AMENDATORY SECTION (Amending WSR 22-20-056, filed 9/29/22, effective 10/30/22)

WAC 173-446-010 Purpose. (1) The purpose of this chapter is to implement the provisions of the GHG emissions cap and invest program created by RCW 70A.65.060 through 70A.65.210, 70A.65.310, 70A.65.320, and 70A.65.400. The provisions of the cap and invest program implemented by this chapter establish a declining cap on GHG emissions from covered entities consistent with the limits established in RCW 70A.45.020, and a program to track, verify, and enforce compliance with the cap through the use of compliance instruments.

(2) Ecology will engage with the environmental justice council. Ecology acknowledges and recognizes there are communities that have historically borne the disproportionate impacts of environmental burdens and that now bear the disproportionate negative impacts of climate change, and the legislature specifically empowered the environmental justice council to provide recommendations to ecology on the cap and invest program.

AMENDATORY SECTION (Amending WSR 24-24-087, filed 12/3/24, effective 1/3/25)

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 a group of registered entities ((~~in~~)) with 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 covered and opt-in entities registered in Washington's program 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~~)) maximum number of allowances ((~~one~~)) that a 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, as determined pursuant to WAC 173-441-122.

"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, until Washington links with an external GHG emissions trading program. Starting on the linkage effective date, ecology will synchronize Washington's compliance periods with those of the linked jurisdiction(s) and compliance periods shall be: January 1, 2027, through December 31, 2028; January 1, 2029, through December 31, 2030; January 1, 2031, through December 31, 2033; each subsequent compliance period will alternate between a duration of two calendar years and three calendar years.

"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.

"Control person" means a director, officer, or any similar individual granted authority to make legally binding decisions on behalf

of, or to direct or cause the direction of the management and policies of a covered entity, opt-in entity, utility, exchange clearing house, or general market participant. This includes partners with over 10 percent control over the partnership, including limited partners or general partners.

"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~~)) affiliated registered entities 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 obligation" means a component of a compliance obligation for a covered entity or opt-in entity.

"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 to which Washington is linked. A qualified entity must be a derivatives clearing organization as de-

fined in the Commodity Exchange Act (7 U.S.C. § 1a) that is registered with the U.S. Commodity Futures Trading Commission pursuant to the Commodity Exchange Act (7 U.S.C. § 7a-1).

"Expanded EITE facility" means an EITE facility that has implemented a major physical change at the facility that resulted in the covered emissions at the facility being equal to or exceeding 25,000 metric tons of carbon dioxide equivalent per year for the first time since emissions year 2014 and directly increases the total productive capacity of the facility and/or allows the production of a new manufactured good.

"External ((~~GHG~~)) greenhouse gas emissions trading program" or "external GHG emissions trading system (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~~)), in the context of offsets, a corporation or other legally constituted entity, tribe, city, county, state agency, individual(s), or a combination thereof that has legal control of any amount of forest carbon within the project area. Control of forest carbon means the forest owner has the legal authority to effect changes to forest carbon quantities, e.g., through timber rights or other forest management or land-use rights. Control of forest carbon occurs through fee ownership and/or deeded encumbrances, such as conservation easements.

"General market participant" means a 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 or by all members of a direct corporate association 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's territorial boundaries and outside the geography of ((~~another jurisdiction with a linkage agreement with Washington~~)) a linked jurisdiction.

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

"Linkage" or "link" 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~~)) another linked jurisdiction and to otherwise coordinate activities to facilitate operation of a joint market. For each linkage, ecology will determine the linkage effective date through the process described in WAC 173-446-090.

"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.

"Linkage effective date" means the date at which ecology will begin accepting compliance instruments from a linked jurisdiction to meet a compliance obligation in Washington pursuant to WAC 173-446-600, and the date ecology will allow compliance instruments issued by ecology to be used to meet a regulatory obligation in the linked jurisdiction. For each linkage, ecology will determine the linkage effective date through the process described in WAC 173-446-090.

"Linked jurisdiction" means a jurisdiction with which Washington has entered into a linkage agreement and for which the linkage has become effective pursuant to the effective date set by ecology under WAC 173-446-090.

"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. Knowledge of a general market participant's current and/or expected holdings of compliance instruments is knowledge of the general market participant's market position.

"Market sensitive information" means:

(a) Information ((~~related to registered~~)) collected about or pertaining to entities registered in Washington's program or in an external GHG ETS of a linked jurisdiction, 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~~)) where:

(i) Its disclosure would be reasonably expected to have an effect on the price or value of allowances or offset credits; and/or

(ii) Its disclosure would be reasonably expected to enable ((~~a registered~~)) an entity to engage in market manipulation such as bidder collusion, market cornering, or extortion of other market participant; and/or

(iii) The information relates to processes or production unique to a registered entity and its disclosure is likely to adversely affect the competitive position of such owner or operator if released to the public or to a competitor.

(iv) The information is otherwise designated as confidential under WAC 173-446-390.

(b) Ecology will treat such information as confidential to the extent possible, except as needed in the course of oversight, investigation, enforcement, and prosecution.

(c) "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 ((~~a registered~~)) an entity 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 ((~~a registered~~)) an entity 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.

"Physical address" means an address for a physical presence, such as an office location, a rental space, or a residence, where an employee, control person, or owner primarily conducts their day-to-day business activities. A post office box is not a physical address.

"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.

"Process unit" means the equipment assembled and connected by pipes and ducts to process raw materials and to manufacture either a final or intermediate product used in the on-site production of other products. The process unit also includes the purification of recovered byproducts.

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

"Registration applicant" means a covered entity, opt-in entity, or 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~~)) means the amount of megawatt-hours of electricity delivered in a given calendar year by an electric utility to its Washington retail electric customers and losses associated with the delivery of that electricity.

"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, in the context of offsets, 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.

AMENDATORY SECTION (Amending WSR 22-20-056, 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 (WTE) 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 from emissions year 2025 or any subsequent year associated with ((~~this~~)) the 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; or

(ii) Whose cumulative annual total of covered emissions from emissions year 2025 or any subsequent year associated with imported electricity from unspecified sources exceeds zero metric tons of carbon dioxide equivalent per year; or

(iii) Whose cumulative annual total of covered emissions from emissions year 2023 or 2024 associated with the imported electricity equal or exceed 25,000 metric tons of carbon dioxide equivalent per year; or

(iv) Whose cumulative annual total of covered emissions from emissions year 2025 or any subsequent year associated with imported electricity from qualifying unspecified electricity purchased from a federal power marketing administration equal or exceed 25,000 metric tons of carbon dioxide equivalent per year. Qualifying unspecified electricity is 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, that ecology determines is not from a specified source;

(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 year((~~s~~)) 2027 ((~~through 2029~~)) or 2028.

(4) Unless otherwise stated, if the final day of any time period falls on a weekend or a state holiday, the time period shall be extended to the next business day.

AMENDATORY SECTION (Amending WSR 24-24-087, filed 12/3/24, effective 1/3/25)

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). Prior to January 1, 2030, this exemption is available whether motor vehicle fuel or special fuel is used to propel a motor vehicle or not. Beginning on January 1, 2030, this exemption only applies to motor vehicle fuel or special fuel that the farm fuel user uses to propel a motor vehicle.

(iv) ((~~Fuels~~)) Motor vehicle fuel or special fuel 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~~)) 2029 and is not available for emissions after ((~~2027~~)) 2029.

(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 counting emissions from fuels that are delivered outside of Washington 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 emis-

sions 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 173-441-124.

(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, the federal power marketing administration may voluntarily elect to ((~~comply with the program in accordance with the requirements of RCW 70A.65.320, and/or under RCW 70A.65.090, 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 opt-in election taking effect, the federal power marketing administration will assume the compliance obligation for covered emissions consistent with its election. If no such election has been made by that federal power marketing administration, then the requirements of (e)(ii) of this subsection apply to the GHG emissions associated with that electricity.~~

~~(iv) For electricity generated by an electric generating facility in Washington where the owner or operator of that facility successfully offers electricity into a centralized electricity market and the electricity is assigned, designated, deemed, or attributed to be serving Washington electric load by the methodologies, processes, or decision algorithms that are put in place by the market operator of that centralized electricity market for purposes of reporting under chapter 173-441 WAC and approved by the department of ecology, the compliance obligation for the GHG emissions associated with that electricity is determined once, based on the emissions reported for that electricity under WAC 173-441-120.~~)) assume the compliance obligation associated with imported electricity, in accordance with WAC 173-446-054. If the federal power marketing administration has not voluntarily elected to assume the compliance obligation associated with imported electricity, the electricity importer is identified through the definition and procedures in WAC 173-441-124.

(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).

AMENDATORY SECTION (Amending WSR 22-20-056, 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~~)) person 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 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) Except as provided in (e) of this subsection, make and submit the following attestation, signed by the primary account representative or alternate account representative for the party: "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 requesting to register as an opt-in entity in Washington's cap and invest program. I certify under penalty of perjury that the facility or facilities, electric power entity or entities, or fuel supplier or suppliers associated with the party, will report the greenhouse gas emissions for which they are responsible in conformance with chapter 173-441 WAC. 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. 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 or misleading statements and attestations, including financial penalties of up to $50,000 for each day that such party is registered in Washington's cap and invest program based on false or misleading information.";

(e) For federally recognized tribes who elect to participate as opt-in entities pursuant to RCW 70A.65.090(5), make and submit the following attestation, signed by the primary account representative or alternate account representative for the tribe: "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 requesting to register as an opt-in entity in Washington's cap and invest program. I certify under penalty of perjury that the facility or facilities, electric power entity or entities, or fuel supplier or suppliers associated with the tribe, will report the greenhouse gas emissions for which they are responsible in conformance with chapter 173-441 WAC. 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. 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 applicable program requirements. I am aware that there are significant penalties for submitting false or misleading statements and attestations, including financial penalties of up to $50,000 for each day that an entity is registered in Washington's cap and invest program based on false or misleading information.";

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

((~~(e)~~)) (g) Except as provided in ((~~(f)~~)) (h) 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)~~)) (h) 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~~)) 173-446-140, and provide the following information to ecology electronically in a format specified by ecology:

(a) Name, contact information, ((~~and~~)) physical and mailing address, and entity type 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 deci-~~

~~sions 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~~)) Name, physical address of workplace, mailing address, phone number, and email address of each of the party's control persons as defined in WAC 173-446-020;

(d) Names and contact information for individuals or parties controlling over 10 percent of the beneficial ownership or 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~~)) Date and place of business registration with a Secretary of State within the United States, and an active file number or ID number assigned by a Secretary of State within the United States, if applicable. If an entity is unable to register with a Secretary of State, then it must submit a certificate of existence or an equivalent certificate from a Secretary of State within the United States. This information is not required for a covered or opt-in entity that is government-operated or tribally owned;

(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).~~)) Name, physical address of workplace, phone number, email address, and the name of the employer of any individual with knowledge of or access to the party's market position, as defined in WAC 173-446-020. Employees, delegates, and officials of local, state, and federal regulatory agencies who have the ability to gain knowledge of or access to the entity's market positions pursuant to any applicable local, state, or federal rules, orders, or decisions are excluded from this disclosure requirement.

(h) When there is a change to the information the registrant has submitted pursuant to this subsection, registrants must update the registration information within 30 calendar days of the change unless otherwise specified.

(6) The registrant must notify ecology within 10 business days of an exchange clearing house issuing a notice of charges to the registrant or entering into a settlement agreement with an exchange clearing house for conduct involving derivatives or swaps based on compliance instruments for Washington's program or a GHG ETS of a linked jurisdiction.

(7) When there is a change to the government-issued taxpayer identification number or employer identification number, or a U.S. federal tax employer identification number, if assigned, that a registrant submitted pursuant to (5) of this section, the registrant must reregister for new accounts within 30 calendar days of the change, and cannot maintain the same tracking system account identification number.

NEW SECTION

WAC 173-446-052 Exchange clearing house registration. (1) An exchange clearing house for derivatives incorporated in the United States may register in the program as a general market participant in order to clear transactions involving compliance instruments. For that purpose, the exchange clearing house must provide and maintain the following information to ecology electronically in a format specified by ecology:

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

(b) Date and place of business registration with a Secretary of State within the United States, and an active file number or ID number assigned by a Secretary of State, then it must submit a certificate of existence or an equivalent certificate from a Secretary of State within the United States;

(c) Name, physical address of workplace, mailing address, phone number, and email address of each of the exchange clearing house's control persons as defined in WAC 173-446-020;

(d) Documentation issued by the U.S. Commodity Futures Trading Commission confirming that the exchange clearing house is a registered "derivatives clearing organization," stating the date on which the U.S. Commodity Futures Trading Commission began supervision of the exchange clearing house, and identifying the rules to be followed by the exchange clearing house;

(e) A declaration signed by a control person, 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 U.S. Commodity Futures Trading Commission or if supervision by the U.S. Commodity Futures Trading Commission ceases. No transaction may be carried out in the clearing house account until ecology receives sufficient documentation establishing that the suspension has been lifted by the U.S. Commodity Futures Trading Commission or that new supervision has been established by the U.S. Commodity Futures Trading Commission. If compliance instruments are recorded in the clearing house account when supervision is suspended or ceases, ecology will return the compliance

instruments to the entity registered in Washington or in an external GHG ETS to which Washington is linked who transferred them into the clearing house account.

AMENDATORY SECTION (Amending WSR 22-20-056, filed 9/29/22, effective 10/30/22)

WAC 173-446-053 Electric utilities registration. (1)(a) In order to receive no cost allowances under WAC 173-446-230, 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~~)) do not meet the applicability conditions in WAC 173-446-030 and 173-446-060 must register in Washington's cap and invest program.

(b) This subsection does not apply if the electric utility elects, pursuant to WAC 173-446-426, to establish a recurring automated transfer of all its no cost allowances to a federal power marketing administration that voluntarily opts into the program under WAC 173-446-054.

(2) To register, electric utilities must comply with the requirements of WAC 173-446-105 through ((~~173-446-130~~)) 173-446-140 and provide the following information to ecology electronically in a format specified by ecology:

(a) Name, physical and mailing addresses, contact information, and 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~~)) Name, physical address of workplace, mailing address, phone number, and email address of each of the utility's control persons, as defined in WAC 173-446-020;

(c) Names and contact information of all individuals or parties controlling more than 10 percent of the beneficial ownership or 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~~)) Date and place of business registration with a Secretary of State within the United States, and an active file number or ID number assigned by a Secretary of State within the United States, if applicable. If an entity is unable to register with a Secretary of State, then it must submit a certificate of existence or an equivalent certificate from a Secretary of State within the United States. This information is not required for a covered entity or opt-in entity that is government-operated or tribally owned;

(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~~)) Name, physical address of workplace, phone number, email address, and name of the employer of any individual with knowledge of or access to the utility's market position ((~~(current and/or expected holdings of compliance instruments and current and/or expected covered emissions)~~)), as defined in WAC 173-446-020. Employees, delegates, and officials of local, state, and federal regulatory agencies who have the ability to gain knowledge of or access to the utility's market positions pursuant to any applicable local, state, or federal rules, orders, or decisions are excluded from this disclosure requirement;

(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.

(3) When there is a change to the information registrants have submitted pursuant to subsection (2) of this section, registrants must update the registration information within 30 calendar days of the change.

(4) The registrant must notify ecology within 10 business days of being issued a notice of charges by an exchange clearing house or entering into a settlement agreement with an exchange clearing house for conduct involving derivatives or swaps based on compliance instruments for Washington's program or a GHG ETS of a linked jurisdiction.

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 entity or opt-in entity, other than a federal power marketing administration, 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.

(5) To register, the federal power marketing administration must comply with the requirements in WAC 173-446-130, except subsections (1), (4), (6), and (9) through (10), 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, physical addresses, and contact information of the party's administrators and officers with authority to make legally binding decisions on behalf of the party;

(d) 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;

(e) Names and contact information for employees of the federal power marketing administration with knowledge of, and decision-making authority related to, the federal power marketing administration's market position, as defined in WAC 173-446-020. Similar requirements outlined in WAC 173-446-050 (5)(g) do not apply to a federal power marketing administration.

(f) An attestation agreed upon between ecology and the federal power marketing administration, signed by the manager of the account representative, confirming the account representative is an employee of the federal power marketing administration.

AMENDATORY SECTION (Amending WSR 22-20-056, filed 9/29/22, effective 10/30/22)

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 and transfer to other parties offset credits without needing to fulfill the requirements of WAC 173-446-120. An offset project operator may receive offset credits and/or allowances from another registered entity only to satisfy the requirements for intentional reversals as outlined in WAC 173-446-570. Parties qualifying as general market participants under this subparagraph may also hold allowances, but only after fulfilling and maintaining the requirements of WAC 173-446-120.

(A) In order to qualify as a general market participant under this subsection (a)(ii), the registered entity must provide ecology the offset project registry identification number(s) for the offset project(s) with which the registered entity is associated within 180 days after ecology sets up the registered entity's account per WAC 173-446-150(1). The deadline may be extended at ecology's discretion if the registered entity is seeking but unable to attain a project registry identification number(s) within 180 days for an offset project(s) seeking issuance of ecology offset credits.

(B) If the registered entity is not named in the listing documents for the offset project, a statement must be provided to ecology affirming the registered entity's role in the offset project, signed by the offset project operator or authorized project designee.

(iii) An exchange clearing house that is registered with ecology pursuant to WAC 173-446-052.

(b) An individual registering as a general market participant must ((~~have primary residence in the United States~~)) be a resident of Washington per WAC 173-446-130(9).

(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~~)) entities registered in Washington's program or in an external GHG ETS of a linked jurisdiction 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~~)) able to demonstrate their location in the United States, as documented in the registration information provided pursuant to subsection (3) of this section.

(i) Effective January 1, 2028, a general market participant must at all times employ an individual with authority to make legally binding decisions on behalf of the entity that is located in the United States.

(ii) Effective January 1, 2028, a general market participant must at all times have at least two account representatives, each with a primary residence and physical address in the United States. Only an individual registrant who elects to have a combined role pursuant to

WAC 173-446-130(1) will not be required to maintain two account representatives located in the United States.

(iii) A general market participant must have a physical address in the United States. The entity must be able to demonstrate that it conducts business in the United States and has an active file number or identification number with a Secretary of State within the United States, if assigned.

(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) Except as provided in WAC 173-446-052, any party wishing to register as a general market participant must comply with the requirements of WAC 173-446-105 through ((~~173-446-130~~)) 173-446-140 and provide the following information to ecology in a format specified by ecology:

(i) Name, physical and mailing ((~~addresses~~)) address, contact information, and 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~~)) Name, physical address of workplace, mailing address, phone number, and email address of each of the general market participant's control persons, as defined in WAC 173-446-020;

(iii) Names and contact information for ((~~persons~~)) individuals or parties controlling more than 10 percent of the beneficial ownership or 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~~)) Date and place of business registration with a Secretary of State within the United States, and an active file number or ID number assigned by a Secretary of State within the United States, if applicable. If an entity is unable to register with a Secretary of State, then it must submit a certificate of existence or an equivalent certificate from a Secretary of State within the United States. This information is not required for a covered entity or opt-in entity that is foreign, government-operated, or tribally owned;

(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~~)) Name, physical address of workplace, phone number, email address, and the employer of any individual 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)~~)), as defined in WAC 173-446-020. Employees, delegates, and officials of local, state, and federal regulatory agencies who have the ability to gain knowledge of or access to the entity's specific market positions pursuant to any applicable local, state, or federal rules, orders, or decisions are excluded from this disclosure requirement;

(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;

(ix) Names and contact information of the National Futures Association registered commodity pool operator or commodity trading advisor that is associated with the entity by contract, employment, or other means;

(x) All individuals and entities registering as a general market participant must, if applicable, submit the following supplemental registration information: The entity's founding and governing agreements, fund prospectus, loan or financing documents, a description of planned market activities, the amount of initial capital funds, the projected capital the entity plans to invest in the carbon market, the source of funds, a statement of compliance per WAC 173-446-400(4) and 173-446-440(5), and any other documents requested by ecology on a case-by-case basis as needed to determine whether the entity's participation in the program conforms with the regulation. All supplemental information submitted must be accompanied with a signed and dated attestation from an account representative. Ecology may, on a case-by-case basis as needed, request a covered entity application submit this supplemental information to ecology within 30 days.

(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.

(d) When there is a change to the information registrants have submitted pursuant to this subsection, the registrants must update the registration information within 30 calendar days of the change.

(4) The registrant must notify ecology within 10 business days of being issued a notice of charges by an exchange clearing house or entering into a settlement agreement with an exchange clearing house for conduct involving derivatives or swaps based on compliance instruments for Washington's program or a GHG ETS of a linked jurisdiction.

(5) When there is a change to the government-issued taxpayer identification number or employer identification number, or a U.S. federal tax employer identification number, if assigned, that a registrant submitted pursuant to (3) of this section, the registrant must re-register for a new account within 30 calendar days and cannot maintain the same tracking system account identification number.

(6) If a currently registered general market participant subsequently becomes subject to the requirements in WAC 173-446-030 to be a covered entity, the registered entity will be required to change its entity type to a covered entity within 30 days of reporting emissions to ecology and is subject to a compliance obligation pursuant to WAC 173-446-600.

AMENDATORY SECTION (Amending WSR 22-20-056, 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 ((~~a registered~~)) an 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)' inter-

ests in litigation or in a regulatory or administrative proceeding or investigation, unless providing factual testimony.

(2) Any Washington registered entity 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~~)) the consultant or advisor's name, phone number, email address, physical and mailing address, type of services provided, and, if applicable, employer name.

(b)(i) 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~~)) within 30 calendar days of entering into a contract with a cap and invest consultant or advisor, including disclosures required under WAC 173-446-120.

(ii) Any changes made to the information disclosed on consultants and advisors must be disclosed to ecology within 30 calendar days.

AMENDATORY SECTION (Amending WSR 22-20-056, 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.~~

~~(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 covered 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)~~)) (2) Any waste to energy facility that is used by a county or city solid waste management program and is newly constructed or modified after January 1, 2027, becomes a covered entity in the calendar year in which its emissions reach the thresholds listed in WAC 173-446-030, or upon formal notice from ecology that the facility is expected to exceed those thresholds, whichever happens first.

((~~(4)~~)) (3) Beginning at the start of the third compliance period, 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 met-~~

~~ric tons of CO_2e per year~~)) the thresholds listed in WAC 173-446-030, or upon formal notice from ecology that the company is expected to exceed those thresholds, whichever happens first.

((~~(5)~~)) (4) Any facility, supplier, or first jurisdictional deliverer of the types described in WAC 173-446-030(1) that ((~~were~~)) was 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~~)) the thresholds listed in WAC 173-446-030, 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 as reported under chapter 173-441 WAC~~)) the thresholds listed in WAC 173-446-030, 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~~)) the thresholds listed in WAC 173-446-030 for the first year the entity is required to report emissions, whichever happens first.

AMENDATORY SECTION (Amending WSR 22-20-056, filed 9/29/22, effective 10/30/22)

WAC 173-446-070 Exiting the program. (1) When a covered entity reports covered emissions that are below ((~~25,000 metric tons of CO_2e~~)) the thresholds listed in WAC 173-446-030 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) and (c) of this subsection, when a covered entity reports covered emissions below ((~~25,000 metric tons of CO_2e~~)) the thresholds listed in WAC 173-446-030 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) For facilities and suppliers, 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~~)) or supplier'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) For first jurisdictional deliverers who are only covered due to emissions under WAC 173-446-030 (1)(c)(i) or (iv), 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 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.

(d) 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.

(3) An opt-in entity may opt out of the program at the end of any compliance period by providing written notice to ecology at least six months prior to the end of the compliance period. The opt-in entity continues to have a compliance obligation through the remainder of the compliance period in which it provided written notice to ecology of its decision to opt out of the program.

(4) A covered or opt-in entity that meets the requirements of exiting the program, or a general market participant that no longer seeks to participate in the program, may request to close its account if all holding accounts are clear of compliance instruments. An entity must not owe a compliance obligation, and an account representative must submit a written request to ecology with the following information:

(a) Requested date for account closure;

(b) Reason for the account closure;

(c) Confirmation that the account balances are zero;

(d) Account representatives will keep access to historical account records so long as the representatives meet the requirements to remain active and designated on the account pursuant to WAC 173-446-130; and

(e) Signed and dated attestation by an account representative pursuant to WAC 173-446-130 (4)(a).

AMENDATORY SECTION (Amending WSR 22-20-056, filed 9/29/22, effective 10/30/22)

WAC 173-446-080 Allowances. (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.~~))

NEW SECTION

WAC 173-446-090 Linkage. (1) Upon the effective date determined by ecology, ecology will begin to accept compliance instruments issued by any linked jurisdiction to meet a compliance obligation in Washington pursuant to WAC 173-446-600, and ecology will allow compliance instruments issued by ecology to be used to meet a regulatory obligation in a linked jurisdiction.

(2)(a) Ecology will provide the initial public notice of the linkage effective date at least 90 days in advance. The public notice will list the names of the linked jurisdictions.

(b) If ecology delays the linkage effective date, ecology must provide a new public notice of the linkage effective date at least 30 days in advance of the new date.

(3) Within 30 days of the initial public notice of the linkage effective date, registered entities and registration applicants must disclose to ecology corporate associations with entities registered in an external GHG ETS of the jurisdictions listed in the public notice.

(4) Starting on the linkage effective date:

(a) A compliance instrument issued by ecology may be used to meet a regulatory obligation within a linked jurisdiction.

(b) A compliance instrument issued by a linked jurisdiction may be used to meet a compliance obligation in Washington.

(c) A compliance instrument may be traded between an entity registered in Washington and an entity registered in an external GHG ETS of a linked jurisdiction.

(5) Ecology will provide public notice of any decision by ecology for Washington to terminate its participation in a linkage agreement.

(6) If a linked jurisdiction takes an official act to revoke, repeal, or indefinitely suspend its ETS program and/or terminate its participation in the linkage agreement, or is deemed by the other jurisdictions to have effectively terminated its participation in the linkage agreement, ecology may suspend or revoke the linkage with that jurisdiction.

(a) During the time period the linkage is suspended, and if the linkage is revoked:

(i) A compliance instrument issued by a jurisdiction(s) with which ecology has suspended or revoked the linkage may be used to meet a compliance obligation in Washington if the compliance instrument was issued prior to the date of the public notice in (c) of this subsection.

(ii) A compliance instrument shall not be traded between an entity registered in Washington and an entity registered in an external GHG ETS of a jurisdiction(s) with which ecology has suspended or revoked the linkage.

(b) Upon ecology's suspension or revocation of linkage, ecology may limit transfers in or out of holding accounts pursuant to WAC 173-446-410, modify auction notices pursuant to WAC 173-446-310, modify holding limits pursuant to WAC 173-446-150, remove and retire allowances from current and future allowance budgets pursuant to WAC 173-446-250(5), or issue additional allowances, pursuant to WAC 173-446-250 to ensure the environmental stringency of the cap and invest program is maintained.

(c) Within 24 hours of taking action to suspend or revoke the linkage, ecology shall provide public notice. The public information will include:

(i) The name(s) of the jurisdiction(s) with which ecology has suspended or revoked the linkage;

(ii) A contact name for questions regarding the action;

(iii) Whether the linkage has been suspended or revoked. If the linkage has been suspended, the notice will include the duration of the action, if known;

(iv) Any details on the status of existing compliance instruments in accounts; and

(v) Any other relevant information.

AMENDATORY SECTION (Amending WSR 22-20-056, filed 9/29/22, effective 10/30/22)

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 to which Washington is linked 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~~)) a control person 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.

AMENDATORY SECTION (Amending WSR 22-20-056, 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:~~)) indicia of control or ownership, or both, listed in (a) through (f) of this subsection are used to determine if a corporate association exists, and multiple indicia may apply at the same time.

(a) The 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) The percent of common owners((~~, directors, or officers~~)) and control persons of the other party((~~;~~)).

(c) The percent of the beneficial ownership or 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 ((~~to which Washington is~~)) of a 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 knowledge of or access to the market positions ((~~(current and/or expected holdings of compliance instruments and current and/or expected covered emissions)~~)), as defined in WAC 173-446-020, 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 to be 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 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 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.~~)) Prior to January 1, 2028, a direct corporate association will not result due to an individual who has shared roles for entities that were registered in Washington's program or the GHG ETS of a linked jurisdiction prior to October 1, 2026, and who would be in a new direct corporate association due to this subsection with another entity registered in Washington's program or the GHG ETS of a linked jurisdiction prior to October 1, 2026.

(b) Prior to January 1, 2028, a direct corporate association will result due to an individual who has shared roles for entities registered in Washington's program or the GHG ETS of a linked jurisdiction after October 1, 2026, unless every registered entity has applied for and been approved for a shared role exemption pursuant to WAC 173-446-110 (6)(d). The direct corporate association will also apply to entities registered in Washington's program or the GHG ETS of a linked jurisdiction after October 1, 2026, who will be in a new direct corporate association group due to this subsection with an entity registered prior to October 1, 2026. A government employee or its delegate who has the ability to gain knowledge of or access to the market positions of multiple entities to perform their job duties and functions is not considered to be an individual who has shared roles.

(c) Beginning January 1, 2028, a direct corporate association will result due to an individual who has shared roles unless every registered entity has applied for and been approved for a shared role exemption pursuant to WAC 173-446-110 (6)(d). A government employee or its delegate who has the ability to gain knowledge of or access to the market positions of multiple entities to perform their job duties and functions is not considered to be an individual who has shared roles.

(8) If two or more entities registered in the tracking system or registered in an external GHG ETS of a linked jurisdiction hire or contract the same commodity pool operators or commodity trading advisors, then these entities will have a direct corporate association.

For the purposes of this requirement, commodity pool operators and commodity trading advisors are defined as individuals or entities actively registered with the National Futures Association, pursuant to the Commodity Exchange Act (7 U.S.C § 1 et seq.).

AMENDATORY SECTION (Amending WSR 22-20-056, 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 and transfer offset credits or receive offset credits and/or allowances from another registered entity in the event of an intentional reversal as outlined in WAC 173-446-570 is not required to disclose any direct or indirect corporate associations.

(c) A covered entity or opt-in entity subject to a direct corporate association pursuant to WAC 173-446-105(7) due to a relationship with an individual consultant or advisor disclosed per WAC 173-446-056 who has shared roles will not have a direct corporate association resulting from the relationships and is not required to apply for the shared role exemption described in (d) of this subsection if the consultant or advisor both provides consulting services pursuant to WAC 173-446-056 to only covered entities, opt-in entities, or both, and does not have a user account in the tracking system.

(i) A consultant or advisor who has a user account in the tracking system and only provides services to consumer-owned electric utilities does not have a direct corporate association resulting from the relationships and is not required to apply for a shared role exemption, if they meet the following requirements:

(A) If the employer of the individual with shared roles is a registered entity, the individual with shared roles cannot be an account representative or account viewing agent for their employer's account.

(B) The individual with shared roles must submit to ecology a contractual agreement or the employment terms and conditions that describe the individual's roles and responsibilities and a signed and dated conflict of interest policy that the individual with a shared role has attested to.

(d) A registered entity subject to the disclosure requirements of a direct corporate association pursuant to WAC 173-446-105(7) is eligible to apply for a shared role exemption. A registered entity approved by ecology for the shared role exemption does not have a direct corporate association resulting from the relationship with the individual consultant or advisor who has shared roles. Every registered entity that would be subject to a direct corporate association due to an individual with shared roles must be approved for the shared role exemption for the exemption to take effect.

(i) If an entity is subject to a direct corporate association due to an individual with shared roles, and that individual is a consultant or advisor disclosed pursuant to WAC 173-446-056(2), then that entity is eligible to apply for the shared role exemption from a direct corporate association pursuant to WAC 173-446-105(7). To apply for this shared role exemption from a direct corporate association, an entity must identify the name of the consultant or advisor, submit to ecology a contractual agreement or the employment terms and conditions that describe the individual's roles and responsibilities and a signed and dated conflict of interest and confidentiality attestation. At any time, ecology maintains the authority to request a copy of the registered entity's conflict of interest and confidentiality policies per WAC 173-446-120 (4)(b).

(A) The primary account representative or any alternate account representative of the entity must submit the following signed and dated attestation to apply for the shared role exemption: "I certify under penalty of perjury under the laws of the state of Washington that for the named consultant or advisor that meets the exemption qualification, this individual disclosed pursuant to WAC 173-446-056(2) will neither gain access to a tracking system account, nor engage in any activities, analyses, or discussions that would result in sharing market position information of my entity with any other entity or individual. I certify that the named consultant or advisor has neither legally binding authority over my entity nor decision-making authority over my entity's market position. I certify that conflict of interest and confidentiality policies and procedures are in place for work with this consultant or advisor and that the individual has read and acknowledged that they will adhere to these policies and procedures."

(ii) An entity is eligible for the shared role exemption when the individual consultant or advisor with shared roles has neither legally binding authority over any of the entities that they serve nor decision-making authority over the market positions of any of the entities that they serve.

(iii) An individual will not be considered to meet the qualification for the shared role exemption and the entity will remain subject to the disclosure requirements of a direct corporate association if the individual has a user account in the tracking system, or if the individual provides services specifically to the registered entity that are not described in the definition of "cap and invest consultant or advisor" in WAC 173-446-056.

AMENDATORY SECTION (Amending WSR 22-20-056, 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 and mailing 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~~)) Name, physical address of workplace, mailing address, phone number, and email address of the party's control persons as defined in WAC 173-446-020;

(d) Names and contact information for individuals or parties controlling over 10 percent of the beneficial ownership or 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~~)) Name, physical address of workplace, phone number, email address, and the name of the employer for any individual 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)~~)), as defined in WAC 173-446-020. Employees, delegates, and officials of local, state, and federal regulatory agencies who have the ability to gain knowledge of or access to the entity's market positions pursuant to any applicable local, state, or federal rules, orders, or decisions are excluded from this disclosure requirement;

(i) For direct corporate associations with ((~~registered~~)) entities ((~~only~~)) registered in Washington or in an external GHG ETS to which Washington is linked, 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. The holding limit and purchase limit assigned will remain in effect until all registered entities of a direct corporate association have submitted updated and consistent percentage shares of the holding limit and purchase limit, the sum of which must equal 100 percent.

(i) All registered entities of a direct corporate association must provide ecology the shared holding limit and purchase limit as outlined in WAC 173-446-120 (1)(i) within 30 calendar days after the creation of a new direct corporate association or after a change in the type of an existing direct corporate association.

(ii) If each registered entity does not provide ecology a shared holding limit and purchase limit within 30 calendar days, ecology may

restrict the registered entities as outlined in WAC 173-446-320(3); 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.

(5) For entities that were registered in Washington's program or the GHG ETS of a linked jurisdiction before October 1, 2026:

(a) Starting 180 days prior to December 31, 2027 (July 4, 2027), a registered entity that is not in a direct corporate association under WAC 173-446-105 (7)(a), but will become subject to a direct corporate association on January 1, 2028, under WAC 173-446-105 (7)(c), must identify the upcoming direct corporate association and disclose the information required pursuant to WAC 173-446-120(1) and, if applicable, apply for a shared role exemption as outlined in WAC 173-446-110 (6)(d). These registered entities must disclose the upcoming direct corporate association and receive approval of any applicable shared role exemption by December 31, 2027.

(b) Effective January 1, 2028, and thereafter, registered entities subject to a direct corporate association pursuant to WAC 173-446-105(7) must disclose the required information pursuant to sub-

section (1) of this section, in accordance with the deadline schedule contained in subsection (4) of this section.

(6) Prior to January 1, 2028, any direct corporate associations created pursuant to WAC 173-446-105(7) that include one or more registered entities that registered in the program after October 1, 2026, the registered entities will have 30 calendar days to identify this corporate association and disclose the required information pursuant to subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 22-20-056, filed 9/29/22, effective 10/30/22)

WAC 173-446-130 Designation and certification of account representatives. (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. An individual registering as a general market participant may elect to have a combined role to serve as both a primary and alternate account representative, or may designate up to four additional alternate account representatives. Account viewing agents with more limited permissions may also be designated, as described in WAC 173-446-140. For the ((~~purposes of the~~)) designated primary account representative ((~~designations~~)) and each additional designated alternate account representative, 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~~)) mailing address, phone number, and email address;

((~~(ii)~~)) (b) 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)~~)) (i) The notarization must include the notary stamp or seal, if required by the jurisdiction where the notary public is commissioned, the notary public's name, the county or state of the notary public's place of business, the commission expiration, the signature of the notary public, and the date of notarization.

(ii) If a notary is obtained from outside of the United States, an apostille must be submitted to confirm that the individual who notarized the document had valid commission at the time that the docu-

ment was notarized. The apostille must be attached to the notarized document.

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

((~~(iv)~~)) (d) Confirmation dated no earlier than three months prior to submission from a financial institution located in the United States that the individual has a ((~~deposit~~)) bank account with the institution((~~; and~~

~~(v)~~)). For the purpose of this subsection "located in the United States" means doing business in the United States. If the registration applicant will only represent a covered or opt-in entity located outside of the United States, the registration applicant may provide documentation of an open bank account in the country in which the covered or opt-in entity is located. This documentation must be accompanied by a signed attestation of a control person of the covered or opt-in entity to ecology as follows: "I certify under penalty of perjury under the laws of the State of Washington that the person requesting access to the program registry will be designated as an account representative for this entity. I certify under penalty of perjury under the laws of the State of Washington that this entity is a covered or opt-in entity under chapter 70A.65 RCW and has no personnel residing in the United States with the authority to take actions that are binding on all persons who have an ownership interest with respect to compliance instruments held in the account for this entity.";

(e) 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((~~.~~));

((~~(e)~~)) (f) A declaration signed by a ((~~director or by any other officer~~)) control person, 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)~~)) (g) 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) Except for individuals registering as general market participants and electing to use a combined role as outlined in subsection (1) of this section, each registered entity must have at least two active account representatives at all times, including a primary account representative, until the entity is authorized to exit the program.

(a) An active account representative is an individual who maintains up-to-date information and documentation in the tracking system as required in subsection (1) of this section and maintains the authority to act on behalf of the entity's tracking system account.

(b) If a registered entity no longer maintains two active account representatives, then a control person of the registered entity must identify new account representatives within 10 business days in accordance with this section.

(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) Individuals are prohibited from sharing their tracking system account or auction platform information, including user ID, username, password, and security questions and answers, with anyone other than authorized ecology personnel, authorized personnel from a linked jurisdiction, or authorized personnel of the administrator of the tracking system or auction platform. Sharing login information with others aside from these authorized personnel may result in loss of access to the tracking or auction platforms, and additional penalties under this chapter.

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

((~~(9)~~)) (10) Subsection (9) of this section does not apply to an entity supplying exchange clearing services pursuant to WAC 173-446-052, provided that it submits with its application to participate as a general market participant the following:

(a) A statement irrevocably consenting to service of process by certified mail directed to the mailing address provided in the entity's application in any action against the entity in a court of the state of Washington arising out of the entity's activities under this chapter; and

(b) In a form approved by ecology, a statement irrevocably consenting to the exercise of personal jurisdiction over the entity by any court situated in Washington state having jurisdiction over the subject matter of the action, in any action against the entity arising out of the entity's activities under this chapter.

(11) 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. In addition, a party may not be designated as an account representative if they are currently barred or suspended by the Financial Industry Regulatory Authority or the National Futures Association.

(12) When there is a change to the information an account representative submitted pursuant to subsection (1) of this section the ac-

count representative must update the individual registration information within 10 business days of the change.

((~~(10)~~)) (13) A registered entity must notify ecology within 10 business days and revoke the designation ((~~as~~)) of an account representative ((~~or account viewing agent~~)) if, while acting as an account representative ((~~or an account viewing agent~~)), a party is:

(a) 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~~)); or

(b) Barred or suspended by the Financial Industry Regulatory Authority or the National Futures Association.

(14) The information submitted to ecology must be true, accurate, and complete, and account representatives must abide by the terms and conditions of the tracking system and auction platform. Ecology may revoke access to the tracking system or auction platform for any account representative who fails to comply with the requirements of this section or who fails to abide by the terms and conditions of the tracking system and auction platform.

(15) An account representative must provide further information regarding their disclosures in this section within 10 business days after receiving a request from ecology.

AMENDATORY SECTION (Amending WSR 22-20-056, filed 9/29/22, effective 10/30/22)

WAC 173-446-140 Designation of account viewing agents. (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, mailing address, email address, and ((~~telephone~~)) phone number of each individual delegated to be an account viewing agent;

((~~(c)~~)) (b) 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.

(i) The notarization must include the notary stamp or seal, if required by the jurisdiction where the notary public is commissioned, the notary public's name, the county or state of the notary public's place of business, the commission expiration, the signature of the notary public, and the date of notarization.

(ii) If a notary is obtained from outside of the United States, an apostille must be submitted to confirm that the individual who notarized the document had valid commission at the time that the document was notarized. The apostille must be attached to the notarized document;

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

((~~(e)~~)) (d) Confirmation dated no earlier than three months prior to submission from a financial institution located in the United States that the individual has a ((~~deposit~~)) bank account with the institution. For the purposes of this subsection, "located in the United States" means doing business in the United States. If an applicant will only represent a covered or opt-in entity located outside of the United States, the applicant may provide documentation of an open bank account in the country in which the covered or opt-in entity is located. This documentation must be accompanied by a signed attestation of a control person of the registration applicant's employer to ecology as follows: "I certify under penalty of perjury under the laws of the State of Washington that the person requesting access to the program registry will be designated as an account viewing agent for this entity. This entity is a covered or opt-in entity under chapter 70A.65 RCW and has no personnel residing in the United States with the authority to take actions that are binding on any persons who have an ownership interest with respect to compliance instruments held in the account for this entity.";

((~~(f)~~)) (e) Any conviction for a criminal offense declared in any jurisdiction during the five years prior to designation as an account ((~~representative~~)) viewing agent, or while designated as an account ((~~representative~~)) viewing agent, 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)~~)) (f) An attestation verifying the selection of the account viewing agent, signed by the ((~~officer~~)) control person of the registered entity who is responsible for the conduct of the account viewing agent, and who is one of the ((~~officers~~)) control persons disclosed pursuant to WAC 173-446-120 (1)(c)((~~.~~));

(g) Except as provided in (h) of this subsection, the submission shall include the following attestation statement made and signed by the account viewing agent: "I certify under penalty of perjury under the laws of the State of Washington that I am authorized to view the account information 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 I provided in support of this submission to Ecology are true, accurate, and complete. I consent to the jurisdiction of Washington state, its courts, and the pollution control hearing board for the 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."; and

(h) 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 account viewing agent: "I certify under penalty of perjury under the laws of the State of Washington that I am authorized to view the account information 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 I provided in support of this submission 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."

(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.

(4) A registration applicant or a registered entity may not designate a party as an account viewing agent under subsection (1) of this section 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. In addition, a party may not be designated as an account viewing agent if they are currently barred or suspended by the Financial Industry Regulatory Authority or the National Futures Association.

(5) When there is a change to the information an account viewing agent submitted pursuant to subsection (2) of this section, the account viewing agent must update the individual registration information within 10 business days of the change.

(6) A registered entity must notify ecology within 10 business days and revoke the designation of an account viewing agent if, while acting as an account viewing agent a party is:

(a) Convicted of a criminal offense involving fraud, dishonesty, deceit, or misrepresentation, or any other criminal offense connected with the activities undertaken as an account viewing agent; or

(b) Barred or suspended by the Financial Industry Regulatory Authority or the National Futures Association.

(7) Individuals are prohibited from sharing their tracking system account or auction platform information, including user ID, username, password, and security questions and answers, with anyone other than authorized ecology personnel, authorized personnel from a linked jurisdiction, or authorized personnel of the administrator of the tracking system or auction platform. Sharing login information with others aside from these authorized personnel may result in loss of access to the tracking or auction platforms, and additional penalties under this chapter.

(8) The information submitted to ecology must be true, accurate, and complete, and account viewing agents must abide by the terms and conditions of the tracking system and auction platform. Ecology may revoke access to the tracking system or auction platform for any account viewing agent who fails to comply with the requirements of this section or who fails to abide by the terms and conditions of the tracking system and auction platform.

(9) An account viewing agent must provide further information regarding their disclosures in this section within 10 business days after receiving a request from ecology.

AMENDATORY SECTION (Amending WSR 24-05-080, filed 2/21/24, effective 3/23/24)

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, WTE facility, and each natural gas utility registering in the program, ecology will also set up a limited use holding account. Electric utilities, WTE facility, 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 electric utility registered in the program, ecology will set up an electricity allocation holding account through which ecology will distribute no cost allowances as described in WAC 173-446-260(3).

(d) For each exchange clearing house, ecology will set up a clearing house account.

(e) 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), (d) and ((~~(d)~~)) (e) 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, its electricity allocation holding account, or any combination of ((~~both~~)) these accounts, 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~~)) total allowance budget for year i. If Washington has linked with any external GHG ETS, upon the linkage effective date this equals the combined allowance budgets of Washington and all external GHG ETS of linked jurisdictions

i = current year

(b) Except as provided in ((~~(c) and~~)) (d) and (e) of this subsection, the maximum number of allowances of each vintage ((~~subsequent to~~)) later than 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~~)) total allowance budget for year j. If Washington has linked with any external GHG ETS, upon the linkage effective date this equals 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 do not count toward the holding limits set in (a) of this subsection.

(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 do not count toward the holding limits set in (a) and (b) of this subsection.

(e) Allowances held in a clearing house account do not count toward the holding limits set in (a) and (b) of this subsection.

(f) In addition to the holding limits described above, unless and 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~~)) a group of direct corporate associates, 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~~)) control person 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.

AMENDATORY SECTION (Amending WSR 22-20-056, filed 9/29/22, effective 10/30/22)

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~~)) values are established in Table 200-1. Ecology may only adjust the total program baseline values 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) establishes processes to ((~~make sure~~)) ensure that each metric ton of emissions is included in the total program baseline and ((~~avoid~~)) to prevent 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 baseline((~~s~~)) calculations.

(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~~)) are calculated based on the facilities' covered emissions as established in WAC 173-446-040 averaged from emissions years ((~~2023~~)) 2015 through ((~~2025~~)) 2019. Ecology ((~~must adjust~~)) adjusted the second compliance period 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~~)) will be calculated September 29, 2028, using data reported as of that day, based on the facilities' covered emissions as established in WAC 173-446-040 averaged from emissions years ((~~2027 through 2029. 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~~)) 2023 through 2025.

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

Table 200-1: Total Program Baseline Values

((~~Emissions Years~~)) Compliance Period	**Total Program Baseline (annual MT CO_2e)**
First compliance period: 2023-2026	68,052,220
((~~2027-2030~~)) Second compliance period	((~~Set by rule by October 1, 2026, according to subsection (3) of this section~~)) 68,151,068

((~~Emissions Years~~)) Compliance Period	Total Program Baseline (annual MT CO_2e)
((~~2031 and subsequent years~~)) Subsequent compliance periods	((~~Set by rule by October 1, 2028, according to subsection (4) of this section~~)) 68,151,068 + (average covered emissions from of railroad companies as described under WAC 173-446-030(3) from 2023 through 2025 calculated using data reported as of September 29, 2028.)

AMENDATORY SECTION (Amending WSR 22-20-056, filed 9/29/22, effective 10/30/22)

WAC 173-446-210 Total program allowance budgets. (1) **Calculating the total program allowance budget.** Ecology ((~~must~~)) will 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~~)) emissions years 2023 through 2026 is the first compliance period baseline described in WAC 173-446-200 Table 200-1 multiplied by the economy wide emissions level for that year described in WAC 173-446-210 Table 210-1, divided by the 2022 economy wide emissions level.

$$T_Y = B_Y * \frac{E_Y}{E_{2022}}$$

Where:

T_Y = The total program allowance budget for a given year

B_Y = The First Compliance Period: The first compliance period baseline described in WAC 173-446-200 Table 200-1

E_Y = The economy wide emissions level for the given budget year described in WAC 173-446-210 Table 210-1

E_{2022} = The economy wide emissions level for 2022 that is described in WAC 173-446-210 Table 210-1

(b) ((~~Emissions years 2027 through 2030~~)) Second compliance period.

((~~(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~~)) years in the second compliance period decreases annually as described in WAC 173-446-210

Table 210-1. To calculate these values the second compliance period baseline described in WAC 173-446-200(3) as listed in WAC 173-446-200 Table 200-1 is multiplied by the economy wide emissions level for that year described in WAC 173-446-210 Table 210-1 divided by the 2022 economy wide emissions level.

$$T_Y = B_Y * \frac{E_Y}{E_{2022}}$$

Where:

T_Y = The total program allowance budget for a given year
B_Y = The Second Compliance Period: The second compliance period baseline described in WAC 173-446-200 Table 200-1
E_Y = The economy wide emissions level for the given budget year described in WAC 173-446-210 Table 210-1
E_{2022} = The economy wide emissions level for 2022 that is described in WAC 173-446-210 Table 210-1

(c) ((~~Emissions years 2031 through 2042~~)) Subsequent compliance periods.

((~~(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~~)) the third and subsequent compliance periods decreases annually as described in WAC 173-446-210 Table 210-1. To calculate these values the baseline described in WAC 173-446-200(4) as listed in WAC 173-446-200 Table 200-1 is multiplied by the economy wide emissions level for that year described in WAC 173-446-210 Table 210-1 divided by the 2022 economy wide emissions level.

$$T_Y = B_Y * \frac{E_Y}{E_{2022}}$$

Where:

T_Y = The total program allowance budget for a given year
B_Y = The Subsequent Compliance Period: The baseline for subsequent compliance periods described in WAC 173-446-200 Table 200-1
E_Y = The economy wide emissions level for the given budget year described in WAC 173-446-210 Table 210-1
E_{2022} = The economy wide emissions level for 2022 that is described in WAC 173-446-210 Table 210-1

(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. When new sectors enter the program at the beginning of the third compliance period, additional allowances associated with those sectors will be added to the overall budget shown in column three from that point forward using the formula established in subsection (1)(c) of this section.

(a) If Washington enters into a linkage agreement, upon the linkage effective date, the values in column three for emissions years 2029 and 2030 of Table 210-1 will be adjusted to reflect the baseline for sectors entering the program in the third compliance period. These

values will be updated pursuant to WAC 173-446-200(4) and come from Table 200-1 for the total allowance baseline.

(b) If Washington has not entered into a linkage agreement, or if Washington has entered into a linkage agreement but prior to the linkage effective date, the values in column three for emissions years 2029 and 2030 of Table 210-1 will be unchanged.

Table 210-1: Total program allowance budget for each year ((~~of the first compliance period~~)) using the methods established in subsections (1) and (2) 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~~))

Emissions Year	Economy Wide Emissions Level ($MT CO_2e$) (E_y)	Total Allowance Budget ($MT CO_2e$) (T_y)
2022	97,912,500	N/A
2023	91,923,438	63,889,636
2024	85,934,375	59,727,052
2025	79,945,313	55,564,468
2026	73,956,250	51,401,884
2027	67,967,188	47,307,917
2028	61,978,125	43,139,287
2029	55,989,063	38,970,657 **
2030	50,000,000	34,802,026 **
2031	47,700,000	33,201,133 *
2032	45,400,000	31,600,240 *
2033	43,100,000	29,999,347 *
2034	40,800,000	28,398,453 *
2035	38,500,000	26,797,560 *
2036	36,200,000	25,196,667 *
2037	33,900,000	23,595,774 *
2038	31,600,000	21,994,881 *
2039	29,300,000	20,393,987 *
2040	27,000,000	18,793,094 *
2041	24,800,000	17,261,805 *
2042	22,600,000	15,730,516 *
2043	20,400,000	14,199,227 *
2044	18,200,000	12,667,938 *
2045	16,000,000	11,136,648 *
2046	13,800,000	9,605,359 *
2047	11,600,000	8,074,070 *
2048	9,400,000	6,542,781 *
2049	7,200,000	5,011,492 *
2050	5,000,000	3,480,203 *

Compliance periods will be determined upon linkage, as noted in the "compliance period" definition in WAC 173-446-020.

* Prior to linkage, the allowance budgets for 2031 and each year thereafter, will be based on the baseline described in WAC 173-446-200 Table 200-1 for subsequent compliance periods.

** Upon linkage, the allowance budgets for 2029 and each year thereafter, will be based on the baseline described in WAC 173-446-200 Table 200-1 for subsequent compliance periods.

Table 210-2: Increase in allowance budgets (MT CO_2e) in the first compliance period as a result of the clarification from the legislature that the target date for the emissions reductions required by RCW 70A.45.020 is December 31st, instead of January 1st, of each year.

Emissions Year	Increase in Budget (MT CO_2e)
2023	601,071
2024	1,202,143
2025	1,803,214
2026	2,404,286

Table 210-3: The increase in the allowance budgets from 2027-2030 caused by the addition of waste to energy facilities as covered entities and as a result of the clarification from the legislature that the target date for the emissions reductions required by RCW 70A.45.020 is December 31st, instead of January 1st, of each year.

Emissions Year	Increase in Budget (MT CO_2e)
2027	3,073,973
2028	3,668,999
2029	4,264,024
2030	4,859,048

AMENDATORY SECTION (Amending WSR 22-20-056, 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 by March 31st of the calendar year after the first emissions year for which they ((~~request~~)) have a compliance obligation and are eligible to receive 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~~)) For any EITE facility that submitted complete information under (a) of this subsection after September 15, 2022, ecology will complete this process by August 15th of the calendar year when the request was submitted provided that a positive verification statement has been issued under WAC 173-441-085(6) for any applicable emissions years that were used to calculate the allocation baseline. 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 un-

der 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~~)) if it identifies significant changes or errors in the data used to establish an allocation baseline as a result of:

(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; or

(IV) A change in product metric, units of production, or product data measurement method as described in WAC 173-441-050 (3)(n)(iii) or (iv) relative to the product metric, units of production, or product data measurement method used in determination of the allocation baseline.

(vi) When reviewing and approving allocation baselines ecology must confirm if any additional NAICS codes reported by the facility under WAC 173-441-050 (3)(i)(ii) are not eligible to receive no cost allowances based on the definition of a manufacturing facility in WAC 173-446A-020 and the NAICS codes listed in Table 030-1 of WAC 173-446A-030. If a facility is reporting additional NAICS codes beginning with 2211, 2212, 22133 or any other NAICS codes not listed in Table 030-1 of WAC 173-446A-030, then ecology must identify the covered emissions associated with the product(s)/activity(s)/service(s) that apply to the additional NAICS code(s) using the data sources listing in (b)(i) of this subsection and exclude those covered emissions from the covered emissions used to calculate the facility's allocation baseline.

(vii) Ecology may make an adjustment to the allocation baseline for an EITE facility if requested by the owner or operator. Ecology may approve an adjustment to an allocation baseline that takes effect for one or more previous emissions years. Ecology will not approve an adjustment to an allocation baseline that would, or is likely to, result in an EITE facility receiving more no cost allowances than the facility's covered emissions for any emissions years for which the adjustment takes effect. In making its determination to approve or deny an adjustment, ecology may also consider analysis described in RCW 70A.65.330(1). Ecology will only consider an adjustment to the allocation baseline for an EITE facility requested by that facility if it finds that at least one of the 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 that have a material impact on emissions. Ecology will only consider adjustments for significant changes that occurred after the program commenced on January 1, 2023, except for the changes described in (b)(vii)(A)(III) of this subsection. For the purpose of this subsection, "significant change in the emissions use or emissions attributable to the manufacture of an individual good or goods" means a change in production or facility operations that increased the total

covered emissions or covered emissions per unit of product at the facility compared to the years used to establish the allocation baseline for the facility and that meets at least one of the following conditions:

(I) The facility commenced manufacturing goods not previously manufactured by the facility that required the installation of a new process unit, as evidenced by a revised air operating permit or other government approval. Ecology must also determine that these goods are being manufactured using best available technology for manufacturing those goods or in a manner that meets an equivalent industry efficiency benchmark including, but not limited to, benchmarks used for allocating allowances to facilities manufacturing those goods in other jurisdictions.

(II) The facility permanently closed one or more process units, which significantly changed the number or type of goods manufactured at the facility, as evidenced by a revised air operating permit or other documentation or attestation provided by the owner or operator of the facility. Ecology must also determine that total annual covered emissions of the facility have not significantly increased since the process unit or units ceased operation.

(III) There were significant changes at the facility during emissions years 2015-2022 so that the years used to establish the allocation baseline are not representative of facility operations. Ecology must also determine that the existing allocation baseline for the facility is lower than other EITE facilities in Washington with the same reported NAICS code in Table 050-1 in chapter 173-441 WAC or the same or an equivalent industrial efficiency benchmark including, but not limited to, benchmarks used for allocating allowances to facilities manufacturing those goods in other jurisdictions. When making this determination ecology must account for any differences in the facility-specific measure of production, product data metrics, and/or units of production used for the facility compared to the facility-specific measure of production, product data metrics, units of production, product benchmarks, or other benchmarks used for EITE facilities in Washington or manufacturing facilities in other jurisdictions.

(B) There are significant changes to the EITE facility's external competitive environment that result in a significant increase in leakage risk that is directly attributable to compliance costs imposed by the program created under this chapter. For the purpose of this subsection, "significant increase in leakage risk" means a high probability that production and covered emissions at the facility would be significantly reduced or cease and would result in a directly attributable increase in greenhouse gas emissions at another facility or facilities manufacturing the same goods outside the state and outside the geography of another jurisdiction with a linkage agreement with Washington. Ecology will only consider changes in the external competitive environment that are directly related to policies or programs that impose compliance costs or equivalent requirements on greenhouse gas emissions from manufacturing facilities. Any adjustments approved by ecology under this subsection will take effect for a maximum of four years and can only apply to emissions year 2027 or later.

(C) There are abnormal operating periods when the EITE facility's carbon intensity has been materially affected. For the purpose of this subsection, "abnormal operating periods" means a significant and unanticipated disruption to normal operating conditions at a facility as the result of a major incident outside the direct control of the facility, such as a natural disaster or power outage that occurred after

the program commenced on January 1, 2023. Any adjustments approved by ecology under this subsection will only be applied to the emissions years when the facility's carbon intensity was materially affected by the abnormal operating periods.

(D) There are significant changes to emissions or product data for the EITE facility as a result of:

(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;

(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; or

(IV) A change in product metric, units of production, or product data measurement method as described in WAC 173-441-050 (3)(n)(iii) or (iv) relative to product metric, units of production, or product data measurement method used in determination of the allocation baseline.

(viii) Owners or operators of any EITE facility who wish to request an adjustment to their approved allocation baseline must submit a request to ecology. Ecology will not consider more than one request for an adjustment under this subsection per facility within a three-year period. Ecology will make determinations on requests submitted under this subsection by August 15th of the calendar year when the request was submitted provided that a positive verification statement has been issued under WAC 173-441-085(6) for any applicable emissions years that were used to calculate the adjusted allocation baseline. Ecology may revise a determination and require the EITE facility to return the equivalent number of allowances if an adverse verification statement is subsequently issued under WAC-173-441-085(8) for any applicable emissions years that were used to calculate the adjusted allocation baseline. Owners or operators must submit the following information to ecology by the applicable date and in a format specified by ecology when requesting an adjustment to an allocation baseline:

(A) For adjustments based on the condition described in (b)(vii)(A) of this subsection, facilities must provide at least two full years of reported emissions and production data since the significant change took effect. The request must be submitted by March 31st of the calendar year when the facility has reported at least two full years of emissions and production data since the significant change took effect. If the facility can provide emissions and production data from emissions years 2015-2019 or earlier years that demonstrates the change in covered emissions per unit of product at the facility compared to the emissions and production data used to establish the allocation baseline for the facility approved by ecology in 2022, then ecology may waive the requirement to submit at least two full years of emissions and production data since the significant change took effect. The facility must also provide information that documents the significant change at the facility, including copies of applicable permits, details of physical changes made to the facility, emissions and production data showing the impact on emissions, and any other information requested by ecology to determine that the facility meets the conditions described in (b)(vii)(A) of this subsection. Ecology will only consider requests under (b)(vii)(A)(III) of this subsection that are received by March 31, 2027.

(B) For adjustments based on the condition described in (b)(vii)(B) of this subsection, the request should be submitted by March 31st of the year for which the facility wishes the adjustment to

be applied to its preliminary allocation of allowances for the following emissions year. Facilities must provide information that demonstrates the following along with any other information requested by ecology to determine that the facility meets the conditions described in (b)(vii)(B) of this subsection:

(I) Compliance costs imposed by the program compared to the compliance costs or equivalent requirements imposed on the applicable facility or facilities with the same reported NAICS code outside of Washington and outside the geography of another jurisdiction with a linkage agreement with Washington. For the purpose of this subsection "compliance costs" means the annual revenues, profits, or value-add for a facility or facilities with the same reported NAICS code or equivalent industrial classification divided by the annual emissions for the same facility or facilities.

(II) Significant changes in the external competitive environment that decrease the compliance costs or equivalent requirements imposed on applicable facilities outside of Washington and outside the geography of another jurisdiction with a linkage agreement with Washington including, but not limited to, the cessation of carbon pricing programs or policies in other jurisdictions.

(III) A reduction in production and emissions at the facility in Washington will be directly offset by an increase in greenhouse gas emissions at a facility or facilities with the same reported NAICS code outside of Washington and outside the geography of another jurisdiction with a linkage agreement with Washington.

(C) For adjustments based on the condition described in (b)(vii)(C) of this subsection, the request should be submitted by March 31st of the year following the emission year(s) when the EITE facility's carbon intensity was materially affected. Facilities must provide information that demonstrates that abnormal operating periods had a material impact on the EITE facility's carbon intensity and any other information requested by ecology to determine that the facility meets the conditions described in (b)(vii)(C) of this subsection.

(D) For adjustments based on the condition described in (b)(vii)(D) of this subsection, the request should be submitted by March 31st of the year for which the facility wishes the adjustment to be applied to its preliminary allocation of allowances for the following emissions year.

(ix) A covered entity that relocates the operations of an EITE facility with a carbon intensity baseline that was approved by ecology under subsection (2)(b) of this section to a new facility in Washington may request that ecology assign to the new facility a carbon intensity baseline equal to the carbon intensity baseline approved by ecology for the existing facility. This request must be submitted to ecology by March 31st of the emissions year for which the new facility will be eligible to receive no cost allowances. Ecology will review and approve the request provided that ecology determines that:

(A) The existing facility from which the approved carbon intensity baseline is being assigned has ceased operations and is a closed facility or will become a closed facility before the new facility commences operations and becomes eligible to receive no cost allowances based on the carbon intensity baseline for the existing facility;

(B) The new facility was constructed after January 1, 2023, and will be operating under the same primary North American Industry Classification System code and report the same production metric under WAC 174-441-050 as the existing facility from which the carbon intensity baseline is being assigned;

(C) The carbon intensity baseline for the existing facility is equal to or below a published carbon intensity benchmark for facilities with the same North American Industry Classification System code or the average carbon intensity of facilities with the same North American Industry Classification System code operating in Washington, or a comparable jurisdiction, if such published benchmark information is available when the covered entity requests transfer of a carbon intensity baseline under this subsection;

(D) The covered entity has complied with all relevant requirements under chapter 70A.65 RCW and this chapter for covered entities to receive no cost allowances; and

(E) Air quality in overburdened communities would not be significantly impacted as a direct result of the new facility being assigned a carbon-intensity baseline equal to the carbon intensity baseline approved by ecology for the existing facility.

(x) If ecology approves the assignment of a carbon intensity baseline under (b)(vii) of this subsection, then the assigned carbon intensity baseline for the new facility will expire after eight emissions years, or emissions year 2034, whichever comes first, and the department will approve a new allocation baseline using the methods described in (b)(v)(A) of this subsection. If the existing facility from which the carbon intensity baseline was assigned does not cease operations and become a closed facility, then ecology will revoke the assignment and approve an allocation baseline for the new facility using the methods described in (b)(v)(A) of this subsection and adjust any allocation of no cost allowances accordingly.

(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~~)) years 2023 through 2026, allowances to cover 97 percent of the facility's allocation baseline for each year during the ((~~second compliance period~~)) years 2027 through 2030, and allowances to cover 94 percent of the facility's allocation baseline for each year during the ((~~third compliance period~~)) years 2031 through 2034.

(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~~)) four-year period for emissions year *t*, as provided in (a) of this subsection.
t = emissions year for which the allocation occurs.

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

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.

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

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~~)) emissions year 2027 or emissions year 2030, ecology may make an upward adjustment in the next ((~~compliance~~)) four-year 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 beyond those achieved since July 25, 2021, are not technically or economically feasible during the next four-year period or part thereof. Ecology may not adjust the reduction schedule to levels above ((~~the first compliance period reduction level~~)) 100 percent of the facility's allocation baseline and adjustments to the reduction schedule expire at the end of the four-year period. Ecology will not approve an adjustment to the reduction schedule that would, or is likely to, result in an EITE facility receiving more no cost allowances than the facility's covered emissions for any emissions years for which the adjustment takes effect. 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~~)) a request to ecology by March 31st

of the year prior to the start of the ((~~compliance~~)) four-year 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~~)) submitted by the facility and information listed in subsection (1)(b)(i) of this section. In making its determination, ecology may also consider analysis described in RCW 70A.65.330(1). Ecology may base the upward adjustment applicable to an EITE facility in the next ((~~compliance~~)) four-year 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.~~)) Owners or operators must submit the following information to ecology in a format specified by ecology when requesting an adjustment to a reduction schedule:

(A) Details of the assessment that was used to identify that additional reductions in carbon intensity or mass emissions at the facility are not technically or economically feasible. This should include an explanation of how the financial value of no cost allowances that the facility has received or is eligible to receive under (b) or (c) of this subsection was considered as part of the economic feasibility assessment.

(B) A description of the facility's manufacturing processes, including the identification of all fuels, processes, equipment, and operations that contribute to the facility's covered emissions.

(C) Description of any factors that have led to an increase or decrease in the facility's covered emissions or emissions intensity of production since July 25, 2021, including details of any projects, actions or strategies implemented by the facility to reduce its greenhouse gas emissions.

(D) Any other information requested by ecology to determine that the facility meets the conditions described in (d)(i) of this subsection.

(iii) For EITE facilities for which ecology has approved an upwards adjustment to the reduction schedule for a four-year period, if the facility is distributed more no cost allowances than required to meet the facility's compliance obligation for the four-year period, then the excess number of allowances will be subtracted from the number of allowances allocated to the facility for the next emissions year.

(iv) 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 uti-

lizing 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)~~)) (v) In the event that a facility ceases production in the state and becomes a closed facility, ecology ((~~will~~)) must withhold or withdraw ((~~the relevant~~)) a share of the facility's no cost allowances ((~~allocated to a~~)) proportional to the time period the 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)~~)) (vi) 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. If the result of the calculation in Eq. 220-3 is greater than zero for an emissions year in which a facility was curtailed, then the resulting number of allowances will be allocated to that facility. If the facility has a no cost allowance deficit carried forward from a previous emissions year, then the deficit must first be subtracted from the result of Eq. 220-3. If the result of Eq. 220-3 is negative for an emissions year in which a facility was curtailed, then the resulting number of allowances will be subtracted from the allowances allocated to the applicable covered entity for the next emissions year according to Eq. 220-2. If the resulting number of allowances cannot be subtracted from the allowances allocated to the applicable covered entity for the next emissions year, ecology will withdraw the resulting number of allowances from the entity. If the curtailed facility has a no cost allowance deficit carried forward from a previous year, then the result of Eq. 220-3 will be added to the deficit and the number of allowances equivalent to the deficit will be withdrawn by ecology. Any allowances withheld or withdrawn under this subsection must be transferred to the emissions containment reserve.

(vii) If the total number of allowances provided to an EITE facility with a mass-based baseline that was estimated by ecology under subsection (1)(b)(v)(A)(III) of this section exceeds the facility's compliance obligation for the emissions years for which it is allocated allowances using the approved mass-based baseline, ecology will subtract the excess number of allowances from the allowances allocated to the facility for the next emissions year. Ecology will provide a

one-time allocation of true-up allowances to an EITE facility with an approved mass-based baseline that was estimated by ecology under subsection (1)(b)(v)(A)(III) of this section if they were not provided with a preliminary allocation of allowances under (b) of this subsection, or allowances from the emissions containment reserve under WAC 173-446-375(2), for the first two emissions years when they were eligible to receive no cost allowances.

(e) New EITE facilities that are assigned a carbon intensity baseline under subsection (1)(b)(ix) of this section will be allocated no cost allowances using the methods specified in (b) and (d) of this subsection. If the total no cost allowances provided to the facility during the first applicable compliance period is less than the compliance obligation from the facility during the applicable compliance period, the facility will be allocated allowances from the emissions containment reserve pursuant to WAC 173-446-375(2) equal to the difference between their compliance obligation and their final allocation of no cost allowances for the applicable emissions years.

(f) EITE facilities for which ecology has approved an adjustment to the allocation baseline under subsection (1)(b)(v)(D) or (1)(b)(vii) of this section will be allocated no cost allowances using the methods specified in (b) and (d) of this subsection with the following modifications:

(i) For adjustments approved under subsection (1)(b)(vii)(A) of this section, ecology will allocate allowances using the adjusted allocation baseline instead of the allocation baseline approved by ecology in 2022 and, if applicable, provide a one-time allocation of true-up allowances to the facility for any previous emissions years for which the adjusted allocation baseline takes effect. The amount of true-up allowances provided will equal the number of allowances the facility should have received for the applicable emissions years using the adjusted allocation baseline as determined using Eq. 220-1 or Eq. 220-4 less the number of allowances already provided to the facility by ecology for the applicable emissions years as determined using Eq. 220-1 or Eq. 220-4.

(ii) For adjustments approved under subsection (1)(b)(vii)(B) of this section, ecology will adjust the EITE facility's allocation baseline upwards by multiplying the allocation baseline by a baseline modifier approved by ecology. The baseline modifier will only be applied to the applicable emissions years approved by ecology. Ecology will not approve a baseline modifier that would result in the facility receiving no cost allowances that would cover greater than 100 percent of its allocation baseline or covered emissions during the applicable emissions years.

(iii) For adjustments approved under subsection (1)(b)(vii)(C) of this section, ecology will adjust the EITE facility's allocation baseline upwards by multiplying the allocation baseline by a baseline modifier approved by ecology and provide a one-time allocation of true-up allowances to the facility for any previous emissions years for which the adjusted allocation baseline takes effect. The amount of true-up allowances provided will equal the number of allowances the facility should have received for the applicable emissions years using the adjusted allocation baseline as determined using Eq. 220-1 or Eq. 220-4 less the number of allowances already provided to the facility by ecology for the applicable emissions years as determined using Eq. 220-1 or Eq. 220-4. The baseline modifier will only account for the increase in carbon intensity directly attributable to the abnormal op-

erating periods and will only be applied to the applicable emissions years approved by ecology.

(iv) For adjustments approved under subsection (1)(b)(vii)(D) or (1)(b)(v)(D) of this section, ecology will allocate allowances using the adjusted allocation baseline instead of the allocation baseline approved by ecology in 2022.

(g) 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.

AMENDATORY SECTION (Amending WSR 22-20-056, 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~~)) are 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~~)) **Calculation of no cost allowances allocated to electric utilities.** The following methods ((~~to~~)) determine ((~~the cost burden effect and~~)) the allocation of no cost allowances to each qualifying electric utility. Under (a) through (c) of this subsection describes the forecasts that ecology uses to develop the inputs to Eq. 230-1.

(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~~)) in Eq. 230-1.

(i) For ((~~the proportion of load that is projected to be served by~~)) natural gas resources, the factor ((~~will be~~)) is 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~~)) is 1.0614 MT CO_2e/MWh, unless the ((~~source of the load~~)) coal resource is coal transition power, as defined in RCW 80.80.010, in which case the factor is zero. Consistent with RCW 19.405.030, starting for emissions year 2027, the factor is zero for any coal resource.

(iii) ((~~For the proportion of load identified as being served by a~~)) The factor is zero for nonemitting or ((~~a~~)) renewable resources ((~~in the clean energy implementation plan, use an emission factor of zero~~)); qualifying facilities under the federal Public Utility Regulatory Policies Act of 1978, P.L. 95-617, in operation prior to May 7, 2019; and nonemitting or renewable resources supporting a voluntary renewable energy purchase by a retail electric customer.

(iv) For ((~~any load from which~~)) resources where 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~~)) the factor is 0.428 MT CO_2e/MWh.

(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 factor is the most recent emission factor established by that procedure.

(e) The ((~~cost burden effect from the emissions for each utility~~)) number of no cost allowances provided to mitigate the cost burden for each emissions year 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.~~))

$$((\text{~~Cost Burden Effect~~})) \quad \underline{\text{NoCostAllowances}_t} = (\text{Load}_{NG} \times \text{EF}_{NG}) + (\text{Load}_{Coal} \times \text{EF}_{Coal}) + (\text{Load}_{NE,RE} \times 0) + (\text{Load}_{Remaining} \times \text{EF}_{Unspecified}) + (\text{Load}_{ACS} \times \text{EF}_{ACS})$$

Eq. 230-1

Where:

$\underline{\text{NoCostAllowances}_t}$ = $\underline{\textit{NoCostAllowances}_t - (2 \times \textit{FJDt} - \textit{FPMA}_t)}$

$\underline{\text{NoCostAllowances}_t}$ = Number of no cost allowances provided for emissions year *t*

Load_{xxx} = Amount of retail ((~~electric~~)) load, for emissions year t, projected to be served by natural gas (NG), coal, ((~~and~~)) nonemitting and renewable resources and other resources listed in WAC 173-446-230 (2)(d)(iii) (NE, RE), sources which ((~~has~~)) have 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. 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)~~)) For an electric utility that is not a load-following customer of a federal power market administration, if the sum of $Load_{NG}$, $Load_{Coal}$, and $Load_{Remaining}$ is less than five percent of retail load, then ecology will adjust $Load_{Remaining}$ upwards so that the sum of $Load_{NG}$, $Load_{Coal}$, and $Load_{Remaining}$ is equal to five percent of retail load. If ecology adjusts $Load_{Remaining}$ upwards, the sum of $Load_{ACS}$ and $Load_{NE,RE}$ will be adjusted downwards an equivalent number of MWh.

(3) **Publication of allocation schedule.**

(a) Ecology will publish the number of allowances to be allocated to electric utilities for each compliance period, referred to as the allocation schedule, using the methods established in subsection (2) of this section. The allocation schedule for the compliance period will be published no later than October 7th in the calendar year prior to the compliance period. Public notice of the availability of this information will also be made concurrently with the publication of the allocation schedule. If the compliance period length is reduced after adoption of the allocation schedule, the allocation schedule will remain in place through the years specified in the schedule, except for updates made under subsection (2)(b) through (d) of this section.

(b) The allocation schedule will be updated by October 7th each year with the most recent asset controlling supplier emission factor for applicable sources or supplying entities.

(c) The allocation schedule may be updated by October 7th each year pursuant to the adjustment mechanism in subsection (4) of this section.

(d) If a compliance period is longer than two years, ecology may update the allocation schedule in the second calendar year of the compliance period, based on a revised forecast of supply or demand for

the remaining years of the compliance period. An update may be made if the revised forecast of supply or demand for the remaining years of the compliance period is approved in a form and manner consistent with subsection (2) of this section by the first business day of September of the second calendar year of the compliance period. Any updates to the allocation schedule based on a revised forecast of supply or demand will be made by October 7th of the second calendar year of the compliance period.

(4) **Adjustment of allowance allocation.** The number of no cost allowances provided to mitigate the cost burden for each emissions year, initially calculated according to Eq. 230-1, may be adjusted after the emissions year according to the following methods.

(a) The initial allocation of allowances may be adjusted to mitigate a significant differential, as assessed by ecology, between the cost burden associated with retail load in previous emission years and the number of no cost allowances provided for previous emission years, calculated according to Eq. 230-1. This assessment is informed by data describing previous emissions years, including data reported and verified according to chapter 173-441 WAC.

(b) Relative to forecasts based on best estimates at the time of retail load or resource supply used to meet retail load, ecology will not make adjustments related to additional or over achievement of:

(i) Decarbonization or energy efficiency efforts such as, but not limited to, time-of-use rates, demand response programs, or weatherization programs; or

(ii) Procurement or dispatch of nonemitting, lower-emitting, or renewable resources.

(c) In a manner consistent with (b) of this subsection, ecology may make adjustments based on:

(i) Forecasts of retail load or resource supply used to meet retail load that were not representative of best estimates at the time of retail load or resource supply used to meet retail load; or

(ii) Divergence from forecast retail load of over 15 percent resulting in cumulative no cost allocation significantly diverging from emissions associated with retail load; or

(iii) A request by an electric utility, consistent with (a) of this subsection.

(d) For ecology to consider an adjustment pursuant to (c)(iii) of this subsection, a utility must submit a request to ecology for adjustment of the number of no cost allowances provided to mitigate the cost burden for an emissions year by August 15th of the calendar year following that emissions year.

(e) If ecology is considering an adjustment pursuant to this subsection that is not requested by an electric utility, ecology must notify the utility by August 15th of the calendar year that ecology intends to make the adjustment. If an electric utility does not meet all reporting and verification requirements under chapter 173-441 WAC for an emissions year and receives an adverse verification statement under chapter 173-441 WAC, or is not in compliance with subsection (10) of this section, ecology may delay notification to the electric utility.

(f) If ecology determines an adjustment is appropriate, ecology will adjust the number of future no cost allowances provided to the electric utility and reflect the adjustment in the published allocation schedule. If ecology determines an upward adjustment is appropriate, ecology will apply the adjustment to the next occurring distribution of no cost allowances under WAC 173-446-260(3). If ecology determines a downward adjustment is appropriate, ecology may apply the ad-

justment to the next occurring distribution of no cost allowances, choose to delay the adjustment, or apply the adjustment to distributions of no cost allowances made over several years.

(5) **No cost allowances provided to mitigate administrative costs.** An additional number of no cost allowances are provided to qualifying electric utilities to mitigate the administrative costs of this chapter, which are part of a utility's cost burden.

(a) In calendar year 2026, ecology will distribute vintage 2027 no cost allowances to mitigate the administrative costs associated with the first compliance period. Only qualifying electric utilities that are registered in Washington's cap and invest program under WAC 173-446-050 or 173-446-053 as of January 1, 2026, are eligible to receive these additional no cost allowances. Vintage 2027 no cost allowances provided to mitigate administrative costs associated with the first compliance period may only be deposited for compliance, consigned, or transferred to a federal power marketing administration. Each eligible electric utility will receive additional no cost allowances as follows:

(i) An electric utility with greater than 20,000,000 MWh in retail sales in 2024 or any multijurisdictional electric company will be allocated 9,000 no cost allowances.

(ii) Any other electric utility with greater than 1,500,000 MWh in retail sales in 2024 will be allocated 5,000 no cost allowances.

(iii) Any other electric utility with greater than 500,000 MWh in retail sales in 2024 will be allocated 3,000 no cost allowances.

(iv) All other electric utilities will be allocated 500 no cost allowances.

(b) In calendar year 2026, ecology will distribute vintage 2027 no cost allowances to mitigate administrative costs associated with emissions years 2027 through 2030. Only qualifying electric utilities that are registered in Washington's cap and invest program under WAC 173-446-050 or 173-446-053 as of October 7, 2026, are eligible to receive these additional no cost allowances. Vintage 2027 no cost allowances provided to mitigate administrative costs associated with emissions years 2027 through 2030 may only be consigned or transferred to a federal power marketing administration. Each eligible electric utility will receive additional no cost allowances as follows:

(i) An electric utility with greater than 20,000,000 MWh in retail sales in 2024 or any multijurisdictional electric company will be allocated 9,000 no cost allowances.

(ii) Any other electric utility with greater than 1,500,000 MWh in retail sales in 2024 will be allocated 5,000 no cost allowances.

(iii) Any other electric utility with greater than 500,000 MWh in retail sales in 2024 will be allocated 3,000 no cost allowances.

(iv) All other electric utilities will be allocated 500 no cost allowances.

(c) Starting for distributions made in calendar year 2030, ecology will distribute no cost allowances to mitigate administrative costs associated with the upcoming compliance period in the year before the start of the compliance period. Only qualifying electric utilities that are registered in Washington's cap and invest program under WAC 173-446-050 or 173-446-053 as of October 7th in the year before the start of a new compliance period are eligible to receive these additional no cost allowances. No cost allowances provided to mitigate administrative costs associated with emissions years 2031 onwards may only be consigned or transferred to a federal power marketing administration. Each electric utility will receive additional no cost allow-

ances as follows, multiplied by the number of years in the compliance period:

(i) An electric utility with greater than 20,000,000 MWh in retail sales in any of the three years before the current calendar year or any multijurisdictional electric company will be allocated 1500 no cost allowances.

(ii) Any electric utility with greater than 1,500,000 MWh in retail sales in any of the three years before the current calendar year will be allocated 950 no cost allowances.

(iii) Any other electric utility with greater than 400,000 MWh in retail sales in any of the three years before the current calendar year will be allocated 425 no cost allowances.

(iv) All other electric utilities will be allocated 75 no cost allowances.

(6) **Consignment of no cost allowances allocated to electric utilities.** This subsection specifies consignment requirements for no cost allowances provided to electric utilities, excluding no cost allowances provided to mitigate administrative costs. Consignment requirements for no cost allowances provided to mitigate administrative costs are established in subsection (5) of this section.

Starting with vintage 2027 no cost allowances provided for emissions year 2027, each electric utility must consign no cost allowances, as specified in (b) of this subsection, unless the electric utility is exempt from consignment requirements under (a) of this subsection.

(a) An electric utility is not required to consign no cost allowances of vintage year *t*, if the number of no cost allowances of vintage year *t* provided to the utility is:

(i) Less than two times the forecast load for emissions year *t* served by power marketed by a federal power marketing administration multiplied by the applicable emission factor; or

(ii) Less than two times the electric utility's total compliance obligation as a first jurisdictional deliverer in any emissions year *t* minus two to *t* minus four; or

(iii) Less than two times the electric utility's total compliance obligation as a first jurisdictional deliverer in emissions year *t*; or

(iv) Less than 100,000.

(b) Unless exempt per (a) of this subsection, an electric utility must consign the lesser of Eq. 230-2, Eq. 230-3, Eq. 230-4, or Eq. 230-5.

$$Consign_t = NoCostAllowances_t - (2 \times FJD_t) - FPMA_t \quad \text{Eq. 230-2}$$

$$Consign_t = NoCostAllowances_t - (2 \times Load_{FPMA} \times \text{EF } FPMA) - FPMA_t \quad \text{Eq. 230-3}$$

$$Consign_t = NoCostAllowances_t - (2 \times FJD_{t-2,4}) - FPMA_t \quad \text{Eq. 230-4}$$

$$Consign_t = NoCostAllowances_t - 100{,}000 \quad \text{Eq. 230-5}$$

Where:

$Consign_t$ = Number of no cost allowances of vintage year *t* that must be consigned.
$NoCostAllowances_t$ = Number of no cost allowances of vintage year *t* provided.
$Load_{FPMA}$ = Forecast load in emissions year *t* served by power marketed by a federal power marketing administration.
EF_{FPMA} = Applicable emission factor for the federal power marketing administration.
$FJD_{t-2,4}$ = The electric utility's maximum compliance obligation as a first jurisdictional deliverer in any emissions year *t* minus 2 to *t* minus 4.
$FPMA_t$ = The number of allowances provided for emissions year *t* that were transferred to a FPMA per WAC 173-446-430.

(c) The allocation schedule will be updated by October 7th each year indicating whether a utility is exempt from consignment require-

ments for the upcoming distribution of no cost allowances of vintage year *t*. After August 10th of the calendar year *t* plus one, ecology will notify each utility of the number of no cost allowances of vintage year *t* that must be consigned. By December 31st of the calendar year *t* plus one, ecology will publish the number of no cost allowances of vintage year *t* that must be consigned.

(d) No cost allowances that are required to be consigned shall be transferred to ecology's auction account by December 31st of the calendar year *t* plus two, where *t* is the latest vintage year of no cost allowances when either (i) or (ii) is true, except as described in (iii):

(i) If the number of no cost allowances of vintage year *t* that are required to be consigned per (b) of this subsection is greater than or equal to 100,000. Any no cost allowances not previously subject to a consignment deadline per (d)(iii) of this subsection must also be transferred to ecology's auction account by the same date.

(ii) When the cumulative number of no cost allowances of any vintage year that have not been subject to a consignment deadline per (d)(iii) of this subsection is equal to or greater than 100,000 allowances.

(iii) If the number of no cost allowances of vintage year *t* that are required to be consigned per (b) of this subsection is less than 100,000, those no cost allowances are not subject to a consignment deadline until (d)(i) or (ii) of this subsection applies.

(7) **Use of no cost allowances.** In a manner consistent with subsections (5) and (6) of this section, allowances allocated at no cost to electric utilities may be consigned to auction for the benefit of ratepayers, transferred at no cost to a federal power marketing administration as described in WAC 173-446-426, 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~~)) under WAC 173-446-425 and 173-446-426. 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.

(8) 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.

(9) The department may not allocate allowances to an electric utility under this section for greenhouse gas emissions associated with electricity produced by a waste to energy facility for which the facility has a compliance obligation under this chapter.

(10) **Additional required disclosures.** Any electric utility allocated under this section, must provide to ecology within 30 calendar days any additional information requested by ecology concerning forecasts used by ecology to develop the inputs to Eq. 230-1 or as part of an adjustment assessment under subsection (4) of this section.

(11) **Transfer of utility territory.**

(a) If ecology determines that an electric utility subject to chapter 19.405 RCW may permanently cease serving Washington retail

electric load at any point in the upcoming calendar year, ecology will not distribute no cost allowances to that utility in October of the current calendar year as otherwise specified in this section and WAC 173-446-260(3). Ecology will instead distribute no cost allowances in the following calendar year to the electric utility after the period the electric utility will serve Washington retail electric load is certain. Ecology will determine an appropriate decrease in the amount of no cost allowances provided to the electric utility under subsections (2) and (5) of this section based on the period the electric utility served Washington retail electric load.

(b) If an electric utility begins serving Washington retail electric load and becomes subject to chapter 19.405 RCW after the beginning of a calendar year and was not previously provided no cost allowances for that calendar year, ecology will distribute no cost allowances to the electric utility after the period the electric utility will serve Washington retail load and be subject to chapter 19.405 RCW is certain. Within 60 calendar days of becoming subject to chapter 19.405 RCW and beginning to serve Washington retail electric load, the electric utility must register in the program to be eligible to receive no cost allowances to mitigate administrative costs for the current compliance period. Ecology will work with the electric utility to determine a process for allocation under subsection (2) of this section in the first compliance period the utility becomes subject to chapter 19.405 RCW. Ecology will determine an appropriate decrease in the amount of no cost allowances provided to the electric utility under subsections (2) and (5) of this section based on the period that the electric utility is serving Washington retail electric load.

NEW SECTION

WAC 173-446-235 Distribution of allowances to waste to energy facilities. (1) **No cost allowances allocated to a waste to energy facility.** Beginning January 1, 2027, until December 31, 2030, ecology will allocate no cost allowances to a waste to energy facility specified in RCW 70A.65.080(2) and as defined in WAC 173-446-220, that was constructed prior to 1992, if the facility is operated in compliance with federal laws and regulations and meets state air quality standards. A WTE 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 WTE facility.

(2) **Calculation of allocation to a WTE facility.** No cost allowances will be allocated for a given emissions year in an amount equal to the following percentages of the facility's allocation baseline. Ecology will establish the facility's allocation baseline by calculating the facility's average annual baseline covered emissions reported to ecology for calendar years 2021 through 2025.

(a) No cost allowances are allocated as follows:

(i) For emissions years 2027 and 2028, 100 percent of facility's allocation baseline;

(ii) For emissions year 2029, 93 percent of facility's allocation baseline;

(iii) For emissions year 2030, 86 percent of facility's allocation baseline.

(b) For emissions year 2027, no cost allowances will be allocated no later than January 1, 2027. For emissions years 2028 through 2030, no cost allowances will be allocated no later than October 24th of the calendar year prior to the emissions year.

(c) Ecology may make an adjustment in the facility's allocation baseline if significant changes or errors are identified in the reported data used to establish the baseline due to revised reports or new assigned emissions levels under chapter 173-441 WAC. Ecology may make a downward adjustment in the facility's allocation baseline, as determined by ecology, if facility operations change significantly, resulting in a substantial reduction in facility covered emissions.

(3) **Consignment of no cost allowances allocated to a WTE facility.** A minimum of 40 percent of the allowances allocated for each emissions year under subsection (2) of this section must be annually consigned to auction by a WTE facility. No cost allowances that are required to be consigned must be transferred to ecology's auction account by December 31st of the emissions year for which the allowances are provided. Proceeds from consignment must be utilized according to the process and requirements provided within this subsection.

(a) The proceeds from consignment must be deposited by ecology into an account held by the owner or operator of the WTE facility that is dedicated solely to expenditures allowed by this section. Expenditures from this account by the owner or operator of the WTE facility are subject to all the planning, approval, and reporting requirements in this section, and must be detailed in the annual report in subsection (7) of this section.

(b) The remaining no cost allowances allocated to a WTE facility may be consigned to auction for investments in programs and projects that reduce greenhouse gas emissions or deposited for compliance. No cost allowances allocated to a WTE facility and intended for consignment may not be traded, transferred, or sold.

(c) Proceeds from consigned allowances may only be used by the owner or operator of the WTE facility, with the approval of ecology, for investments in projects or programs that reduce greenhouse gas emissions associated with the WTE facility, and must adhere to the following process:

(i) Before expenditure of proceeds from consigned allowances specified in subsection (2) of this section, the owner or operator of a WTE facility must submit to ecology a written proposal for investments in projects or programs that reduce greenhouse gas emissions associated with the WTE facility. The format and required content of a greenhouse gas emissions reduction proposal will be provided by ecology to the WTE facility by December 1, 2026.

(ii) Within 90 days of receipt, the department must complete its review of the proposal. The owner or operator of the WTE facility must address ecology's comments and gain final approval of the revised proposal from ecology before making the proposed expenditures.

(iii) The owner or operator of a WTE facility must take reasonable steps towards implementation of the proposal, consistent with the proposal timeline and requirements, and report on progress within the report required in subsection (7) of this section.

(iv) A proposal for a project or program included in the greenhouse gas emissions reduction plan required in subsection (6) of this section, once approved by ecology, will be considered to meet the requirements in this subsection.

(4) **Compliance obligation.** If the actual emissions of the waste to energy facility exceed the facility's no cost allowances allocated for emissions years 2027 through 2030, the owner or operator of the WTE facility must acquire additional compliance instruments to meet its compliance obligation. The WTE facility may bank unused allowances. Ecology will limit the use of offset credits for compliance by the WTE facility such that the quantity of no cost allowances plus the provision of offset credits does not exceed 100 percent of the facility's total compliance obligation for emissions years 2027 through 2030.

(5) **Curtailed or closed WTE facility.** In the event that a facility ceases production in the state and becomes a closed facility, ecology must withhold or withdraw a share of the facility's no cost allowances proportional to the time period the facility ceases production in the state and becomes a closed facility. If the owner or operator of the WTE facility curtails all production and becomes a curtailed facility, the facility may retain unused allowances, but they may not be traded, sold, or transferred and the facility is still required to invest any proceeds from consignment into emissions reduction efforts as specified in subsection (3) of this section. An owner or operator of a curtailed WTE facility may transfer the allowances to a new operator of the WTE facility. If the curtailed facility becomes a closed facility, then all unused allowances must be transferred to the emissions containment reserve established in RCW 70A.65.140. A curtailed WTE facility is not eligible to receive no cost allowances during a period of curtailment. Any allowances withheld or withdrawn under this subsection must be transferred to the emissions containment reserve established in RCW 70A.65.140.

(6) **WTE facility greenhouse gas emissions reduction and waste reduction and material recovery plan.** By December 1, 2030, the owner or operator of a WTE constructed prior to 1992 must provide a plan to ecology and the department of commerce. The plan must include a greenhouse gas emissions reduction plan and a waste reduction and material recovery plan. Ecology may provide technical assistance and guidance for development and implementation of the plan.

(a) The plan must include two parts:

(i) A greenhouse gas emissions reduction plan that outlines how the facility will achieve emissions reductions consistent with the state emissions limits for 2040 and 2050 under chapter 70A.45 RCW.

(A) Emissions reductions may be proposed to be achieved by any combination of carbon capture, sequestration or other captured carbon use approved by rule or policy by ecology, waste reduction activities, recycling and reuse activities, energy conservation, industrial symbiosis, or other greenhouse gas emissions reduction strategies identified by the owners or operators of the WTE facility.

(B) Emissions reduction measures proposed in the plan must be designed to achieve real, permanent, quantifiable, and verifiable greenhouse gas reductions.

(C) The plan must include a detailed technical description of the proposal, a timeline for its completion, an estimation of annual emissions reductions attributable to the project or program, estimated project costs, sources of funding for the project, including consigned allowance revenue provided by ecology to the owner or operator of the WTE facility, and other technical implementation details necessary to understanding the objectives, implementation, resources and outcomes of the project or program.

(D) The format and required content of the greenhouse gas emissions reduction plan will be provided by ecology to the WTE facility by December 1, 2026.

(ii) A waste reduction and material recovery portion of the plan must be consistent with the state's waste management hierarchy established in RCW 70A.205.005, take into consideration the organic material management policies in RCW 70A.205.540 and 70A.205.545 and the expected impacts of chapter 70A.208 RCW, and consider the local solid waste plan under chapter 70A.205 RCW.

(b) In developing the plan, the owner or operator of the WTE facility must document their consideration of social, environmental, and health factors in overburdened and vulnerable populations, and consult with local municipally created stakeholder and community advisory bodies formed with the purpose of advising on climate or sustainability decisions.

(c) The owner or operator of a WTE constructed prior to 1992 must submit a draft plan to ecology and the department of commerce for review by February 1, 2030.

(i) Within 180 days of receipt, ecology, in consultation with the department of commerce must complete its review of the plan and provide comments to the owner and operator of the WTE facility.

(ii) The owner or operator of the WTE facility must meaningfully address any comments and requested corrections from ecology and finalize the plan within 120 days of receiving ecology's comments.

(d) The owner or operator of the WTE facility must take reasonable steps toward implementation of the plan, operate the facility and take other actions, as appropriate, consistent with the goals of the plan, including dedication of revenue from no cost allowances consigned to auction as described in subsection (3) of this section. The owner or operator of the WTE facility must report on progress within the report required in subsection (7) of this section.

(7) The owner or operator of the WTE facility must report in writing to ecology by February 1st of each year a detailed accounting of any funds received and expended on ecology-approved investments in projects or programs that reduce greenhouse gas emissions associated with the WTE facility occurring in the previous emissions year. This accounting must be accompanied by a narrative description that includes the project or program emissions reduction measures partially or entirely completed, as well as detail on the staffing, equipment, contractors, and other associated expenses incurred. The report must provide a detailed explanation of any significant deviations in scope, timeline, expenditures, and/or funding sources from the greenhouse gas emissions reduction plan required in subsection (6) of this section. The report must also detail project or program emissions reduction measure related activities planned for the coming calendar year. Ecology may require revisions to this report within 14 calendar days of the request if the report does not provide sufficient detail on expenditure of consignment proceeds. The owner or operator of the WTE facility must report to ecology following each calendar year until all funds from the account required by subsection (3) of this section have been expended.

AMENDATORY SECTION (Amending WSR 22-20-056, 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~~)) 2026 distributed to a natural gas utility decreases annually relative to the previous year by an additional seven percent of the utility's allocation baseline.

(iii) The total number of no cost allowances for 2027 through 2030 distributed to a natural gas utility decreases annually relative to the previous year by an additional six and one tenth percent of the utility's allocation baseline.

(b) Emissions years 2031 through ((~~2042~~)) 2050.

(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~~)) two and three tenths percent of their allocation baseline.

(ii) The total number of no cost allowances distributed to a natural gas utility for 2032 through ((~~2042~~)) 2050 decreases annually relative to the previous year by an additional ((~~one and eight~~)) two and three 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.

NEW SECTION

WAC 173-446-245 Voluntary renewable electricity reserve account. Total allowances allocated for the purposes of recognizing voluntary renewable electricity purchases. Ecology will allocate 0.33 percent of the allowances of vintage year 2023-2026 in Table 210-1 to a voluntary renewable electricity reserve account pursuant to RCW 70A.65.090 (9) and (11).

AMENDATORY SECTION (Amending WSR 22-20-056, filed 9/29/22, effective 10/30/22)

WAC 173-446-250 Removing and retiring allowances. (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~~)) three years' annual allowance budgets in equal increments 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 unresolved compliance obligations resulting from covered entity bankruptcy.** Starting in 2027, ecology will retire future vintage allowances equivalent to the unsurrendered compliance obligation of any bankrupt entity, where such compliance obligation is not otherwise accounted for by WAC 173-446-610(12). The unsurrendered compliance obligation of the bankrupt entity consists of the quantity of verified reported emissions under chapter 173-441 WAC, and assigned emissions for which the covered entity would be required to submit allowances from the allowance budget two years after the current allowance budget year that is not already allocated to entities pursuant to WAC 173-446-370.

(4) **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 as-

sociated 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)~~)) 0.428 MT of CO_2e/MWh.

(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.

(5) **Adjustments related to withdrawal, suspension, or revocation of linkage.** If ecology suspends or revokes a linkage under WAC 173-446-090(6), ecology may adjust allowance budgets of current and future years as follows:

(a) Ecology may remove and retire allowances from the allowance budgets of current and future years if ecology determines an adjustment is necessary to ensure consistency with the requirements of RCW 70A.65.060 and 70A.65.070.

For each determination, ecology will provide notice to the public of ecology's determination to remove and retire allowances and how many allowances to remove if any.

(b) Ecology may also issue additional allowances of current and future years as necessary. The department shall determine and make public the circumstances, metrics, and processes that would initiate the public consideration of additional allowance budget adjustments to ensure successful achievement of the proportionate emission reduction limits.

AMENDATORY SECTION (Amending WSR 22-20-056, filed 9/29/22, effective 10/30/22)

WAC 173-446-260 Allowance distribution dates. (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.

AMENDATORY SECTION (Amending WSR 22-20-056, filed 9/29/22, effective 10/30/22)

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. Starting with the first year of the second compliance period, electric utilities must consign no cost allowances to auction consistent with WAC 173-446-230 (5) and (6). 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.

(iv) No cost allowances of vintage year *t* that are required to be consigned under (b)(ii) of this subsection must be transferred to ecology's auction account by December 31st of the calendar year *t*.

(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 transfer the number of allowances they intend to consign to an auction to the auction holding account 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) Ecology must introduce any additional allowances from the first compliance period described in Table 210-2, that are not placed in reserve accounts as required in WAC 173-446-245, 173-446-370, and 173-446-375. Ecology will introduce these additional allowances through quarterly auctions no later than the quarterly auction that will transfer allowances to entities before November 1, 2027.

(c) 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 (excluding those consigned by utilities as described in WAC 173-446-300 (2)(b)) 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. The number of allowances redesignated to a subsequent auction will not exceed 25 percent of the allowances already designated by ecology for that auction. If the allowances are not sold within 24 months, ecology shall place them in the emissions containment reserve.

AMENDATORY SECTION (Amending WSR 22-20-056, 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), 173-446-052, 173-446-053, 173-446-054, 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.

(v) An attestation disclosing the existence and status of any ongoing investigation or an investigation that has occurred within the last 10 years with respect to any alleged violation of any rule, regulation, or law associated with any commodity, securities, environmental, or financial market for the entity participating in the auction, and all other entities with whom the entity has a direct corporate association pursuant to WAC 173-446-105 that participate in a carbon, fuel, or electricity market. Additionally, the attestation must disclose any notice of charges issued by an exchange clearing house to the registered entity or settlement agreements entered with an exchange clearing house involving conduct related to derivatives or swaps based on compliance instruments for Washington's program or the GHG ETS of a linked jurisdiction. The attestation must be updated to reflect any change in the status of an investigation that has occurred since the most recent auction application attestation was submitted.

(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 Washington registered entities 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 and WAC 173-446-050, 173-446-053, and 173-446-055.

(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.

AMENDATORY SECTION (Amending WSR 22-20-056, filed 9/29/22, effective 10/30/22)

WAC 173-446-317 Auctions—Prohibited actions. (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~~)) and other individuals or organizations, including their direct and indirect corporate associations, and their consultants and advisors 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.

AMENDATORY SECTION (Amending WSR 22-20-056, 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) A registration applicant may be denied registration or a registered entity may have their registration revoked or suspended:

(a) If ecology determines the registration applicant or registered entity has provided false or misleading information;

(b) If ecology determines the registration applicant or registered entity has withheld information material to the registration;

(c) If an individual fails to comply with WAC 173-446-130 within 30 days of submitting a user registration request in the tracking system;

(d) If an individual is already registered and has a user account under the same or a different name. This provision applies to individuals who are also registered in an external GHG ETS to which Washington is linked;

(e) If ecology determines the registration applicant, registered entity, or a consultant or advisor disclosed pursuant to WAC 173-446-056, has made false or materially misleading statements to the public or another registered entity regarding their participation in Washington's program or a GHG ETS of a linked jurisdiction or false representations of information within the tracking system.

(3) If a Washington registered entity violates any provision specified in this chapter, ecology may:

(a) Reduce the number of compliance instruments a covered entity or opt-in entity may have in its accounts below the amount allowed by the holding limit pursuant to WAC 173-446-150(2);

(b) Increase the annual surrender obligation for a covered entity or an opt-in entity to a percentage of its reported and verified or assigned emission above the 30 percent obligation pursuant to WAC 173-446-600 (3)(a);

(c)(i) Suspend or revoke the registration of opt-in entities and general market participants;

(ii) A registered entity that has had its account(s) revoked or suspended by Washington or the GHG ETS of a linked jurisdiction, may not hold compliance instruments or register with Washington's program for another set of accounts in any capacity. If registration is revoked or suspended, the entity must sell or voluntarily retire all compliance instruments in its holding account within 30 days of a notice of revocation. During the 30 days after the notice of revocation, entities may access their holding accounts to sell and transfer com-

pliance instruments, but may not purchase additional compliance instruments;

(d) Limit or prohibit transfers in or out of the holding account.

(4) 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)~~)) (5) 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)~~)) (6) 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)~~)) (7) 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.

AMENDATORY SECTION (Amending WSR 22-20-056, 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 to which Washington is linked, 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.

AMENDATORY SECTION (Amending WSR 22-20-056, 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, and upon the linkage effective date:

(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 by the first business day in December after, ecology shall announce the floor price for the next year.

(4) The price ceiling unit 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 price ceiling unit price for ((~~a year after 2023~~)) 2024 through 2025 shall be the price ceiling unit 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) The price ceiling unit price for 2026 shall be $80.

(7) The price ceiling unit price for 2027 shall be:

(a) If Washington has not entered into a linkage agreement, or if Washington has entered into a linkage agreement but prior to the linkage effective date, the price ceiling unit price for 2027 shall be $80; or

(b) If Washington enters into a linkage agreement, upon the linkage effective date, the price ceiling unit price for 2027 shall be $102.52, 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 the prior year.

(8) The price ceiling unit price for 2028 shall be:

(a) If Washington has not entered into a linkage agreement, or if Washington has entered into a linkage agreement but prior to the linkage effective date, the price ceiling unit price for 2028 shall be $80

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 the prior year; or

(b) If Washington enters into a linkage agreement, upon the linkage effective date the price ceiling unit price for 2028 shall be equal to the 2027 price ceiling unit price in the linked jurisdiction, 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 the prior year.

(9) The price ceiling unit price for 2029 and each year thereafter shall be the price ceiling unit price of the previous 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.

(10) Beginning in 2022, ((~~on the first business day in December of~~)) each year by the first business day in December, ecology shall announce the price ceiling unit price for the next year.

AMENDATORY SECTION (Amending WSR 22-20-056, 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.

AMENDATORY SECTION (Amending WSR 22-20-056, filed 9/29/22, effective 10/30/22)

WAC 173-446-365 Auction of future year allowances. (1) Two times per year in years 2023 through 2026, ecology shall hold parallel auctions of future vintage allowances. Four times per year starting in 2027 and for all subsequent years, 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 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 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~~)) 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 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~~)) 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 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~~)) 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 in accordance with the budgets listed in WAC 173-446-210 Table 210-1.

(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.

AMENDATORY SECTION (Amending WSR 24-05-080, filed 2/21/24, effective 3/23/24)

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)~~)) (a) 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.~~)) placed allowances in the allowance price containment reserve account as follows based on annual allowance budgets necessary to achieve the 2030 statewide emissions limit by January 1, 2030:

(i) Five percent of the total annual allowance budget for each year of 2023 through 2026.

(ii) Five percent of the annual allowance budget for each year of 2027 to 2030 without taking into account the increase in the allowance budgets caused by the addition of new covered entities in subsequent compliance periods.

(b) No sooner than the allowance price containment reserve auction following the first quarterly allowance auction in 2027, and prior to the last APCR auction offered before the 2027 compliance deadline, ecology shall place additional allowances in the allowance price containment reserve account as follows:

(i) Five percent of the total annual allowance budget for each year from 2031 to 2040 as described in Table 210-1.

(ii) Five percent of the additional allowances available due to the increases in the allowance budgets for 2023 to 2026 (as described in Table 210-2) relative to those budgets when allowances were placed in the APCR from those budgets under (a)(i) of this subsection.

(iii) Five percent of the additional allowances available due to the increases in the allowance budgets for 2027 to 2030 (as described in Table 210-3) relative to those budgets when allowances were placed in the APCR from those budgets under (a)(ii) of this subsection.

(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 covered entities and opt-in entities registered in Washington's program 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 1 price((~~s~~)) for a year after 2023 shall be the allowance price containment Tier 1 price((~~s~~)) 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) The Tier 2 price for 2026 shall be the midpoint between the Tier 1 price and the price ceiling unit price outlined in WAC 173-446-335.

(v) The Tier 2 price for 2027 shall be:

(A) If Washington has not entered into a linkage agreement, or if Washington has entered into a linkage agreement but prior to the linkage effective date, the Tier 2 price for 2027 shall be the midpoint between the Tier 1 price and the price ceiling unit price outlined in WAC 173-446-335; or

(B) If Washington enters into a linkage agreement, upon the linkage effective date the Tier 2 price for 2027 shall be $83.92, 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 the prior year.

(vi) The Tier 2 price for 2028 shall be:

(A) If Washington has not entered into a linkage agreement, or if Washington has entered into a linkage agreement but prior to the linkage effective date, the Tier 2 price for 2028 shall be equal to the Tier 2 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, upon the linkage effective date, the Tier 2 price for 2028 shall be equal to the 2027 Tier 2 price set by a linked jurisdiction, 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 the prior year.

(vii) The Tier 2 price for 2029 and each year thereafter shall be the Tier 2 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.

(viii) Beginning in 2022, ((~~on~~)) each year by 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) During an individual allowance price containment reserve auction event, 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.

Ecology shall reject bids placed by individual bidders, or the sum of bids placed by members of a direct corporate association, during an allowance price containment reserve auction for allowances at any tier that exceed the total quantity of allowances offered at that tier.

(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.

AMENDATORY SECTION (Amending WSR 22-20-056, 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)~~)) On January 1, 2023, ecology placed two percent of allowances from the first compliance period into the emissions containment reserve account based on annual allowance budgets necessary to achieve the 2030 statewide emissions limit under RCW 70A.65.070 by January 1, 2030.

(b) No sooner than January 1, 2027, ecology shall place two percent of the additional allowances available due to the increase in the allowances budgets for 2023-2026 as described in WAC 173-446-210 Table 210-2 relative to those budgets when allowances were placed in the

emissions containment reserve from those budgets under (a) of this subsection.

(c) 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)~~)) (d) Allowances from EITE facilities that have been curtailed or closed.

((~~(d)~~)) (e) 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)~~)) (f) 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 the covered 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~~)). For the purpose of this subsection, the "first applicable compliance period" means the compliance period when the new or expanded EITE facility became a covered entity for the first time by reporting covered emissions greater than 25,000 MT CO_2e in a single year.

(c) If provided to either new or expanded EITE facilities, the allowances provided ((~~must~~)) will be limited to the number of allowances required to cover the covered emissions ((~~resulting from the expansion~~)) of the facility for the applicable emissions years. If the number of allowances that a new or expanded EITE facility is eligible to receive for a given emissions years as determined using Eq. 220-1 in WAC 173-446-220 (2)(b) or Eq. 220-4 in WAC 173-446-220 (2)(c) is greater than the facility's covered emissions for that given emissions year, then ecology will not allocate any allowances to that facility from the emissions containment reserve. When provided to either new or expanded EITE facilities, the allowances will be allocated in a manner that is consistent with the methods described in WAC 173-446-220 and the allowances must be placed in the EITE facility's compliance account and used for compliance at the next compliance deadline.

(d) Owners or operators of an EITE facility who wish to be allocated allowances from the emissions containment reserve must submit a request electronically to ecology concurrent with their request under WAC 173-446-220 (1)(a) by March 31st of the year following the emissions year when the facility became a covered entity for the first time by reporting covered emissions greater than 25,000 MT CO_2e, concurrent with their request for allocation under WAC 173-446-220 (1)(a). Expanded EITE facilities must also include the following information when submitting such requests to ecology:

(i) Information that demonstrates how the facility meets the definition of an expanded EITE facility, including copies of applicable government permits or approvals and details of physical changes made to the facility and their impact on emissions at the facility.

(ii) Information that identifies how the covered emissions from the facility have changed since the expansion took effect, compared to the years that are required to be used to establish the facility's allocation baseline pursuant to WAC 173-446-220.

(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 covered entities and opt-in entities registered in Washington's program may participate in the auctions.

AMENDATORY SECTION (Amending WSR 22-20-056, 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~~)) before a full compliance period obligation deadline, 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 covered entities and opt-in entities registered in Washington's program that do not have ((~~sufficient~~)) enough eligible compliance instruments in their holding and compliance accounts to meet their compliance obligations ((~~for that compliance~~)) before the full compliance period obligation deadline.

(2) Each price ceiling unit covers the compliance obligation for the emission of one metric ton of CO_2e.

(3) Only covered entities or opt-in entities registered in Washington's program that do not have sufficient eligible compliance instruments in their holding and compliance accounts to ((~~meet~~)) fulfill their ((~~requirements for~~)) compliance obligations by the immediately upcoming full compliance period ((~~compliance~~)) obligation deadline may purchase price ceiling units. These ((~~covered~~)) entities may purchase only the number of price ceiling units necessary to ((~~meet~~)) fulfill their compliance obligations ((~~for~~)) by the immediately upcoming full compliance period obligation deadline and must ((~~use~~)) surrender those price ceiling units ((~~for compliance~~)) at the immediately upcoming full compliance period obligation deadline.

AMENDATORY SECTION (Amending WSR 22-20-056, 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~~)) a full compliance period obligation deadline ((~~for a compliance period~~)) and the full compliance period obligation deadline itself.

(2) Price ceiling units shall be sold at the ceiling price.

(3) Price ceiling unit sales shall be held only if a covered entity or opt-in entity registered in Washington's program requests a price ceiling unit sale at least 10 days before the immediately upcoming full compliance period obligation 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~~)) by the immediately upcoming full compliance period obligation deadline ((~~for a compliance period~~)). This accounting must include any confirmed and finalized agreements to transfer compliance instruments to the covered entity or opt-in entity prior to the full compliance period obligation 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)~~)) (6) 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)~~)) (7) After a sale, ecology will transfer purchased price ceiling units directly to each purchaser's compliance account for retirement at the immediately upcoming full compliance period obligation deadline.

AMENDATORY SECTION (Amending WSR 22-20-056, filed 9/29/22, effective 10/30/22)

WAC 173-446-390 Confidentiality. 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~~)) ecology 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~~)) ecology 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.

AMENDATORY SECTION (Amending WSR 22-20-056, filed 9/29/22, effective 10/30/22)

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 until it is surrendered. 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)~~)) (3) 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~~)) is linked.

((~~(8)~~)) (4) 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)~~)) is prohibited from acquiring allowances and holding them in its own holding account on behalf of another entity. A registered entity is prohibited from allowing a second entity or person to authorize or make decisions on the registered entity's behalf to acquire, hold, trade, or dispose of allowances. In-kind trading and distribution of allowances, and any activity that results in the delegation, reassignment, or control of the registered entities allowances by a second entity while the allowances still reside in the registered entity's holding account is prohibited.

(a) A registered entity may not hold allowances in which a second entity has any ownership interest.

(b) A registered entity may not hold allowances pursuant to an agreement or contract that gives a second entity any degree of control over the transaction decisions and the trading of allowances held or to be held in the registrant's tracking system holding account.

(i) Financing agreements where control, ownership, or both control and ownership over allowances is given to a second entity outside of an event of default are prohibited.

(ii) Agreements that grant legally binding authority to a second entity to represent or manage the tracking system account of a registered entity are prohibited.

(c) Provisions in priced contracts specifying a future date to deliver a specified quantity of compliance instruments, or specifying a procedure to determine a quantity or a delivery date of compliance instruments, or specifying a procedure that determines both a quantity of compliance instruments for delivery and a delivery date of compliance instruments do not violate the prohibition on beneficial holding conduct. A transaction resulting from a change of facility ownership or operation control that is required to be disclosed pursuant to WAC 173-446-150(4) does not violate the beneficial holding prohibition.

(d) Subitems (a) through (c) of this subsection do not apply to following:

(i) Exchange clearing houses registered pursuant to WAC 173-446-052;

(ii) Transfers between direct corporate associations accurately disclosed pursuant to WAC 173-446-120;

(iii) Transfers between a federal power marketing administration and its customers.

(iv) Voluntary transfers on behalf of unregistered entities based on transaction agreements specified in WAC 173-446-435 (1)(c), as long as the registered entity holds the allowances on behalf of the unregistered entity for 90 days or fewer.

(5) 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)~~)) (6) Qualifying transfers of no cost allowances from an electric utility to an electrical generating facility may follow the process in WAC 173-446-425 and/or 173-446-426.

((~~(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.~~))

AMENDATORY SECTION (Amending WSR 22-20-056, 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~~)) is linked must follow the procedures outlined below.

(a) To initiate the transfer, a transferor's account representative must submit to ecology and to all the transferor's other account representatives a transaction request containing the information outlined in WAC ((~~173-446-430~~)) 173-446-415. 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.

NEW SECTION

WAC 173-446-412 Transactions involving exchange clearing houses. (1) Every registered entity who wishes to transfer compliance instru-

ments 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 compliance instruments to be traded;

(d) The exchange delivery settlement price of each type entered in U.S. dollars and, where applicable, each vintage of allowances;

(e) The type of compliance instrument 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 WAC 173-446-410 (1)(b) is not required for exchange clearing house transactions.

(3) An exchange clearing house that wishes to transfer compliance instruments to another registered entity for a transaction must send ecology a transaction request containing the following information:

(a) The clearing house account number of the exchange clearing house;

(b) The holding account number of the buyer;

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

(d) The settlement price of each type and, where applicable, each vintage of compliance instruments;

(e) The types of compliance instrument trading agreement that the transaction date scheduled;

(f) Where applicable, the codes of the exchange and of the contract.

(4) A transaction request must be proposed by one of the exchange clearing house's account representatives.

(a) The proposed transaction request 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 transaction request 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 compliance instruments to the holding account of the receiving registered entity.

(d) The account representatives involved in the transaction must provide ecology on request and within 10 business days with any additional information concerning the transfer.

(5) Compliance instruments 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.

AMENDATORY SECTION (Amending WSR 22-20-056, filed 9/29/22, effective 10/30/22)

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~~)) except that the settlement price of transferred compliance instruments ((~~when~~)) need not be disclosed if:

(a) The transaction is between registered entities in a direct corporate association ((~~or is a bundled transfer~~)), whether in Washington or in an external GHG ETS to which Washington is linked;

(b) The proposed transfer is from an entity's holding account to its compliance account;

(c) The proposed transfer is from a public utility to a federal power marketing administration to cover emissions associated with imported power; or

(d) Is a bundled transaction;

(5) If a transaction agreement for compliance instruments does not contain a price at the time a transfer is proposed in the tracking system, the proposed transfer is allowed only if it results from one of the transaction agreement types outlined in subsection (7)(a) through (e) of this section. For proposed transfers of unpriced compliance instruments, entities must provide in the tracking system either a description of the valuation method used or a total market valuation for the transaction;

(6) Upon request by ecology, parties to the transaction must submit the transaction agreement, invoice records, written counterparty confirmation, and screenshots of completed trade details to ecology within 10 business days to verify that the transfer information recorded in the tracking system is accurate and that the trade is not prohibited pursuant to WAC 173-446-400(4) or 173-446-440. Parties to the transaction may submit other documentation to further substantiate the transaction;

(7) Unpriced transfers. The following transaction types are unpriced and must adhere to the requirements outlined in subsections (5) and (6) of this section:

(a) The proposed transfer results from a transaction agreement that incorporates compliance instruments with other product sales or purchases and specifies a total cost or cost basis for the transaction but does not specify a price or cost basis for the sale of the compliance instruments alone.

(b) The proposed transfer results from a transaction agreement for a change of facility ownership or business merger between entities that has been disclosed pursuant to WAC 173-446-150(4).

(c) The proposed transfer results from a transaction agreement specifying that a registered entity will voluntarily retire the compliance instruments on behalf of an unregistered entity.

(d) The proposed transfer is to satisfy a contractual requirement to replace an invalidated offset credit that has been invalidated pursuant to WAC 173-446-580, or to address an intentional forest offset project reversal determination made pursuant to WAC 173-446-570(3).

(e) The proposed transfer results from a transaction agreement involving swaps or exchanges of compliance instruments for commodities or assets without a specific price or cost basis for the compliance instruments alone, but instead contains a total market valuation that will be reported for the transaction;

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

((~~(6)~~)) (9) 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)~~)) (10)(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."

AMENDATORY SECTION (Amending WSR 22-20-056, 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 ((~~wishing to~~)) registered in Washington's cap and invest program that receives no cost allowances pursuant to WAC 173-446-230 may submit a request to ecology to transfer no cost allowances to the compliance account of an electrical generating facility ((~~or federal power marketing administration may submit a request to ecology asking for the transfer and~~)) registered in Washington's cap and invest program by 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.

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 registered in Washington's cap and invest program that receives no cost allowances pursuant to WAC 173-446-230 may voluntarily elect to transfer all or a designated number of the allowances allocated to the Washington utility at no cost to a federal power marketing administration that is registered in Washington's cap and invest program as an opt-in entity. These allowances must 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 ecology requesting the transfer.

(2) An electric utility receiving an allocation of allowances at no cost may also submit a request to establish a recurring automated transfer of all or a designated number of allowances allocated to the utility at no cost to a federal power marketing administration that is registered as an opt-in entity under WAC 173-446-054. The no cost allowances transferred to the federal power marketing administration may only be used for direct compliance with the federal power marketing administration's own compliance obligation.

(a) Ecology will notify the electric utility no later than August 1st of each year to remind the electric utility that the recurring automated transfer established under this subsection will occur unless ecology receives a notification from the electric utility by September 1st stating that the automated recurring transfer to the federal power marketing administration should not occur. The transfer of allowances will occur no earlier than October 24th of each year as outlined in WAC 173-446-260(3).

(3) The request must provide the following information:

(a) If applicable, 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.

(4) The request must be submitted with the following attestation, signed by a representative of the electric utility: "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 electric utility. 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. 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."

(5) Ecology 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.

(6) An electric utility receiving an allocation of allowances at no cost must inform ecology 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 a request as outlined in this section by September 1st, ecology must automatically place all directly allocated allowances for the following calendar year into the electric utility's holding account. Nothing in this subsection precludes an electric utility from requesting a manual transfer of allowances under subsection (1) of this section after September 1st of each year.

AMENDATORY SECTION (Amending WSR 22-20-056, filed 9/29/22, effective 10/30/22)

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 or WTE facility 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~~)) utility or WTE facility's holding account number;

(b) The ((~~utility's~~)) utility or WTE facility'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~~)) utility or WTE facility's holding account to its limited use holding account.

NEW SECTION

WAC 173-446-435 Voluntary retirement transfers. (1) A registered entity wishing to transfer compliance instruments from its holding account to its retirement account must send ecology a request including:

(a) The registered entity's holding account number; and

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

(c) For the sole purpose of a voluntary transfer to the retirement account, a transfer request may be based on a transaction agreement with an unregistered entity if that entity is not registered into an external GHG ETS, regardless of whether the external GHG ETS has a retirement-only agreement with ecology.

A registered entity may not transfer more than 10,000 allowances per year to the retirement account on behalf of an unregistered entity based on a transaction agreement specified in (c) of this subsection. There is no limit on a registered entity's transfer of offset credits to the retirement account on behalf of an unregistered entity based on a transaction agreement specified in (c) of this subsection.

(2) To initiate a transfer to the retirement account, an account representative for 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 request 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 unless 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 the retirement 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 transfer 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 transfer.

(6) Voluntary retirement transfers do not count toward fulfilment of emissions obligations as described in WAC 173-446-600 or fulfilment of penalty obligations as described in WAC 173-446-610.

AMENDATORY SECTION (Amending WSR 22-20-056, filed 9/29/22, effective 10/30/22)

WAC 173-446-440 Compliance instrument transactions—Prohibited actions. (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~~)) Commodity 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.

(5) A trade involving, related to, or associated with any of the following are prohibited:

(a) Any manipulative or deceptive device in violation of this chapter;

(b) A corner or attempt to corner the market for compliance instruments for Washington's program or the GHG ETS to which Washington is linked;

(c) Fraud, or an attempt to defraud any other entity;

(d) A false, misleading, or inaccurate report concerning information or conditions that affects or tends to affect the price of a compliance instrument;

(e) An application, report, statement, or document required to be filed pursuant to this article which is false or misleading with respect to a material fact, or which omits to state a material fact necessary to make the contents therein not misleading;

(f) Any trick, scheme, or artifice to falsify or conceal a material fact, including use of any false statements or representations, written or oral, or documents made by or provided to an entity on or through which transactions in compliance instruments occur, are settled, or are cleared; or

(g) Bilateral contracts based on compliance instruments for Washington's program or the GHG ETS to which Washington is linked are prohibited from having contractual terms which provide the elements necessary to instruct one party to submit a bid in an auction on behalf of the other party.

AMENDATORY SECTION (Amending WSR 22-20-056, filed 9/29/22, effective 10/30/22)

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)~~)) Additional required disclosures. 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.

(2) Compliance obligations. A compliance obligation is the requirement to surrender the number of compliance instruments or price ceiling units equivalent to a covered or opt-in entity's covered emissions during a compliance period.

(3) Emissions obligations. Ecology may divide the compliance obligation for a covered entity or opt-in entity into multiple different emissions obligations. This subsection describes the different kinds of emissions obligations that can make up compliance obligations, including their respective due dates and amounts.

(a) Annual obligation. By 5:00 p.m. Pacific Time ((~~November 1st of 2024 and each year thereafter, each~~)) on November 1st, or if November 1st is not a business day in Washington or an external GHG ETS to which Washington is linked, the next business day, a covered entity ((~~and~~)) or opt-in entity must ((~~have in its compliance account sufficient compliance instruments of former vintage years to cover~~)) surrender compliance instruments that meet the requirements of subsection (5) of this section in an amount equal to 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.~~

~~(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 not 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~~

~~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 trading system, all offset credits must provide direct environmental benefits to Washington state.~~

~~(iv) If ecology has linked with an external GHG 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 must be located in a jurisdiction with which ecology has linked.~~

~~(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 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 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 trading system, all offset credits must provide direct environmental benefits to Washington state.~~

~~(iv) If ecology has linked with an external GHG 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 must be located in a jurisdiction with which ecology has linked.~~

~~(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 trading system, all offset credits must provide direct environmental benefits to the state.~~

~~(iv) If ecology has linked with an external GHG 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 must be located in a jurisdiction with which ecology has linked.~~

~~(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.~~)) (b) Full compliance period obligation. In each year following the final year of a compliance period, by 5:00 p.m. Pa-

cific Time on November 1st, or if November 1st is not a business day in Washington or an external GHG ETS to which Washington is linked, the next business day, a covered entity or opt-in entity must surrender price ceiling units or compliance instruments that meet the requirements of subsection (5) of this section in an amount equal to all its covered emissions during the compliance period, excepting the number of compliance instruments the entity surrendered to fulfill annual obligations during the compliance period. If ecology determines that a covered entity or opt-in entity has over-reported its GHG emissions under chapter 173-441 WAC, ecology will reduce the entity's upcoming full compliance period obligation by an amount equal to the number of over-reported emissions. In no case will ecology reduce an entity's full compliance period obligation under this subsection to an amount less than zero.

(c) Offset invalidation obligation. No later than six months after ecology issues written notice of a decision to invalidate offset credits as described in WAC 173-446-580, a covered entity or opt-in entity must surrender price ceiling units or compliance instruments that meet the requirements of subsection (5) of this section in an amount equal to the number of invalidated offset credits it previously used for compliance.

(d) Under-reported emissions obligation. Whenever ecology determines that a covered entity or opt-in entity has under-reported its emissions under chapter 173-441 WAC, that entity must surrender price ceiling units or compliance instruments that meet the requirements of subsection (5) of this section in an amount equal to all the under-reported emissions by November 1st, or if November 1st is not a business day in Washington or an external GHG ETS to which Washington is linked, the next business day immediately following ecology's determination.

(4) Deferred compliance requirement for electricity exports. For any portion of covered emissions from a first jurisdictional deliverer in Washington 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 (3)(a) of this section do not apply. Only the requirements of subsection (3)(b) 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 the requirements of subsection (3)(a) and (b) of this section both apply.

(5) Surrender. Ecology may restrict the amounts or kinds of price ceiling units and compliance instruments a covered entity or opt-in entity may use to fulfill an emissions obligation. This subsection specifies the manner in which an entity may surrender compliance instruments or price ceiling units to fulfill an emissions obligation. Starting on the linkage effective date, a covered entity or opt-in entity may use compliance instruments issued by a jurisdiction with which Washington has linked to meet its compliance obligation as described in WAC 173-446-090, subject to the surrender rules in this section.

(a) Annual obligation. A covered entity or opt-in entity may only use the following kinds of compliance instruments to fulfill an annual obligation:

(i) Offset credits, subject to the requirements of (e) of this subsection.

(ii) Allowances obtained from the allowance price containment reserve.

(iii) Allowances of any vintage year prior to the calendar year in which the obligation is due.

(iv) If the entity received allocation under WAC 173-446-220 (2)(d)(iii), (2)(f)(i), (2)(f)(iii), or WAC 173-446-260 (5)(a), allowances of vintages of the two years following the year the relevant emissions occurred.

(b) Full compliance period obligation. A covered entity or opt-in entity may only use price ceiling units or the following kinds of compliance instruments to fulfill a full compliance period obligation:

(i) Offset credits, subject to the requirements of (e) of this subsection.

(ii) Allowances obtained from the allowance price containment reserve.

(iii) Allowances of any vintage year prior to the calendar year in which the obligation is due.

(iv) If the entity received allocation under WAC 173-446-220 (2)(d)(vii), (2)(f)(i), (2)(f)(iii), or WAC 173-446-260 (5)(a), allowances of vintages of the two years following the final year of the compliance period.

(c) Offset invalidation obligation. A covered entity or opt-in entity may only use price ceiling units as described in (c)(iv) of this subsection or the following kinds of compliance instruments to fulfill an offset invalidation obligation:

(i) Offset credits, subject to the requirements of (e) of this subsection.

(ii) Allowances obtained from the allowance price containment reserve.

(iii) Allowances of any vintage.

(iv) If the offset invalidation obligation's deadline is the same as a full compliance period obligation's deadline, price ceiling units.

(d) Under-reported emissions obligation. A covered entity or opt-in entity may only use price ceiling units as described in (d)(v) of this subsection or the following kinds of compliance instruments to fulfill an under-reported emissions obligation:

(i) Offset credits, subject to the requirements of (e) of this subsection.

(ii) Allowances obtained from the allowance price containment reserve.

(iii) Allowances of any vintage year prior to the calendar year in which the obligation is due.

(iv) If the entity received allocation under WAC 173-446-220(2)(d)(ii), (2)(f)(i), (2)(f)(iii), or WAC 173-446-260 (5)(a), allowances of the vintage of the year following the year in which the under-reported emissions obligation is due, or any year prior to that year.

(v) If the under-reported emissions obligation's deadline is the same as a full compliance period obligation's deadline, price ceiling units.

(e) Offset credit usage.

(i) 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.

(ii) Unless Washington is linked with an external GHG ETS, a covered entity or opt-in entity may only use offset credits from offset projects that provide direct environmental benefits to Washington state to fulfill its compliance obligation. Starting on the linkage

effective date, a portion of offset credits used for compliance may be sourced from offset projects that are located in a jurisdiction with which Washington is linked, subject to the limits in this subsection.

(iii) To fulfill a portion of a compliance obligation resulting from covered emissions that occurred in the first compliance period:

(A) A covered entity or opt-in entity may use offset credits, whether or not they are from offset projects located on federally recognized tribal land, in an amount no greater than five percent of its covered emissions.

(B) In addition to, but separate from the limit in (e)(iii)(A) of this subsection, a covered entity or opt-in entity may also use offset credits from offset projects located on federally recognized tribal land that provide direct environmental benefits to Washington, as described in WAC 173-446-595, in an amount no greater than an additional three percent of its covered emissions.

(C) If Washington is linked with an external GHG ETS, beginning on the linkage effective date, at least 50 percent of any offset credits a covered entity or opt-in entity uses 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 Washington is linked.

(iv) To fulfill a portion of a compliance obligation resulting from covered emissions that occurred in the second compliance period or any subsequent compliance period:

(A) A covered entity or opt-in entity may use offset credits, whether or not they are from offset projects located on federally recognized tribal land, in an amount no greater than four percent of its covered emissions.

(B) In addition to, but separate from the limit in (e)(iv)(A) of this subsection, a covered entity or opt-in entity may also use offset credits from offset projects located on federally recognized tribal land that provide direct environmental benefits to Washington, as described in WAC 173-446-595, in an amount no greater than an additional two percent of its covered emissions.

(C) If Washington is linked with an external GHG ETS, beginning on the linkage effective date, at least 75 percent of any offset credits a covered entity or opt-in entity uses 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 Washington is linked.

(v) Ecology may reduce the limits in (e)(iii)(A) and (e)(iv)(A) 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 entity or opt-in entity has or is likely to:

(A) Contribute substantively to cumulative air pollution burden in an overburdened community identified by ecology, in consultation with the environmental justice council.

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

(vi) Ecology shall limit the use of offset credits for compliance by an EITE, such that the quantity of no cost allowances plus the use of offset credits does not exceed 100 percent of the EITE's total compliance obligation over a compliance period.

(6) Retirement. This subsection specifies the manner in which ecology retires price ceiling units or compliance instruments to fulfill an emissions obligation.

(a) Once placed in a compliance account, price ceiling units and compliance instruments can only be removed by ecology. Immediately after the deadline for a covered entity or opt-in entity to fulfill an emissions obligation, ecology will remove from that entity's compliance account only the number of price ceiling units or compliance instruments needed to fulfill the emissions obligation, except as specified in WAC 173-446-320 (3)(b).

(b) When a covered entity or opt-in entity surrenders price ceiling units or compliance instruments that are eligible to fulfill an emissions obligation subject to the requirements of subsection (5) of this section, ecology will, before retiring price ceiling units, retire the compliance instruments in the following order:

(i) In order of vintage, from earliest to latest, offset credits.

(ii) Allowances obtained from the allowance price containment reserve.

(iii) In order of vintage, from earliest to latest, allowances not specified in (b)(ii) of this subsection.

AMENDATORY SECTION (Amending WSR 22-20-056, filed 9/29/22, effective 10/30/22)

WAC 173-446-610 Enforcement. (1) When a covered entity or opt-in entity reasonably believes that it will be unable to fulfill an emissions obligation, the entity shall immediately notify ecology. Upon receiving notification, ecology will issue an order requiring the covered entity or opt-in entity to submit allowances in accordance with the requirements of this section.

(2) Penalty obligations. If a covered entity 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)~~)) fulfill an emissions obligation as described in WAC 173-446-600(3), it has violated its compliance obligation and correction is not possible. As a result ((~~of such noncompliance~~)), the covered entity or opt-in entity must, within six months after the ((~~compliance~~)) emissions obligation deadline ((~~submit to ecology~~)), surrender 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)~~)) surrender by the emissions obligation deadline. This penalty obligation consists of a shortfall obligation and an untimely surrender obligation.

(a) Shortfall obligation. The shortfall obligation is the unfulfilled portion of an entity's emissions obligation, i.e., the number of compliance instruments that the entity failed to surrender by the emissions obligation deadline specified in WAC 173-446-600(3).

(b) Untimely surrender obligation. The untimely surrender obligation is three times the shortfall obligation.

(3) Surrender. Ecology may restrict the amount or kind of allowances a covered entity or opt-in entity may use to fulfill penalty obligations. This subsection specifies the manner in which an entity may surrender allowances to fulfill a penalty obligation. Starting on the linkage effective date, a covered entity or opt-in entity may use allowances issued by a jurisdiction with which Washington has linked to meet its penalty obligation as described in WAC 173-446-090, subject to the surrender rules in this section.

(a) Shortfall obligation. A covered entity or opt-in entity may only use the following kinds of allowances to fulfill a shortfall obligation:

(i) Allowances obtained from the allowance price containment reserve.

(ii) Allowances of a vintage of any year prior to the year in which the entity incurred the shortfall obligation.

(b) Untimely surrender obligation. A covered entity or opt-in entity may only use the following kinds of allowances to fulfill an untimely surrender obligation:

(i) Allowances obtained from the allowance price containment reserve.

(ii) Allowances of any vintage.

(4) Retirement. This subsection specifies the manner in which ecology retires allowances to fulfill penalty obligations. Once placed in a compliance account, allowances can only be removed by ecology. Immediately after the deadline for a covered entity or opt-in entity to fulfill an emissions obligation, ecology will remove from that entity's compliance account only the number of allowances needed to fulfill the penalty obligation, except as specified in WAC 173-446-320 (3)(b).

When a covered entity or opt-in entity surrenders allowances that are eligible to fulfill a penalty obligation subject to the requirements of subsection (3) of this section, ecology will retire the allowances in the following order:

(a) Allowances obtained from the allowance price containment reserve.

(b) In order of vintage, from earliest to latest, allowances not specified in (a) of this subsection.

(5)(a) If a covered entity or opt-in entity fails to submit ((~~penalty~~)) allowances as required by subsection ((~~(1)~~)) (2) 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)~~)) (2) 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)~~)) (b) Each metric ton of CO_2e not covered by a compliance instrument constitutes a separate violation. The number of metric tons of CO_2e not covered by compliance instruments is calculated as equal to the remaining balance of allowances needed to fulfill the shortfall obligation portion of the penalty obligation.

(6) 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) Made false or materially misleading statements regarding the registered entity's participation in Washington's program or a GHG ETS of a linked jurisdiction;

(c) Withheld material information that could influence a decision by ecology;

((~~(c)~~)) (d) Violated any part of the auction rules;

((~~(d)~~)) (e) Violated registration requirements; or

((~~(e)~~)) (f) Violated any rules regarding the conduct of the auction.

((~~(5)~~)) (7) In addition to the specific sanctions in subsections ((~~(3)~~)) (5) and ((~~(4)~~)) (6) 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)~~)) (5) and ((~~(4)~~)) (6) of this section and this subsection must be deposited into the climate investment account. Beginning July 1, 2027, all penalties under subsections (5) and (6) of this section and this subsection must be deposited into the Climate Commitment Act operating account.

((~~(6)~~)) (8) Violators are also subject to the sanctions authorized in chapter 19.86 RCW, as appropriate.

((~~(7)~~)) (9) Orders and penalties issued under this chapter are appealable to the pollution control hearings board under chapter 43.21B RCW.

((~~(8)~~)) (10) 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)~~)) (2) of this section. In no case will ecology reduce the number of ((~~penalty~~)) allowances required to be provided within six months under subsection (2) of this section to a number below one allowance for each missing compliance instrument.

((~~(9)~~)) (11) 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 opera-

tional 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.

AMENDATORY SECTION (Amending WSR 22-20-056, filed 9/29/22, effective 10/30/22)

WAC 173-446-620 Contact information. 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~~)) Climate Pollution Reduction Program
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

For email: ((~~CCAmailbox@ecy.wa.gov~~)) CPRRulemaking@ecy.wa.gov