafter, ecology will distribute no cost allowances to mass-based EITE facilities, natural gas utilities, and electric utilities. The allowances distributed will be of the vintage of the year following the year in which they are distributed.

(4) By October 24th of 2023, and by October 24th of each year thereafter, ecology will make an initial distribution of no cost allowances to intensity-based EITE facilities. These distributions shall be based on production data from one year prior to the

distribution year. The allowances distributed will be of the vintage of the year following the year in which they are distributed.

(5) By October 24th of 2024, and by October 24th of each year thereafter, ecology will conduct the final reconciliation of no cost allowances for intensity-based EITE facilities for the prior year based on production data from the prior year as reported to ecology and verified during the distribution year.

(a) If the initial allocation of allowances for a given year is lower than the actual number of allowances required as shown by the verified production data, ecology shall distribute additional allowances to the EITE facility to make up the difference. These allowances will come from the next year's vintage of allowances. Ecology shall accept these future vintage allowances for meeting compliance obligations for emissions from the year prior to the distribution year.

(b) If the initial allocation of allowances for a given year is higher than the actual number of allowances required as shown by the verified production data, ecology shall make up the difference by reducing the number of allowances allocated to the facility in the initial distribution of allowances for the next year. If the difference cannot be made up through reductions in the next year's

initial distribution, the remaining reductions in allowances shall be carried forward to subsequent years until the deficit is resolved.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-260, filed 9/29/22, effective 10/30/22.]

ALLOWANCE AUCTIONS

WAC 173-446-300 Auctions of current and prior year allowances.

(1) Each year starting in 2023, ecology shall submit allowances for the purpose of auctions to be held on four separate occasions, each consisting of a single round of bidding.

(2) Only the following allowances shall be auctioned:

(a) Allowances reserved by ecology for the purpose of auctions;

(b) Allowances consigned to auction by electric utilities and natural gas utilities as follows:

(i) Electric utilities may choose at any time to consign up to 100 percent of their allowances to auction. During the first compliance period, electric utilities may choose whether or not to consign no cost allowances to auction, and if so, how many allowances to consign. All proceeds from the auction of allowances consigned by electric utilities will be used for the benefit of ratepayers, which, for investor-owned utilities, will be determined by the utilities and

transportation commission, and with the first priority the mitigation of any rate impacts to low-income customers.

(ii) Natural gas utilities may choose at any time to consign up to 100 percent of their allowances to auction. Natural gas utilities must consign to auction:

(A) In 2023, at least 65 percent of the no cost allowances allocated to them for 2023;

(B) In 2024, at least 70 percent of the no cost allowances allocated to them for 2024;

(C) In 2025, at least 75 percent of the no cost allowances allocated to them for 2025;

(D) In 2026, at least 80 percent of the no cost allowances allocated to them for 2026;

(E) In 2027, at least 85 percent of the no cost allowances allocated to them for 2027;

(F) In 2028, at least 90 percent of the no cost allowances allocated to them for 2028;

(G) In 2029, at least 95 percent of the no cost allowances allocated to them for 2029;

(H) In 2030, and every year thereafter, 100 percent of the no cost allowances allocated to them for 2030 and subsequent years.

(iii) All proceeds from the auction of allowances consigned by natural gas utilities shall be used for the benefit of customers, as determined by the utilities and transportation commission for investor-owned natural gas utilities, including at a minimum eliminating any additional cost burden to low-income customers from the implementation of the Climate Commitment Act.

(A) Revenues from allowances consigned by natural gas utilities and sold at auction must be returned by providing nonvolumetric credits on ratepayer utility bills, prioritizing low-income customers, or used to minimize cost impacts on low-income, residential, and small business customers through actions that include, but are not limited to, weatherization, decarbonization, conservation and efficiency services, and bill assistance. Investor-owned utility compliance with this subsection will be determined by the utilities and transportation commission. Nothing in this subsection amends the utilities and transportation commission's jurisdiction over investor-owned utilities.

(B) The customer benefits provided from allowances consigned to auction by natural gas utilities under this section must be in addition to existing requirements in statute, rule, or other legal requirements, as determined for investor-owned utilities by the

utilities and transportation commission. Nothing in this subsection amends the utilities and transportation commission's jurisdiction over investor-owned utilities.

(C) Except for low-income customers, any customer bill credits under this subsection are reserved exclusively for customers at locations connected to a natural gas utility's system on July 25, 2021. Bill credits may not be provided to customers of the gas utility at a location connected to the system after July 25, 2021. Investor-owned utility compliance with this section will be determined by the utilities and transportation commission. Nothing in this subsection amends the utilities and transportation commission's jurisdiction over investor-owned utilities.

(c) Electric utilities and natural gas utilities must notify Ecology of the number of allowances they intend to consign to an auction at least 75 days prior to the auction.

(3) At each auction, ecology shall submit the percentage of current and prior vintage allowances ecology considers appropriate after considering the allowances in the marketplace due to the marketing of no cost allowances issued to EITE facilities, electric utilities, and natural gas utilities.

(a) Ecology shall offer only such number of allowances at each auction as will enhance the likelihood of achieving the GHG emission reductions required in RCW 70A.45.020.

(b) By January 15th of 2024 and each succeeding year, ecology shall publish on its website the dates of the quarterly auctions for that year and the number of allowances of that year's vintage allowances that ecology will submit for each of those auctions.

(4) At each auction, consigned allowances shall be sold first. If at the end of an auction, any consigned allowances remain unsold, they shall be retained to be submitted for sale in the subsequent auction.

(5) If, at the end of an auction, any of the allowances submitted to auction by ecology have not yet been sold, ecology shall hold them to be auctioned in subsequent auctions but only after the settlement price for allowances has been above the auction floor price for two consecutive auctions. If the allowances are not sold within 24 months, ecology shall place them in the emissions containment reserve.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-300, filed 9/29/22, effective 10/30/22.]

WAC 173-446-310 Public notice.

[NO CHANGES TO THIS SECTION ARE PROPOSED AT THIS TIME]

(1) At least 60 calendar days before an auction, ecology shall provide notice of the auction to the Environmental Justice Council and to the public, setting out the following information:

(a) The day on which, and time period during which, bidding in the auction may take place;

(b) The location or internet address at which the auction will be held;

(c) A summary of the requirements of this rule relating to the auction or sale, including the auction floor price and the emissions containment reserve trigger price;

(d) A summary of the auction process;

(e) For each allowance being offered for sale at the auction, the vintage year, if any, of the allowance; and

(f) The number of allowances of each vintage year being offered for sale at the auction.

(2) Ecology may, at any time after providing a notice under subsection (1) of this section, change the information included in the notice by providing notice of the change using the same methods used to provide the original 60-day notice of the auction.

(3) Ecology may delay the day on which bidding in the auction may take place by up to 10 business days by providing notice using the

same methods used to provide the original 60-day notice of the auction.

(4) If ecology changes the day on which the bidding in the auction may take place by more than 10 business days, ecology must provide a new 60-day notice.

(5) Subject to subsections (6) and (7) of this section, if the day on which bidding in the auction may take place is changed by 10 business days or less, all requirements under this chapter for which there is a time limit determined in relation to the day on which bidding takes place, shall be determined in relation to the new day as specified in the notice of change.

(6) Subsection (5) of this section does not apply with respect to a requirement if, before the day on which ecology provides a notice of a change, the time limit in respect to the requirement expired.

(7) Despite subsection (5) of this section, if a registered entity has given a bid guarantee in accordance with WAC 173-446-325 for the purpose of bidding in an auction and the day of the auction is subsequently changed, the registered entity is not required to provide a new bid guarantee.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-310, filed 9/29/22, effective 10/30/22.]

WAC 173-446-315 Registration for an auction. (1) A registered entity must apply to ecology before bidding in each auction. To apply to bid in an auction each registered entity must:

(a) No later than 40 calendar days before the day of the auction, update any information required to be updated under WAC 173-446-050(5), 173-446-053, 173-446-055, or 173-446-105 through 173-446-140.

(b) By the auction application deadline, which is no later than 30 calendar days before the day of the auction, submit the following information to ecology:

(i) The name, contact information, and holding account number of the registered entity.

(ii) The names and identification numbers of all designated account representatives of the registered entity.

(iii) The name and contact information of any consultant that provides advice related to the auction participant's bidding strategy and, if applicable, the name of the consultant's employer.

(iv) The form of bid guarantee to be given.

(c) No later than 12 calendar days before the day of the auction, submit a bid guarantee meeting the requirements of WAC 173-446-325.

(2) If the registered entity has retained a cap and invest consultant or advisor regarding auction bidding strategy, the registered entity must:

(a) Ensure against the consultant or advisor transferring the registered entity's information to other auction participants or coordinating the bidding strategy among participants.

(b) Inform the consultant or advisor of the prohibition on sharing information with other auction participants and ensure the consultant or advisor has read and acknowledged the prohibition under penalty of perjury.

(3) No later than 15 calendar days before the day of an auction, a cap and invest consultant or advisor advising on bidding strategy must provide to ecology the following information:

(a) Names of the registered entities, including Washington registered entities and entities registered with an external GHG ETS of a linked jurisdiction, participating in the cap and invest program that are being advised;

(b) Description of the advisory services being performed; and

(c) Assurance under penalty of perjury that the advisor is not transferring to or otherwise sharing information with other auction participants.

(4) Subject to subsection (5) of this section, upon receiving an application from a registered entity that meets the requirements set out in subsection (1) of this section, ecology shall permit the registered entity to bid in the auction.

(5) Ecology shall refuse permission to bid in an auction if any of the following circumstances apply:

(a) The registered entity has given false or misleading information in the application.

(b) The registered entity has failed to disclose information required under subsection (1) of this section.

(c) The registered entity has disclosed auction-related information in violation of WAC 173-446-317.

(d) The registered entity's cap and invest accounts are subject to conditions under this rule or imposed by ecology that prohibit participation in auctions or otherwise prevent allowances or credits from being transferred to the registered entity's cap and invest accounts.

(e) A bid guarantee that has been submitted in the form of a wire transfer has not been deposited into an escrow account established by the financial services administrator or the institution indicated by the financial services administrator.

(6) Any registered entity requesting permission to participate in an auction or participating in an auction must provide ecology on request within five business days of the request any additional information concerning its participation in the auction.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-315, filed 9/29/22, effective 10/30/22.]

WAC 173-446-317 Auctions—Prohibited actions.

[NO CHANGES TO THIS SECTION ARE PROPOSED AT THIS TIME]

(1) Collusion among bidders and/or market manipulation are prohibited.

(2) To prevent bidder collusion and minimize the potential for market manipulation, a registered entity registered to participate in an auction may not release or disclose any bidding information including, but not limited to:

(a) Intent to participate or refrain from participating in an auction;

(b) Auction approval status;

(c) Intent to bid;

(d) Bidding strategy;

(e) Bid price or bid quantity; or

(f) Information on the bid guarantee provided to the financial administrator.

(3) No party shall coordinate the bidding strategy of more than one auction participant.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-317, filed 9/29/22, effective 10/30/22.]

WAC 173-446-320 Suspension and revocation of registration. (1) Ecology may cancel or restrict a previously approved auction participation application or reject a new application if ecology determines that a registered entity has:

(a) Provided false or misleading information;

(b) Withheld material information that could influence an ecology decision;

(c) Violated any part of the auction rules;

(d) Violated registration requirements;

(e) Violated any of the rules regarding the conduct of the auction;

(f) Coordinated bidding strategy of more than one auction participant in violation of WAC 173-446-317~~(2)~~; or

(g) Disclosed auction-related information in violation of WAC 173-446-317(1).

(2) The restrictions on disclosures in WAC 173-446-317 do not apply to a disclosure between registered entities who are members of the same direct corporate association.

(3) A registered entity is exempt from the prohibition on coordinating bidding strategies in WAC 173-446-317(2) if the coordination is with other registered entities with whom the registered entity is in a direct corporate association.

(4) If the percentage of holding limits and/or purchase limits allotted to a registered entity that is a member of a direct corporate association changes during the period beginning 39 calendar days before the auction and ending on the day of the auction, the registered entity is prohibited from bidding in the auction.

(5) Any cancellation or restriction approved by ecology under subsection (1) of this section may be permanent or for a specified number of auctions. The cancellation or restriction is not the exclusive remedy, and is in addition to the remedies that may be available under chapter 19.86 RCW or other state or federal laws.
[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-320, filed 9/29/22, effective 10/30/22.]

WAC 173-446-325 Bid guarantee.

[NO CHANGES TO THIS SECTION ARE PROPOSED AT THIS TIME]

(1) Each registered entity must provide a bid guarantee for the purpose of bidding in an auction. The bid guarantee must cover bids for future vintage allowances as well as bids for current and past vintage allowances. The bid guarantee must meet the following criteria:

(a) Be in U.S. dollars;

(b) Be valid for at least 26 calendar days following the day of the auction or sale;

(c) Be one or a combination of the following and must be given in a form and manner approved by ecology:

(i) Cash in the form of a wire transfer;

(ii) An irrevocable letter of credit; or

(iii) A bond.

(d) All bid guarantees must be in a form that may be accepted by the financial services administrator consistent with U.S. banking laws and bank practices;

(i) If the bid guarantee is a wire transfer, it must be deposited in an escrow account of the financial services administrator or of the institution indicated by the financial services administrator.

(ii) If the bid guarantee is an irrevocable letter of credit, it must:

(A) Be made payable to the financial services administrator; and

(B) Be payable within three business days of a payment request.

(e) The bid guarantee must be for an amount that is greater than or equal to the registered entity's proposed maximum bid value, as determined under subsection (2) of this section.

(2) The registered entity's proposed maximum bid value for an auction is determined as follows:

(a) For each bid price proposed by the registered entity, multiply the bid price by the number of allowances that the registered entity proposes to purchase at that bid price or at a higher bid price.

(b) The highest value calculated under (a) of this subsection is the proposed maximum bid value.

(3) When parallel auctions for future allowances are held at the same time as auctions of current and past vintage allowances, the maximum bid value will be calculated first for the current and past

vintage allowances. Any amount of the bid guarantee remaining after resolving the auction of current and past vintage allowances will be calculated for any bids for future vintage allowances.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-325, filed 9/29/22, effective 10/30/22.]

WAC 173-446-330 Purchase limits. A registered entity shall comply with the following rules for purchasing allowances available at an auction:

(1) A covered entity or opt-in entity that is not a member of a direct corporate association shall not purchase more than ~~10~~ 25 percent of the allowances available.

(2) A general market participant that is not a member of a direct corporate association shall not purchase more than four percent of the allowances available.

(3) For purposes of auction purchase limits, all members of a direct corporate association, including both Washington registered entities and entities registered in an external GHG ETS of a linked jurisdiction, are considered to be a single party subject to the purchase limits in subsections (1) and (2) of this section. A covered entity or opt-in entity that is a member of a direct corporate

association shall ensure that the purchase limit set out in subsection (1) of this section is allocated among the members of the direct corporate association.

(4) If the direct corporate association mentioned in subsection (3) of this section includes a general market participant, the allocation under subsection (3) of this section must be carried out in such a manner as to ensure the rule set out in subsection (5) of this section is also complied with.

(5) A general market participant that is a member of a direct corporate association shall ensure that the purchase limits set out in subsection (2) of this section are allocated among all members of the direct corporate association who are general market participants.

(6) No registered entity that is a member of a direct corporate association shall purchase more than the share of the purchase limit allocated to the registered entity under this section.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-330, filed 9/29/22, effective 10/30/22.]

WAC 173-446-335 Auction floor price and ceiling price. (1) The auction floor price for 2023 shall be $19.70 increased by five percent plus the rate of inflation as measured by the most recently available

12 months of the consumer price index for all urban consumers as of the first business day in December 2022.

(2) (a) The auction floor price for a year after 2023 shall be the auction floor price for the prior calendar year increased annually by five percent plus the rate of inflation as measured by the most recently available 12 months of the consumer price index for all urban consumers as of the first business day in December of the prior year.

(b) If Washington enters into a linkage agreement with a Canadian jurisdiction:

(i) The auction administrator shall set the exchange rate as the most recently available daily buying rate for U.S. and Canadian dollars as published by the Bank of Canada, and shall announce the exchange rate prior to the opening of the auction window.

(ii) The auction floor price in Canadian dollars shall be the highest of the minimum prices set and published or posted in Canadian dollars in any linked jurisdiction operating an external GHG ETS.

(iii) The auction administrator will use the announced exchange rate to convert to a common currency the auction floor price previously calculated separately in U.S. and Canadian dollars. The auction administrator will set the auction floor price equal to the higher of the two values.

(3) Beginning in 2022, on the first business day in December of each year, ecology shall announce the floor price for the next year.

(4) The ceiling price for 2023 shall be $72.29 increased by five percent plus the rate of inflation as measured by the most recently available 12 months of the consumer price index for all urban consumers as of the first business day in December of 2022.

(5) The ceiling price for a year after 2023 shall be the ceiling price for the prior calendar year increased annually by five percent plus the rate of inflation as measured by the most recently available 12 months of the consumer price index for all urban consumers as of the first business day in December of the prior year.

(6) Beginning in 2022, on the first business day in December of each year, ecology shall announce the ceiling price for the next year.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-335, filed 9/29/22, effective 10/30/22.]

WAC 173-446-340 Emissions containment reserve trigger price.

[NO CHANGES TO THIS SECTION ARE PROPOSED AT THIS TIME]

The emissions containment reserve trigger price is suspended as of October 1, 2022, until reinstated by rule.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-340, filed 9/29/22, effective 10/30/22.]

WAC 173-446-345 Administration of auction—Lots.

[NO CHANGES TO THIS SECTION ARE PROPOSED AT THIS TIME]

Ecology shall divide allowances that are to be auctioned into lots in accordance with the following rules:

(1) Each lot, other than the final lot for each vintage, shall consist of 1,000 allowances.

(2) The final lot may consist of fewer than 1,000 allowances if fewer than 1,000 allowances remain once all other allowances have been divided into lots of 1,000.

(3) Each lot of future vintage allowances must consist of only one vintage of allowances.

(4) Each lot other than lots of future vintage allowances may include both current and past vintage allowances.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-345, filed 9/29/22, effective 10/30/22.]

WAC 173-446-350 Bids. (1) A registered entity must include the following in a bid submitted in an auction:

(a) The bid price, in U.S. dollars and whole cents;

(b) The number of lots that the participant wishes to purchase.

(2) Each bid must be sealed and submitted in the form approved by ecology.

(3) A participant may submit more than one bid in an auction.

(4) After the period of time for bidding has concluded, ecology shall reject bids or portions of bids of a registered entity if acceptance of all of the registered entity's bids would result in contravention of the registered entity's holding limit or purchase limit.

(5) Ecology shall reject bids or portions of bids as noted in subsection (4) of this section, starting with the registered entity's lowest bid price and continuing in increasing order by bid price, until the total of the registered entity's bids remaining would, if accepted, not result in contravention of a holding limit or purchase limit.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-350, filed 9/29/22, effective 10/30/22.]

WAC 173-446-353 Determination of actual maximum bid value.

[NO CHANGES TO THIS SECTION ARE PROPOSED AT THIS TIME]

(1) Before accepting any bids, ecology shall determine whether each registered entity's actual maximum bid value, as determined under

subsection (2) of this section, is greater than the registered entity's bid guarantee.

(2) The registered entity's actual maximum bid value is determined as follows:

(a) For each bid price included in the registered entity's bids, multiply the bid price by the number of allowances that the registered entity proposed to purchase at that bid price or at a higher bid price.

(b) The highest value calculated under (a) of this subsection is the actual maximum bid value.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-353, filed 9/29/22, effective 10/30/22.]

WAC 173-446-355 Maximum bid value in excess of bid guarantee.

[NO CHANGES TO THIS SECTION ARE PROPOSED AT THIS TIME]

(1) If the actual maximum bid value of a registered entity's bids exceeds the value of the registered entity's bid guarantee, ecology shall remove from the registered entity's bids enough lots such that the remaining bids would not result in the actual maximum bid value exceeding the value of the bid guarantee.

(2) If ecology has removed lots under subsection (1) of this section, each removed lot of allowances shall be considered as a new bid at each valid bid price in descending order, between:

(a) The bid price at which the actual maximum bid value was greater than the registered entity's bid guarantee; and

(b) The lowest bid price.

(3) For the purposes of subsection (2) of this section, a bid price is a valid bid price if that registered entity's actual maximum bid value at that bid price would not exceed the value of that participant's bid guarantee or the registered entity's holding limit or purchase limit.

(4) The registered entity is deemed to bid on the removed lots at the first valid bid price between the prices mentioned in subsection (2)(a) and (b) of this section that would result in the registered entity's actual maximum bid value being less than or equal to the value of the registered entity's bid guarantee.

(5) If no valid bid price between the prices mentioned in subsection (2)(a) and (b) of this section would result in a bid with an actual maximum bid value being less than or equal to the value of the registered entity's bid guarantee, ecology shall reject the removed lot.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-355, filed 9/29/22, effective 10/30/22.]

WAC 173-446-357 Acceptance of bids.

[NO CHANGES TO THIS SECTION ARE PROPOSED AT THIS TIME]

(1) No bid price that is below the auction floor price shall be accepted.

(2) Ecology shall accept bids that have not been rejected, starting with the highest bid price and continuing in decreasing order by bid price until no more acceptable bids remain or no more of the allowances described in the notice of the auction are available.

(3) If the demand for allowances results in an auction settlement price that is lower than the emissions containment reserve trigger price, and ecology has not suspended the emissions containment reserve trigger price under WAC 173-446-340, ecology shall withhold up to 10 percent of the allowances submitted by ecology for auction as needed until either the emissions containment reserve trigger price becomes the auction settlement price or the number of allowances ecology may withhold is exhausted. Allowances withheld from the auction under this subsection shall be placed in the emissions containment reserve.

(4) Subsection (5) of this section applies if more than one bid has been submitted at the lowest accepted bid price for allowances in a quarterly auction of current, past, or future allowances, or at a Tier 1 price or the Tier 2 price for auctions from the allowance price containment reserve.

(5) If the total number of allowances bid upon at a bid price mentioned in subsection (4) of this section is greater than the number of allowances available at that bid price, ecology shall divide the remaining allowances available at that bid price between the registered entities who submitted the bids at that bid price, in accordance with the following steps:

(a) Divide the number of allowances bid upon by each registered entity at that bid price by the total number of allowances that were bid upon at that bid price. This is the registered entity's share of the allowances.

(b) Multiply each participant's share determined under (a) of this subsection by the number of allowances remaining, rounding down to the nearest whole number. This is the number of allowances to be distributed to the registered entity.

(c) If any allowances remain after carrying out the steps under (a) and (b) of this subsection, distribute the remaining allowances as follows:

(i) Assign a random number to each registered entity who submitted a bid at the applicable lowest bid price.

(ii) Distribute one allowance at a time to the registered entities in ascending order by the random number assigned, until no more of the allowances available at that bid price remain.

(6) Ecology shall distribute each allowance for which a bid has been accepted. The price to be paid by all bidders for each allowance is the lowest accepted bid price, which is also known as the auction settlement price.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-357, filed 9/29/22, effective 10/30/22.]

WAC 173-446-360 Payment for purchases.

[NO CHANGES TO THIS SECTION ARE PROPOSED AT THIS TIME]

(1) A registered entity who has been notified by ecology that one or more bids by the registered entity have been successful in an auction shall pay, in the form and manner approved by ecology, the

amount set out in the notice to the financial services administrator no later than seven calendar days after receiving the notice.

(2) If the registered entity provided more than one form of bid guarantee, the bid guarantee instruments must be applied to a registered entity's unpaid balance in the order the instruments are listed in WAC 173-446-325 (1)(c).

(3) Ecology shall transfer the allowances paid for under subsections (1) and (2) of this section to the registered entity's holding account.

(4) The financial services administrator shall return any unused portions of a bid guarantee.

(5) Despite subsection (3) of this section, ecology may transfer allowances purchased at an auction to a participant's compliance account if:

(a) The allowances are current or past year vintage allowances; and

(b) Holding limits would not apply to the allowances once they are transferred to the compliance account.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-360, filed 9/29/22, effective 10/30/22.]

WAC 173-446-362 Summary of auction.

[NO CHANGES TO THIS SECTION ARE PROPOSED AT THIS TIME]

(1) No later than 45 days following the conclusion of the auction, ecology shall make available to the public a written summary of each auction, setting out the following information:

(a) The auction settlement price;

(b) The registered entities to whom ecology gave permission to participate in the auction;

(c) Details regarding the number of allowances sold, the number of each vintage year of allowances sold, and a description of how the allowances were distributed among the registered entities who submitted bids, without identifying which registered entities purchased the allowances.

(2) No later than 60 days following the conclusion of each auction, ecology shall transmit to the environmental justice council a summary results report and a post-auction public proceeds report.

(3) Beginning in 2024, ecology shall communicate the results of the previous calendar year's auctions to the environmental justice council on an annual basis.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-362, filed 9/29/22, effective 10/30/22.]

WAC 173-446-365 Auction of future year allowances. (1) ~~Two~~Four times per year, ecology shall hold parallel auctions of future vintage allowances.

(2) Auctions of future vintage allowances shall follow the procedure set out in WAC 173-446-310 through 173-446-362.

(3) For each auction of future vintage allowances, ecology will submit for auction allowances from the year three years in the future according to the following schedule:

(a) For each auction of future vintage allowances in 2023, ecology will submit for auction ~~five~~2.5 percent of the allowances in the annual allowance budget for 2026.

(b) For each auction of future vintage allowances in 2024, ecology will submit for auction ~~five~~2.5 percent of the allowances in the annual allowance budget for 2027 as determined without taking into account the increase in the allowance budget caused by the addition of waste-to-energy facilities as covered entities in the second compliance period.

(c) For each auction of future vintage allowances in 2025, ecology will submit for auction ~~five~~2.5 percent of the allowances in the annual allowance budget for 2028 as determined without taking into

account the increase in the allowance budget caused by the addition of waste-to-energy facilities as covered entities in the second compliance period.

(d) For each auction of future vintage allowances in 2026, ecology will submit for auction ~~five~~2.5 percent of the allowances in the annual allowance budget for 2029 as determined without taking into account the increase in the allowance budget caused by the addition of waste-to-energy facilities as covered entities in the second compliance period.

(e) For each auction of future vintage allowances in 2027 and each year thereafter, ecology will submit for auction ~~five~~2.5 percent of the allowances in the annual allowance budget for the year three years in the future.

(4) Auctions for future vintage allowances shall occur at the same time, with bidding during the same bidding window, and using the same procedures as auctions for current vintage and past vintage allowances. Bidders shall provide one bid guarantee to cover both the auction for current and past vintage allowances and the auction for future vintage allowances. However, bidders must provide separate bids for future vintage allowances. Bidders may not include in one bid future allowances mixed with current and past vintage allowances. If

future vintage allowances remain unsold at the end of the calendar year for which they were designated for sale at auction, they shall be returned to the pool of allowances of their vintage and not be offered for sale until that year.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-365, filed 9/29/22, effective 10/30/22.]

WAC 173-446-370 Allowance price containment reserve account.

(1) Ecology shall maintain an allowance price containment reserve account.

(a) Allowances in the allowance price containment reserve have no vintage and are therefore eligible to be submitted for compliance at any time.

(b) Allowances purchased from the allowance price containment reserve are placed directly into the purchaser's compliance account.

(c) On January 1, 2023, ecology shall place into the allowance price containment reserve account:

(i) Five percent of the allowances in the annual allowance budgets for each year of the first compliance period; and

(ii) Five percent of the allowances in the annual allowance budgets for each year of the second compliance period, as determined

without taking into account the increase in the allowance budgets caused by the addition of waste-to-energy facilities as covered entities in the second compliance period.

(2) Ecology shall hold separate auctions for allowances from the allowance price containment reserve:

(a) When the settlement price in the preceding auction of current and prior vintage allowances reaches the Tier 1 price for allowances in the allowance price containment reserve;

(b) When new covered and opt-in entities enter the program and allowances from the emissions containment reserve account are exhausted; and

(c) Once each year before the compliance deadline.

(3) Only Washington covered entities and Washington opt-in entities may participate in allowance price containment reserve auctions. General market participants may not participate in allowance price containment reserve auctions.

(4) Allowance price containment reserve auctions shall follow the procedures described in WAC 173-446-310 through 173-446-362, except:

(a) The purchase limits in WAC 173-446-330 do not apply to allowance price containment reserve auctions.

(b) In place of an auction floor price, there are two tiers of allowance prices at which bidders may bid:

(i) Tier 1 price for 2023 shall be $46.05 increased by five percent plus the rate of inflation as measured by the most recently available 12 months of the consumer price index for all urban consumers as of the first business day in December of 2022.

(ii) Tier 2 price for 2023 shall be $59.17 increased by five percent plus the rate of inflation as measured by the most recently available 12 months of the consumer price index for all urban consumers as of the first business day in December of 2022.

(iii) The allowance price containment reserve tier prices for a year after 2023 shall be the allowance price containment tier prices for the prior calendar year increased annually by five percent plus the rate of inflation as measured by the most recently available 12 months of the consumer price index for all urban consumers as of the first business day in December of the prior year.

(iv) Beginning in 2022, on the first business day in December of each year, ecology shall announce the allowance price containment reserve tier prices for the next year.

(c) Bidders in an allowance price containment reserve auction may submit multiple bids. Each bid must be at either the Tier 1 price or the Tier 2 price.

(d) Tier 1 allowances shall be sold first, then Tier 2 allowances. The auction of Tier 1 allowances shall continue until all Tier 1 allowances are sold or all bids are filled, whichever occurs first. If any Tier 1 allowances remain, ecology will award them to bidders for Tier 2 allowances at the Tier 1 price using a random number selection process that assigns random numbers to each lot bid and awards Tier 1 allowances starting with the lowest random number until all Tier 1 allowances are sold. The subsequent auction of Tier 2 allowances shall continue until all Tier 2 allowances are sold or all bids are filled, whichever occurs first.

(e) Ecology shall reject bids or portions of bids, starting with the smallest of the registered entity's Tier 2 bids, until the total of the registered entity's bids remaining would, if accepted, not result in contravention of a holding limit.

(f) The registered entity's actual maximum bid value is determined as follows:

(i) Multiply the Tier 1 bid price by the total number of allowances the registered entity proposed to purchase at that bid price.

(ii) Multiply the Tier 2 bid price by the total number of allowances the registered entity proposed to purchase at that bid price.

(iii) The registered entity's actual maximum bid value is the sum of the results obtained in (i) of this subsection added to the results obtained in (ii) of this subsection.

(g) If the actual maximum bid value of a registered entity's bids exceeds the value of the registered entity's bid guarantee, ecology shall, starting with the registered entity's Tier 2 bids, remove enough lots, such that the remaining bids would not result in the actual maximum bid value exceeding the value of the bid guarantee.

(h) If the sum of the bids accepted for a tier is greater than the number of allowances in the tier, ecology will follow the process in WAC 173-446-357(5) to distribute the allowances from each tier.

(i) After a sale, ecology will transfer purchased allowances directly to each purchaser's compliance account.

(j) Allowances remaining unsold at the end of an allowance price containment reserve auction remain in the allowance price containment

reserve to be available for sale at the next allowance price containment reserve auction.

[Statutory Authority: Chapter 70A.65 RCW. WSR 24-05-080 (Order 23-02), § 173-446-370, filed 2/21/24, effective 3/23/24. Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-370, filed 9/29/22, effective 10/30/22.]

WAC 173-446-375 Emissions containment reserve account. (1) Ecology shall maintain an emissions containment reserve account containing the following allowances:

(a) Allowances amounting to two percent of the annual allowance budgets for years 2023 through 2026.

(b) Allowances submitted by ecology for auction that are unsold after being offered for sale for 24 months in current and past year vintage allowance auctions and future vintage allowance auctions.

(c) Allowances from EITE facilities that have been curtailed or closed.

(d) Allowances from facilities that fall below the emissions threshold. The number of these allowances must be proportionate to the amount of emissions the facility was previously emitting.

(e) Unless the emissions containment reserve trigger price is suspended under WAC 173-446-340, allowances withheld from auction as described in WAC 173-446-357(3).

(2) Ecology shall distribute allowances from the emissions containment reserve account as follows:

(a) By auction when new covered and opt-in entities enter the program; and

(b) By direct allocation at no cost to cover emissions for the first applicable compliance period for new or expanded EITE facilities that meet the following criteria:

(i) New facilities that have emissions greater than 25,000 MT CO_2e per year during the first applicable compliance period.

(ii) Expanded facilities that trigger the need for governmental approval or permits.

(c) If provided to expanded EITE facilities, the allowances provided must be limited to the number of allowances required to cover the covered emissions resulting from the expansion of the facility. When provided to either new or expanded EITE facilities, the allowances must be placed in the EITE facility's compliance account and used for compliance at the next compliance deadline.

(3)(a) Ecology shall hold auctions of allowances from the emissions containment reserve account when new covered and opt-in entities enter the program.

(b) Auctions of allowances from the emissions containment reserve account shall follow the processes and procedures specified in WAC 173-446-310 through 173-446-362. Only Washington covered entities and Washington opt-in entities may participate in the auctions.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-375, filed 9/29/22, effective 10/30/22.]

WAC 173-446-380 Price ceiling units. (1) Immediately prior to the deadline for compliance for each compliance period, in the event that no allowances remain in the allowance price containment reserve, ecology shall issue price ceiling units for sale at the ceiling price to Washington covered entities that do not have sufficient eligible compliance instruments in their holding and compliance accounts to meet their compliance obligations for that compliance deadline.

(2) Each price ceiling unit covers the compliance obligation for the emission of one metric ton of CO_2e.

(3) Only Washington covered entities that do not have sufficient eligible compliance instruments in their holding and compliance

accounts to meet their requirements for the immediately upcoming compliance period compliance obligation may purchase price ceiling units. These covered entities may purchase only the number of price ceiling units necessary to meet their compliance obligations for the upcoming compliance period deadline and must use those price ceiling units for compliance at the immediately upcoming compliance deadline.
[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-380, filed 9/29/22, effective 10/30/22.]

WAC 173-446-385 Price ceiling unit sales. (1) Price ceiling unit sales shall only be held between the last allowance price containment reserve auction before the compliance deadline for a compliance period and the compliance period deadline itself.

(2) Price ceiling units shall be sold at the ceiling price.

(3) Price ceiling unit sales shall be held only if a Washington covered entity requests a price ceiling unit sale at least 10 days before the immediately upcoming deadline for a compliance period.

(4) In a request for a price ceiling unit sale, the covered entity must provide an accounting to ecology showing that it has insufficient compliance instruments to meet its compliance obligations for the immediately upcoming deadline for a compliance period. This

accounting must include any confirmed and finalized agreements to transfer compliance instruments to the covered entity prior to the compliance deadline.

(5) If the statutory conditions for the sale of price ceiling units outlined above are met, ecology shall instruct the financial services administrator to begin to accept cash payment for purchases from price ceiling sales no earlier than 10 business days after the previous allowance price containment reserve auction and to cease accepting payments no later than seven business days thereafter.

(7) The financial services administrator will inform ecology of the amounts of payments received from covered entities no later than one business day after it ceases to accept payments.

(8) After a sale, ecology will transfer purchased price ceiling units directly to each purchaser's compliance account for retirement at the immediately upcoming compliance deadline.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-385, filed 9/29/22, effective 10/30/22.]

WAC 173-446-390 Confidentiality.

[NO CHANGES TO THIS SECTION ARE PROPOSED AT THIS TIME]

Records containing the following information are confidential and are exempt from public disclosure in their entirety:

(1) Bidding information as identified in WAC 173-446-317;

(2) Information contained in the secure, online electronic tracking system for compliance instruments;

(3) Financial, proprietary, and other market sensitive information as determined by ecology that is submitted to the department pursuant to this chapter;

(4) Financial, proprietary, and other market sensitive information as determined by ecology that is submitted to an independent contractor or the financial services administrator engaged by ecology; and

(5) Financial, proprietary, and other market sensitive information as determined by ecology that is submitted to a jurisdiction with which the department has entered into a linkage agreement pursuant to RCW 70A.65.210, and which is shared with ecology, the independent contractor, or the financial services administrator pursuant to a linkage agreement.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-390, filed 9/29/22, effective 10/30/22.]

COMPLIANCE INSTRUMENT TRANSACTIONS

WAC 173-446-400 Compliance instruments transactions—General information.

(1) A compliance instrument can satisfy a covered or opt-in entity's compliance obligation arising from the emission of one metric ton of carbon dioxide equivalent in one calendar year. A compliance instrument does not expire, and may be held or banked. Once surrendered, a compliance instrument must be retired and never used, traded, or transferred again.

(2) By 5:00 p.m. Pacific Time November 1st of 2024 and each year thereafter, each covered entity and opt-in entity must have in its compliance account sufficient compliance instruments of former vintage years to cover at least 30 percent of its covered emissions for the previous calendar year. Except as provided in subsections (4) and (5) of this section, allowances used for this annual compliance requirement must be of the vintage of the year the emissions occurred or any year prior to that year.

(3) By 5:00 p.m. Pacific Time November 1st of the year following the final year of each compliance period, each covered entity and each opt-in entity must have transferred to its compliance account at least one compliance instrument for each metric ton of covered emissions of carbon dioxide equivalent emitted by that party during the compliance

period. Except as provided in subsections (4) and (5) of this section, allowances used for compliance under this provision must be of the vintage of any year of the compliance period or of any prior year.

(4) When using allowances for compliance, EITE facilities may provide future vintage allowances obtained as described in WAC 173-446-260 in the process of reconciling their compliance obligation for a given year with their actual production data for that year.

(5) Allowances obtained from the allowance price containment reserve may be used for compliance at any time.

(6) 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.

(7) 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~~ of a linked jurisdiction.

(8) A registered 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.

(9) 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 removed by ecology.

(10) Qualifying transfers of no cost allowances from an electric utility to an electrical generating facility may follow the process in WAC 173-446-425.

(11) Deferred compliance requirement for electricity exported to an external GHG emissions trading program for first compliance period. For any portion of covered emissions from a first jurisdictional deliverer in Washington state exported from Washington and imported into an external GHG emissions trading program, as demonstrated to ecology's satisfaction through means established under chapter 173-441 WAC, the requirements of subsection (2) of this section do not apply. Only the requirements of subsection (3) of this section apply to that portion of covered emissions. This deferral is only in effect for the first compliance period, and for subsequent compliance periods subsections (2) and (3) both apply.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-400, filed 9/29/22, effective 10/30/22.]

WAC 173-446-410 Transfers among registered entities—Process.

(1) Every registered entity wishing to trade compliance instruments with another party registered in Washington's program or with a party registered in an external GHG ETS ~~to which Washington has~~ of a linked jurisdiction 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 calendar days after submission of the original request to ecology.

(b) If the intended transferee wishes to accept the transfer, within three calendar days after the initial transaction request referenced in this subsection, 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.

(d) The account representatives involved in the transaction must provide ecology on request and within 10 business days with any additional information concerning the transaction.

(2) Ecology will transfer the compliance instruments unless:

(a) The transfer would result in noncompliance with chapter 70A.65 RCW or this chapter;

(b) Ecology has reasonable grounds to believe that a violation has been committed under chapter 70A.65 RCW in relation to the request; or

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

(3) Transfer refusal.

(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.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-410, filed 9/29/22, effective 10/30/22.]

NEW SECTION

WAC 173-446-412 Transactions involving exchange clearing houses.

(1) Every registered entity who wishes to transfer allowances to an exchange clearing house must send Ecology a transaction request for the clearing house with the following information:

(a) the holding account number of the seller;

(b) the clearing house account number of the clearing house

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

(d) the settlement price of each type and, where applicable, each vintage of allowances;

(e) the type of allowances trading agreement and the transaction date scheduled

(f) where applicable, the codes of the exchange and of the contract.

(2) The transaction request must be sent in accordance with the procedures set in WAC 173-446-410, except that the confirmation of

acceptance required by subsection (1)(b) of that section, is not required for exchange clearing house transactions.

(3) An exchange clearing house that wishes to use allowances to compensate for a transaction must send Ecology an application for compensation containing the following information:

(a) the clearing house account number of the exchange clearing house;

(b) the holding account number of the registered entity who is compensated;

(c) the quantity, type and, where applicable, vintage of the allowances used for compensation;

(d) the settlement price of each type and, where applicable, each vintage of allowances;

(e) the types of allowances trading agreement that the transaction date scheduled;

(f) where applicable, the codes of the exchange and of the contract.

(4) An application for compensation must be proposed by one of the exchange clearing house's account representatives.

(a) The proposed application for compensation must then be submitted to all other account representatives at the exchange clearing house for confirmation by at least one of them.

(b) Once the application is confirmed, a notice to that effect must be sent to all the account representatives.

(c) Upon receipt of the documentation that the required notices have been sent, Ecology will transfer the allowances to the holding account of the registered entity who is compensated.

(d) The account representatives involved in an application for compensation of allowances must provide Ecology on request and within 10 business days with any additional information concerning the compensation.

(4) Allowances that are transferred to a clearing house account that are not used within 5 business days for a transaction by a registered entity will be returned to the seller.

WAC 173-446-415 Transaction requests—Information required by ecology. Each transaction request submitted under WAC 173-446-410 must contain the following information:

(1) The holding account number of the transferor;

(2) The holding account number of the transferee;

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

(4) 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 need not be disclosed when the transaction is between registered entities in a direct corporate association~~.~~, whether in Washington or in an external GHG ETS of a linked jurisdiction, or is a bundled transfer;

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

(6) 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; and

(7)(a) Except as provided in (b) of this subsection, 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, its courts and the pollution control hearings board for purposes of enforcement of the laws, rules and regulations pertaining to chapters 173-446 WAC and 70A.65 RCW. 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."

(b) For federally recognized tribes who elect to participate as opt-in entities or general market participants pursuant to RCW 70A.65.090(5), each transaction request submitted under WAC 173-446-410 must include the following attestation statement made and signed by the primary account representative or the alternate account representative making the submission: "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 tribal government 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. The tribal government on whose behalf I am authorized to make this submission has entered into a written agreement, negotiated on an individual basis between ecology and the tribal government, that establishes a dispute resolution process and/or other compliance mechanisms in order to ensure the enforceability of all program requirements applicable to the tribe in its role as an opt-in entity or a general market participant, as applicable. 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."

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-415, filed 9/29/22, effective 10/30/22.]

WAC 173-446-420 Transfers to a compliance account—Process.

[NO CHANGES TO THIS SECTION ARE PROPOSED AT THIS TIME]

(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 a compliance account, 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 business 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 reasonable 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 five business days following the failure to complete the transaction.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-420, filed 9/29/22, effective 10/30/22.]

WAC 173-446-425 Transfers of no cost allowances from an electric utility to an electrical generating facility~~ or to a federal power marketing administration~~.

(1) An electric utility that is a Washington registered entity wishing to transfer no cost allowances to the compliance account of ~~an~~a Washington electrical generating facility~~ or federal power~~

~~marketing administration~~ may submit a request to ecology asking for the transfer and providing the following information:

(a) The electric utility's holding account number;

(b) The compliance account number of~~ the federal power marketing administration or~~ the electrical generating facility;

(c) The quantity and vintage of no cost allowances to be transferred;

(d) The relationship between the electric utility and the ~~federal power marketing administration or~~ electric generating facility.

(2) Ecology may transfer the allowances only if:

(a) The electric generating facility is operated by the electric utility; or

(b) The electric utility has an agreement to purchase imported electricity or a power purchase agreement, including a custom product contract from the ~~federal power marketing administration or the~~ electric generating facility.

(c) The transfer will not violate the ~~federal power marketing administration's or the~~ electrical generator's holding limit.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-425, filed 9/29/22, effective 10/30/22.]

NEW SECTION

WAC 173-446-426 Transfers of no cost allowances from an electric utility to a federal power marketing administration.

(1) An electric utility that is a Washington registered entity may voluntarily elect to transfer all or a designated number of the allowances allocated to the utility at no cost to a federal power marketing administration that is registered as an opt-in entity to be used for direct compliance. An electric utility electing to transfer allowances allocated at no cost from the utility's holding account to a holding account of a federal power marketing administration to be used for direct compliance may submit a request to the department requesting the transfer. The request must provide the following information:

(a) The electric utility's holding account number;

(b) The holding account number of the federal power marketing administration;

(c) The number and vintage of no cost allowances to be transferred; and

(d) The relationship between the electric utility and the federal power marketing administration.

(2) The department may transfer the allowances only if:

(a) The electric utility has an agreement to purchase electricity from the federal power marketing administration, or a power purchase agreement, including a custom product contract, with the federal power marketing administration; and

(b) The transfer does not violate the federal power marketing administration's holding limit.

(3) An electric utility receiving an allocation of allowances at no cost must inform the department by September 1st of each year of the accounts into which the allocation or a portion of the allocation is to be automatically distributed under this subsection. If an electric utility fails to submit its distribution preference by September 1st, the department must automatically place all directly allocated allowances for the following calendar year into the electric utility's holding account. Nothing in this subsection (3) precludes an electric utility from requesting a manual transfer of allowances under subsection (1) of this section after September 1st of each year.

WAC 173-446-430 Transfers of no cost allowances from a utility's holding account to its limited use holding account for consignment to auction.

(1) A utility that is a Washington registered entity wishing to consign no cost allowances to auction must transfer those no cost allowances from its holding account to its limited use holding account by submitting a request to ecology asking for the transfer and providing the following information:

(a) The utility's holding account number;

(b) The utility's limited use holding account number; and

(c) The quantity and vintage of no cost allowances to be transferred.

(2) Upon receipt of the required information, ecology will transfer the allowances from the utility's holding account to its limited use holding account.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-430, filed 9/29/22, effective 10/30/22.]

WAC 173-446-440 Compliance instrument transactions—Prohibited actions.

[NO CHANGES TO THIS SECTION ARE PROPOSED AT THIS TIME]

(1) Other than the account representatives directly involved in a transaction, no party holding confidential or 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 person 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 subsection (1) of this section may use the confidential or 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; and

(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 material impact on the price of a compliance instrument.

(4) False or misleading information.

(a) No party may disclose false or misleading information or information that must be filed pursuant to this chapter before it is filed, in order to carry out a transaction.

(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 material impact on the price or value of a compliance instrument.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-440, filed 9/29/22, effective 10/30/22.]

OFFSETS

[NO CHANGES TO 173-446-500 THROUGH 173-446-595 ARE PROPOSED THROUGH THIS RULEMAKING ON LINKAGE]

COMPLIANCE AND ENFORCEMENT

WAC 173-446-600 Compliance obligations. (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. All general market participants must comply with all requirements for participating in auctions, and holding and transferring compliance instruments, as well as all other provisions of this chapter.

(2) Unless otherwise required by specific provisions of this regulation, all parties participating in the program must provide to ecology within 14 calendar days any additional information requested by ecology concerning their participation in the program.

(3) By 5:00 p.m. Pacific Time November 1st of 2024 and each year thereafter, each covered entity and opt-in entity must have in its compliance account sufficient compliance instruments of former vintage years to cover at least 30 percent of its covered emissions for the previous calendar year.

(4) By 5:00 p.m. Pacific Time November 1st of the year following the final year of each compliance period, each covered entity and each opt-in entity must have transferred to its compliance account one compliance instrument for each metric ton of covered emissions of carbon dioxide equivalent emitted by that party during the compliance period. Except as provided in (a) and (b) of this subsection, allowances used for compliance under this provision must be of the vintage of any year of the compliance period or of any prior year.

(a) When using allowances for compliance, EITE facilities may provide future vintage allowances obtained as described in WAC 173-446-260 in the process of reconciling their compliance obligation for a given year with their actual production data for that year.

(b) Allowances obtained from the allowance price containment reserve may be used for compliance at any time.

(5) Compliance instruments to be used for compliance must be in the complying covered or opt-in entity's compliance account. Once

placed in a compliance account, compliance instruments can only be removed by ecology. Immediately after each compliance deadline, ecology will remove and permanently retire sufficient compliance instruments from each covered entity's or opt-in entity's compliance account to cover that covered entity's or opt-in entity's compliance obligation.

(6) Deferred compliance requirement for electricity exported to an external GHG emissions trading program for first compliance period. For any portion of covered emissions from a first jurisdictional deliverer in Washington state exported from Washington and imported into an external GHG emissions trading program, as demonstrated to ecology's satisfaction through means established under chapter 173-441 WAC, the requirements of subsection (2) of this section do not apply. Only the requirements of subsection (3) of this section apply to that portion of covered emissions. This deferral is only in effect for the first compliance period, and for subsequent compliance periods subsections (2) and (3) of this section both apply.

(7) A portion of each covered entity's or opt-in entity's compliance obligation may be met by offset credits placed in the covered entity's or opt-in entity's compliance account. Each offset credit is worth one metric ton of carbon dioxide equivalent. All

offset credits used for compliance must have been issued for reporting periods wholly after July 25, 2021 or within two years prior to July 25, 2021.

(a) For the first compliance period (January 1, 2023, through December 31, 2026):

(i) No more than five percent of a covered entity's or opt-in entity's compliance obligation may be satisfied by offset credits from projects whether or not they are located on federally recognized tribal land.

(ii) In addition to, but separate from the limit in (a)(i) of this subsection, a covered entity or opt-in entity may satisfy up to an additional three percent of its compliance obligation using offset credits generated from offset projects on federally recognized tribal land.

(iii) Unless ecology has linked with an external GHG ETS~~trading system~~, all offset credits must provide direct environmental benefits to Washington state.

(iv) If ecology has linked with an external GHG ETS~~trading system~~, at least 50 percent of any offset credits used by a covered entity or opt-in entity for compliance must be sourced from offset projects that provide direct environmental benefits in Washington

state. The remaining amount, if any, must be sourced from offset projects that are located in a jurisdiction with which ecology has entered into a linkage~~ed~~ agreement.

(b) For the second compliance period~~ (January 1, 2027, through December 31, 2030):~~:

(i) No more than four percent of a covered entity's or opt-in entity's compliance obligation may be satisfied by offset credits from projects whether or not located on federally recognized tribal land.

(ii) In addition to, but separate from the limit in (b)(i) of this subsection, a covered entity or opt-in entity may satisfy up to an additional two percent of its compliance obligation using offset credits generated from offset projects on federally recognized tribal land.

(iii) Unless ecology has linked with an external GHG ETS~~trading system~~, all offset credits must provide direct environmental benefits to Washington state.

(iv) If ecology has linked with an external GHG ETS~~trading system~~, at least 75 percent of any offset credits used by a covered entity or opt-in entity for compliance must be sourced from offset projects that provide direct environmental benefits in Washington state. The remaining amount, if any, must be sourced from offset

projects that are located in a jurisdiction with which ecology has entered into a linkageed agreement.

(c) For the third and subsequent compliance periods:

(i) No more than four percent of a covered entity's or opt-in entity's compliance obligation may be satisfied by offset credits including offset credits from projects on federally recognized tribal land.

(ii) A covered entity or opt-in entity may satisfy an additional two percent of its compliance obligation using offset credits generated from offset projects on federally recognized tribal land.

(iii) Unless ecology has linked with an external GHG ETStrading system, all offset credits must provide direct environmental benefits to the state.

(iv) If ecology has linked with an external GHG ETStrading system, at least 75 percent of any offset credits used by a covered entity or opt-in entity for compliance must be sourced from offset projects that provide direct environmental benefits in Washington state. The remaining amount, if any, must be sourced from offset projects that are located in a jurisdiction with which ecology has entered into a linkedage agreement.

(d) Ecology may reduce the limits in (a)(i) and (b)(i) of this subsection 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 identified 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.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-600, filed 9/29/22, effective 10/30/22.]

WAC 173-446-610 Enforcement. (1) If a covered or opt-in entity does not have sufficient compliance instruments in its compliance account to meet its compliance obligation by the compliance deadlines specified in WAC 173-446-600 (3) and (4), it has violated its compliance obligation and correction is not possible. As a result of such noncompliance, the covered or opt-in entity must, within six months after the compliance deadline submit to ecology four penalty

allowances for every one compliance instrument that it failed to have in its compliance account by 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 CO_2e not covered by a compliance instrument constitutes a separate violation. The 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;

(c) Violated any part of the auction rules;

(d) Violated registration requirements; or

(e) Violated any rules regarding the conduct of the auction.

(5) In addition to the specific sanctions 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.

(7) Orders and penalties issued under this chapter are appealable to the pollution control hearings board under chapter 43.21B RCW.

(8) For the first compliance period or until Washington enters into a linkage agreement, whichever occurs first, ecology may reduce the amount of the penalty by adjusting the monetary amount of a civil penalty or reducing the number of penalty allowances required to be provided within six months under subsection (1) of this section. In no case will ecology reduce the number of penalty allowances required to a number below one allowance for each missing compliance instrument.

(9) 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.

(10) If ecology determines that a covered entity or an opt-in entity has over reported its GHG emissions under chapter 173-441 WAC, ecology will reduce the covered or opt-in entity's compliance obligation by sufficient compliance instruments to cover the amount of over-reported emissions.

(11) If ecology determines that a covered entity or an opt-in entity has under reported its GHG emissions under chapter 173-441 WAC:

(a) The covered or opt-in entity must, by November 1st of the year in which ecology makes the determination, provide sufficient compliance instruments to cover the additional emissions.

(b) If the covered or opt-in entity fails to submit the compliance instruments required under (a) of this subsection, the covered or opt-in entity must, within six months after the compliance deadline, submit four penalty allowances for every one compliance instrument that it failed to submit.

(12) When ownership or operational control of a registered entity changes, whether by merger, acquisition, or any other means, the

successor entity resulting from the change in ownership or operational control is expressly liable for any unmet compliance obligation(s) of the predecessor registered entity that is a party to the transaction resulting in the change in ownership or operational control. The unmet compliance obligations of the predecessor registered entity include the quantity of verified covered emissions, assigned emissions, and emissions that are attributable to the predecessor registered entity but not yet reported for which the registered entity would be required to submit compliance instruments to ecology absent the change of ownership or operational control, but that the registered entity has not submitted to ecology at the time of the change of ownership or operational control.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-610, filed 9/29/22, effective 10/30/22.]

WAC 173-446-620 Contact information.

[NO CHANGES TO THIS SECTION ARE PROPOSED AT THIS TIME]

Unless otherwise specified, all requests, notifications, and communications to ecology pursuant to this chapter, must be submitted in a format as specified by ecology to either of the following:

For U.S. mail:

Climate Commitment Act Program

Air Quality Program

Department of ecology

P.O. Box 47600

Olympia, WA 98504-7600

For email: CCAmailbox@ecy.wa.gov

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-620, filed 9/29/22, effective 10/30/22.]

SEVERABILITY

WAC 173-446-700 Severability.

[NO CHANGES TO THIS SECTION ARE PROPOSED AT THIS TIME]

If any provision of the rule or its application to any covered entity or other person or party or circumstances is held invalid, the remainder of the rule or application of the provision to other covered entities or other persons or parties or circumstances is not affected.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-700, filed 9/29/22, effective 10/30/22.]