



February 1, 2022

Katie Wolt
Washington Department of Ecology
Air Quality Program
P.O. Box 47600
Olympia, WA 98504-7600
katie.wolt@ecy.wa.gov

Submitted via online public comment form

RE: Environmental Defense Fund comments relating to the proposed rule Chapter 173-446A WAC, Criteria for Emissions-Intensive, Trade-Exposed Industries

Dear Ms. Katie Wolt,

Environmental Defense Fund (EDF) is pleased to submit the following comments on proposed rule Chapter 173-446A WAC, Criteria for Emissions-Intensive, Trade-Exposed (EITE) Industries. EDF is a non-profit, non-governmental, and non-partisan organization that links science, economics, and law to create innovative, equitable, and cost-effective solutions to urgent environmental problems. EDF has over two million members, many of them living in Washington. EDF brings deep expertise to climate policy issues and has long pursued initiatives at the state and national level designed to reduce emissions of climate-altering and health-harming air pollutants.

The passage of the Climate Commitment Act last year solidified Washington state as a national climate leader, making Washington only the second state after California to place a binding, declining limit on greenhouse gas (GHG) emissions across all major sectors of its economy. We deeply appreciate the Department of Ecology's (Ecology) efforts to develop rigorous, effective rules to ensure that all aspects of the CCA's climate commitment are realized. The proposed rule for criteria for EITE industries is an important component of a cap-and-invest program that can minimize the risk of emissions "leaking" to out-of-state facilities—safeguarding against potential shifts of climate pollution to regions without regulation while simultaneously protecting the economic vitality of Washington's communities.

In the proposed rule, criteria for emissions intensity must be based on a true measure of emissions intensity as a measure of emissions per unit of output or value added. The CCA's direct allocation of allowances to EITE facilities serves a specific purpose: avoid leakage of emissions from manufacturing to other locations. To ensure that those direct allocations fulfill their intended purpose, entities must be designated as EITEs based on an assessment of true emissions intensity, not a measure of absolute emissions in emissions per year. The CCA directs Ecology to adopt objective criteria for both emissions intensity and trade exposure for the purpose of identifying EITEs in the second compliance period and subsequent compliance periods. However, as written, the proposed rule does *not* include objective criteria for emissions intensity.

Failing to use a true measure of emissions intensity will also create inconsistencies, both with California's program and potentially with the CCA program rules. In California's program, facilities are classified as emissions-intensive based on weighted average emissions per million dollars of value added. We also note that emissions intensity is accurately defined—using a true measure of emissions intensity—in the draft rule for the CCA program, Chapter 173-446 WAC. It is essential that a true measure of emissions intensity is used consistently across all rules and legislation related to allowance allocations to EITE facilities—this consistency is necessary for proper CCA program functioning and could potentially help facilitate a future linkage with California and Quebec's linked emissions trading system.

EDF appreciates the alignment between the proposed rule's methodology for assessing a facility's trade exposure and the method used in California. We recommend mirroring California's approach to assessing emissions intensity as well. Evidence suggests that this approach, along with California's broader output-based approach to direction allocation to EITE facilities, has been effective at reducing the carbon intensity of the state's economy even while overall GSP has increased.¹ To ensure alignment with California's program, Ecology must at minimum base the assessment of emissions intensity on a measure of intensity instead of a measure of absolute emissions per year. We encourage Ecology to reference the methodology described in the California Air Resources Board's Leakage Analysis.²

Additionally, there should be a process for regular reevaluation of EITE designation for facilities that receive EITE designation that are not otherwise defined as EITEs in statute. This would ensure that designated facilities continue to meet the criteria and that direct allocations of allowances serve their intended purpose: minimizing leakage risk.

We appreciate the inclusion of language specifying that Ecology must consider a facility's location relative to overburdened communities and any recommendations from the Environmental Justice Council when evaluating a petition, and the inclusion of language specifying the Ecology may deny a petition based on this consideration upon a determination that air quality in an overburdened community would be unacceptably impacted. These are important guardrails and we encourage Ecology to work with the Environmental Justice Council to develop guidance for how such considerations might impact a determination.

We appreciate the opportunity to provide comments on the proposed rules for criteria for the designation of EITE industries, and we look forward to continued engagement on the implementation of the Climate Commitment Act.

Respectfully submitted,

Kjellen Belcher
Senior Analyst, U.S. Climate, Environmental Defense Fund

Katelyn Roedner Sutter
Senior Manager, U.S. Climate, Environmental Defense Fund

¹ California Air Resources Board. (2021). California Greenhouse Gas Emissions for 2000 to 2019: Trends of Emissions and Other Indicators. Available at

https://ww3.arb.ca.gov/cc/inventory/pubs/reports/2000_2019/ghg_inventory_trends_00-19.pdf

² California Air Resources Board. (2010). Proposed Regulation to Implement the California Cap-and-Trade Program, Staff Report: Initial Statement of Reasons, Appendix K: Leakage Analysis. Available at

<https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2010/capandtrade10/capv4appk.pdf>