

**Comments
of the Western Power Trading Forum
To the Washington Department of Ecology
On the Draft Program Rules under the Climate Commitment Act
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The Western Power Trading Forum¹ (WPTF) appreciates the opportunity to provide input to the Washington Department of Ecology (Ecology) on the partial draft program rules under the Climate Commitment Act (CCA) contained in Chapter 173-446 WAC and released in December.

Our comments below address a number of issues in the new provisions in the draft rule. We provide two general comments below. The more detailed comments on specific sections follow the structure of the draft rule. We also include suggests for textual revisions of the draft rule to address these concerns, and some additional minor revisions for clarity.

General Comments

Ecology should hold the first auction in late 2022 for price discovery.

At the January 11th workshop Ecology stated that the first allowance auction won't be held until early 2023. If Ecology establish contracts now with the entities that provide auction services for the WCI, there is no reason that the auction can't be held in late 2022. WPTF emphasizes the need to hold the first quarterly allowance auction as soon as possible. Electricity market participants are already engaging in contracts for the delivery of electricity into Washington in 2023. Until the first auction occurs, the price of Washington allowances will not be known. As a result, independent power producers, electricity marketers and other entities covered by the program that will not receive free allocation of allowances will not be able to accurately factor program compliance costs into these forward transactions. Ecology should work to ensure that the first auction takes place in the second half of 2022 to provide allowance price discovery. The remainder of the 2023 quarterly allowance auctions can occur as normally scheduled in 2023.

Electricity importers should receive credit for carbon costs paid in another jurisdiction, even without program linkage.

Ecology should work with CARB to set up arrangements to provide credit for carbon compliance costs in one jurisdiction in the other jurisdiction. Such an arrangement would, for instance, ensure that electricity that originates and incurs a compliance obligation in one program from having to pay these costs again in the other jurisdiction. We recognize that the Climate Commitment Act anticipates such an arrangement once programs are linked. However, similar arrangements would be important to maintain interstate electricity transfers between the two states prior to linkage, or if linkage does not occur.

¹ WPTF is a diverse organization of over 90 members comprising power marketers, generators, investment banks, public utilities and energy service providers, whose common interest is the development of competitive electricity markets in the West.

Comments on Specific Sections

Covered emissions

More clarity is needed for Covered Emissions of electric importers

As WPTF indicated in our previous comments, Section 173-446-040 in combination with the draft GHG reporting rule WAC 173-441 did not provide sufficient clarity for electricity importers as to which emissions are subject to a compliance obligation, due to gaps in the reporting rule. Because the reporting rule has not yet been finalized, we can not assess whether the reporting rule problems have been addressed. If the final rules under WAC 173-441 do not provide sufficient detail on the calculation of covered emissions by electricity importers, then such provisions would be added here.

The rule prematurely determines the compliance obligation associated with BPA imports.

Para 3(e) of section 173-446-040 states that “ A utility that purchases electricity for use in the state of Washington from a federal power marketing administration is the importer and first jurisdictional deliverer of that electricity.” Pursuant to the CCA legislation, Ecology does not have authority to make this determination. Rather, the determination as to which entity (the Bonneville Power Administration (BPA) or its utility customers) bears the compliance obligation for emissions associated with imports from BPA’s system depends solely on whether BPA elects to comply with the CCA. As we noted in our comments on the GHG reporting rule, the CCA program rules must address must all scenarios contemplated in the legislation – the case where BPA elects to be a covered entity, and the case where it does not.

Program Account Requirements and Compliance Instrument Transactions

Additional Account Types are needed.

Several additional account types will be needed to implement the program. These include individual consignment accounts for entities that receive directly allocated allowances and wish (or are required) to consign these allowances to auction, and an auction holding account for allowances that will be offered at each auction. Additionally, Ecology should establish a single account to hold compliance instruments that are retired by individual entities; such retirement would occur by moving instruments from individual entity compliance accounts to the Ecology administered retirement account.

Additionally, Ecology should make clear in the rule that rules for transfers of compliance instruments between accounts, including accounts registered to different entities, will be effectuated within a program registry (and a definition of program registry included). The ability of the program registry to manage compliance instrument transfers in accordance with program rules eliminates the need for several of the proposed rule provisions. For instance, the tracking system can prohibit transactions that would result in a violation of holding limits. Thus, it is not necessary to require that entities explain any violation of holding limits or divest of allowances in excess of the holding limits, as such violations would never occur.

Information on units in individual holding accounts must be kept confidential.

Information published by Ecology on compliance instruments in holding accounts must be aggregated across entities to protect the confidentiality of this information. Information on

compliance units in individual holding accounts must be treated as confidential and not published.

Total program baseline.

Ecology must collect data to construct an accurate baseline for emissions associated with electricity imports.

Ecology is proposing to calculate the emission baseline for electricity imports using information reported by utilities in the fuel mix reports. Use of fuel-mix information would effectively be a consumption-based inventory for electricity imports² and as such would be methodologically inconsistent with the way that emissions will be attributed to imported electricity during the program's compliance periods on a first jurisdictional deliverer (FJD) basis. Such methodologically inconsistency would prevent evaluation of whether Ecology's proposed program cap are appropriately stringent and could result in overly lax or overly stringent program caps.

An emission baseline for electricity imports derived from utility fuel mix reports would diverge from the way that emissions would be attributed during the compliance period pursuant to Ecology's own GHG reporting rule in several material ways:

- The fuel-mix reports attribute emissions based on utility *procurement* of resources, rather than on the actual delivery of electricity from those resources. Because of this fuel-mix reports likely overstate imports of renewable electricity and underestimates emissions.
- For unspecified purchases, fuel mix reports do not and cannot distinguish between electricity sourced from in-state resources and imports. Thus, a fuel mix derived inventory most likely double counts some in-state generation and any associated emissions.
- Fuel mix reports account for utility procurement of resources on a calendar year basis. In contrast, FJD reporting accounts electricity imports and emission on an hourly basis. Utility market import transactions for balancing and hedging would not be reflected in fuel mix reported procurement portfolios. However, these transactions would be captured as imports during the compliance period. A fuel mix report emission baseline would undercount emissions from these import transactions.

We do not know whether these inherent methodological differences would make an estimate of emissions associated with electricity imports based on fuel mix reports less than or greater than the true value, but the fact that we don't know underscores the inappropriateness of using fuel mix reports. Further RCW 19.29A.130(6) explicitly states that fuel mix disclosure is intended solely for informational purposes.

For credibility of program caps, it is important that Ecology establish the emission baseline for electricity imports using a method that is consistent with the way that emissions for electricity imports will be accounted for during the compliance periods. Although Ecology

² We recognize that Ecology intends to include emissions from in-state generators in the baseline for facilities.

does not have historic reports by electricity importers, Ecology could work with stakeholders to construct a robust data set using information from Open Access Technology International (OATI) and fuel mix reports submitted by the multistate entities (BPA, PacifiCorp, Avista, NRU and PNGC), as follows.

- Ecology should contract with OATI to provide e-tag data for each of the 2015-2019 calendar years to derive the quantity of electricity imported into balancing authority areas located entirely inside Washington, and to designated scheduling points for BPA customers that participate in the wholesale market. This data should be aggregated by first point of receipt but need not be aggregated by individual importer (i.e. the purchasing-selling entity). For multijurisdictional utilities that are also BPA customers, these imports will need to be apportioned to Washington load.
 - Any electricity imported from points of receipt that can be matched to resources that would be considered specified according to the reporting rule (e.g. Colstrip and renewable resources in utility portfolios) should be attributed emissions using a resource-specific emission factor.
 - All other imports should be attributed emissions using the default emission factor³.
- Emissions associated with BPA sales to its Washington customers should be calculated using the volume of these sales multiplied by BPA's asset-controlling supplier emission factor for the year, as assigned by the California Air Resources Board.

Emissions associated with imports from multijurisdictional utilities should be calculated in accordance with the method in the reporting rule, using the entity's fuel mix reports for the year. Because emissions for these entities are calculated as the utility's Washington load multiplied by the emissions associated with generation and purchases for the utility's entire 'system', the fuel mix reports will provide a fairly accurate estimate of emissions associated with electricity imported by these utilities for Washington customers.

Allocation

Ecology should ensure that allowances allocated to electric utilities are available for other covered entities.

With respect to allocations, Ecology proposes to allocate allowances directly to utilities consistent with the CCA legislation. WPTF supports the public policy principle of using allowances to mitigate the impact of the program on electricity rate-payers, we wish to ensure that it is done in a way that maintains the liquidity of the allowance market and the competitiveness of the state's wholesale electricity markets. In this regard we have two recommendations. First, WPTF anticipates that that Ecology will allocate allowances to utilities in excess of the direct compliance obligation that these utilities would incur as covered entities (i.e. as first jurisdictional delivers) to alleviate the cost burden to customers. It is therefore incumbent upon Ecology to make sure that sufficient allowances are available for covered entities, including independent power producers, that do not receive free allowances and need them for compliance. WPTF would prefer that Ecology require utilities to consign allowances in excess of covered emissions to auction. If Ecology is unwilling to do

³ As WPTF indicated in our comments on the draft reporting rule, the default emission factor should be that used by the California Air Resources Board.

this, then it should take other steps to ensure that utility-allocated allowances are made available to covered entities, including the establishment of holding limits for these allowances, oversight of utilities' use of allowances, and monitoring of the liquidity of the allowance market.

Secondly, because allocation of allowances can affect the compliance costs of covered entities under the program, it could alter the competitiveness of entities that receive direct allocation vis-à-vis their competitors who do not. WPTF is concerned that direct allocation of allowances for utility-owned fossil resources that participate could harm the competitiveness of resources owned by Independent Power Producers. WPTF therefore recommends that the rules be modified to include a clear principle that utilities should schedule and dispatch resources in their portfolio in a least cost manner, and that the variable cost for individual resources bid into wholesale markets should include the market value of allowances needed for that resource's compliance under the program.

Adjustments to allowance budgets

Ecology should take limits on use of offsets into account in setting program caps, rather than making adjustment for offsets used as compliance instruments.

Section 9 of the CCA states that "Annual allowances budgets must be set such that the use of offsets as compliance instruments, consistent with section 19 of this act, does not prevent the achievement" of the state's emission limits. It further directs ecology to "reduce the annual allowance budget relative to the limits in an amount equivalent to offset use or in accordance with a similar methodology adopted by the program." Ecology has proposed to retire allowances on a 1:1 basis for every offset credit retired under the program, rather than taking the limits on use of offsets into account in establishing annual program caps. If Ecology anticipates that there will be sufficient offsets available to reach program limits on their use, then WPTF would prefer the latter approach, because this would provide covered entities with more certainty about the allowance supply over time.

Ecology should conduct a public rule-making process before making any changes to the program that will impact the supply of allowances and any reductions in allowance supply relative to those previously set forth in rule should apply for future compliance periods.

The CCA also directs Ecology to evaluate the performance of the program at the end of 2027 and 2035. If Ecology determines that adjustments to annual program caps are necessary for "covered entities to achieve their proportionate share" of the states 2030 and 2040 emission reduction limits, then Ecology is to adjust program caps. "for consistency with proportional GHG emission limits". WPTF does not dispute Ecology's authority to make these adjustments, in line with the statute, but believes that Ecology must conduct a public process 2027 and 2035 as part of its evaluation of the program performance and before submitting its report to the legislature. Any recommendation for adjustments to the program caps must be discussed

within that public process and included in the report to the legislature. This will ensure that covered entities have advance knowledge of any pending reductions in the supply of allowances for the second and third compliance periods. We urge Ecology to modify the program rules to reflect this approach.

Allowance Auctions

Ecology should set a minimum quantity of allowances to be offered at each auction.

Ecology proposes to determine the quantity of allowances offered at auction in advance of each auction. WPTF suspect that this is due to the fact that Ecology will not know the quantity of allowances voluntarily consigned to auction until immediately prior to each auction. Recognizing this limitation, it would none-the-less be feasible and desirable for Ecology to establish the minimum quantity of allowances available at each auction and include this in the rule. Specifically, one quarter of the total allowances that must be consigned to auction in year should be made available at each auction. Ecology's authority to modify these amounts should be limited to increasing the quantity available at auction to reflect allowances that have been voluntarily consigned to that auction. Additionally, as we discuss below, any allowances source from the emissions containment reserve account for new covered and opt-in entities should be added to the quantity available at auction.

Ecology must follow standard procedures for providing public notice of auctions.

Ecology proposes to give itself discretion to provide notice of auction to the public in manner it considers appropriate and to change the information in these notices at any time by providing notice in any way it seems fit. This is completely inappropriate given the critical role that auctions will play in providing access to allowances for covered entities that do not receive a free allocation. Instead, Ecology should include a schedule for quarterly auctions in the rule. Any deviations in this schedule should be limited to 4 business days. Ecology should publish auction information on its website [and also provide email notice to market participants.] Any changes to the auction information, including the quantity of allowances available, should be noticed at least 30 days prior to the auction.

The auction floor price for 2024 should be set at the level of the price floor for Western Climate Initiative (WCI) to facilitate program linkage.

If Washington's program links to those of the other WCI jurisdictions, allowances from all three programs will be offered in a joint auction. Thus, the auction floor price for all three programs must be the same. While it is not necessary for Washington's floor price to match those of the other WCI jurisdictions until linkage occurs, failure to align the floor price now would mean that Ecology must adjust it before linkage occurs. Such an adjustment would undermine price certainty for covered entities. For this reason, we recommend that Ecology set the 2024 auction floor price at the level of the WCI floor price.

An auction ceiling price is unnecessary.

Establishment of a Price Containment Reserve (PCR) negates the need for an auction ceiling price. It would not be rational for covered entities to make auction bids at levels higher than the tier one price, because the entity would pay more for these allowances if the bid is accepted than it would in the PCR auction. Ecology should eliminate the auction price ceiling.

The percentage of future vintage allowances consigned to auction should be harmonized with WCI.

WPTF recommends that the proportion of future allowance budgets consigned to auction in the current year be increased to 10% to match those of other WCI jurisdictions. Again, this would facilitate program linkage.

Ecology should not conduct separate auctions and price containment reserve auctions for new covered entities and opt-in entities.

Ecology proposes to conduct separate auctions of allowances sourced from the emissions containment reserve for new program entrants. Additionally, Ecology proposed to hold separate price tier auctions for new entrants in the event that emission containment reserve allowances have been exhausted. Holding separate auctions for new participants would mean that these entities would not compete on a level playing field with existing covered entities for allowances. Depending on the supply of emission price reserve allowances available and the demand of new participants, separate auctions could create a price advantage or a price disadvantage for the new participants vis-a-vis existing participants. Instead of conducting separate auctions, Ecology should simply make the quantity of allowances released from the emission containment reserve for new participants available in regularly scheduled auctions and allow new participants to compete in those auctions for allowances. Similarly, if a price containment reserve auction is held, new participants should also be able to participate in that auction.

Tier prices for the Allowance Price Containment Reserve and Price Ceiling units should be set at the level of the other WCI jurisdictions.

Once linked, allowances will be fungible between the Washington cap and trade program and other WCI jurisdictions program. If Washington APCR tier prices differ from the level of other WCI jurisdictions, when the APCR price in the jurisdiction(s) with the lower Tier price, the additional supply of allowances from that jurisdiction would increase the supply across the entire linked footprint. This would not be an acceptable outcome in the jurisdiction(s) with the higher tier price as it undermines the environmental integrity of the program cap in that jurisdiction(s). For this reason, Washington should set the APCR tier prices at the WCI levels to enable future program linkage. Similarly, the price for price ceiling units should also match those of the WCI. Although PCU units themselves cannot be traded, their supply could free up other allowances (held by other entities) for transfer.

The Emission Containment Reserve Trigger Price should be set as close to the Auction floor price as possible.

The purpose of the emission containment reserve as set out in the legislation is to “help ensure that the price of allowances remains sufficient to incentivize reductions in greenhouse gas emissions.” The legislation further states that the reserve trigger price must be set at a reasonable amount above the auction floor price and equal to the level established in jurisdictions with which the department has entered into a linkage agreement. If allowance auctions do not clear at the level of the reserve price floor, Ecology must withhold allowances and place these in the emission price containment reserve. The allowances removed from auction will be additional to the 2% of the annual allowance budget that Ecology must place in the program per the legislation. Allowances may be removed from the emission price containment reserve and distributed only for new covered or opt-in covered entities, or expanded operations.

WPTF asserts that an allowance price floor set at the level of those in the WCI jurisdictions will in and of itself provide a reasonable long-term price signal to incentivize emission reductions. We further assert that 2% of allowances set aside in the emissions price containment reserve may well be sufficient for new or expanded program entrants. Given that Ecology's proposed approach to setting program caps and reducing these over time is likely to result in stringent annual allowance budgets, that 7% of allowances will be set aside from each allowance budget for the allowance price containment reserve and the emission price containment reserve, that triggering of the emission price containment reserve may have the effect of removing allowances from distribution *permanently*, we urge Ecology to set the emission containment reserve trigger price as close as possible to the auction floor price. The fact that the WCI jurisdictions do not have a emission containment reserve also argues for setting that trigger price close to the auction floor, as this would minimize price volatility upon program linkage.

Lastly, in the event that tier 2 of the allowance price containment reserve is accessed, WPTF recommends that Ecology removes allowances from the emission containment reserve and place these in the allowance price containment reserve. The additional allowances might eliminate the need to distribute price ceiling units.

Textual Comments

GENERAL REQUIREMENTS

WAC 173-446-010 Purpose.

The purpose of this chapter is to implement the provisions of the GHG reduction program established in RCW 70A65.060 through 70A65.210. This program establishes 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.

WAC 173-446-020 Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) Definitions.
 - (a) "Additional" means 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 conservative business-as-usual scenario.
 - (b) "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 article or applicable Compliance Offset Protocol.
 - (c) "Allowance" means an authorization to emit up to one metric ton of carbon dioxide equivalent.
 - (d) "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 in the event of unanticipated high costs for compliance instruments.
 - (e) "Annual allowance budget" means the total number of GHG allowances allocated for auction and distribution for one calendar year by Ecology.
 - (f) "Asset controlling supplier" means any party that owns or operates interconnected electricity generating facilities or serves as an exclusive marketer for these facilities even though it does not own them, and has been designated by Ecology and received an Ecology -published emissions factor for the wholesale electricity procured from its system. Ecology shall use a methodology consistent with the methodology used by an external GHG emissions trading program that shares the

regional electricity transmission system. Electricity from an asset controlling supplier is considered a specified source of electricity.

- (g) "Auction" means the process of selling GHG allowances by offering them up for bid, taking bids, and then distributing the allowances to winning bidders.
- (h) "Auction floor price" means a price for allowances below which bids at auction are not eligible to be accepted.
- (i) "Auction purchase limit" means the limit on the number of allowances one registered entity or a group of affiliated registered entities may purchase from the share of allowances sold at an auction.
- (j) "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.
- (k) "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.
- (l) "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.
- (m) "Best available technology" 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.
- (n) "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 industrial waste, including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material.
- (o) "Biomass-derived fuels," "biomass fuels," or "biofuels" means fuels derived from biomass that have at least 40 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.

Commented [CB1]: WPTF suggests that Ecology eliminate definitions, such as this, that are not used in the program rules.

Commented [CB2]: Delete, this definition is unnecessary.

- (p) "Carbon dioxide equivalents" or CO₂e is as defined in Chapter 173-441 WAC
- (q) "Carbon dioxide 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.
- (r) "Climate commitment" means the process and mechanisms to ensure a coordinated and strategic approach to advancing climate resilience and environmental justice and achieving an equitable and inclusive transition to a carbon neutral economy.
- (s) "Climate resilience" is the ongoing process of anticipating, preparing for, and adapting to changes in climate and minimizing negative impacts to our natural systems, infrastructure, and communities. For natural systems, increasing climate resilience involves restoring and increasing the health, function, and integrity of our ecosystems and improving their ability to absorb and recover from climate-affected disturbances. For communities, increasing climate resilience means enhancing their ability to understand, prevent, adapt, and recover from climate impacts to people and infrastructure.
- (t) "Closed facility" means a facility at which the current owner or operator has elected to permanently stop production and will no longer be an emissions source.
- (u) "Closed electric power entity" means an electric power entity that has elected to permanently stop providing or distributing electric power.
- (v) "Closed supplier" means a supplier that has elected to permanently stop supplying any of the materials that trigger coverage as a supplier under the Climate Commitment Act.
- (w) "Compliance instrument" means an allowance, ~~or~~ offset credit or price containment unit 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.
- (x) "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.
- (y) "Compliance Offset Protocol" means an offset protocol adopted by Ecology.

Commented [CB3]: This definition is unnecessary.

- (z) "Compliance period" means the four-year period for which the compliance obligation is calculated for covered entities.
- (aa) "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.
- (bb) "Covered emissions" means the emissions described in WAC 173-446-040 for which a covered entity has a compliance obligation or other requirements under this chapter.
- (cc) "Covered entity" means a person that is designated by Ecology as subject to this chapter as specified in WAC 173-446-030 or WAC 173-446-060 . Each facility, supplier, or first jurisdictional deliverer serving as an electricity importer is a separate covered entity.
- (dd) "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.
- (ee) "Crediting Period" means the pre-determined period 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.
- (ff) "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.
- (gg) "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.
- (hh) "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.
- (ii) "Direct environmental benefits in the State" refers to the reduction or avoidance of emissions of any air pollutant in the state or the reduction or avoidance of any pollutant that could have an adverse impact on waters of the state.

Commented [CB4]: Suggest this definition be deleted, as the applicability section of the rule better states which entities are covered. If this is retained, it should be modified to exactly reflect the applicability section, including emission thresholds, and the two different types of First jurisdictional deliverer.

Commented [CB5]: This definition is unnecessary.

- (jj) “Direct corporate association” means a group of parties that meet the requirements in WAC 173-446-105 to be a direct corporate association.
- (kk) “Direct GHG Emission Reduction” means a GHG emission reduction from applicable GHG emission sources, GHG sinks, or GHG reservoirs that are under control of the Offset Project Operator or Authorized Project Designee.
- (ll) “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.
- (mm) “Electricity importer” has the same meaning as in Chapter 173-441 WAC;
- (nn) “Electric power entity” includes any of the following that supply electric power in Washington with associated emissions of greenhouse gases equal to or above the threshold established under RCW 70A.15.2200(5)(a):
 - (i) Electricity importers and exporters;
 - (ii) Retail providers, including multijurisdictional retail providers; and
 - (iii) First jurisdictional deliverers not otherwise included here.
- (oo) “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.
- (pp) “Emissions containment reserve trigger price” means the price below which allowances will be withheld from sale by Ecology or its agent at an auction, as determined by Ecology by rule.
- (qq) “Emissions threshold” means the GHG emission level at or above which a person has a compliance obligation.
- (rr) “Emissions year” means the calendar year in which GHG emissions occur.
- (ss) “Environmental benefits” means activities that:
 - (i) Prevent or reduce existing environmental harms or associated risks that contribute significantly to cumulative environmental health impacts;
 - (ii) Prevent or mitigate impacts to overburdened communities or vulnerable populations from, or support community response to, the impacts of environmental harm; or

Commented [CB6]: This definition is contingent upon the reporting rule accurately reflecting the legislative definitions, and addressing gaps in the draft rule.

Commented [CB7]: Electric power entity is a reporting term, not a CCA program term. The CCA refers to first jurisdictional deliverers and electric utilities. This definition should be deleted.

- (iii) 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.
- (tt) “Environmental harm” means the individual or cumulative environmental health impacts and risks to communities caused by historic, current, or projected:
 - (i) Exposure to pollution, conventional or toxic pollutants, environmental hazards, or other contamination in the air, water, and land;
 - (ii) 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;
 - (iii) Loss or impairment of ecosystem functions or traditional food resources or loss of access to gather cultural resources or harvest traditional foods; or
 - (iv) Health and economic impacts from climate change.
- (uu) “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.
- (vv) "External GHG emissions trading program" 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.
- (ww) "Facility" has the same meaning as in Chapter 173-441 WAC.
- (xx) "First jurisdictional deliverer" has the same meaning as in Chapter 173-441 WAC.
- (yy) “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.
- (zz) “Forest Owner” means the owner of any interest in the real (as opposed to personal) property involved in a forest offset project, excluding government agency third party beneficiaries of conservation easements. Generally, a Forest Owner is the owner in fee of the real property involved in a forest offset project. In some cases, one entity may be the owner in fee while another entity may have an interest in the trees or the timber on the property, in which case all entities or individuals 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.

- (aaa) "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.
- (bbb) "Greenhouse gas" or GHG has the same meaning as in WAC 173-441-040.
- (ccc) "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.
- (ddd) "Greenhouse Gas Emissions Source" or "GHG Emissions Source" means, in the context of offset credits, any type of emitting activity that releases greenhouse gases into the atmosphere.
- (eee) "Greenhouse Gas Removal" or "GHG Removal" means the calculated total mass of a GHG removed from the atmosphere over a specified period of time.
- (fff) "Greenhouse Gas Removal Enhancement" or "GHG Removal Enhancement" means a calculated increase in GHG removals relative to a project baseline.
- (ggg) "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.
- (hhh) "Greenhouse Gas Sink" or "GHG Sink" means a physical unit or process that removes a GHG from the atmosphere.
- (iii) "Holding limit" means the maximum number of allowances that may be held for use or trade by a registered entity at any one time.
- (jjj) "Imported electricity" has the same meaning as in Chapter 173-441 WAC.
- (kkk) "Indirect corporate association" means a group of parties that meet the requirements in WAC 173-446-105 to be an indirect corporate association.
- (lll) "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.
- (mmm) "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.

- (nnn) "Lead Verifier" means ...
- (ooo) "Lead Verifier Independent Reviewer" or "Independent Reviewer" means ...
- (ppp) "Leakage" means a reduction in emissions of GHGs within the state that is offset by a directly attributable increase in GHG emissions outside the state and outside the geography of another jurisdiction with a linkage agreement with Washington.
- (qqq) "Limits" means the GHG emissions reductions required by RCW 70A.45.020.
- (rrr) "Linkage" means a bilateral or multilateral decision under a linkage agreement between GHG market programs to accept compliance instruments issued by a participating jurisdiction to meet the obligations of regulated entities in a partner jurisdiction and to otherwise coordinate activities to facilitate operation of a joint market.
- (sss) "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.
- (ttt) "Linked jurisdiction" means a jurisdiction with which Washington has entered into a linkage agreement.
- (uuu) "Multijurisdictional consumer-owned utility" has the same meaning as in Chapter 173-441 WAC.
- (vvv) "Multijurisdictional electric company" has the same meaning as in Chapter 173-441 WAC
- (www) "NAICS" has the same meaning as in Chapter 173-441 WAC.
- (xxx) "NERC e-tag" has the same meaning as in Chapter 173-441 WAC.
- (yyy) "Offset credit" means a tradable compliance instrument that represents an emissions reduction or emissions removal of one metric ton of carbon dioxide equivalent.

Commented [CB8]: Missing definition

- (zzz) “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 believe that an Offset Project Data Report contains errors resulting in an overstatement of the reported total GHG emission reductions or GHG removal enhancements greater than 5 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.
- (aaaa) "Offset project" means a project that reduces or removes GHG that are not covered emissions under this chapter.
- (bbbb) “Offset Project Boundary” is defined by and includes all GHG emission sources, GHG sinks or 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.
- (cccc) “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 article or a Compliance Offset Protocol. An unattested report is not a valid Offset Project Data Report, and therefore will not satisfy any deadlines regarding submittal of an Offset Project Data Report.
- (dddd) “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, 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 article in order to be considered complete by Ecology or the Offset Project Registry.
- (eeee) “Offset Project Operator” means the entity(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.
- (ffff) “Offset Project Registry” means an entity 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.

- (gggg) "Offset protocols" means a set of procedures and standards to quantify GHG reductions or GHG removals achieved by an offset project.
- (hhhh) "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 article for calculating and reporting project baseline emissions, project emissions, GHG reductions, and GHG removal enhancements.
- (iv) "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 this section and applicable Compliance Offset Protocol, assessing the Offset Project Operator's or Authorized Project Designee's compliance with this article and applicable Compliance Offset Protocol, and submitting an Offset Verification Statement to Ecology or an Offset Project Registry.
- (jjjj) "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 article and applicable Compliance Offset Protocol, and containing the attestations required pursuant to this article.
- (kkkk) "Offset Verification Team" means all of those working for a verification body, including all subcontractors, to provide offset verification services for an Offset Project Operator or Authorized Project Designee.
- (llll) "Opt-in entity" means a person responsible for greenhouse gas emissions that is not a covered entity but voluntarily participates in the program.
- (mmmm) "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.
- (nnnn) "Overburdened community" includes, but is not limited to:
- (i) Highly impacted communities as defined in RCW 19.405.020;
 - (ii) Communities located in census tracts that are fully or partially on "Indian country" as defined in 18 U.S.C. Sec. 1151; and

- (iii) 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.
- (iv) Overburdened communities identified by Ecology may include the same communities as those identified by Ecology through its process for identifying overburdened communities under RCW 70A.02.010.
- (oooo) "Party" means a person, firm, association, organization, partnership, business trust, corporation, limited liability company, company, or government agency.
- (pppp) "Person" has the same meaning as defined in Chapter 173-441 WAC.
- (qqqq) "Point of delivery" has the same meaning as in Chapter 173-441 WAC.
- (rrrr) "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 article and applicable Compliance Offset Protocol.
- (ssss) "Price ceiling unit" means the units issued at a fixed price by Ecology for the purpose of limiting price increases and funding further investments in GHG reductions.
- (tttt) "Program" means the GHG emissions cap and invest program created by and implemented pursuant to this chapter.
- (uuuu) "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.
- (vvvv) "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.
- (wwww) "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

Commented [CB9]: This term is not currently used in the program rules, but should be.

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 article 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 article or applicable Compliance Offset Protocol and substituting alternative requirements not approved by the Board.

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

(yyyy) "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 CO₂e.

(zzzz) Reporter" has the same meaning as in Chapter 173-441 WAC.

(aaaa) "Resilience" means the ability to prepare, mitigate and plan for, withstand, recover from, and more successfully adapt to adverse events and changing conditions, and reorganize in an equitable manner that results in a new and better condition.

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

Commented [CB10]: Unnecessary, delete.

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

(dddd) "Specified source of electricity" or "specified source" has the same meaning as in Chapter 173-441 WAC.

Commented [CB11]: This term is not used in the program rules, delete.

(eeee) "Supplier" means a supplier of fuel in Washington as defined in Chapter 173-441 WAC.

(ffff) "Total Program Baseline" means the total of covered greenhouse gas emissions from covered entities [during the baseline period](#).

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

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

(iiii) "Unspecified source of electricity" or "unspecified source" means a source of electricity that is not a specified source at the time of entry into the transaction to procure electricity.

(jjjjj) "Verification Body" means a firm accredited 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.

(kkkkk) "Voluntary renewable 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.

(2) Definitions from Chapter 173-441 WAC. For those terms not listed in subsection (1) of this section, the definitions found in Chapter 173-441 WAC apply in this chapter.

(3) Definitions from chapter 173-446A WAC. For those terms not listed in subsections (1) through (2) in this section, the definitions found in chapter 173-446A WAC apply in this chapter.

WAC 173-446-030 Applicability.

All covered emissions from facilities, suppliers, and first jurisdictional deliverers of electricity 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 those listed in subsection (a) (i) or (ii), with covered emissions for any calendar year from 2015 through 2019 equal to or exceeding 25,000 metric tons of carbon dioxide equivalent.
 - (i) A landfill used by a city or county solid waste management program or
 - (ii) A waste to energy facility used by a city or county solid waste management program.
 - (b) A first jurisdictional deliverer that generates electricity in Washington and whose covered emissions associated with this generation equal or exceed 25,000 metric tons of carbon dioxide equivalent per year;
 - (c) A first jurisdictional deliverer that imports electricity into the state, and whose of covered emissions associated with this imported electricity, whether from specified or unspecified sources, exceeds 25,000 metric tons of carbon dioxide equivalent per year;
 - (d) Any supplier of fossil fuel other than natural gas when 25,000 metric tons or more of covered emissions of carbon dioxide equivalent per year would result from the full combustion or oxidation of that fuel. Covered emissions do not include emissions from fuel products that are produced or imported with a documented

final point of delivery outside of Washington and combusted outside of Washington;

- (e) Any supplier of natural gas when more than 25,000 metric tons of covered emissions of carbon dioxide equivalent per year would result from the full combustion or oxidation of that natural gas. Covered emissions do not include emissions from fuel products:
 - (i) That are produced or imported with a documented final point of delivery outside of Washington and combusted outside of Washington;
 - (ii) Supplied to covered entities under (a) through (d) of this subsection; and
 - (iii) Delivered to opt-in entities.
 - (f) Any person who is not a natural gas company and has a tariff with a natural gas company to deliver to an end-use customer in the state an amount of natural gas whose covered emissions if fully combusted or oxidized would exceed 25,000 metric tons of carbon dioxide equivalent per year. Covered emissions do not include emissions from natural gas:
 - (i) Supplied to covered entities under (a) through (d) of this subsection; and
 - (ii) Delivered to opt-in entities.
 - (g) Any end-use customer in Washington who directly purchases natural gas from a person that is not a natural gas company and has the natural gas delivered through an interstate pipeline to a distribution system owned by the purchaser in amounts that, if fully combusted or oxidized, would result in covered emissions of more than 25,000 metric tons of carbon dioxide equivalent per year. Covered emissions do not include emissions from natural gas:
 - (i) Supplied to covered entities under (a) through (d) of this subsection; and
 - (ii) Delivered to opt-in entities.
- (2) Beginning with the second compliance period (emissions years 2027 through 2030) and for all subsequent compliance periods, covered entities also include any owner or operator of a waste to energy facility used by a county or city solid waste management program with annual covered emissions from 2023 through 2025 equal to or exceeding 25,000 metric tons of carbon dioxide equivalent per year.
- (3) Beginning with the third compliance period (emissions years 2031 through 2034) and for all subsequent compliance periods, covered entities also include:
- (a) An owner or operator of a landfill used by a county or city solid waste management program whose covered emissions equal or exceed 25,000 metric

tons of carbon dioxide equivalent per year for the years 2027 through 2029;
Except landfills that meet both of the following requirements:

- (i) The landfill captures at least 75 percent of the landfill gas generated by the decomposition of waste as reported under Chapter 173-441 WAC; and
 - (ii) The landfill operates a program, individually or through partnership with another party, that results in the production of renewable natural gas or electricity from landfill gas generated by the facility.
- (b) A railroad company, as defined in RCW 81.04.010, whose covered emissions equal or exceed 25,000 metric tons of carbon dioxide equivalent per year for the years 2027 through 2029.

WAC 173-446-040 Covered emissions.

- (1) Reported emissions. Covered emissions are GHG emissions reported under WAC 173-441 except as modified in subsections (2) through (4) of this section. Covered emissions:
- (a) Are calculated on a calendar year basis using Chapter 173-441 WAC;
 - (b) Include emissions of all GHGs included in WAC 173-441-040;
 - (c) Are expressed in units of CO₂e 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 reported emissions:
 - (i) Carbon dioxide emissions from the combustion of biomass or biofuels from any facility, supplier, or electric power entity;
 - (ii) GHG emissions from the following facilities:
 - (A) A coal-fired electric generation facility exempted from additional GHG limitations, requirements, or performance standards under RCW 80.80.110; or
 - (B) Facilities with North American industry classification system code 92811 (national security).
 - (b) The following supplier emissions are not covered emissions if the supplier can demonstrate to Ecology's satisfaction as specified under WAC 173-441-122 (5)(d)(xi) that the emissions originate from:

Commented [CB12]: This section will need to be checked against final reporting rule to see if clear enough

- (i) The combustion of the following fuels, if demonstrated to Ecology's satisfaction that they are used for aviation purposes:
 - (A) Kerosene-type jet fuel, and
 - (B) Aviation gasoline.
 - (ii) Watercraft fuels supplied in Washington that are combusted outside of Washington, including:
 - (A) The following fuels may be assumed to be watercraft fuels combusted outside of Washington:
 - (I) Residual fuel oil No. 5 (Navy Special); and
 - (II) Residual fuel oil No. 6 (a.k.a. Bunker C).
 - (B) Suppliers must demonstrate to Ecology's satisfaction both use in watercraft and combustion outside of Washington for all other fuels, including distillate No. 2 and distillate fuel oil No. 4, to qualify for this exemption.
 - (iii) Motor vehicle fuel or special fuel used exclusively for agricultural purposes by a farm fuel user as described in WAC 173-441-122 (5)(d)(xi)(c); or
 - (iv) Fuels used for transporting agricultural products on public highways if it meets the requirements in RCW 82.08.865 as described in WAC 173-441-122 (5)(d)(xi)(c). This exemption is in effect for emissions years 2023 through 2027 and is not available for emissions after 2027.
- (3) Allotment of covered emissions. The facility, supplier, or first jurisdictional deliverer that reports the GHG emissions is accountable for the covered emissions it reports unless otherwise described in this subsection. This subsection provides details on accountability for covered emissions and provides direction when emissions may be reported by multiple facilities, suppliers, or electric power entities.
- (a) Covered emissions for facilities.
 - (i) The following emissions are covered emissions for facilities:
 - (A) Emissions from the onsite combustion of natural gas, natural gas liquids, liquefied petroleum gas, compressed natural gas, or liquefied natural gas;

- (B) Emissions from the onsite combustion of residual fuel oil No. 5 (Navy Special), and residual fuel oil No. 6 (a.k.a. Bunker C);
 - (C) Emissions from the onsite combustion of fuel products where the fuel product was generated or modified onsite and not purchased in its combusted form from a supplier. These fuel products may include, but are not limited to: refinery gas, still gas, fuel gas, black liquor, landfill gas, and biogas
 - (D) Carbon dioxide collected and supplied offsite that does not meet the criteria specified in subsection (3)(a)(ii)(B) of this section; and
 - (E) Emissions from ~~an~~ first jurisdictional deliverer that ~~electric generating-generates facility-electricity~~ in Washington ~~serving as a first jurisdictional deliverer~~ derived from any of the means in (A) through (D) except as exempted (2)(b) of this section.
 - (F) All other reported emissions under WAC 173-441-120 are covered emissions for the facility unless otherwise specified in subsection (2) or (3)(a)(ii) of this section.
- (ii) The following emissions are not covered emissions for facilities:
- (A) Emissions from the onsite combustion of any fuel product as described in WAC 173-441-122(5) except those described in subsection (3)(a)(i)(B) or (C) of this section:
 - (B) Carbon dioxide collected and supplied offsite that the facility owner or operator can demonstrate to Ecology's satisfaction meets either of the following criteria:
 - (I) The carbon dioxide is permanently removed from the atmosphere either through long term geologic sequestration or by conversion into long lived mineral form.
 - (II) The carbon dioxide is part of the covered emissions of another covered party under this chapter.
- (b) Allotment of covered emissions for suppliers of natural gas.
- (i) The following emissions are covered emissions for suppliers of natural gas:
- (A) Emissions from the onsite combustion of natural gas, natural gas liquids, liquefied petroleum gas, compressed natural gas, or liquefied natural gas at any facility that is not a covered or opt-in entity under this chapter.

Commented [CB13]: The program applies to first electricity generators s first jurisdictional deliverers, not as facilities.

- (B) All other reported emissions under WAC 173-441-122(4) are covered emissions for the supplier unless otherwise specified in subsection (2) or (3)(b)(ii) of this section.
- (ii) The following emissions are not covered emissions for suppliers of natural gas:
 - (A) Emissions from the onsite combustion of natural gas, natural gas liquids, liquefied petroleum gas, compressed natural gas, or liquefied natural gas at any facility that is a covered or opt-in entity under this chapter.
 - (B) Any supplier of natural gas who is not a natural gas company and has a tariff with a natural gas company to deliver to an end-use customer in the state, or any end-use customer in Washington who directly purchases natural gas from a person that is not a natural gas company and has the natural gas delivered through an interstate pipeline to a distribution system owned by the purchaser may exclude emissions that would result from the full combustion or oxidation of that gas:
 - (I) For fuel products that are produced or imported with a documented final point of delivery outside of Washington and combusted outside of Washington;
 - (II) Supplied to other covered or opt-in entities under; or
 - (III) Delivered to opt-in entities.
- (c) Allotment of covered emissions for suppliers of fossil fuel other than natural gas.
 - (i) The following emissions are covered emissions for suppliers of fossil fuel other than natural gas:
 - (A) Emissions from the combustion of any petroleum product, biomass-derived fuel, or coal-based liquid fuel except those described in subsection (3)(a)(i)(B) or (C) of this section; 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) or (3)(c)(ii) of this section.
 - (ii) The following emissions are not covered emissions for suppliers of fossil fuel other than natural gas:

- (A) Emissions from the combustion of fuel products described in subsection (3)(a)(i)(B) or (C) of this section;
 - (B) Emissions that would result from the combustion of fuel products that are produced or imported with a documented final point of delivery outside of Washington and combusted outside of Washington; or
 - (C) The emissions are part of the covered emissions of another covered or opt-in entity under this chapter.
- (d) Allotment of covered emissions to suppliers of carbon dioxide.
- (i) The following emissions are covered emissions for suppliers of carbon dioxide:
 - (A) Carbon dioxide supplied that does not meet the criteria specified in subsection (3)(d)(ii) of this section; 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) or (3)(d)(ii) of this section.
 - (ii) Carbon dioxide supplied that the supplier owner or operator can demonstrate to Ecology's satisfaction meets either of the following criteria are not covered emissions for suppliers of carbon dioxide:
 - (A) The carbon dioxide is permanently removed from the atmosphere either through long term geologic sequestration or by conversion into long lived mineral form; or
 - (B) The carbon dioxide is part of the covered emissions of another covered or opt-in party under this chapter.
- (e) Allotment of covered emissions to 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.
 - (ii) A utility that purchases electricity for use in the state of Washington from a federal power marketing administration is the importer and first jurisdictional deliverer of that electricity. Such a utility is a covered entity under this program and has the compliance obligation for the GHG emissions associated with that electricity.

Commented [CB14]: Ecology should clarify how this will be monitored and enforced.

Commented [CB15]: This provisions is unnecessary, covered above.

Commented [CB16]: Delete.

- (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, an assigned emissions level under WAC 173-441-086, or to compensate for a change in methodology as described in WAC 173-441-050(4).

WAC 173-446-050 Covered entity registration.

Commented [CB17]: This section should refer to the program registry

- (1) Any reporter under Chapter 173-441 WAC reporting at least 25,000 metric tons of covered CO₂e emissions per calendar year for 2015 or any year thereafter that meets the applicability conditions in WAC 173-446-030 or 173-446-060 is automatically registered as a covered entity in Washington’s cap and invest program.
- (2) The owner or operator of any reporter under Chapter 173-441 WAC that is not a covered entity may ask Ecology to be registered in Washington’s cap and invest program as an opt-in entity. Upon receipt of this request, Ecology will register the reporter in the cap and invest program as an opt-in entity. Opt-in entities incur compliance obligations as if they were covered entities.
- (3) Any party who is not a reporter but is responsible for GHG in Washington may voluntarily participate in the cap and invest program as an opt-in entity. To participate, these persons must:
 - (1) Report GHG to Ecology under the voluntary reporting requirements in Chapter 173-441 WAC;
 - (2) Request to be registered in the cap-and-invest program as an opt-in entity; and
 - (3) Incur compliance obligations as if they were covered entities.
- (4) Ecology will email notice of registration to the designated representative and alternate designated representative of each newly-registered entity.
- (5) Any covered entity receiving notice of registration that believes it was registered in error and should not be included in the program may provide a written request to Ecology explaining why it should be removed from registration.

WAC 173-446-053 Electric Utilities Registration

- (1) All electric utilities in Washinton that do not report GHG emissions under Chapter 173-441 WAC must register to receive no cost allowances.
- (2) To register, electric utilities must provide the following information to Ecology:
 - (a) Name, physical and mailing addresses, contact information, party type, date and place of incorporation, and ID number assigned by the incorporating agency;

- (b) Names and addresses of the utility's directors and officers with authority to make legally binding decisions on behalf of the utility, and partners with more than 10 percent of control over the partnership, including any individual or party doing business as a limited partner or general partner;
- (c) Names and contact information for persons controlling more than 10 percent of the voting rights attached to all the outstanding voting securities of the utility;
- (d) A business number, if one has been assigned to the utility by a Washington State agency;
- (e) A government issued taxpayer or Employer Identification Number, or a U.S. Federal Tax Employer Identification Number, if assigned;
- (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 section WAC 173-446-120 and a brief description of the association. Utilities must complete this disclosure before they may hold allowances;
- (g) Names and contact information for all employees of the utility with knowledge of the utility's market position (current and/or expected holdings of compliance instruments and current and/or expected covered emissions);
- (h) Information required pursuant to section WAC-173-446-056 for individuals serving as Cap-and-Invest Consultants and Advisors for registered entities participating in the Cap-and-Invest Program.

WAC 173-446-055 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 as a general market participant.
 - (a) The following defines the parties that may qualify as general market participants:
 - (i) An individual, or a party that does not meet the requirements to be a covered entity or an opt-in entity, that intends to purchase, hold, sell, or voluntarily retire compliance instruments;
 - (ii) A party operating an offset project that is registered with Ecology pursuant to WAC 173-446-500 (offsets). Parties qualifying as general market participants under this subparagraph may hold offsets without needing to fulfill the requirements of WAC 173-446-120. Parties qualifying as general market participants under this subparagraph may also hold allowances, but only after fulfilling the requirements of WAC 173-446-120.

- (b) An individual registering as a general market participant must have primary residence in the United States.
- (c) Registration and consulting activities. An individual who provides cap-and-invest consulting services as described in WAC 173-446-056 and registers as a general market participant in the tracking system must disclose to Ecology the parties for which the individual is providing consulting services.
 - (i) The disclosure must be made when the individual registers as a general market participant, or within 30 days of initiating the consulting activity if the individual is already registered.
 - (ii) If the individual is associated with a party providing cap-and-invest consulting services so that in the course of the individual's duties the individual gains access to the market position of another registered entity, then the individual must provide a notarized letter from the party providing the cap-and-invest consulting services stating that it is aware of the individual's plans to apply as a general market participant in the Cap-and-Invest Program and that it has conflict of interest policies and procedures in place that prevent the individual from using information gained from the relationship with the party for personal gain in the Cap-and-Invest Program. Failure to provide such a letter by the applicable deadline described above in subsection (1)(c)(i) will result in suspension, modification, or revocation of the individual's tracking system account.
- (d) An individual who is already registered in the tracking system and intends to provide cap-and-invest program advisory services to other registered entities must disclose the proposed relationship with the other registered entities to Ecology and comply with the requirements of subsection (1)(a)(ii) above prior to providing the advisory services. Failure to provide such a letter by the deadline will result in suspension, modification, or revocation of the individual's tracking system account.
- (e) A party registering as a general market participant must be located in the United States, according to the registration information provided pursuant to subsection (3) of this section.
- (f) Individuals identified by registered entities pursuant to section WAC 173-446-120(1)(c), (d), or (h); WAC 173-446-130; WAC 173-446-140; or WAC 173-446-056, unless disclosed pursuant subsection (1)(c) of this section; are not eligible to register as general market participants.
- (g) An individual who is an employee of a party subject to the requirements of Chapters 173-441 or 173-446 WAC is not eligible to register as a general market participant.

- (2) Restrictions on other registered entities. The following entities do not qualify to hold compliance instruments and do not qualify as a registered entity:
 - (a) An offset verifier accredited pursuant to WAC 173-446-xxx (offsets);
 - (b) A verification body accredited pursuant to WAC 173-446-xxx (offsets);
 - (c) Offset project registries; and
 - (d) An emissions reporting verifier accredited pursuant to Chapter 173-441 WAC.
- (3) General market participant registration.
 - (a) Any party wishing to register as a general market participant must provide the following information to Ecology:
 - (i) Name, physical and mailing addresses, contact information, party type, date and place of incorporation, and ID number assigned by the incorporating agency;.
 - (ii) Names and addresses of the general market participant's directors and officers with authority to make legally binding decisions on behalf of the general market participant, and partners with more than 10 percent of control over the partnership, including any individual or party doing business as the limited partner or general partner;
 - (iii) Names and contact information for persons controlling more than 10 percent of the voting rights attached to all the outstanding voting securities of the party;
 - (iv) A business number, if one has been assigned to the party by a Washington State agency;
 - (v) A government issued taxpayer or Employer Identification Number, or a U.S. Federal Tax Employer Identification Number, if assigned;
 - (vi) Disclosure of all other parties with whom the party has a direct corporate association or indirect corporate association that must be reported pursuant to section WAC 173-446-120 and a brief description of the association. Parties qualifying as general market participants under (1)(a)(ii) of this subsection must complete this disclosure before they may hold allowances;
 - (vii) Names and contact information for all employees of the party with knowledge of the party's market position (current and/or expected

holdings of compliance instruments and current and/or expected covered emissions);

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

WAC 173-446-056 Cap-and-invest consultants and advisors.

- (1) A “Cap-and-Invest Consultant or Advisor” is an individual or party that is not an employee of a registered entity, but is providing any of the following services for a party registered in the Cap-and-Invest Program, regardless of if the consultant or advisor is acting in the capacity of an offset or emissions verifier:
 - (a) Designing, developing, implementing, reviewing or maintaining an inventory or offset project information or data management system for air emissions or development of a forest management plan, or timber harvest plan, unless the review was part of providing GHG offset verification services; or, where applicable, designing, developing, implementing, reviewing or maintaining electricity or fuel transactions, unless the review was part of providing GHG verification services;
 - (b) Developing GHG emission factors or other GHG-related engineering analysis, including developing or reviewing a 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 which explicitly identify GHG reductions and GHG removal enhancements as a benefit;
 - (d) Designing, developing, implementing, internally auditing, consulting, or maintaining an offset project resulting in GHG emission reductions and GHG removal enhancements;
 - (e) Owning, buying, selling, trading, or retiring shares, stocks, or 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) Appraisal services of carbon or GHG liabilities or assets;

- (i) Brokering in, advising on, or assisting in any way in carbon or GHG-related markets;
- (j) Directly responsible for developing any health, environment or safety policies for the Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s); or directly managing any health, environment or safety functions for a reporting party;
- (k) Bookkeeping or other services related to the accounting records or financial statements;
- (l) Any service related to information systems, including International Organization for Standardization 14001 Certification for Environmental Management (ISO 14001 Certification) and energy management systems, including those conforming to ISO 50001, unless those systems will not be part of an emissions verification process and will not be reviewed as part of the offset verification process;
- (m) Appraisal and valuation services, both tangible and intangible;
- (n) Fairness opinions and contribution-in-kind reports in which the verification body has provided its opinion on the adequacy of consideration in a transaction, unless the resulting services will not be part of the emissions verification process and the information reviewed in formulating the Offset Verification Statement will not be reviewed as part of the offset verification process;
- (o) Any actuarially oriented advisory service involving the determination of accounts recorded in financial statements and related accounts;
- (p) Any internal audit service that has been outsourced by the reporting party or by the Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s) that relates to the Offset Project Operator's, Authorized Project Designee's, if applicable, and their technical consultant(s)' internal accounting controls, financial systems, or financial statements, unless the systems and data reviewed during those services, as well as the result of those services will not be part of the offset verification process;
- (q) Acting as a broker-dealer (registered or unregistered), promoter or underwriter on behalf of a reporting party or an Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s);
- (r) Any legal services 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 non-legal services, such as brokering, auditing, financial advice, bid strategy, or other services listed in this section; and

- (s) Expert services to an emissions reporter or to the Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s) or a legal representative for the purpose of advocating the Offset Project Operator's, Authorized Project Designee's, if applicable, and their technical consultant(s)' interests in litigation or in a regulatory or administrative proceeding or investigation, unless providing factual testimony.
- (2) A party employing Cap-and-Invest Consultants or Advisors must disclose to Ecology the following information for each Cap-and-Invest Consultant or Advisor:
- (a) Information to identify the Cap-and-Invest Consultant or Advisor, including:
 - (i) Name;
 - (ii) Contact information;
 - (iii) Physical work address of the Cap-and-Invest Consultant or Advisor; and
 - (iv) Employer, if applicable.
 - (b) The party must disclose the information in section (a) in this subsection to Ecology:
 - (i) With the disclosures required under WAC 173-446-120;
 - (ii) Within 30 days of entering into a contract with a Cap-and-Invest Consultant or Advisor; and
 - (iii) Within 30 days of a change to the information disclosed on Consultants and Advisors.

WAC 173-446-060 New or modified covered entities.

- (1) Unless otherwise provided under WAC 173-446-030, any facility, supplier, or first jurisdictional deliverer beginning operation or modified after January 1, 2023 becomes a covered entity in the calendar year in which its emissions reach the thresholds listed in WAC 173-446-030, or upon formal notice from Ecology that the facility, supplier, or first jurisdictional deliverer is expected to exceed those thresholds, whichever happens first. Covered entities meeting these criteria are required to transfer their first allowances on November 1 of the year following the year in which their covered emissions were equal to or exceeded 25,000 metric tons CO₂e per year.
- (2) Any waste to energy facility that is used by a county or city solid waste management program and is newly constructed or modified after January 1, 2027 becomes a covered entity in the calendar year in which its emissions reach the thresholds listed in WAC 173-446-030, or upon formal notice from Ecology that the facility is expected to exceed those thresholds, whichever happens first. Covered entities meeting these criteria are required to transfer their first allowances on November 1 of the year following the year in which their covered emissions were equal to or exceed 25,000 metric tons CO₂e per year.

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

WAC 173-446-070 Curtailment and closure.

- (1) When a covered entity reports covered emissions that are below 25,000 metric tons of carbon dioxide equivalent in any given calendar year during a compliance period, the covered entity continues to have a compliance obligation through the end of that compliance period.
- (2) A covered entity may exit the program based on the following:
 - (a) Except as provided in (2)(b) of this subsection, when a covered entity reports covered emissions below 25,000 metric tons of carbon dioxide equivalent for each year during an entire compliance period, or has ceased all processes at the facility requiring reporting under 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.
 - (b) A covered entity identified in subsection (2)(a) above will remain a covered entity if Ecology provides notice at least 12 months before the end of the compliance period that the facility, supplier, or first jurisdictional deliverer's covered emissions are within 10 percent of the 25,000 metric-ton threshold, and the covered entity must remain a covered entity to ensure equity among all covered entities.
 - (c) Whenever a covered entity ceases to be a covered entity, Ecology must notify the appropriate policy and fiscal committees of the legislature of the name of the facility, supplier, or first jurisdictional deliverer and the reason it is no longer a covered entity.

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 indicates the annual allowance budget from which the allowance originates.

PROGRAM ACCOUNT REQUIREMENTS

WAC 173-446-100 Program accounts required.

- (1) Within 30 days after receiving a registration notice from Ecology, each registered entity must make corporate association disclosures and designate account representatives as described in WAC 173-446-105 through 173-446-140 below. Within 30 days after Ecology has received the required complete documents, Ecology will set up the required accounts for each registered entity.
- (2) A registered entity that is a member of a direct corporate association may apply for a consolidated entity account to include other associated registered entities from within the direct corporate association. To do so, the applicant must identify each associated registered entity that will be assigned to its account, and each associated registered entity must provide an attestation signed by its officer or director to confirm that it seeks to be added to the consolidated entity account. The applicant must be able to demonstrate that it has the controlling ownership or authority to act on behalf of all members of the direct corporate association. The applicant cannot be a party that is a subsidiary to or controlled by another associated entity within the direct corporate association.
- (3) A registered entity that is a member of a direct corporate association and seeks to apply for its own separate registered entity account, rather than apply for a consolidated entity account, must provide an allocation of the holding and purchase limits among the separate accounts established for any of its corporate associates per the requirements of WAC 173-446-120(1)(i). All members of a direct corporate association must separately confirm the allocation of holding and purchase limits.

WAC 173-446-105 Disclosure of corporate associations – Indicia of corporate association.

- (1) A corporate association exists when one party has an ownership interest in or control over a second party. The following criteria determine ownership or control:
 - (a) Percent of ownership of any class of listed shares, the right to acquire such shares, or any option to purchase such shares of the other party;
 - (b) Percent of common owners, directors, or officers of the other party;
 - (c) Percent of the voting power of the other party;
 - (d) In the case of a partnership other than a limited partnership, percent of the interests of the partnership;
 - (e) In the case of a limited partnership, the percent of control over the general partner or the percent of the voting rights to select the general partner; and

- (f) In the case of a limited liability corporation, percent of ownership in the other party regardless of how the interest is held.
- (2) An party has a direct corporate association with another party, regardless of whether the second party is registered in the Cap-and-Invest Program or in an external GHG ETS to which Washington is linked, if either one of these entities has any criterion in subsection (1) of this section that is greater than 50 percent.
- (3) A direct corporate association also exists when two entities are connected through a line of more than one direct corporate association.
 - (a) A party (A) has a direct corporate association with another party (B) if the two entities share a common parent and that parent has direct corporate association with each party (A and B) when applying the indicia of control contained in subsection (1) 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 entities 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 entities if the total percentage of control is more than 20 percent but less than or equal to 50 percent when multiplying the percentage of control at each link in the chain of corporate associations.
- (5) A publicly owned 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. A publicly owned 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.
- (6) An individual who has access to the market positions (current and/or expected holdings of compliance instruments and current and/or expected covered emissions) of two or more parties registered in the tracking system or registered in an external GHG ETS to

which Washington has linked is considered an individual who has shared roles. For the purposes of this requirement, Account Representatives are defined as having access to the market positions of the 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, the registered entities for which the individual has the shared role will have a direct corporate association.
- (b) If any individual is a Cap-and-Invest Consultant or Advisor for the registered entities for which the individual has a shared role, but is not disclosed pursuant to WAC 173-446-056, and the individual can use market position information obtained through the shared role without restriction, the registered entities for which the individual has shared roles will have a direct corporate association. It is the responsibility of the registered entity employing an individual as a Cap-and-Invest Consultant or Advisor to determine if the individual has access ~~to~~ the registered entity's [holdings of compliance instruments, market position](#).

WAC 173-446-110 Disclosure of corporate associations – types of disclosures required.

- (1) Registered entities must disclose all direct and indirect corporate associations with entities registered in the Cap-and-Invest Program or in another external GHG ETS to which Washington has linked.
- (2) Registered entities must disclose all direct corporate associations with parties not registered in the Cap-and-Invest Program or in another external GHG ETS to which Washington has linked if those parties have the degree of ownership interest in or control over the registered entity to meet the requirements of having a direct corporate association.
- (3) A registered entity that has a direct or indirect corporate association with another registered entity must disclose the identity of all parties involved in the line of direct or indirect corporate associations between the two registered entities, even if such parties are not registered.
- (4) Registered entities that have direct corporate associations with unregistered parties in the United States or Canada that are otherwise not required to be disclosed must disclose those associations within 30 calendar days of a request by Ecology. The disclosing party may elect to disclose only those directly associated parties located in the United States or Canada that participate in a market related to the Cap-and-Invest Program.
 - (a) Parties participating in a market related to the Cap-and-Invest-Program include only those that purchase and sell GHG compliance instruments, natural gas, oil, or electricity; or 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 required disclosure: (1) Exhibit 21 of the Form 10-K submitted to the Securities and Exchange Commission by the registrant or an affiliate of the registrant; (2) the application for market-based rate authority, or update to such application, submitted by the registrant or an affiliate of the registrant to the Federal Energy Regulatory Commission pursuant to 18 CFR Part 35 and Order 697; (3) the application for registration with the National Futures Association, or update to such application, submitted by the registrant or an affiliate of the registrant as required by the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act; (4) Form 40 or Form 40S filed by the registrant or an affiliate of the registrant in accordance with the Commodity Futures Trading Commission's reporting rules; and/or (5) Part 1A of a Form ADV filed with the Securities and Exchange Commission by a registered investment advisor responsible for managing the registrant.

- (5) Registered entities that have direct corporate associations with other parties outside the United States and Canada that participate in a market related to the Cap-and-Invest Program that are not otherwise required to be disclosed must disclose those associations within 30 calendar days of a request by Ecology.
 - (a) Parties participating in a market related to the Cap-and-Invest Program include only those that purchase and sell GHG compliance instruments, natural gas, electricity, or oil; or conduct exchange trades involving derivatives or swaps based on GHG compliance instruments, natural gas, oil, or electricity.
 - (b) Registered entities may disclose these associations using the documentation options listed in RCW 172-446-110(4)(b).
- (6) The following entities are exempt from the disclosure requirements:
 - (a) Any registered entity subject to affiliate compliance rules promulgated by state or federal agencies shall not be required to disclose information or take other action that violates those rules.
 - (b) A party registering as a general market participant solely to hold offsets is not required to disclose any direct or indirect corporate associations.

WAC 173-446-120 Disclosure of corporate association – information to be submitted.

- (1) Registered entities disclosing direct or indirect corporate association must provide the following information for each reportable corporate association:
 - (a) Name, contact information, and physical address of the party;
 - (b) Tracking system identification number, if applicable;

- (c) Names and addresses of the party's directors and officers with authority to make legally binding decisions on behalf of the party, and partners with over 10 percent of control over the partnership, including any individual or entity doing business as the limited partner or general partner.
 - (d) Names and contact information for individuals or parties controlling over 10 percent of the voting rights attached to all the outstanding voting securities of the party.
 - (e) Business number, if one has been assigned by a Washington State agency.
 - (f) A government issued Taxpayer Identification Number or Employer Identification Number, or for parties located in the United States, a U.S. Federal Tax Employer Identification Number, if assigned;
 - (g) Place and date of incorporation, if applicable;
 - (h) Names and contact information for all employees of the party with knowledge of the party's market position (current and/or expected holdings of compliance instruments and current and/or expected covered emissions); and
 - (i) For direct corporate associations with registered entities only, the percentage share of the holding limit and purchase limit assigned to each party opting out of account consolidation pursuant to WAC 173-446-120; the sum of the shares must equal 100 percent.
 - (j) Any further information requested by Ecology concerning the corporate association.
- (2) Registered entities that have disclosable corporate associations must identify whether the type of corporate association is direct or indirect.
- (a) Registered entities identifying an indirect corporate association must provide a brief description of the association, including information sufficient to explain the registered entity's evaluation of the indicia of control in WAC 173-446-100 (1) that was used to determine the type of corporate association disclosed for each associated party.
 - (b) Registered entities identifying a direct corporate association must identify the nature of the associated party as a parent, a subsidiary, or a party with a common parent, but need not include an evaluation of the indicia of control.
- (3) All corporate association disclosures required by this section must be provided by doing xxx.
- (4) The registered entity must disclose the information required:

- (a) Within 30 days after receiving Registration Notification from Ecology under WAC 173-446-050.
- (b) Within 10 days of receiving a request for further information from Ecology.
- (c) Within 30 calendar days of the creation of a direct or indirect corporate association or of a change in the type of a corporate association involving registered entities pursuant to WAC 173-446-110(1) or WAC 173-446-100(6)(b); or registered and unregistered parties pursuant to section WAC 173-446-110(2) and (3).
- (d) Within one year of a modification if the changes in information involve only unregistered parties disclosed pursuant to sections WAC 173-446-100(4) and (5).
- (e) No later than 10 calendar days prior to the auction application deadline established in [the section of the rule on auctions] when disclosing a change related to another party registered in the Cap-and-Invest Program or to parties registered into other external GHG ETS to which Washington has linked, if the disclosing entity intends to participate in the auction; and
- (f) Within one year for all other changes.

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

- (1) Within 30 days after receiving registration notification from Ecology, every registered entity must designate at least 2 and at most 5 natural persons to act as account representatives to perform any operations within the Cap-and-Invest Program on its behalf. The registered entity must identify one primary account representative, who is the resource person to be contacted for any information concerning the registered entity. For the purposes of the designations, the registered entity must provide Ecology with the following information and documents:
 - (a) The name and contact information of the registered entity;
 - (b) The following information concerning each designated account representative:
 - (i) Name and contact information at the individual’s home address;
 - (ii) The individual’s date of birth;
 - (iii) Copies of at least 2 identity documents, including one with a photograph, issued by a government or one of its departments or agencies, bearing the individual’s name and date of birth; along with an attestation from a notary completed less than 3 months prior to the application, stating that the notary has established the identity of the individual and verifying the authenticity of the copies of the identity documents;

- (iv) The name and contact information of the individual's employer;
 - (v) Confirmation from a financial institution located in the United States that the individual has a deposit account with the institution; and
 - (vi) Any conviction for a criminal offense declared in any jurisdiction during the previous five years constituting a felony under U.S. federal law or Washington law, or the equivalent thereof. The disclosure must include the type of violation, jurisdiction, and year;
- (c) A declaration signed by a director or by any other officer, or a resolution of the board of directors of the registered entity attesting that the account representatives have been duly designated to act on behalf of the registered entity for the purposes of this program;
 - (d) An attestation from a notary or attorney confirming the link between an account representative and the registered entity; and
 - (e) The following declaration signed by each of the account representatives, "I certify under penalty of perjury under the laws of the state of Washington that I was selected as the primary account representative or the alternate account representative, as applicable, by an agreement that is binding on all parties who have an ownership interest with respect to compliance instruments held in the account. I certify that I have all the necessary authority to carry out the duties and responsibilities contained in Chapter 173-446 WAC on behalf of such parties and that each such party shall be fully bound by my representations, action, inactions, or submissions and by any order or decision issued to me by Ecology or a court regarding the account."
- (2) A registered entity must have at least 2 account representatives at all times, including a primary account representative.
 - (3) All representations, acts, errors or omissions made by the account representatives in the performance of their duties are deemed to be made by the registered entity.
 - (4) Each submission concerning the account shall be submitted, signed, and attested to by the primary account representative or any alternate account representative for the party that owns the compliance instruments held in the account. Each such submission shall include the following attestation statement made and signed by the primary account representative or any alternate account representative: "I certify under penalty of perjury under the laws of the state of Washington that I am authorized to make this submission on behalf of the party that owns the compliance instruments held in the account. I certify under penalty of perjury under the laws of the state of Washington that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary

responsibility for obtaining the information, I certify under penalty of perjury under the laws of the state of Washington that the statements and information submitted to Ecology are true, accurate, and complete. I consent to the jurisdiction of Washington State and its courts for purposes of enforcement of the laws, rules and regulations pertaining to Chapter 173-446 WAC and Chapter 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) The duties of the account representatives terminate when a request for revocation is received from the registered entity and, when a registered entity has only 2 representatives, only after a new representative has been designated. The duties of the account representatives also terminate when all the accounts of the registered entity are closed.
- (6) If the registered entity is a natural person, any act that must be performed by an account representative in this program must be performed by the registered entity.
- (7) At the written request of a registered entity, Ecology may, before a request for revocation of mandate is sent to Ecology by the Registered Entity, where the urgency of the situation warrants it, withdraw access to the electronic system from one of its account representatives.
- (8) Only an individual who resides in Washington may be designated as the primary account representative of a registered entity.
- (9) No individual designated as an account representative or authorized as an account viewing agent may have been found guilty, in the 5 years prior to the notice of designation or authorization, of fraud or any other criminal offense connected with the activities for which designation is requested.

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

- (1) A primary account representative or alternate account representative for a registered entity may authorize up to 5 natural persons per account to act as account viewing agents who may view all information contained in the tracking system involving the registered entity’s accounts, information, and transfer records (account viewing authority). The persons delegated shall not have authority to take any other action with respect to an account on the tracking system.
- (2) To delegate account viewing authority, the primary account representative or alternate account representative, as appropriate, must submit to Ecology a notice of delegation that includes the following:
 - (a) The name, address, email address, and telephone number of each primary account representative or alternate account representative;

- (b) The name, address, email address, and telephone number of each natural person delegated to be an account viewing agent; and
 - (c) An attestation verifying the selection of the account viewing agent, signed by the officer of the registered entity who is responsible for the conduct of the account viewing agent, and is one of the officers disclosed pursuant to WAC 173-446-120(1)(c).
- (3) A notice of delegation for an account viewing agent shall be effective with regard to the accounts identified in such notice, upon receipt of the notice by Ecology and until receipt by Ecology of a superseding notice of delegation by the primary account representative or alternate account representative as appropriate. The superseding notice of delegation may replace any previously identified account viewing agent, add a new account viewing agent, or eliminate entirely any delegation of authority.

WAC 173-446-150 Accounts for registered entities.

- (1) Within 30 days after Ecology receives the required disclosures of corporate association and complete documents for the certification and designation of the primary and alternate account representatives, Ecology will set up two accounts for each covered entity and two accounts for each opt-in entity:
- (a) A compliance account through which compliance instruments are transferred to Ecology for retirement. Compliance instruments in compliance accounts may not be sold, traded, or otherwise provided to another account or person.
 - (b) A holding account for allowances that may be bought, sold, transferred to another registered entity, or traded.
- (2) Within 30 days after Ecology receives the required disclosures of corporate association and complete documents for the certification and designation of the primary and alternate account representatives, Ecology will set up a holding account for each general market participant.
- (3) Holding limits.
- (a) The maximum total number of allowances of the current or prior vintage, that a covered entity or an opt-in entity may hold in its holding account and, where applicable, its compliance account is the following:

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

HL_i = holding limit for year i

C_i = annual cap on emissions for year i

i = current year

Commented [CB18]: This section should also specify Ecology accounts, and consignment accounts.

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

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

HL_j = holding limit for year j

C_j = annual cap on emissions for year j

j = year subsequent to the current year

- (c) The holding limits set in (3)(a) and (b) of this subsection do not apply to the allowances recorded in the compliance account of a covered entity or opt-in entity and needed to cover estimated GHG emissions for the current year or emissions for preceding years.

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

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

Commented [CB19]: There is no reason for this provision, as the program registry can prevent violations of holding accounts.

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

Commented [CB20]: Individual holding account information must be confidential. Ecology may wish to publish information on compliance (retired units) by individual covered entities.

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

ALLOWANCE BUDGETS AND DISTRIBUTION OF ALLOWANCES

WAC 173-446-200 Total program baseline.

- (1) **Total program baseline and subtotal baselines.**

Ecology must use the following methods for establishing a total program baseline for this chapter.

- (a) Subtotal baselines are calculated individually for each reporter or sector on an annual basis as described in subsection (2) of this section. The total program baseline is the sum of the subtotal baselines. The total program baseline is given

in Table 200-1. Ecology may only adjust the total program baseline through rulemaking as described in subsections (3) through (4) of this section.

- (b) Ecology may use the following data sources when calculating subtotal baselines depending on data availability, quality, applicability, and the agency's best professional judgement. Ecology may adjust data and combine information from multiple sources when calculating subtotal baselines.
 - (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 electric power entities described under WAC 173-446-030(1) that would meet applicability requirements based on covered GHG 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 periods of closure, curtailment, or 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.
 - (a) Facilities that are not EITEs. Ecology must calculate subtotal baselines for facilities that are not EITEs, including electric generating facilities reporting under WAC 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 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 subsection (2)(a) of this section and are not part of the electric power entity subtotal baseline.

(3) **Subtotal baselines for sectors entering the program in the second compliance period.** Subtotal baselines for facilities in sectors described under WAC 173-446-030(2) must be calculated based on the facilities’ covered emissions as established in WAC 173-446-040 averaged from emissions years 2023 through 2025. Ecology must adjust the total program baseline in Table 200-1 of this section by adding the subtotal baseline for facilities under WAC 173-446-030(2) in a future rulemaking by October 1, 2026.

(4) **Subtotal baselines for sectors entering the program after the second compliance period.** Subtotal baselines for facilities in sectors described under WAC 173-446-030(3) must be calculated based on the facilities’ covered emissions as established in WAC 173-446-040 averaged from emissions years 2027 through 2029. 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 rulemaking by October 1, 2028.

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

Table 200-1: Total Program Baseline Values

Emissions Years	Total Program Baseline (annual MT CO₂e)
2023-2026	TEMPORARY PLACEHOLDER VALUE 71,000,000 TEMPORARY PLACEHOLDER VALUE
2027-2030	Set by rule by October 1, 2026 according to subsection (3) of this section
2031 and subsequent years	Set by rule by October 1, 2028 according to subsection (4) of this section

WAC 173-446-210 Total program allowance budgets.

(1) Calculating the total program allowance budget.

Ecology must use the following methods for setting the total allowances in the program for each year. The total allowances in the program for each year must be in units of MT CO₂e on a mass basis.

- (a) Emissions years 2023 through 2026.
 - (i) The total program allowance budget for emissions year 2023 is equal to ninety three percent (93%) 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 2024 through 2026 decreases annually relative to the previous year by an additional seven percent (7%) of the total program baseline in WAC 173-446-200 Table 200-1 for 2023 through 2026.
- (b) Emissions years 2027 through 2030.
 - (i) The total program allowance budget for emissions year 2027 is equal to the 2026 total program allowance budget plus the adjustment to the total program baseline described in WAC 173-446-200 (3) reduced by an additional seven percent (7%) of the total program baseline in WAC 173-446-200 Table 200-1 for 2027 through 2030.
 - (ii) The total program allowance budget for 2028 through 2030 decreases annually relative to the previous year by an additional seven percent (7%) of the total program baseline in WAC 173-446-200 Table 200-1 for 2027 through 2030.
- (c) Emissions years 2031 through 2040.
 - (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 nine tenths percent (1.9%) 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 2032 through 2040 decreases annually relative to the previous year by an additional one and nine tenths percent (1.9%) of the total program baseline in WAC 173-446-200 Table 200-1 for 2031 and subsequent years.
- (d) Emissions years 2041 through 2050.

The total program allowance budget for 2041 through 2050 decreases annually relative to the previous year by an additional two and five tenths percent (2.5%) of the total program baseline in WAC 173-446-200 Table 200-1 for 2031 and subsequent years.

(2) **Total program allowance budget.**

Table 210-1 displays the total allowances in the program for each year using the method established in subsection (1) of this section.

(3) **Allowance allocation.**

Ecology must auction a number of allowances equivalent to the total covered emissions in MT CO_{2e} listed in Table 210-1 for a given emissions year minus any allowances allocated in sections 220, 230, and 240, or that are withheld or removed by section 250, by xxx of the emissions year.

Table 210-1: Total allowances in the program for each year using the method established in subsection (1) of this section.

Emissions Year	Total Covered Emissions (MT CO_{2e})
2023	TEMPORARY PLACEHOLDER VALUE 66,030,000 TEMPORARY PLACEHOLDER VALUE
2024	TEMPORARY PLACEHOLDER VALUE 61,060,000 TEMPORARY PLACEHOLDER VALUE
2025	TEMPORARY PLACEHOLDER VALUE 56,090,000 TEMPORARY PLACEHOLDER VALUE
2026	TEMPORARY PLACEHOLDER VALUE 51,120,000 TEMPORARY PLACEHOLDER VALUE

WAC 173-446-220 Distribution of allowances to Emissions-Intensive and Trade-Exposed Entities.

- (1) **Allocation baselines for EITE entities.** Use the following data source and methods to facilitate the allocation of no cost allowances to EITE entities.
- (a) Owners or operators of any EITE facility that wish to be allocated no cost allowances must submit the following information to Ecology electronically in a format specified by Ecology. The information must include all emissions years beginning with 2015 and ending in the most recent emissions year. Any EITE facility requesting no cost allowances for emissions year 2023 must submit the information by September 15, 2022. Any facility requesting no cost allowances beginning with emissions years after 2023 must submit the information concurrent with their petition as established in WAC 173-446A-040(1) or March 31st of the emissions year they request no cost allowances, whichever is sooner.

- (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.
 - (ii) All applicable total annual facility product data, units of production, specific product, and supporting data described in WAC 173-441-050(3)(n).
 - (iii) The EITE facility's primary North American industry classification system (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) An estimation of the EITE facility's carbon intensity baseline by dividing the 2015 through 2019 average of covered emissions from subsection (1)(a)(i) of this section by the 2015 through 2019 average of total annual product data from subsection (1)(a)(ii) of this section. The owner or operator may also include a separate calculation if they are requesting alternate years for their allocation baseline average that uses averages for the requested years.
 - (v) Any owner or operator of an EITE facility requesting the use of alternate years for their allocation 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. They must submit information supporting why the proposed alternate years are reflective of normal operation. If an owner or operator requests including an emissions year prior to 2015 in their allocation baseline, then the submission must include all information for those years. An emissions year prior to 2012 is not eligible for use as an alternate year.
 - (vi) Any owner or operator of an EITE facility requesting a mass-based baseline must submit information supporting why they are not able to feasibly determine a carbon intensity baseline based on its unique circumstances. The mass-based baseline is calculated as the 2015 through 2019 average covered emissions from subsection (1)(a)(i) of this section. The owner or operator may also include a separate calculation if they are requesting alternate years for their allocation baseline average that uses averages for the requested years.
- (b) Ecology must assign an allocation baseline by November 15, 2022 to any EITE facility that completed submitting their information under subsection (1)(a) of this section by September 15, 2022. Ecology must assign an allocation baseline within ninety calendar days of a complete submission to any EITE facility that

completed submitting their information under subsection (1)(a) of this section after September 15, 2022. The allocation baseline will be determined using the following method.

- (i) Ecology may use any of the following sources or combination of sources when assigning an allocation baseline. Ecology may adjust submitted information as necessary.
 - (A) Information submitted under subsection (1)(a) of this section,
 - (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.
- (ii) Ecology must calculate a mass-based baseline for each EITE facility by averaging the 2015 through 2019 covered emissions from subsection (1)(b)(i) of this section. Ecology must also include a separate calculation if Ecology approves alternate years for the allocation baseline average under subsection (1)(b)(iv) of this section that uses averages for the approved years.
- (iii) Ecology must calculate a carbon intensity baseline for each EITE facility by dividing the 2015 through 2019 average of covered emissions from subsection (1)(b)(i) of this section by the 2015 through 2019 average total annual product data from subsection (1)(b)(i) of this section unless Ecology determines it is not feasible to determine product data for the facility based on its unique circumstances. Ecology must also include a separate calculation if Ecology approves alternate years for the allocation baseline average under subsection (1)(b)(iv) of this section that uses averages for the approved years. It is feasible to determine product data for any facility that:
 - (A) Reports product data as specified in WAC 173-441-050(3)(n), or
 - (B) Ecology is capable of determining product data as specified in WAC 173-441-050(3)(n) using any of the data sources specified in subsection (1)(b)(i) of this section.
- (iv) Ecology may allow the use of alternate years for an EITE facility's allocation 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. An emissions year prior to 2012 is not eligible for use as an alternate year.

- (v) The EITE facility's allocation baseline is equal to its carbon intensity baseline as calculated under subsection (1)(b)(iii) of this section unless Ecology is unable to perform the calculation in that subsection. If Ecology is unable to assign a carbon intensity baseline, then the allocation baseline is the mass-based baseline calculated in subsection (1)(b)(ii) of this section. The allocation baseline is based on the separate calculation described in subsections (1)(b)(ii) or (iii), as applicable, that accounts for alternate years if Ecology approves alternate years for the allocation baseline average under subsection (1)(b)(iv) of this section.
- (A) Ecology must use the following methods, in order of precedence, to set an allocation baseline for any EITE facility joining the program after emissions year 2023 under section 060 of this chapter. Ecology must use 2015 through 2019 emissions years whenever possible based on the data sources listed in subsection (1)(b)(i) of this section and may not use an emissions year prior to 2012. Ecology may exclude emissions years that contain abnormal periods of operation. Ecology must consider the products and criteria pollutants being 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 that is built on tribal lands or is 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 years.
 - (II) If at least three years of GHG emissions data are 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 subsection (1)(b)(v)(A)(I) of this section based on the three or more available data years once available. This switch should not occur until the next compliance period.
 - (III) If less than three years of GHG emissions data 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 subsection (1)(b)(v)(A)(I) of this section. This switch should not 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 facility.

- (B) Except as described in subsection (1)(b)(v)(A) of this section, the owner or operator of an EITE facility using a mass-based baseline, must submit a request to Ecology if they want 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 subsection (1)(b)(v)(A) of this section or when the EITE facility reports a primary NAICS code beginning with 3364 under Chapter 173-441 WAC. A facility reporting a primary NAICS code beginning with 3364 under Chapter 173-441 WAC that uses a mass-based baseline may not convert to a carbon intensity baseline until the next compliance period.
- (D) Prior to the beginning of a new compliance period, Ecology may make an upward or downward adjustment in the allocation baseline for an EITE facility effective starting in the next compliance period. Any adjustment must be based on significant changes to emissions or product data from:
 - (I) Revised reports under WAC 173-441-050(7) for any emissions year used in determination of the allocation baseline,
 - (II) A new assigned emissions level under WAC 173-441-086 for any emissions year used in determination of the allocation baseline, or
 - (III) A change in reporting method as described in WAC 173-441-050(4) relative to the method used for reports from emissions years used in determination of the allocation baseline.

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

- (a) EITE facilities are awarded no cost allowances according to the reduction schedule: 100% of the facility's allocation baseline for each year during the first compliance period, 97% of the facility's allocation baseline for each year during the second compliance period, and 94% of the facility's allocation baseline for each year during the third compliance period.
- (b) For a facility using a carbon intensity allocation baseline, the distribution of no-cost allowances for a given emissions year is determined using eq. 220-1.

$$\text{NoCostAllowances}_t \text{ (MT CO}_2\text{e)} = \text{InitialNoCostAllowances}_t + \text{TrueUp}_t \text{ Eq 220-1}$$

Where:

$\text{NoCostAllowances}_t$ = number of allowances allocated for emissions year t

$\text{InitialNoCostAllowances}_t$ = amount of allowances initially allocated for emissions year t . This amount is calculated using data from the previous emissions year, $t-1$, according to Eq 220-2

TrueUp_t = amount of true-up allowances allocated to account for actual production from emissions year t , determine according to Eq 220-3

t = emissions year for which the allocation occurs

$$\text{InitialNoCostAllowances}_t \text{ (MT CO}_2\text{e)} = \text{CarbonIntensityAllocationBaseline} \times \text{Production}_{t-1} \times \text{ReductionSchedule}_t \text{ Eq 220-2}$$

Where:

$\text{CarbonIntensityAllocationBaseline}$ = carbon intensity baseline determined pursuant to subsection (1)(b) of this section

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

$\text{ReductionSchedule}_t$ = reduction percentage corresponding to the compliance period for emissions year t , as provided in subsection (2)(a) of this section

t = Emissions year for which the allocation occurs

$$\text{TrueUp}_t \text{ (MT CO}_2\text{e)} = (\text{CarbonIntensityAllocationBaseline} \times \text{Production}_t \times \text{ReductionSchedule}_t) - \text{InitialNoCostAllowances}_t \text{ Eq 220-3}$$

Where:

$\text{CarbonIntensityAllocationBaseline}$ = 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 subsection (1)(a)(ii) of this section

$\text{ReductionSchedule}_t$ = reduction percentage corresponding to the compliance period for emissions year t , as provided in subsection (2)(a) of this section

$\text{InitialNoCostAllowances}_t$ = determined according to Eq 220-2

t = Emissions year for which the allocation occurs

- (i) The true up calculation will be done after receipt and verification of an EITE facility's production as described in WAC 173-441-085. If the result of the calculation in Equation 220-3 is greater than zero, the resulting number of allowances will be allocated to the applicable EITE facility. Allowances allocated to facilities for this purpose will be from future vintages.

- (ii) If the result of the calculation in Equation 220-3 are negative the resulting number of allowances will be subtracted from the next allocation of allowances in the next emission year.
 - (iii) If the results of the calculation in Equation 220-3 are 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.

$$\text{NoCostAllowances}_t (\text{MT CO}_2\text{e}) = \frac{\text{Mass-based allocation baseline} \times \text{ReductionSchedule}_t}{\text{Eq 220-4}}$$

Where:

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

ReductionSchedule_t = reduction percentage corresponding to the compliance period for the given emissions year, as provided in subsection (2)(a) of this section

- (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 WAC 173-446-240, if applicable.
 - (ii) Prior to the beginning of either the second, third, or subsequent compliance periods, Ecology may make an upward adjustment in the next compliance period's reduction schedule for an EITE facility based on the facility's demonstration to Ecology that additional reductions in carbon intensity or mass emissions are not technically or economically feasible. Ecology may not adjust the reduction schedule above the first compliance period reduction schedule. Owners or operators of any EITE facility that wish to have an upward adjustment of their reduction schedule must submit the following information to Ecology electronically in a format specified by Ecology. The information must be submitted by March 31 of the year prior to the start of the next compliance period in which the facility wishes to have an upward adjustment under this subsection. Ecology will make a determination on adjustments based on information contained in the facility's submission and information listed in (1)(b)(i) of this section. The submission must include at least one of the following:
 - (A) Information describing changes at the facility to the manufacturing process that have a material impact on emissions and data showing

a significant change in the emissions use or emissions attributable to the manufacture of an individual good or goods at the facility.

- (B) Information showing significant changes to the EITE facility's external competitive environment that result in a significant increase in leakage risk.
- (C) Data showing the facility's carbon intensity has been materially affected due to abnormal operating periods so that these abnormal operating periods are either excluded or otherwise considered in the establishment of the compliance period carbon intensity benchmarks.
- (D) Ecology may allocate additional no cost allowances to a facility with a primary North American Industry Classification System code beginning with 3364 reported under WAC 173-441 that is using a mass-based allocation baseline in order to accommodate an increase in production that increases its emissions above the baseline on a basis equivalent in principle to those awarded to entities utilizing a carbon intensity allocation baseline. Owners or operators of an EITE facility that 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 31 of the year following the emissions year in 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 (1)(b)(i) of this section.
 - (I) Data from the facility showing an increase in production that increases its emissions above baseline.
 - (II) Projected production data if the facility wishes to be allocated ongoing additional no cost allowances.
- (E) Ecology will withhold or withdraw the relevant share of no cost allowances allocated to a facility that ceases production in the state and becomes a closed facility. Any allowances withheld or withdrawn under this subsection must be transferred to the emissions containment reserve.
- (F) A facility that curtails all production and becomes a curtailed facility may retain no cost allowances allocated to the facility, but the allowances cannot be traded, sold, or transferred and the facility is still subject to the emission reduction requirements specified in this section. An owner or operator of a curtailed

facility may transfer the allowances to a new operator of the facility that will be operated under the same North American industry classification system code(s). If the curtailed facility becomes a closed facility, then all unused allowances will be transferred to the emissions containment reserve. A curtailed facility is not eligible to receive free allowances during a period of curtailment. Any allowances withheld or withdrawn under this subsection must be transferred to the emissions containment reserve.

- (e) An EITE facility must continue to be in compliance with Chapter 173-441 WAC and this chapter to continue receiving no cost allowances.

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

- (1) **Total no cost allowances allocated to electric utilities.** Allowances allocated to electrical utilities for a compliance period are based on the cost burden effect of the program. Ecology will use the following method to determine how cost burden and its effect will be used to allocate allowances to each electric utility for each emissions year.
 - (a) Ecology will use utility-specific forecasts that provide retail electric load.
 - (b) Ecology will determine the generation resource fuel type forecasted to be used to provide retail electric load for a utility for the compliance period. This determination will be based on the following sources, in the order necessary to most accurately determine the resource mix that will be used by that electric utility to comply with the clean energy transformation act, RCW 19.405.
 - (i) The clean energy implementation plan for that utility that is approved and submitted pursuant to chapter 19.405 RCW, the Washington clean energy transformation act.
 - (ii) An approved integrated resource plan, or supporting materials for that plan, that is consistent with or used for the clean energy implementation plan.
 - (iii) Another source that is consistent with a forecast approved by the appropriate governing board or the utilities and transportation commission of each utility's supply and demand.
 - (c) Ecology will use the following emission factors to determine the emissions associated with the projected generation mix.
 - (i) For generation that is projected to be served by natural gas the factor will be XXXX per MWh.

- (ii) For generation that is projected be served by coal the factor will be XXX per MWh, unless that generation is coal transition power as defined in RCW 80.80.010 in which case the factor is zero.
- (iii) For generation identified as a non-emitting or a renewable resource in the clean energy implementation plan, use an emission factor of zero.
- (iv) For any generation from which the fuel type source is unknown or unknowable, and for unspecified market purchases, use the unspecified emission factor using the procedures identified in WAC 173-444-040.

(d) The cost burden effect from the emissions for each utility will be calculated according to equation 230-1. The resulting total emissions represents the cost burden effect for the utility.

$$Cost\ Burden\ Effect = (Gen_{NG} \times EF_{NG}) + (Gen_{Coal} \times EF_{Coal}) + Gen_{RE} \times 0 + Gen_{Other} \times EF_{Other} \quad Eq\ 230-1$$

Where:

Gen = Generation of natural gas (NG), coal, and non-emitting and renewable resource (NE, RE), and remaining generation

EF = Emission factor for natural gas (NG), coal, and unspecified electricity

(e) One allowance will be allocated for each metric ton of emissions of the cost burden effect for each electric utility for each emissions year as projected through this process.

- (2) 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 1/3 of one percent (0.33%) of the total program budget for each year as provided in Table 210-1.
- (3) If a facility is identified by Ecology as EITE under Chapter 173-446A WAC, unless allowances have been otherwise allocated for electricity-related emissions to the facility under WAC 173-446-220 or to a consumer-owned utility under this section, 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, consistent with and only if the methods in (2) above have not already accomplished this.
- (4) 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; and

- (b) The contract was in effect as of July 25, 2021, and expires no later than the end of the first compliance period.
- (5) Allowance consignment. Allowances allocated at no cost to consumer-owned and investor-owned electric utilities may be consigned to auction for the benefit of ratepayers, deposited for compliance, or a combination of both. The benefits of all allowances consigned to auction must be used by consumer-owned and investor-owned electric utilities for the benefit of ratepayers, with the first priority the mitigation of any rate impacts to low-income customers.

WAC 173-446-240 Distribution of allowances to natural gas utilities.

- (1) **Allocation baselines for suppliers of natural gas.** Use the following data source and methods to facilitate the allocation of no cost allowances to suppliers of natural gas.
 - (a) Ecology will assign an allocation baseline to each supplier of natural gas 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 supplier of natural gas's allocation baseline.
 - (b) A supplier of natural gas that is a covered party 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 supplier of natural gas that becomes a covered party under WAC 173-446-030(1) or WAC 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 they become a covered reporter 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 supplier of natural gas 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 suppliers of natural gas for a given emissions year.
- (a) Emissions years 2023 through 2030.
 - (i) The suppliers of natural gas's total no cost allowances for emissions year 2023 is equal to ninety three percent (93%) of their allocation baseline.
 - (ii) The suppliers of natural gas's total no cost allowances for 2024 through 2030 decreases annually relative to the previous year by an additional seven percent (7%) of their allocation baseline.
 - (b) Emissions years 2031 through 2050.
 - (i) The suppliers of natural gas's total no cost allowances for emissions year 2031 is equal to their 2030 total program allowance budget reduced by an additional two and three tenths percent (2.3%) of their allocation baseline.
 - (ii) The suppliers of natural gas's total no cost allowances for 2032 through 2050 decreases annually relative to the previous year by an additional two and three tenths percent (2.3%) of their allocation baseline.
 - (c) A supplier of natural gas 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 consigned to auction for the benefit of customers.** Use the following method to determine how to allocate the no cost allowances specified in subsection (2) of this section for each supplier of natural gas.
- (a) No cost allowances must be consigned to auction for the benefit of customers, including at a minimum eliminating any additional cost burden to low-income customers from the implementation of this chapter according to X.
 - (b) Sixty-five percent (65%) of the supplier of natural gas's no costs allowances specified in subsection (2) of this section must be consigned to auction for the benefit of customers for emissions year 2023. The percentage of no cost allowances consigned to auction for the benefit of customers is increased five percent (5%) each emissions year until one hundred percent (100%) of no cost allowances are consigned to auction for the benefit of customers beginning with emissions year 2030.
 - (c) All no cost allowances for the supplier of natural gas specified in subsection (2) of this section that are not consigned to auction in subsection (3)(b) of this section must be deposited in the supplier of natural gas's holding account.

WAC 173-446-250 Adjustments to allowance budget.

- (1) The total pool of allowances available to registered entities through the allowance budget established in WAC 173-446-210, through the auction process in WAC 173-446-300, and through other means may be modified using the methods and for the reasons identified in this section.
- (2) **Methods for reducing allowances from the allowance budget.** When Ecology is required or elects to remove and retire allowances from the total allowance pool, Ecology will do so using the methods listed below in the following order:
 - (a) Remove and retire allowances from the pool of allowances that have been left unsold at auction and are available for reintroduction to auction pursuant to WAC 173-446-300(5).
 - (b) Reduce the number of allowances from the next year's planned annual allowance budget, by removing and retiring a portion of that planned allowance total.
 - (c) Remove and retire allowances from being offered for sale at a subsequent auction that is at least 90 days from the time of a determination that this option will be chosen.
- (3) **Adjustments for EITE actual production.** The following method will be used to update the pool of available allowances based on the actual production of each EITE facility for each emission year.
 - (i) The calculation to determine allowance pool adjustment is the sum of all the $TrueUp_t$ allowances calculated according to Eq 220-3 for all EITE facilities receiving no cost allowances during a given year:
$$\text{Allowance adjustment (MT CO}_2\text{e)} = \sum_{t=1} TrueUp_t \text{ Eq 250-1}$$

Where:
 $TrueUp_t$ = determined according to Eq 220-3
 t = emissions year for which the allocation occurs
 n = total EITE facilities receiving no cost allowances in emissions year t
 - (ii) If the result of the calculation in Equation 250-1 is greater than zero, then additional allowances will be added to the pool of available allowances .
 - (iii) If the result of the calculation in Equation 250-1 is negative the resulting number of allowances will be subtracted from the pool of available allowances using the methods in . subsection (2).
 - (iv) If the result of the calculation in Equation 250-1 is zero, no further action will be taken.
- (4) **Adjustments for the use of offsets as compliance instruments.** Ecology will use the following process to remove and retire allowances from the total pool of 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 February 15 of each year.
 - (i) The calculation to determine the applicable number of offset credits is as follows:
$$\text{Offset credits used} = \text{Offsets} - \text{Invalidations} + \text{Reversals (Eq 250-2)}$$

Where:

Commented [CB21]: This is not needed, rather Ecology should set program caps taking into account offset limits

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

Invalidations = number of offset credits invalidated by Ecology that were used in the prior year (if any)

Reversals = number of forestry offset credits moved from the forest buffer account and used for the purposes of unintentional reversal in the prior year (if any)

- (ii) If the number of offset credits calculated by Equation 250-2 is greater than zero, the total pool of allowances will be reduced using the methods in subsection (2).

(5) **Adjustments to ensure consistency with proportional GHG emission limits.** To ensure that the total pool of allowances remains consistent with the annual allowance budgets established in WAC 17-446-210 and the requirements of RCW 70A.65.060 and 70A.65.070, Ecology may take the following actions:

- (a) Reduce the total pool of program allowances by removing and retiring allowances using the methods in subsection (2) of this section 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 based on the proportion of covered emissions in the program relative to total statewide greenhouse gas emissions.
- (b) This determination will be made within 2 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).
- (c) 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 no further action will be taken.

(6) **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 through aggregation or other means, or,
 - (C) Have through some other means received approval from Ecology .
 - (iv) Have associated contract or settlement documentation demonstrating the sale to and purchase of the renewable energy credits associated with the generation of the electricity to the voluntary renewable electricity end-user or entity purchasing on behalf of the end-user.

Commented [CB22]: This paragraph should include a requirement for public process to evaluate progress toward GHG limits, and any recommendation to adjust program budgets, as part of the preparation of the report to the legislature.

- (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 RCW 19.405, 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 attestation:
 - (i) Submit a signed attestation to Ecology as follows: “I certify under penalty of perjury of 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.”
 - (ii) Submit a signed attestation to Ecology as follows: “I understand I am voluntarily participating in the Washington State Greenhouse Gas Cap-and-Invest Program under RCW 70A.65 and WAC 173-446, 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.”
- (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 pro-rated among all eligible generation.
- (f) Allowance retirement. The number of allowances retired from the voluntary renewable electricity reserve account for eligible generation in a given year are calculated as follows:

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

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 CO₂e emissions factor for unspecified power, based on the methods provided in WAC 441- XXX.

- (g) Excess allowance. A surplus of allowances in the Voluntary Electricity Reserve Account will be addressed in two ways.
 - (i) If not all allowances allocated to the reserve account from an allowance budget year are retired, they will be held in the reserve account and available for retirement in subsequent budget years.
 - (ii) If the Voluntary Electricity Reserve Account surplus 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 reduce the surplus of allowances in the reserve account, using the methods identified in subsection (2) of this section.

ALLOWANCE AUCTIONS

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

- (1) Each year starting in 2023, Ecology shall submit allowances for the purposes of an auction 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 power entities and natural gas utilities as follows.
 - (i) During the first compliance period, electric utilities may choose whether or not to consign no cost allowances to auction, and if so, how many allowances to consign. All proceeds from the auction of allowances consigned by electric power entities will be used for the benefit of ratepayers.
 - (ii) Natural gas utilities must consign a portion of their no cost allowances to auction. All proceeds from the auction of allowances consigned by natural gas utilities shall be used for the benefit of customers, including at a minimum eliminating any additional cost burden to low-income customers from the implementation of the Climate Commitment Act. The portion of no cost allowances natural gas utilities must consign to auction is:
 - (A) In 2023, 65 percent of their no cost allowances

- (B) In 2024, 70 percent of their no cost allowances
- (C) In 2025, 75 percent of their no cost allowances
- (D) In 2026, 80 percent of their no cost allowances
- (E) In 2027, 85 percent of their no cost allowances
- (F) In 2028, 90 percent of their no cost allowances
- (G) In 2029, 95 percent of their no cost allowances
- (H) In 2030, 100 percent of their no cost allowances

- (3) At each auction, Ecology shall submit ~~one quarter the percentage of current and prior vintage allowances that must be consigned to auction from the relevant annual program budget for auction that Ecology considers appropriate.~~ Ecology shall additionally submit any voluntarily consigned allowances and any allowances released from the emission containment reserve for auction.
- (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 offered for sale in the subsequent auction.
- (5) If, at the end of an auction, any of the allowances submitted to auction by Ecology remain unsold, Ecology shall hold them for submittal in a subsequent auction as the settlement price for allowances has been above the auction floor price for two auctions. If the allowances remain unsold for 24 months, Ecology shall place them in the emissions containment reserve.

Commented [CB23]: Ecology should establish in rule the minimum quantity of allowances that will be made available at each quarterly auction. This amount should be equal to 1/4 of the annual allowances designated for auctioned..

WAC 173-446-310 Public Notice

- (1) At least 60 days before an auction, Ecology shall provide notice of the auction to the Environmental Justice Council ~~on its website and via email to registered entities and to the public in the manner Ecology considers appropriate,~~ setting out the following information:
 - (a) The day on which, and time period during which, bidding in the auction or sale may take place.
 - (b) The location or internet address at which the auction or sale will be held.
 - (c) A summary of the requirements of this rule relating to the auction or sale.
 - (d) A summary of the auction process.
 - (e) For each allowance being offered for sale at the auction, the vintage year, if any, of the allowance, and
 - (f) The number of allowances of each vintage year being offered for sale at the auction.
- (2) Subject to subsection (3), Ecology may, ~~at any time up until 30 days~~ after providing a notice under subsection (1), change the information included in the notice by providing notice of the change ~~in such manner as Ecology considers appropriate, on its website and via email to registered entities.~~
- (3) The day on which bidding in the auction or sale may take place may be changed by a maximum of four business days, which four business days may be either before or after the day specified in the original notice of the auction.
- (4) Subject to subsections (5) and (6), if the day on which bidding in the auction may take place is changed, all requirements under WAC 173-446 in respect of which there is a time limit determined in relation to the day on which bidding takes place shall be, as of the day on which the notice of the change is provided by Ecology, determined in relation to the new day as specified in the notice of change.

- (5) Subsection (4) does not apply with respect to a requirement if, before the day on which Ecology provides a notice of a change, the time limit in respect of the requirement expired.
- (6) Despite subsection (4), if a registered entity has given a bid guarantee in accordance with WAC 173-446-325 for the purpose of bidding in an auction and the day of the auction is subsequently changed, the registered entity is not required to provide a new bid guarantee that is valid for at least 26 days following the revised day of the auction.

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 days before the day of the auction, update any information required to be updated as a condition of the participant's registration.
 - (b) No later than 30 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.
 - (v) The form of bid guarantee to be given.
 - (c) No later than 12 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 days before the day of an auction, a Cap-and-Invest Consultant or Advisor advising on bidding strategy must provide to Ecology the following information:
 - (a) Names of the registered entities 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), upon receiving an application from a registered entity that meets the requirements set out in subsection (1), 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).
 - (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 in the form of a wire transfer that has been submitted by the registered entity 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 5 days any additional information concerning its participation in the auction.

Commented [CB24]: This term should be defined

WAC 173-446-317 Auctions - Prohibited Actions

- (1) To prevent bidder collusion and minimize the potential for market manipulation, a registered entity registered to participate in an auction may not release or disclose any bidding information including, but not limited to:
 - (a) Intent to participate or refrain from participating in an auction
 - (b) Auction approval status
 - (c) Intent to bid
 - (d) Bidding strategy
 - (e) Bid price or bid quantity
 - (f) Information on the bid guarantee provided to the financial administrator
- (2) No party shall coordinate the bidding strategy of more than one auction participant.
- (3) Any registered entity requesting permission to participate in an auction or participating in an auction must provide Ecology on request and within 5 days any additional information concerning its participation in the auction.

WAC 173-446-320 Suspension and revocation of registration

- (1) Ecology may revoke permission to bid in an auction if the registered entity has:
 - (a) Provided false or misleading facts;
 - (b) Withheld material information that could influence Ecology's decision regarding registration for the auction;
 - (c) Violated any part of the auction rules;
 - (d) Violated registration requirements;
 - (e) Coordinated bidding strategy of more than one auction participant in violation of WAC 173-446-317(2); or
 - (f) Disclosed auction-related information in violation of WAC 173-446-317(1).

- (2) The restrictions on disclosures in WAC 173-446-317 do not apply to a disclosure between registered entities who are members of the same direct corporate association.
- (3) A registered entity is exempt from the prohibition on coordinating bidding strategies in WAC 173-446-317(2) if the coordination is with other registered entities with whom the registered entity is in a direct corporate association.
- (4) If any of the information provided by a registered entity under WAC 173-446-120 changes during the period beginning 39 days before the auction and ending on the day of the auction, the person is prohibited from bidding in the auction.

WAC 173-446-325 Bid guarantee

- (1) Each registered entity must provide a bid guarantee for the purpose of bidding in an auction. The bid guarantee must meet the following criteria:
 - (a) It must be in US dollars.
 - (b) It must be valid for at least 26 days following the day of the auction or sale.
 - (c) It must be one or a combination of the following and must be given in a form and manner approved by Ecology:
 - (i) Cash in the form of a wire transfer.
 - (ii) An irrevocable letter of credit; or
 - (iii) A bond.
 - (d) All bid guarantees must be in a form that may be accepted by the financial services administrator consistent with U.S. banking laws and bank practices.
 - (i) If the bid guarantee is a wire transfer, it must be deposited in an escrow account of the financial services administrator or of the institution indicated by the financial services administrator.
 - (ii) If the bid guarantee is an irrevocable letter of credit,
 - (A) it must be made payable to the financial services administrator, and
 - (B) it must be payable within three business days of a payment request.
 - (e) The bid guarantee must be for an amount that is greater than or equal to the registered entity's proposed maximum bid value, as determined under subsection (2).
- (2) The registered entity's proposed maximum bid value for an auction is determined as follows:
 - (a) For each bid price proposed by the registered entity, multiply the bid price by the number of allowances that the registered entity proposes to purchase at that bid price or at a higher bid price.
 - (b) The highest value calculated under subsection (a) is the proposed maximum bid value.

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 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 4 percent of the allowances available.
- (3) ~~A general market participant that is not a member of a direct corporate association may not own in aggregate more than 10 percent of the total allowances issued in a calendar year.~~
- (4) For purposes of auction purchase limits, all members of a direct corporate association are considered to be a single party subject to the purchase limits in (1), (2), and (3). A registered entity that is a member of a direct corporate association shall ensure that the purchase limit set out in subsection (1) is allocated among the members of the direct corporate association.
- (5) If the direct corporate association mentioned in subsection (4) includes a general market participant, the allocation under subsection (4) must be carried out in such a manner as to ensure the rule set out in subsection (6) is also complied with.
- (6) A general market participant that is a member of a direct corporate association shall ensure that the purchase limits set out in subsections (2) and (3) are allocated among all members of the direct corporate association who are general market participants.
- (7) 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.

Commented [CB25]: This is a holding limit, not an auction purchase limit, and different than the holding limit established elsewhere in the rule. The WCI jurisdictions do not have separate holding limits for these participants.

WAC 173-446 335 Auction floor price and Auction ceiling price

- (1) The auction floor price for 2023 shall be ~~xxx.~~
- (2) The auction floor price for a year after 2023 shall be the auction floor price for the prior calendar year increased annually by 5 percent plus the rate of inflation as measured by the most recently available twelve months of the Consumer Price Index for All Urban Consumers.
- (3) Beginning in 2023, on the first business day in December of each year, Ecology shall announce the floor price for the next year.
- (4) ~~The auction ceiling price shall be x for 2023.~~
- (5) The auction ceiling price for a year after 2023 shall be the auction ceiling price for the prior calendar year increased annually by 5 percent plus the rate of inflation as measured by the most recently available twelve months of the Consumer Price Index for All Urban Consumers.
- (6) Beginning in 2023, on the first business day in December of each year, Ecology shall announce the ceiling price for the next year.

Commented [CB26]: This should be the 2023 WCI auction price floor.

Commented [CB27]: There is no need for ceiling prices. Entities won't bid above PCR tier 1 price.

WAC 173-446-340 Emissions containment reserve trigger price

- (1) The emissions containment reserve trigger price for 2023 shall be ~~xxx.~~
- (2) The emissions containment reserve trigger price for a year after 2023 shall be the emissions containment trigger price for the prior calendar year increased annually by 5 percent plus the rate of inflation as measured by the most recently available twelve months of the Consumer Price Index for All Urban Consumers.

Commented [CB28]: This price should only be slightly higher than the auction reserve trigger price.

- (3) Beginning in 2023, on the first business day in December of each year, Ecology shall announce the emissions containment trigger price for the next year.

WAC 173-446-345 Administration of Auction: Lots

Ecology shall divide allowances that are to be auctioned into lots in accordance with the following rules:

- (1) Each lot, other than the final lot for each vintage, shall consist of 1,000 allowances.
- (2) The final lot of each vintage may consist of fewer than 1,000 allowances if fewer than 1,000 allowances remain once all other allowances have been divided into lots of 1,000.
- (3) Each lot must consist of only one vintage of allowances.

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 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 or sale.
- (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 (4), 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.

WAC 173-446-353 Determination of actual maximum bid value

- (1) Before accepting any bids, Ecology shall determine whether each registered entity's actual maximum bid value, as determined under subsection (2), is greater than the registered entity's bid guarantee.
- (2) The registered entity's actual maximum bid value is determined as follows:
 - (a) For each bid price included in the registered entity's bids, multiply the bid price by the number of allowances that the registered entity proposed to purchase at that bid price or at a higher bid price.
 - (b) The highest value calculated under subsection (a) is the actual maximum bid value.

WAC 173-446-355 Maximum bid value in excess of bid guarantee

- (1) If the actual maximum bid value of a registered entity's bids exceeds the value of the registered entity's bid guarantee, Ecology shall remove from the registered entity's bids enough lots such that the remaining bids would not result in the actual maximum bid value exceeding the value of the bid guarantee.

- (2) If Ecology has removed lots under subsection (1), each removed lot of allowances shall be considered as a new bid at each valid bid price in descending order, between
 - (a) the bid price at which the actual maximum bid value was greater than the registered entity's bid guarantee; and
 - (b) the lowest bid price.
- (3) For the purposes of subsection (2), a bid price is a valid bid price if that registered entity's actual maximum bid value at that bid price would not exceed the value of that participant's bid guarantee or the registered entity's holding limit or purchase limit.
- (4) The registered entity is deemed to bid on the removed lots at the first valid bid price between the prices mentioned in subsections (2) (a) and (b) that would result in the registered entity's actual maximum bid value being less than or equal to the value of the registered entity's bid guarantee.
- (5) If no valid bid price between the prices mentioned in subsections (2) (a) and (b) would result in a bid with an actual maximum bid value being less than or equal to the value of the registered entity's bid guarantee, Ecology shall reject the removed lot.

WAC 173-446-357 Acceptance of bids

- (1) No bid price that is below the auction floor price shall be accepted.
- (2) Ecology shall accept bids that have not been rejected, starting with the highest bid price and continuing in decreasing order by bid price until no more acceptable bids remain or no more of the allowances described in the notice of the auction are available.
- (3) If the demand for allowances results in an auction clearing price that is lower than the emissions containment reserve trigger price [for two consecutive auctions](#), Ecology shall withhold up to 10 percent of the allowances submitted by Ecology for auction as needed until either the emissions containment reserve trigger price becomes the auction settlement price or the number of allowances Ecology may withhold is exhausted. Allowances withheld from the auction under this subsection shall be placed in the emissions containment reserve.
- (4) Subsection (5) applies if more than one bid has been submitted at the lowest accepted bid price for allowances.
- (5) If the total number of allowances bid upon at a bid price mentioned in subsection (4) is greater than the number of allowances available at that bid price, Ecology shall divide the remaining allowances available at that bid price between the registered entities who submitted the bids at that bid price, in accordance with the following steps:
 - (a) Divide the number of allowances bid upon by each registered entity at that bid price by the total number of allowances that were bid upon at that bid price. This is the registered entity's share of the allowances.
 - (b) Multiply each participant's share determined under paragraph (5)(a) by the number of allowances remaining, rounding down to the nearest whole number. This is the number of allowances to be distributed to the registered entity.

- (c) If any allowances remain after carrying out the steps under paragraphs (a) and (b), distribute the remaining allowances as follows:
 - (i) Assign a random number to each registered entity who submitted a bid at the applicable lowest bid price.
 - (ii) Distribute one allowance at a time to the registered entities in ascending order by the random number assigned, until no more of the allowances available at that bid price remain.
- (6) Ecology shall distribute each allowance for which a bid has been accepted. The price to be paid by all bidders for each allowance is the lowest accepted bid price, which is also known as the auction settlement price.

Commented [CB29]: Ecology should better explain what 'accepted bid price' means – it is not that the bid met criteria for price floor or bid guarantee, but rather that the bid was satisfied so that the bidder receives allowances. .

WAC 173-446-360 Payment for purchases

- (1) A registered entity who has been notified by Ecology that one or more bids by the registered entity have been successful in an auction shall pay, in the form and manner approved by Ecology, the amount set out in the notice to the financial services administrator no later than seven days after receiving the notice.
- (2) If the registered entity provided a wire transfer as its bid guarantee, the wire transfer must be used to satisfy the amount payable under subsection (1).
- (3) If the amount of the wire transfer is not sufficient to satisfy the whole amount payable under subsection (1) and the registered entity does not pay the whole amount by the deadline set out in that subsection, the irrevocable letter of credit shall be used to satisfy the balance.
- (4) If the registered entity did not provide a wire transfer as its bid guarantee and does not pay the whole amount payable under subsection (1) by the deadline set out in that subsection, the irrevocable letter of credit shall be used to satisfy the amount.
- (5) Ecology shall transfer the allowances paid for under subsections (1) to (4) to the registered entity's holding account.
- (6) The financial services administrator shall return any unused portions of a bid guarantee.
- (7) Despite subsection (5), Ecology may transfer allowances purchased at an auction to a participant's compliance account if,
 - (a) the allowances are current or past year vintage allowances or allowances with no vintage year; and
 - (b) holding limits would not apply to the allowances once they are transferred to the compliance account.

WAC 173-446-362 Summary of auction

- (1) Ecology shall make available to the public, in a manner that Ecology considers appropriate, a written summary of each auction, setting out the following information:
 - (a) The auction settlement price.
 - (b) The registered entities to whom Ecology gave permission to participate in the auction.
 - (c) Details regarding the number of allowances sold, the number of each vintage year of allowances sold, and a description of how the allowances

- were distributed among the registered entities who submitted bids, without identifying which registered entities purchased the allowances.
- (2) The summary shall be made available no later than 45 days following the conclusion of the auction.

WAC 173-446-365 Auction of future year allowances

- (1) Two times per year, Ecology shall hold parallel auctions of future vintage allowances.
- (2) Auctions of future vintage allowances shall follow the same procedure set out in WAC 173-446-310 through -362.
- (3) At each auction of future allowances, Ecology will consign to auction 5 percent of the allowances for the year that is three years later than the auction year.
- (4) Auctions for future vintage allowances shall occur at the same time, with bidding during the same bidding window, as auctions for current vintage and past vintage allowances. However, bidders must provide separate bid guarantees for future vintage allowances and must provide separate bids for future vintage allowances. Bidders may not include in one bid future allowances mixed with current and past vintage allowances.

Commented [CB30]: Suggest this be increase to 10% to match WCI and facilitate joint auction once linkage occurs.

WAC 173-446-370 Allowance Price Containment Reserve Account

- (1) Ecology shall maintain an allowance price containment reserve account. For each year of the first compliance period, Ecology shall place 5% of the allowance in the annual allowance budget into the allowance price containment reserve account.
- (2) By January 15 of each year of subsequent compliance periods, Ecology shall determine the number of allowances to be placed in the allowance price containment reserve account.
- (2) Ecology shall hold separate auctions for allowances from the allowance price containment reserve 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.
- (3) ~~Ecology shall also hold separate auctions for allowances from the allowance price containment reserve when new covered and opt-in entities enter the program and allowances from the emissions containment reserve account are exhausted.~~
- (4) Only covered entities and opt-in entities may participate in allowance price containment reserve auctions.
- (5) Allowance price containment reserve auctions shall follow the procedures described in WAC 173-446-310 through -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 = xxx for 2023
 - (ii) Tier 2 = XXX for 2023

Commented [CB31]: Ecology should move allowances from the emissions containment reserve to the price containment reserve if Tier 2 of the price containment reserve is accessed.

Commented [CB32]: Makes no sense, but will it happen?

Commented [CB33]: These prices should match WCI.

- (iii) The allowance price containment reserve tier prices for a year after 2023 shall be the allowance price containment tier prices for the prior calendar year increased annually by 5 percent plus the rate of inflation as measured by the most recently available twelve months of the Consumer Price Index for All Urban Consumers.
- (iv) Beginning in 2023, on the first business day in December of each year, Ecology shall announce the allowance price containment tier prices for the next year.
- (c) Bidders in an allowance price containment reserve auction may submit multiple bids. Each bid must be at either the Tier 1 price or the Tier 2 price.
- (d) Tier 1 allowances shall be sold first, then Tier 2 allowances. The auction of Tier 1 allowances shall continue until all Tier 1 allowances are sold or all bids are filled, whichever occurs first. 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:
 - (a) Multiply the Tier 1 bid price by the total number of allowances the registered entity proposed to purchase at that bid price.
 - (b) Multiply the Tier 2 bid price by the total number of allowances the registered entity proposed to purchase at that bid price.
 - (c) The registered entity's actual maximum bid value is the sum of the results obtained in (a) added to the results obtained in (b).
- (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.

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 2 percent of the annual allowance budgets for 2023 through 2026.
 - (b) Allowances submitted by Ecology for auction that remain unsold after being offered for sale for 24 months in current and past year vintage allowance auctions and future vintage allowance auctions.
 - (c) Allowances from EITEs that have been curtailed or closed.
 - (d) Allowances from facilities that fall below the emissions threshold. The number of these allowances must be proportionate to the amount of emissions the facility was previously using.

- (e) 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~~ Into quarterly auctions when new covered and opt-in entities enter the program; and
 - (b) By direct allocation at no cost to new or expanded EITE facilities with emissions greater than 25,000 MT CO₂e per year during the first applicable compliance period. These allowances must be retired by the facility.
- (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 to 362 EXCEPT: only covered entities and opt-in entities may participate in the auctions.~~

Commented [CB34]: Ecology should not hold separate auctions for these entities. Simply include these allowances in the quarterly auctions

WAC 173-446-380 Price Ceiling Units

- (1) In the event that no allowances remain in the allowance price containment reserve, Ecology shall issue price ceiling units for sale at the price ceiling to covered and opt-in entities that do not have sufficient eligible compliance instruments in their holding and compliance accounts to meet their compliance obligations for the next compliance deadline.
- (2) Each price ceiling unit covers the emission of 1 metric ton of CO₂e.
- (3) Only covered and opt-in entities that do not have sufficient eligible compliance instruments in their holding and compliance accounts to meet their requirements for the next compliance deadline may purchase price ceiling units. These covered and opt-in entities may purchase only the number of price ceiling units necessary to meet their compliance obligations for the next compliance deadline.

WAC 173-446-385 Price Ceiling Unit Sales

- (1) Price ceiling unit sales shall only be held between the last Allowance Price Containment Reserve Sale before a compliance deadline and the compliance 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 requests a price ceiling unit sale.
- (4) In a request for a price ceiling unit sale, the covered entity or opt-in entity must provide an accounting to Ecology showing that it has insufficient compliance instruments to meet its compliance obligations for the next compliance deadline. ~~The covered entity or opt-in entity must also demonstrate to Ecology's satisfaction that it tried, but was unable to acquire sufficient compliance instruments to meet its compliance obligations for the immediately upcoming compliance deadline.~~
- (5) Ecology shall review any requests and notify requesters of Ecology's response.

Commented [CB35]: Set at WCI price.

Commented [CB36]: This is unnecessary. . The higher price of price ceiling units will encourage entities to try to acquire less expensive compliance instruments.

- (6) If Ecology agrees to sell price ceiling units, Ecology shall instruct the financial services administrator to begin to accept cash payment for purchases from price ceiling sales no earlier than ten business days after the previous Reserve sale and to cease accepting payments no later than seven days thereafter.
- (7) The financial services administrator will inform Ecology of the amounts of payments received from covered entities no later than one business day after it ceases to accept payments.
- (8) After a sale, Ecology will transfer purchased price ceiling units directly to each purchaser's compliance account for retirement at the next compliance deadline.

COMPLIANCE INSTRUMENT TRANSACTIONS

WAC 173-446-400 Compliance instruments transactions – general information.

- (1) A compliance instrument authorizes a covered entity to emit one metric ton of carbon dioxide equivalent in one calendar year. A compliance instrument does not expire, and may be held or banked. Once ~~used~~ **surrendered and retired for compliance**, a compliance instrument ~~must be retired and cannot be re-~~ used, traded, or transferred again.
- (2) By the end of each compliance period, each covered entity must surrender to Ecology the number of compliance instruments equal to the number of metric tons of carbon dioxide equivalent emitted by the covered entity during the compliance period.
- (3) Allowances may be obtained by direct distribution of no-cost allowances from Ecology, by purchase at auction, or by purchase, trade or transfer from other parties owning allowances.
- (4) Offset credits may be obtained as outlined in WAC 173-446-500.
- (5) A compliance instrument may be traded only among covered entities, opt-in entities, and general market participants registered with Ecology or with an external GHG ETS to which Washington has linked.
- (6) **A covered entity or opt-in entity may only hold compliance instruments for its own use and may not hold compliance instruments on behalf of another party having an interest in or control of the compliance instruments.**
- (7) Only compliance instruments recorded in a holding account may be traded. Once in a compliance account, compliance instruments may not be traded or sold, but may only be transferred to Ecology to cover GHG emissions.

Commented [CB37]: Entity surrenders units, Ecology retires.

Commented [CB38]: Holding should be allowed for others in corporate association

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 linked must follow the procedures outlined below.

- (a) To initiate the transfer, a transferor's account representative must submit to Ecology and to all the transferor's other account representatives a transaction request containing the information outlined in WAC 173-446-430. A second transferor's account representative must submit confirmation of the transaction request to Ecology and to all the transferee's account representatives within 2 days after submission of the original request to Ecology.
 - (b) If the intended transferee wishes to accept the transfer, within three days after receiving confirmation of the transaction request referenced in paragraph (1) above, a transferee's account representative must submit to Ecology and to the transferor confirmation of acceptance of the transfer.
 - (c) At each step in the transaction request, the account representative concerned must attest to holding due authorization to complete the transaction for the registered entity, and that the information contained in the transaction request is true, accurate and complete.
 - (d) The account representatives involved in the transaction must provide Ecology on request and as soon as possible with any additional information concerning the transaction.
- (2) Ecology will transfer the compliance instruments unless:
- (a) The transfer would result in non-compliance with Chapter 70A.65 RCW or Chapter 173-446 WAC;
 - (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.

WAC 173-446-420 Transfers to Ecology – process.

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

- (a) The registered entity's holding account number and its compliance account number; and
 - (b) The quantity, type, and, where applicable, vintage of the compliance instruments to be transferred.
- (2) To initiate a transfer to Ecology, an account representative from the registered entity must submit the transfer request to Ecology and to all the registered entity's other account representatives. One of the other account representatives must confirm the transfer request within two days after its submittal to Ecology.
- (3) Once the transfer has been confirmed, Ecology will send a notice to all the registered entity's account representatives. Unless otherwise indicated by one of the account representatives, or Ecology has serious grounds to believe that a violation under this rule has been committed, Ecology will transfer the compliance instruments from the registered entity's holding account to its compliance account.
- (4) Account representatives who have sent a transfer request for compliance instruments must provide Ecology, on request and as soon as possible, any additional information concerning the transfer.
- (5) When a transaction cannot be completed because of an error or omission in the information included in the request, or because the request does not meet the requirements of this section, or because an account does not contain enough compliance instruments or for any other reason, Ecology will send notice to the parties concerned within 5 working days following the failure to complete the transaction.

WAC 173-446-430 Transaction requests – information required by Ecology.

- (1) Each transaction request must contain the following information:
- (a) The holding account number of the transferor;
 - (b) The holding account number of the transferee;
 - (c) The quantity, type and, where applicable, vintage of the compliance instruments to be traded;
 - (d) The settlement price of each type, and, where applicable, each vintage of compliance instruments, as well as the method used to determine the settlement price; Provided that a registered entity is not required to disclose the settlement price of transferred compliance instruments when the transaction is between related entities or is a bundled transfer;
 - (e) The type of trading agreement, the date of signing of the agreement and the agreed upon trading date;

- (f) Where applicable, all other transactions or products covered by the agreement, a description of those transactions or products, and the name and contact information of the parties involved; and
- (g) The following attestation statement made and signed by the primary account representative or any alternate account representative: “I certify under penalty of perjury under the laws of the State of Washington that I am authorized to make this submission on behalf of the registered entity that owns the compliance instruments held in the account. I certify under penalty of perjury under the laws of the State of Washington that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify under penalty of perjury under the laws of the State of Washington that the statements and information submitted to Ecology are true, accurate, and complete. I consent to the jurisdiction of Washington and its courts for purposes of enforcement of the laws, rules and regulations pertaining to WAC 173-446 and I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

WAC 173-446-440 Compliance instrument transactions – prohibited actions.

- (1) ~~Other than the account representatives and registered cap and trade advisors directly involved in a transaction, no party holding privileged information on a compliance instrument may trade that compliance instrument, disclose the information or recommend that another party trade the compliance instrument,~~ except if the party has reason to believe that the information is known to the public or to the other party in the transaction. However, the party may disclose the information or recommend that another party trade the compliance instrument if the party is required to disclose the information in the course of business, and if nothing leads the 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 paragraph (1) above may use the privileged information in any other way, unless the party has reason to believe that the information is known to the public. In particular, the party may not carry out operations on futures contracts or other derivatives within the meaning of the Commodities Exchange Act, 7 U.S.C. Chapter 1 involving a compliance instrument.
- (3) A party with knowledge of material order information may not carry out or recommend that another party carry out a transaction involving a compliance instrument, or disclose the information to any other party except if:
 - (a) The party has reason to believe the other party is already aware of the information;

Commented [CB39]: This paragraph is mixing different things – sharing of information, initiations of transactions, and recommendations for transactions. Ecology should think clearly about which transactions are prohibited for different people.

- (b) The party must disclose the information in the course of business, and nothing leads the party to believe that it will be used or disclosed in contravention of this section;
 - (c) The party carries out a transaction involving the compliance instrument concerned by the information in order to perform a written obligation that the party contracted before becoming aware of the information; and
 - (d) For the purposes of this section, material order information is any information concerning an order to buy or an order to sell a compliance instrument that could have a major impact on the price of a compliance instrument.
- (4) False or misleading information.
- (a) No party may disclose false or misleading information or information that must be filed pursuant to Chapter 173-446 WAC before it is filed, in order to carry out a transaction, in particular when it could influence the price of a compliance instrument.
 - (b) For the purpose of this section, false or misleading information is any information likely to mislead on an important fact, as well as the simple omission of an important fact; an important fact is any fact that may reasonably be believed to have a significant impact on the price or value of a compliance instrument.

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COMPLIANCE AND ENFORCEMENT

WAC 173-446-600 Compliance obligations.

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

Commented [CB40]: It is not clear what monitoring is referring to.

- (2) All parties participating in the program must provide to Ecology within 14 days any additional information requested by Ecology concerning their participation in the program.
- (3) By November 1 of each year, each covered entity and opt-in entity must transfer to Ecology sufficient compliance instruments of current or former vintage years to cover at least 30% of its covered emissions for the previous calendar year.
- (4) By November 1 of the year following the final year of each compliance period, each covered entity and each opt-in entity must have transferred to Ecology one compliance instrument for each metric ton of covered emissions of carbon dioxide equivalent emitted by that party during the compliance period.
- (5) Compliance instruments to be transferred to Ecology must be in the [covered entity or opt-in covered entity's complying party](#)'s compliance account. Once placed in a compliance account, compliance instruments cannot be removed by anyone except Ecology. Once Ecology has received all compliance instruments from a particular party for a particular compliance period, Ecology will remove and permanently retire all the compliance instruments from that party's compliance account.
- (6) A portion of each covered entity or opt-in entity's compliance obligation may be met by transferring to Ecology offset credits. Each offset credit is worth one metric ton of carbon dioxide equivalent.
 - (a) Unless modified by Ecology by rule as authorized in RCW 70A.65.170(3)(c), for the first compliance period (January 1, 2023 through December 31, 2026), no more than 5 percent of a covered entity's or opt-in entity's compliance obligation may be satisfied by providing Ecology with offset credits.
 - (i) Unless Ecology has linked with an external GHG trading system, all offsets must provide direct environmental benefits to the state.
 - (ii) 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 other 50 percent must be located in a jurisdiction with which Ecology has linked.
 - (b) Unless modified by Ecology by rule as authorized in RCW 70A.65.170(3)(c), For the second compliance period (January 1, 2027 through December 31, 2030), no more than 4 percent of a covered entity's or opt-in entity's compliance obligation may be satisfied by offset credits.
 - (i) Unless Ecology has linked with an external GHG trading system, all offsets must provide direct environmental benefits to the state.
 - (ii) If Ecology has linked to an external GHG trading system, at least 75 percent of any offset credits used by a covered entity or an opt-in entity for compliance must be sourced from offset projects that provide direct environmental benefits in Washington State, unless Ecology determines

there is not a sufficient supply of offsets in Washington to meet offset demand. The other 25 percent ~~must~~ may be located in a jurisdiction with which Ecology has linked.

- (c) Ecology may reduce the limits in (a) and (b) above for a specific covered entity or opt-in entity if Ecology, in consultation with the Environmental Justice Council, determines that the covered or opt-in entity has or is likely to:
 - (i) Contribute substantively to cumulative air pollution burden in an overburdened community as determined by Ecology in consultation with the Environmental Justice Council.
 - (ii) Violate any permits required by any federal, state, or local air pollution control agency where the violation may result in any increase in emissions.
- (d) In addition to the offset credits cited in (a) in this subsection, during the first compliance period, a covered entity or opt-in entity may satisfy up to 3 percent of its compliance obligation using offset credits generated from offset projects on federally recognized tribal land.
- (e) In addition to the offset credits cited in (b) in this subsection, during the second compliance period, a covered entity or opt-in entity may satisfy up to 2 percent of its compliance obligation using offset credits generated from offset projects on federally recognized tribal land.

WAC 173-446-610 Enforcement.

- (1) If a covered or opt-in entity does not submit sufficient compliance instruments to meet its compliance obligation by the specified transfer dates, a penalty of four allowances for every one compliance instrument that is missing must be submitted to Ecology within six months after the compliance deadline.
- (2) When a covered entity or opt-in entity reasonably believes that it will be unable to meet a compliance obligation, the entity shall immediately notify Ecology. Upon receiving notification, Ecology will issue an order requiring the covered or opt-in entity to submit the penalty allowances.
- (3) If a covered entity or opt-in entity fails to submit penalty allowances as required by subsection (1) of this section, Ecology must issue an order or issue a penalty of up to \$10,000 per day per violation, or both, for failure to submit penalty allowances as required by subsection (1) of this section. Each metric ton of CO₂e not covered by a compliance instrument constitutes a separate violation. The order may include a plan and schedule for coming into compliance.
- (4) Ecology may issue a penalty of up to \$50,000 per day per violation if Ecology determines that a registered entity has:

- (a) Provided false or misleading facts;
 - (b) Withheld material information that could influence a decision by Ecology concerning the registered entity's approval to participate in an auction;
 - (c) Violated any part of the auction rules;
 - (d) Violated registration requirements; or
 - (e) Violated any rules regarding the conduct of the auction.
- (5) Except as provided in subsections (3) and (4) of this section, any person that violates the terms of this chapter or an order issued under this chapter incurs a penalty of up to \$10,000 per day per violation for each day that the person does not comply. All penalties under subsections (3) and (4) of this section and this subsection must be deposited into the climate investment account.
- (6) Violators are also subject to the sanctions authorized in Chapter 19.86 RCW, as appropriate.
- (7) Orders and penalties issued under this chapter are appealable to the Pollution Control Hearings Board under Chapter 43.21B RCW.
- (8) For the first compliance period, Ecology may reduce the amount of the penalty by adjusting the monetary amount or the number of penalty allowances not timely provided.

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.