



*We Feed You*

July 15, 2022

Joshua Grice  
Washington Department of Ecology  
Air Quality Program  
P.O Box 47600  
Olympia, WA 98504

RE: Comments on WAC 173-446 Climate Commitment Act Draft Rule

Dear Joshua,

Food Northwest appreciates this opportunity to provide comments on WAC 173-446 Climate Commitment Act Draft Rule. Established in 1914, and headquartered in Portland, Oregon, Food Northwest is a trade association of food manufacturers in Washington, Oregon, and Idaho. Many of our members have facilities in Washington and will be significantly impacted directly or indirectly by the Climate Commitment Act Program. RCW 70A.65.110(6) of the Climate Commitment Act (CCA) classifies food manufacturing as an Emissions-Intensive, Trade-Exposed (EITE) industry. Food processing is the second largest manufacturing sector in Washington.

Food Northwest shares the State's goal to protect and improve the environment, and the need to reduce GHG emissions. In 2009, Food Northwest was the first industry group in the nation to adopt a goal to reduce industry-wide energy intensity by 25% in 10 years and, a total of 50% in 20 years. We are proud that we have been a national leader in this effort. We are currently exploring new and innovative means to reduce greenhouse gas emissions. In addition, our industry is aggressively incorporating sustainability into our business practices and taking actions to become more sustainable. Moreover, through our raw products, food processors are directly linked to the environment. We have been, and will be, impacted by climate change. Responsible stewardship is critical to a sustained food industry.

Food Northwest has specific comments on the following sections of the CCA draft rule:

**WAC 173-446-040. Covered emissions.**

RCW 70A.65.080 exempts CO<sub>2</sub> emissions from the combustion of biomass or biofuels. However, WAC 173-446-040 (3)(a)(i)(C), provides that emissions from the on-site combustion of a fuel product where the fuel product was generated or modified on-site and not purchased in its combusted form from a supplier are covered emissions. Does this paragraph apply only to non-CO<sub>2</sub> GHG emissions, or does it include CO<sub>2</sub> emissions? To be consistent with the statute, it should apply only to non-CO<sub>2</sub> emissions, but this is not clear.

**WAC 173-446-070. Exiting the program.**

**A process for exiting the program is required.**

Granted, it is unlikely that many will be exiting the program any time soon, but an exit process will be needed. For example, does the covered entity apply to change its status from covered entity? What is required? Can an exiting covered entity choose to participate in the program under a different status? What happens if the entity has unused allowances in their account? California's program has an exiting process in Section 95835 (c) – (f) of the Regulation for the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms [https://ww2.arb.ca.gov/sites/default/files/2021-02/ct\\_reg\\_unofficial.pdf](https://ww2.arb.ca.gov/sites/default/files/2021-02/ct_reg_unofficial.pdf).

Additionally, details are needed for the provision in WAC 173-446-070(2)(b), which states that an entity will remain a covered entity if Ecology provides notice at least 12 months before the end of the compliance period that the entity's covered emissions are within 10% of the 25,000 metric ton threshold. How will this determination be made and demonstrated? Is this 10% above the threshold or does it also include 10% below the threshold? How does this provide equity? How can this determination be challenged? What if an entity receives a notice but at the end of the compliance period emissions are actually reduced to the threshold?

**WAC 173-446-220(1)(b). Distribution of allowances to emissions-intensive and trade-exposed entities (EITEs)**

**The process set out in the draft rule to determine each EITE entity's carbon intensity baseline for distribution of allowances is inconsistent with that in the CCA and must be revised.**

As provided in RCW 70A.65.110 (3)(a) of the CCA, the EITE facility's allowance allocation baseline for the first compliance period is equal to its carbon intensity baseline for years 2015 - 2019. RCW 70A.65.110(2)(c)(a) specifies that the EITE entity shall calculate its carbon intensity for the for the distribution of free allowances. By September 15, 2022, each EITE shall submit its carbon intensity for the first compliance period to Ecology and by November 15, 2022, Ecology shall "review and approve" each EITE's baseline carbon intensity. RCW 70A.65.110 (3)(c)(ii). Nowhere does the CCA require Ecology to independently calculate an EITE's carbon intensity and use its own calculation to assign an allocation baseline.

WAC 173-446-220 (1)(b) sets a different process for assigning the allocation baseline whereby Ecology calculates the EITE's carbon intensity using data from multiple sources, adjusting data sets according to Ecology's professional judgement, and using other data sources Ecology deems significant. The CCA directs the EITE and not Ecology to calculate the carbon intensity or mass-based baseline and the rule must be consistent.

**WAC 173-446-220(2)(d). Upward adjustment in the number of no cost allowances.**

**The upward adjustments in the draft rule must be revised consistent with the provisions of the CCA.**

RCW 70A.65.110(3)(f) provides two upward adjustments to an EITE's benchmark: one is discretionary and the other is mandatory. The discretionary adjustment is not available during the first compliance period but can be made prior to a subsequent compliance period. This adjustment is based on a showing by the EITE that additional carbon reductions are not technically or economically feasible and may be based on the facility's best available technology analysis. The mandatory adjustment is specified for three circumstances in RCW 70A.65.110(f)(a), (ii), and (iii):

- (i) A significant change in the emissions use or emissions attributable to the manufacture of an individual good or goods in this state by an emissions-intensive, trade-exposed facility based on a finding by the department that an adjustment is necessary to accommodate for changes in the manufacturing process that have a material impact on emissions;
- (ii) Significant changes to an emissions-intensive, trade-exposed facility's external competitive environment that result in a significant increase in leakage risk; or
- (iii) Abnormal operating periods when an emissions-intensive, trade-exposed facility's carbon intensity has been materially affected so that these abnormal operating periods are either excluded or otherwise considered in the establishment of the compliance period carbon intensity benchmarks.

WAC 173-446-220(2)(d) does not recognize the legislative intent to provide these two separate adjustments, but rather combines them. Request for upward adjustment requires submission of one of (A), (B), or (C) which are the same as the three listed directly above. None of these three submittals has anything to do with economic or technical infeasibility or best available technology analysis.

Food Northwest recommends that Ecology separate the two types of adjustment requests consistent with the CCA. Section (f) also provides that Ecology is to by rule provide for emissions-intensive, trade-exposed facilities to apply for an adjustment. The CCA provides for compliance using best available technology, but the draft rule provides no method to apply for and demonstrate BAT. Ecology will need to develop by rule the use of best available technology as a method for compliance.

#### **WAC 173-446-390. Confidentiality.**

##### **Covered entities should be able to request that specific information be determined confidential.**

Under this section, financial, proprietary, and other market sensitive information submitted to Ecology will be confidential and exempt from public disclosure "as determined by Ecology".

The Greenhouse Gas Reporting Rule, WAC 173-441-150, provides that any person submitting information to Ecology may request that Ecology keep information that is not emissions data confidential as proprietary information. Likewise, the

Washington Clean Air Act, 70A.15.2510, provides that information furnished to or obtained by Ecology, other than ambient air quality data or emissions data, that relates to processes or production or is likely to adversely affect the competitive position of the owner if released to the public or a competitor and the owner so certifies, shall be only for the confidential use of Ecology.

Food processors consider processes and production data proprietary information, as well as other financial information, the release of which could have adverse impacts. Food Northwest urges Ecology to provide for owner request of confidentiality consistent with the Greenhouse Gas Reporting Rule and the Clean Air Act.

RCW 70A.65.005(6) of the CCA states that the legislature intends to create a climate policy that recognizes the special nature of EITEs and that climate policies must be appropriately designed in order to avoid leakage. Free allowances at a reasonable declining rate, a BAT compliance option, access to funding for decarbonization projects, and other flexibilities and incentives will help avoid leakage and preserve the competitiveness of Washington's industries.

These types of policies are particularly important to food processors. The CCA Program will increase the cost of making food in Washington by an industry that is already operating on some of the thinnest margins of any business sector. Washington food companies face significant competition from imported food products as well as domestic food products from areas of the U.S. that lack strict environmental regulations like those in Washington. Recent events have only increased the costs to food processors: Plant closures during the pandemic; expenditures for Covid-19 protective equipment, structures, and processes; supply chain bottlenecks; inability to source food oils due to competition from biofuels; skilled worker shortages; rapidly increasing wages; inflation; crop losses due to heat and drought; and natural gas and transportation fuel cost increases due to global market pressures.

Food is very price sensitive. In fact, a contract can be lost by a mere 1/2-cent per pound increase in price. If we can't prepare food at a competitive price with other states or countries, then grocers, restaurants and other customers will obtain food from somewhere else that is cheaper.

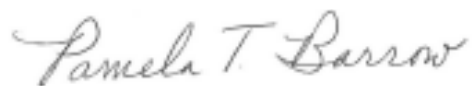
If we can't compete, we will have to make cuts in production and jobs or may cease production in Washington altogether. Leakage of production to Idaho is a real risk

for food manufacturing as many Washington companies also have facilities in Idaho where there is little chance of carbon pricing.

Washington's rural communities will be particularly impacted by the loss of food companies or loss of investment in Washington food manufacturing facilities. Agriculture is a critical industry in rural areas and food manufacturing is an essential partner. Food companies are major employers and support related businesses and community infrastructure in these rural locales.

Food Northwest appreciates the opportunity to review and provide comments on Ecology's draft rule. We look forward to continuing to work with Ecology to shape and implement a CCA Program that is good for Washington's economy, environment, and its citizens. Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Pamela T. Barrow".

Pamela Barrow  
Vice President

