Concise Explanatory Statement
Chapter 173-446 WAC Climate Commitment Act Program

Summary of Rulemaking and Response to Comments

Air Quality Program

Washington State Department of Ecology

Olympia, Washington

September 2022, Publication 22-02-046

Publication Information

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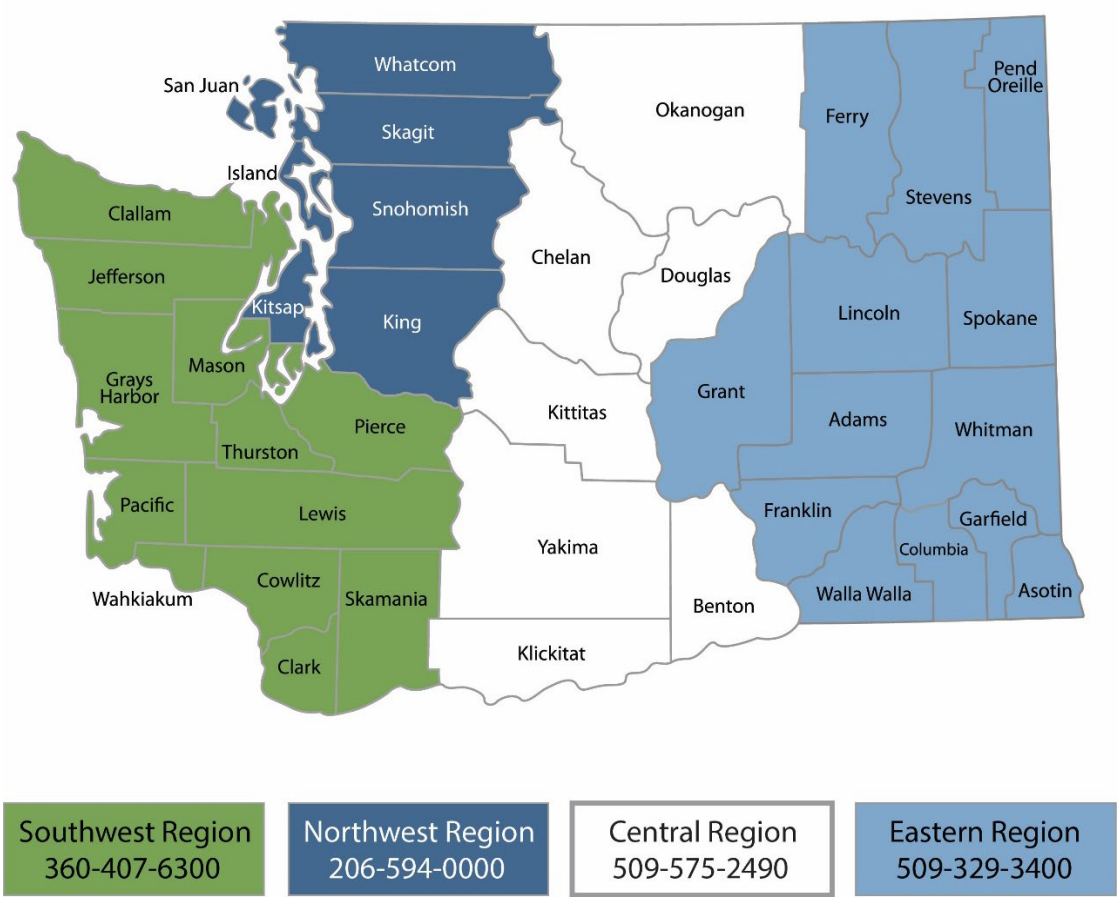
Department of Ecology's Regional Offices

Map of Counties Served



Region	Counties Served	Mailing Address	Phone
Southwest	Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Mason, Lewis, Pacific, Pierce, Skamania, Thurston, Wahkiakum	PO Box 47775 Olympia, WA 98504	360-407-6300
Northwest	Island, King, Kitsap, San Juan, Skagit, Snohomish, Whatcom	PO Box 330316 Shoreline, WA 98133	206-594-0000
Central	Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, Yakima	1250 W Alder St Union Gap, WA 98903	509-575-2490
Eastern	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman	4601 N Monroe Spokane, WA 99205	509-329-3400
Headquarters	Across Washington	PO Box 46700 Olympia, WA 98504	360-407-6000

Concise Explanatory Statement

Chapter 173-446 WAC
Climate Commitment Act Program

Air Quality Program

Washington State Department of Ecology

Olympia, WA

September 2022 | Publication 22-02-046

DEPARTMENT OF
ECOLOGY
State of Washington

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Table of Contents

Abbreviations and Acronyms

APA	Administrative Procedure Act
APCR	Allowance price containment reserve
AQ	Air quality
CAA	Clean Air Act
CARB	California Air Resources Board
Cal ISO	California Independent System Operator
CBA	Cost benefit analysis
CCA	Climate Commitment Act
CES	Concise Explanatory Statement
CETA	Clean Energy Transformation Act
CFR	Code of Federal Regulations
CITSS	Compliance Instrument Tracking System Service
CO_2	Carbon dioxide
CO_2e	Carbon dioxide equivalent
COU	Consumer Owned Utility
DEBs	Direct environmental benefits to the state
ECY	Washington State Department of Ecology (Ecology)
ECR	Emissions containment reserve
EFSEC	Energy Facility Siting Evaluation Council
EIM	Energy Imbalance Market
EITE	Emission-intensive, trade-exposed
EJ	Environmental Justice
EPA	U.S. Environmental Protection Agency
EPE	Electric power entity
FJD	First Jurisdictional Deliverer
FMD	Fuel Mix Disclosure
FRA	Final Regulatory Analyses
GHG	Greenhouse gas
IOU	Investor Owned Utility
MT	Metric tons

NAICS	North American Industry Classification System
OATI	Open Access Technology International
OFM	Office of Financial Management
PRA	Preliminary Regulatory Analyses
RCW	Revised Code of Washington
SBEIS	Small Business Economic Impact Statement
SCC	Social cost of carbon
SEPA	State Environmental Policy Act
USDOE	U.S. Department of Energy
UTC	Utilities and Transportation Commission
VRE	Voluntary Renewable Electricity
VRERA	Voluntary Renewable Electricity Reserve Account
WAC	Washington Administrative Code

Introduction

The purpose of a Concise Explanatory Statement is to:

- Meet the Administrative Procedure Act (APA) requirements for agencies to prepare a Concise Explanatory Statement (RCW 34.05.325).
- Provide reasons for adopting the rule.
- Describe any differences between the proposed rule and the adopted rule.
- Provide Ecology's response to public comments.

This Concise Explanatory Statement provides information on The Washington State Department of Ecology's (Ecology) rule adoption for:

Title:	Climate Commitment Act Program
WAC Chapter(s):	173-446
Adopted date:	September 29, 2022
Effective date:	October 30, 2022

To see more information related to this rulemaking or other Ecology rulemakings please visit our website: https://ecology.wa.gov/About-us/How-we-operate/Laws-rules-rulemaking.

Organization of this Document

Ecology accepted formal public comments on the rule proposal from May 16, 2022, through July 15, 2022. During this 60 day public comment period, formal comments were accepted through our online public comment tool, by mail, email, and by testimony provided at the public hearings. (Due to the pandemic, all meetings and hearings were held virtually.) We held four public hearings on this rule proposal. Comments made during the public hearings are treated the same as written comments. We received 1,401 comment submissions. Most submissions included several unique comments. Several of the comment submissions were submitted on behalf of multiple individuals or organizations. Many of the comment letters expressed support for the rule. We also received many comments on specific sections of the proposed rule.

In this document we have organized the topics into the following four categories:

I Comments related to Environmental justice

II General comments on the CCA

III General comments on 173-446

IV Specific comments on 173-446 by section

To see how Ecology responded to your comments, please locate your name or organization in the List of Commenters table beginning on page 56. In the adjacent columns, the commenter should find their comment code as well as the category, topic, and sub-topic in which the response to their comment can be found in the Concise Explanatory Statement. (In the List of Commenters table, commenters are listed alphabetically by last name of the person submitting.)

If you submitted a form letter, please refer to Section V for Ecology's response.

Reasons for Adopting the Rule

In 2021, the Washington State Legislature passed the Climate Commitment Act (CCA)[2], which established a comprehensive program to reduce greenhouse gas pollution and help achieve the greenhouse gas limits set in state law. The CCA is codified in Chapter 70A.65 RCW, Greenhouse Gas Emissions – Cap and Invest Program, and requires the program to start January 1, 2023. The CCA directs Ecology to adopt rules to implement a cap on greenhouse gas emissions, including mechanisms for the sale and tracking of tradable emissions allowances, along with compliance and accountability measures. The CCA also directs Ecology to design allowance auctions to allow for linkage to similar programs in other jurisdictions as much as possible.

Differences between the Proposed Rule and Adopted Rule

RCW 34.05.325(6)(a)(ii) requires Ecology to describe the differences between the text of the proposed rule as published in the Washington State Register and the text of the rule as adopted, other than editing changes, stating the reasons for the differences.

The differences between the proposed rule filed on May 16, 2022, and the adopted rule filed on September 30, 2022, are outlined below. Ecology made these changes for all or some of the following reasons:

- In response to comments we received.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.
- To facilitate effective program implementation.

The following table summarizes the changes and Ecology's reasons for making them.

[2] Climate Commitment Act, ESSSB 5126, Chapter 316, Laws of 2021

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-010(1)	Replaced "This program" with "The provisions of the cap and invest program implemented by this chapter"	In response to comments to add some environmental justice/Environmental Justice Council provisions to the rule.
173-446-010(2)	Added subsection; "Ecology will engage with the Environmental Justice Council. Ecology acknowledges and recognizes there are communities that have historically borne the disproportionate impacts of environmental burdens and that now bear the disproportionate negative impacts of climate change, and the legislature specifically empowered the environmental justice council to provide recommendations to Ecology on the cap and invest program."	In response to comments to add environmental justice/Environmental Justice Council provisions to the rule.
173-446-020	Added "Affiliated registered entities" definition	Clarity
173-446-020	Added comma in “Aggregation” definition	Consistency
173-446-020	Replaced "surrender" with "use for compliance" in “Banking” definition	Clarity
173-446-020	Added "Business-as-Usual scenario" definition	Added in response to comments. This definition is the same as the definition in California’s cap and trade regulations.
173-446-020	Added "Conservative" definition	Added in response to comment. This definition is the same as the definition in California’s cap and trade regulations; limited to offsets.
173-446-020	Added ", in the context of offsets," to the definition of "Direct Environmental Benefits in the State"	Restricted this definition to offsets, in response to comments about perceived conflict with “Environmental Benefits” definition in the Rule.

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-020	Added "or its agent" to "Emissions Containment Reserve Allowance" definition	In response to comment noting that the definition in the rule deviates from the definition in statute by the omission of “or its agent.”
173-446-020	Added "or any other allowance placed into the emissions containment reserve" to the "Emissions Containment Reserve Allowance" definition	To ensure allowances placed in the ECR by other means are also recognized as ECR allowances.
173-446-020	Changed definition of "First jurisdictional deliverer" from "has the same meaning as in Chapter 173-441 WAC" to "means the owner or operator of an electric generating facility in Washington state or an electricity importer"	Anticipating future change to GHG reporting rule to remove term and keep it solely in this rule.
173-446-020	Replaced “offset credits” with “offsets” in “Greenhouse gas emissions source” definition	Consistency
173-446-020	Removed "as well as addressing other aspects of the offset project in order to ensure the quality of the project" from the "Offset protocols" definition	In response to comment that the definition in the rule deviates from the definition in the statute.
173-446-020	Changed the word "person" to "party" in the definition for "Opt-In Entity"	To avoid the confusion caused by use of the term “person.”
173-446-020	Added "Permanent" definition	In response to comments.
173-446-020	Added “Registration Applicant” definition	Clarity

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-020	Changed the word "surrendered" to used" in the definition for "Retire"	To be consistent with changes made elsewhere in the rule in response to comment to clarify that compliance occurs when a covered/opt-in entity has sufficient compliance instruments in its compliance account on the compliance deadline to meet its compliance obligation.
173-446-020	Added "sector" definition	Added in response to comment asking for a definition of “sector.”
173-446-020	Inserted comma in "Unintentional Reversal" definition	To ensure the phrase “that is not the result of the forest owner’s negligence etc.” applies to any reversal, not just disease.
173-446-030(1)(a)	Inserted comma	To ensure that the phrase “whose covered emissions etc.” applies to any owner or operator of a facility – not just to a waste to energy facility.
173-446-030(1)(a)	Changed 2019 to 2022	Changed in response to comments to clarify that a facility w/emissions > 25,000 CO2e in any year up through 2022 is a covered entity from day one.
173-446-030(1)(b)	Added ", other than a waste to energy facility used by a city or county solid waste management program,"	In response to comment from the City of Spokane to clarify that waste to energy facility is not treated as an electricity generator for the first compliance period.
173-446-030(1)(b)	Removed "from 2015 through 2019"	To correct error; consistency with the statute.
173-446-030(1)(c)	Removed "from 2015 through 2019"	To correct error; consistency with the statute.
173-446-030(1)(d)	Changed 2019 to 2022	Consistency with the statute.
173-446-030(1)(e)(i)	Changed 2019 to 2022	Consistency with the statute.
173-446-030(1)(e)(ii)	Added words "natural gas"	To clarify that the delivery is of natural gas.

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-030(1)(e)(ii)	Changed 2019 to 2022	Consistency with the statute.
173-446-030(1)(e)(iii)	Changed 2019 to 2022	Consistency with the statute.
173-446-040(3)	Added words "or opt-in"	Catching several inadvertent omissions for clarity.
173-446-040(3)(a)(i)(D)	Added words "or opt-in"	Catching several inadvertent omissions for clarity.
173-446-040(3)(a)(i)(E)	Removed (b) from citation to subsection (2)(b).	Clarity
173-446-040(3)(a)(ii)(B)	Added words "or opt-in"	Catching several inadvertent omissions for clarity. (B-5-14: BP)
173-446-040(3)(c)(ii)(B)	(B) Emissions from products listed in Table MM-1 of 40 C.F.R. Part 98 Subpart MM as adopted in chapter 173-441 WAC when the supplier is also a refiner and can demonstrate to ecology's satisfaction that the product is used as a non-crude feedstock at a refinery in Washington under their operational control. These non-covered emissions must meet the standards described in Subpart MM, and are calculated using provisions described in § 98.393(b) and subtracted as described in § 98.393(d), which is limited to modifications due to non-crude feedstocks. Emissions occurring at the refinery due to processing the non-crude feedstock are part of the facility's covered emissions. Processed or unprocessed products associated with the previously excluded non-crude feedstocks leaving the refinery are no longer excluded and part of the supplier's covered emissions.	Clarification

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-040(3)(e)(ii)	Revised section to say "the party deemed to be the electricity importer is the next purchasing-selling entity in the physical path on the NERC e-tag, or if there is no additional purchasing-selling entity over which the state of Washington has jurisdiction, then a utility that purchases electricity for use in the state of Washington from that federal power marketing administration or the generation balancing authority is the importer and first jurisdictional deliverer of that electricity. Such a utility or generation balancing authority is a covered entity under this program and has the compliance obligation for the GHG emissions associated with that electricity. "	Changed in response to comment to make consistent with the statute – RCW 70a.65.020 (27)(e).
173-446-040(3)(e)(iii)	Added subsection; “If the electricity importer is a federal power marketing administration over which the state of Washington does not have jurisdiction, and the federal power marketing administration has voluntarily elected to comply with the program, then any utility that purchases electricity for use in the state of Washington from that federal power marketing administration may provide by agreement for the assumption of the compliance obligation by the federal power marketing administration. The department of ecology must be notified of such an agreement at least 12 months prior to the compliance period for which the agreement is applicable or, for the first compliance period, 12 months prior to the first calendar year to which the	Preventing double counting

Rule Changes		
Section	**Change**	**Reason for Change**
	agreement is applicable. Upon effect of the agreement, the covered emissions for the utility are the responsibility of the federal power marketing administration as long as the agreement is in effect. If no agreement is in place for a utility that purchases electricity from that federal power marketing administration, then the requirements of subsection (e)(ii) of this section apply to the GHG emissions associated with that electricity."	
173-446-040(3)(e)(iv)	Added subsection; "For the first compliance period the electricity importer for electricity delivered from the energy imbalance market is the purchasing entity located or operating in Washington that receives the delivery of electricity transacted through the energy imbalance market. For electricity transferred through the energy imbalance market that is generated by a first jurisdictional deliverer with a compliance obligation under this chapter, there is no compliance obligation for that same electricity if it is delivered to an energy imbalance market purchasing entity in Washington."	Clarifying interim compliance obligation for EIM power, and preventing double counting when that power is generated in-state.
173-446-050(1)	Added "other than a waste to energy facility or a railroad"	To reflect the fact that waste to energy facilities and railroads are not covered entities during the first compliance period.

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-050(1)	Replaced "is automatically registered" with "will receive written notice from ecology that it must register"	Changed to align with CITSS process.
173-446-050(1)	Added "That notice will be sent to the designated representative and alternate designated representative as established under WAC 173-441-060 of each covered entity. To register, each covered entity must follow the registration process provided in subsection (5) of this section. "	Changed to align with CITSS process.
173-446-050(2)	Replaced "Upon receipt of this request, ecology will register the reporter in the cap and invest program as an opt-in entity" with "To register, the opt-in entity must follow the registration process provided in subsection (5) of this section"	Changed to align with CITSS process.
173-446-050(3)	Replaced “e” with “f” in both instances	To account for addition of new subsection (c)
173-446-050(4)	Removed subsection	Changed to align with CITSS process.
173-446-050(5)	Now subsection (4); Revised to say "Any party receiving notice that it must register as a covered entity that believes it received the notice in error and should not be a covered entity in the program may, within 30 calendar days of receiving ecology's notice, provide a signed written request to ecology asking ecology to remove it from registration and explaining why. The final determination remains with ecology" and removing "explaining why it should be removed from registration"	To make it clear that Ecology has the final determination on who should or should not be registered in the program.

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-050(5)	New subsection; "To register, each covered or opt-in entity must comply with the requirements in WAC 173-446-105 through 130, and provide the following information to ecology electronically in a format specified by ecology: (a) Name, contact information, and physical address of the party; (b) Tracking system identification number, if applicable; (c) Names and addresses and contact information of the party's directors and officers with authority to make legally binding decisions on behalf of the party, and partners with over 10 percent of control over the partnership, including any individual or entity doing business as the limited partner or general partner; (d) Names and contact information for individuals or parties controlling over 10 percent of the voting rights attached to all the outstanding voting securities of the party; (e) Business number, if one has been assigned by a Washington state agency; (f) A government issued taxpayer identification number or employer identification number, or for parties located in the United States, a U.S. federal tax employer identification number, if assigned; (g) Place and date of incorporation, if applicable; (h) Names and contact information for all employees of the party with knowledge of the party's market position (an employee who has knowledge of both the party's	Changed to align with CITSS process.

Rule Changes		
Section	**Change**	**Reason for Change**
	current and/or expected holdings of compliance instruments and the party's current and/or expected covered emissions);"	
173-446-050(3)(c)	New subsection (c); Remaining subsections renumbered; "Follow the registration process provided in subsection (5) of this section;"	Changed to align with CITSS process.
173-446-050(3)(e)	Added "Except as provided in (f) of this subsection, "	In response to comments from Tribes concerning their sovereign immunity.

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-050(3)(f)	Added subsection; "For federally recognized tribes who elect to participate as opt-in entities pursuant to RCW 70A.65.090 (5), enter into a written agreement, negotiated on an individual basis between ecology and the tribal government, that establishes a dispute resolution process and/or other compliance mechanisms in order to ensure the enforceability of all program requirements applicable to the tribe in its role as an opt-in entity."	In response to comments from Tribes concerning their sovereign immunity.
173-446-053(1)	Added "or that report fewer than 25,000 MTCO2e covered emissions per year"	In response to comments – to clarify that these reporters also need to register.
173-446-053(2)	Revised to say "To register, electric utilities must comply with the requirements of WAC 173-446-105 through 130 and provide the following information to ecology electronically in a format specified by ecology:"	Changed to align with CITSS process.
173-446-055(1)(d)	Replaced (a) with (c) in both instances	Correcting typographical error
173-446-055(3)(a)	Added "comply with the requirements of WAC 173-446-105 through 130 and" and "in a format specified by ecology:"	Changed to align with CITSS process.
173-446-055(3)(a)(i)	Replaced “information” with “incorporation”	Typographical correction; consistency with 173-446-053(2)(a)
173-446-055(3)(b)	Added "Except as provided in subsection (c) below,"	In response to comments from Tribes concerning their sovereign immunity.

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-055(3)(c)	Added subsection; "For federally recognized tribes who elect to participate as general market participants pursuant to RCW 70A.65.090 (5), the tribe must enter into a written agreement, negotiated on an individual basis between ecology and the tribal government, that establishes a dispute resolution process and/or other compliance mechanisms in order to ensure the enforceability of all program requirements applicable to the tribe in its role as a general market participant.”	In response to comments from Tribes concerning their sovereign immunity.
173-446-056(1)	Removed "not an owner or employee of a registered entity, but is"	Corrected typographical error.
173-446-056(1)	Added "a"	Corrected typographical error.
173-446-060(1)	Moved this repeated sentence from subsections a-d to section 1: "Any party that becomes a covered entity under the criteria set forth in any subsequent subsection of this section is required to transfer its first allowances to its compliance account by November 1st of the year following the year in which its covered emissions first equaled or exceeded 25,000 metric tons CO2e per year." and renumbered remaining sections	Improve readability
173-446-060(4)	New subsection (5): Added ", or whose emissions in those years were below 25,000 metric tons of CO2e per year"	To ensure coverage in the program consistent with statute.
173-446-070(1)	Added "for all of its covered emissions"	In response to comment asking for clarification of this point.
173-446-070(2)(a)	Revised to say "Except as provided in (b) of this subsection, when a covered entity reports covered emissions below 25,000 metric tons of CO2e for every year during an entire compliance period, or	Clarity

Rule Changes		
Section	**Change**	**Reason for Change**
	has permanently ceased all processes at the facility requiring reporting under chapter 173-441-WAC, the facility, supplier, or first jurisdictional deliverer is no longer a covered entity as of the beginning of the subsequent compliance period. Even though no longer a covered entity, the facility, supplier, or first jurisdictional deliverer must meet its compliance obligation for covered emissions occurring during any compliance period when it was a covered entity,"	
173-446-070(2)(b)	Added "below the 25,000 metric ton threshold but still"	In response to comment asking for clarification on this point.
173-446-080(3)	Rephrased to say "Each allowance is of the vintage year of the annual allowance budget from which it comes."	In response to comment noting that vintage year is not tied to the GHG emissions year – but rather to the year of the annual allowance budget the allowance comes from.
173-446-100(1)	Replaced "within 30 calendar days after receiving a registration notice" with “within 40 calendar days after receiving a notice to register”	In response to comment that 30 days is too short, and in acknowledgement that Ecology cannot and will not authorize an account until the registered entity provides the required information. The duty is on the registered entity to provide the information – and once it is provided, Ecology will act.
173-446-100	Added “registration applicant” throughout	Changed to align with CITSS process
173-446-100(3)	Replaced “registered entity” with “registration applicant”	Changed to align with CITSS process
173-446-100(2)	Changed "direct corporate association" to "consolidated entity account" for both uses	In response to comment asking for clarity on this point.

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-110(1)	Replaced "registered entity" with "registration applicant" throughout	Changed to align with CITSS process
173-446-110(2)	Added "Disclosure of parent companies."	In response to comment to clarify that this provision applies to the disclosure of parent companies.
173-446-110(6)(b)	Changed "party" to "offset project operator"	Added to clarify the limits on this provision.
173-446-120	Replaced "registered entity" with "registration applicant" throughout	Changed to align with CITSS process
173-446-120(1)	Removed "about themselves regardless of whether they are part of a corporate association, as well as"	Moved to registration section to align with CITSS.
173-446-120(1)(c)	Added "and contact information"	For consistency with other requirements for contact information.
173-446-120(1)(h)	Revised to say "Names and contact information for all employees of the party with knowledge of the party's market position (an employee who has knowledge of both the party's current and/or expected holdings of compliance instruments and the party's current and/or expected covered emissions);"	In response to comment that almost all employees of some companies know the party's current and/or expected covered emissions.
173-446-120(4)(a)	Changed "30" to "40"	In response to comment that 30 days is too short, and in acknowledgement that Ecology cannot and will not authorize an account until the registered entity provides the required information. The duty is on the registered entity to provide the information – and once it is provided, Ecology will act.
173-446-130(1)	Replaced "30" with "40"	Changed to align with CITSS process
173-446-130	Replaced "registered entity" with "registration applicant" throughout	Changed to align with CITSS process

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-130(1)(b)(ii)	Added “and at least one document that is customarily accepted by the State of Washington as evidence of the primary residence of the individual”	Consistency with California and to ensure Ecology can verify an account representative's address
173-446-130(1)(b)(v)	Removed "previous"; Added "prior to designation as an account representative, or while designated as an account representative,"	To ensure Ecology has notice of criminal convictions during an account representatives tenure as an account representative.
173-446-130(1)(d)	Removed: (1) now renumbered	In response to comments and in acknowledgement that the other safeguards in the rule concerning account representatives are sufficient.
173-446-130(4)(a)	Added “Except as provided in (b) of this subsection”	Due to changes in the rule concerning Tribal sovereignty
173-446-130(4)(b)	Added new section; “For federally recognized tribes who elect to participate as opt-in entities or general market participants pursuant to RCW 70A.65.090(5), each such submission shall include the following attestation statement made and signed by the primary account representative or the alternate account representative making the submission: "I certify under penalty of perjury under the laws of the state of Washington that I am authorized to make this submission on behalf of the tribal government that owns the compliance instruments held in the account. I certify under penalty of perjury under the laws of the state of Washington that I have personally examined, and am	In response to comments for concerns over Tribal sovereignty

Rule Changes		
Section	**Change**	**Reason for Change**
	familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify under penalty of perjury under the laws of the state of Washington that the statements and information submitted to Ecology are true, accurate, and complete. The tribal government on whose behalf I am authorized to make this submission has entered into a written agreement, negotiated on an individual basis between ecology and the tribal government, that establishes a dispute resolution process and/or other compliance mechanisms in order to ensure the enforceability of all program requirements applicable to the tribe in its role as an opt-in entity or a general market participant, as applicable. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."	

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-130(5)	Revised to say "The duties of the account representative terminates when the account representative resigns, when a request for revocation is received from the registered entity or, when a registered entity has only two designated account representatives, only after a new representative has been designated. The duties of an account representatives also terminates when all the accounts of the registered entity by whom the account representative was designated are closed."	Corrected typographical error.
173-446-130(8)	Revised to "RCW 23.95.510"	Correction.
173-446-130(10)	Added subsection "A registered entity must revoke designation as an account representative or account viewing agent if while acting as an account representative or an account viewing agent a party is convicted of a criminal offense involving fraud, dishonesty, deceit, or misrepresentation, or any other criminal offense connected with the activities undertaken as account representative or account viewing agent."	To ensure account representatives can't remain account representatives if they are convicted of certain criminal offenses
173-446-140(1)	Changed "on to "in"	Corrected typographical error.
173-446-140(2)	Added "electronically in a format specified by ecology"	For consistency with other requests for information.
173-446-140(2)(c), (d), (e), (f)	Added section; Renumbered existing "e" to "g"; Copies of at least two identity documents, including at least one with a photograph, issued by a government or one of its departments or agencies, bearing the individual's name and date of birth; and at least one document	Account Viewing Agents are able to view market sensitive allowance holdings and compliance obligations of entity registry accounts. Cap and Invest consultants and advisors often act as account viewing agents for multiple market participants, and can therefore view the accounts of multiple market participants and

Rule Changes		
Section	**Change**	**Reason for Change**
	that is customarily accepted by the State of Washington as evidence of the primary residence of the individual; along with an attestation from a notary completed less than three months prior to the application, stating that the notary has established the identity of the individual and verifying the authenticity of the copies of the identity documents; (d) The name and contact information of the individual's employer; (e) Confirmation from a financial institution located in the United States that the individual has a deposit account with the institution; and (f) Any conviction for a criminal offense declared in any jurisdiction during the five years prior to designation as an account representative, or while designated as an account representative, constituting a felony under U.S. federal law or Washington law, or the equivalent thereof. The disclosure must include the type of violation, jurisdiction, and year; and"	know the market positions of multiple market participants. It is therefore necessary for Ecology to have this information about account viewing agents in order to ensure the integrity and transparency of the market. Ecology is also directed to create a linkage ready regulation to the extent feasible. This provision aligns expectations for account viewing agents with other jurisdictions with similar programs
173-446-150(1)(b)	Removed "as a covered or opt-in entity"	In response to comment noting that opt-in entities may not receive no cost allowances.
173-446-150(2)(a)	Modified definition of Ci in formula to "annual allowance budget for year I"	Changed for consistency with the terminology used in the rest of the rule, in response to comment concerning the term “annual cap”, which is not defined and is not used elsewhere in the rule.

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-150(2)(b)	Modified definition of Cj in formula to "annual allowance budget for year j"	Changed for consistency with the terminology used in the rest of the rule, in response to comment concerning the term “annual cap”, which is not defined and is not used elsewhere in the rule.
173-446-150(4)	Added "(4) When the ownership of a registered entity changes, the following information must be submitted to Ecology within 30 calendar days of finalization of the ownership change: (a) A description of the merger or acquisition and the effective date of the change of ownership, including whether the merger or acquisition is the purchase of a registered entity or entities from another party or the purchase of a party that owns a registered entity or entities. (b) Both the legal and operating names and the tracking system IDs of the parties owning the registered entity or entities prior to the change in ownership; (c) The legal name, operating name, and the tracking system ID of the purchasing party, if any; (d) Written direction regarding whether the purchased registered entity or entities will be added to a 3consolidated entity account or whether the purchased registered entity or entities will be associated with a party that will opt out of account consolidation; (e) Documentation with signatures (original or electronic) by a director or officer from the seller of the registered entity or entities, the registered entity or entities, and from the purchasing party, notifying Ecology of the change of	Added to describe the process for accounts when the ownership of a registered entity changes.

Rule Changes		
Section	**Change**	**Reason for Change**
	ownership; (f) Any changes to disclosures or new disclosures required under WAC 173-446-110, -120, and -130; (g) Direction regarding the disposition of compliance instruments that must be transferred by Ecology to the purchasing party. Compliance instruments can be transferred. Any administrative transfers required may be requested as a one-time occurrence scheduled to occur within five business days after the facility or facilities are transferred in the tracking system to the purchasing party; (h) It is the responsibility of the parties participating in the change of ownership to transfer any compliance instruments from tracking system holding accounts that the control prior to closure. Prior to closure, Ecology may transfer compliance instruments from a registered entity's compliance account to its holding account upon request by the registered entity. If a party no longer owns or operates any active registered entity in its tracking system account due to a change in ownership, then that party may exit the Program and close its tracking system accounts within five business days after the registered entity or entities are transferred in the tracking system to the purchasing party.	
173-446-200(2)	Removed "GHG" from "covered GHG emissions"	Clarity & Consistency
173-446-200(2)(f)	Added "and unclaimed"	Technical Clarification
173-446-200(5)	Updated total program baseline	Updated to most recent data.
173-446-210(1)(a)(ii)	Added "each year from"	Clarity

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-210(1)(b)(ii)	Added "each year from"	Clarity
173-446-210(1)(c)(ii)	Added "each year from"	Clarity
173-446-210(1)(d)	Added "each year from"	Clarity
173-446-210(2)	Updated total covered emissions	Updated to match new total program baseline.
173-446-220	Changed "entities" to "facilities"	Consistency and accuracy
173-446-220(1)	Changed "entities" to "facilities"	Consistency and accuracy
173-446-220(1)	Revised to say "Ecology will use the following data sources, methods, and criteria to review and approve allocation baselines submitted by EITE facilities"	Series of changes to better reflect statutory language/framework of submit->review->approve as requested by multiple commenters. Actual process does not change.
173-446-220(1)(a)	Changed "must submit the following information to ecology" to "must submit their proposed allocation baseline with the following supporting information that facilitates ecology's review to ecology"	Series of changes to better reflect the statutory language/framework of submit->review->approve as requested by multiple commenters. Actual process does not change.
173-446-220(1)(a)(i)	Added "which serves as the facility's amount of carbon dioxide equivalent emissions"	Using statutory term for clarity/defining.
173-446-220(1)(a)(ii)	Added "the facility specific measure of production, which is"	Using statutory term for clarity/defining.
173-446-220(1)(a)(iv)	Revised to say "The EITE facility's proposed allocation baseline, including: "; Added sections (A) and (B)	Slight reorganization for clarity and to support submit->review->approve framework.
173-446-220(1)(a)(iv)	Changed "their" to "the"	To avoid using a plural pronoun with a singular subject
173-446-220(1)(a)(v)	Renumbered; Replaced "allocation" with "carbon intensity"	Slight reorganization for clarity and to support submit->review->approve framework.
173-446-220(1)(a)(vi)	Renumbered to (C); Added "may also submit a mass-based baseline. An owner or operator"	Series of changes to better reflect the statutory language/framework of submit->review->approve as requested by multiple commenters. Actual process does not change.
173-446-220(1)(a)(vi)	Renumbered to (C); Removed "allocation"	Series of changes to better reflect the statutory language/framework of submit->review->approve as requested by multiple commenters. Actual process does not change.

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-220(1)(b)	Revised to say "Ecology must use the following criteria to review and approve an allocation baseline by November 15, 2022, for any EITE facility submitting complete information under (a) of this subsection by September 15, 2022. Ecology must complete this process within 90 calendar days of a complete submission to any EITE facility that submitted complete information under (a) of this subsection after September 15, 2022. The allocation baseline will be reviewed by ecology using the following method and approved based on the criteria described in this subsection."	Series of changes to better reflect the statutory language/framework of submit->review->approve as requested by multiple commenters. Actual process does not change.
173-446-220(1)(b)(i)	Changed "calculating subtotal" to "reviewing carbon intensity or mass-based"	Series of changes to better reflect the statutory language/framework of submit->review->approve as requested by multiple commenters. Actual process does not change.
173-446-220(1)(b)(i)	Changed "calculating an allocation baseline" to "reviewing baseline"	Series of changes to better reflect the statutory language/framework of submit->review->approve as requested by multiple commenters. Actual process does not change.
173-446-220(1)(b)(i)	Added "Ecology will rely on data provided in subsections (b)(i)(A) through (C) of this subsection whenever possible	Commenters are concerned about (D), letting them know it is last choice.
173-446-220(1)(b)(ii)	Revised first sentence: "Ecology's review of the submission must include calculating a mass-based baseline for each EITE facility by averaging the 2015 through 2019 covered emissions determined using data from the data sources listed in (b)(i) of this subsection. "	Clarity
173-446-220(1)(b)(ii)	Changed "allocation" to "mass-based"	Series of changes to better reflect the statutory language/framework of submit->review->approve as

Rule Changes		
Section	**Change**	**Reason for Change**
		requested by multiple commenters. Actual process does not change.
173-446-220(1)(b)(iii)	Revised first sentence: "Ecology's review of the submission must include calculating a carbon intensity baseline for each EITE facility by dividing the 2015 through 2019 average of covered emissions using the data sources listing in (b)(i) of this subsection by the 2015 through 2019 average total annual product data determined using the data sources listing in (b)(i) of this subsection unless ecology determines it is not feasible to determine product data for the facility based on the facility's unique circumstances."	Clarity
173-446-220(1)(b)(iii)	Changed "allocation" to "carbon intensity"	Series of changes to better reflect the statutory language/framework of submit->review->approve as requested by multiple commenters. Actual process does not change.
173-446-220(1)(b)(iv)	Changed "allocation" to "carbon intensity or mass-based"	Series of changes to better reflect the statutory language/framework of submit->review->approve as requested by multiple commenters. Actual process does not change.
173-446-220(1)(b)(v)	Added "Ecology must use the following criteria when approving allocation baselines."	Series of changes to better reflect the statutory language/framework of submit->review->approve as requested by multiple commenters. Actual process does not change.
173-446-220(1)(b)(v)	Added "review" and replaced "assign" with "determine"	Series of changes to better reflect the statutory language/framework of submit->review->approve as requested by multiple commenters. Actual process does not change.
173-446-220(1)(b)(v)(A)	Changed "set" to "review and approve"	Series of changes to better reflect the statutory language/framework of submit->review->approve as requested by multiple commenters. Actual process does not change.

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-220(1)(b)(v)(A)(III)	Added “operating” and “if those measurements exist”	Clarity
173-446-220(2)(d)(ii)	Minor language changes throughout	Responding to comments that the language deviated from statute. Only deviations are minor wording changes and the provision above that adjustments cannot exceed original conditions.
173-446-230(1)	Revised to say "Allowances will be allocated to qualifying electric utilities for the purposes of mitigating the cost burden of the program based on the cost burden effect of the program. Only electric utilities subject to chapter 19.405 RCW, the Washington Clean Energy Transformation Act, qualify for no cost allowances."	Clarifying language and additional direction from statute that should also be in the rule
173-446-230(2)	Revised to say "The cost burden effect recognizes that compliance with the program requires the submission of compliance instruments and in the absence of possessing the required compliance instruments procurement of those instruments has an associated cost that would be translated into consumer electricity prices without the mitigation of that cost burden as provided by this program. Those potential costs, along with the administrative costs of the program, comprise the cost burden of the program. Provision of some or all of the allowances necessary to address this deficit, through the means established in this section, is the method by which this cost burden is mitigated. Under this framework,	Clarifying language

Rule Changes		
Section	**Change**	**Reason for Change**
	ecology will use the following methods to determine the cost burden effect and the allocation of allowances to each qualifying electric utility."	
173-446-230(2)(a)	Revised to say "Ecology will use utility-specific demand forecasts that provide estimates of retail electric load. Demand forecasts should represent the best estimate of the most likely electricity demand scenario during the compliance period."	Clarifying language; Consultation with energy agencies
173-446-230(2)(b)	Revised to say "Ecology will use utility-specific resource supply forecasts to determine the generation resource fuel types that are forecasted to be used to provide the retail electric load predicted by the demand forecast for the utility. Resource supply forecasts should represent the best estimate of the most likely electricity resource mix scenario during the compliance period, including but not limited to using an assumption of average hydroelectric conditions."	Clarifying language; Consultation with energy agencies

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-230(2)(c)	Revised to say "These determination forecasts will be based on derived from the following sources, which will be relied upon in the rank order listed below as necessary to most accurately determine the resource mix supply and demand forecasts that best predict the manner in which will be used by that each electric utility to will comply with the Clean Energy Transformation Act, chapter 19.405 RCW:	Clarity
173-446-230(2)(c)(i)	Revised to say "A forecast of supply or a forecast or demand, along with any supporting information, which has been approved by the utilities and transportation commission in the case of an investor-owned utility or approved by the governing board of a consumer-owned utility. Any such forecast must also be consistent with the clean energy implementation plan that is submitted pursuant to the Clean Energy Transformation Act, chapter 19.405 RCW."	Clarity
173-446-230(2)(c)(ii)	Revised to say "The forecasts of supply and forecasts of demand that are part of the clean energy implementation plan, or supporting materials for that plan, -for a utility that is submitted pursuant to chapter 19.405 RCW, the Washington Clean Energy Transformation Act."	Clarity

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-230(2)(c)(iii)	Revised to say "An integrated resource plan, or supporting materials for that plan, that complies with Chapter 19.280 RCW and is consistent with or serves as the basis for the clean energy implementation plan submitted pursuant to chapter 19.405 RCW, the Washington Clean Energy Transformation Act."	Consultation with energy agencies
173-446-230(2)(c)(iv)	Removed; remaining subsections renumbered	Modifying text and placement
173-446-230(2)(c)(v)	Now 173-446-230(2)(c)(iv); Revised to say "Another source that provides a utility's supply or demand forecast that is, based on ecology's analysis, consistent with an existing forecast approved by the appropriate governing board or the utilities and transportation commission."	Consultation with energy agencies
173-446-230(2)(c)(v)	Added subsection; "For multijurisdictional electric companies, a multistate resource allocation methodology that has been approved by the utilities and transportation commission may be used in the relevant forecasts."	Clarity and additional direction
173-446-230(2)(d)	Revised to say "Ecology will use the following emission factors to determine the emissions associated with the projected electricity resource supply mix. These factors are to be applied to the amount of electrical load in megawatt-hours (MWh) that comprises that proportion of the forecasted demand served by that resource type."	Consultation with energy agencies
173-446-230(2)(d)(i), (ii), (iii)	Changed "generation" to "the proportion of load" throughout	Clarity
173-446-230(2)(d)(i), (ii), (iii)	Added "resources" throughout	Clarity

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-230(2)(d)(v)	Subsection added; "For load from a source or supplying entity that has established an asset controlling supplier emission factor pursuant to WAC 173-441, use the most recent emission factor established by that procedure."	In response to comments and anticipating future availability of information
173-446-230(2)(d)	Changed "will be" to "is"; and added "of"	Clarity
173-446-230(2)(d)	Added "In cases where no retail electric load is attributable to the resource category for that term of the equation, the relevant term should be treated as zero."	Clarity
173-446-230(2)(e)	Revised to say "One allowance will be initially allocated for each metric ton of emissions associated with the cost burden effect for each qualifying electric utility for each emissions year as projected through this process. The final total of allocated allowances will be subject to further adjustments as detailed in this subsection."	Consultation with energy agencies
173-446-230(2)(f)	Added subsection; Remaining subsections renumbered; “The initial allocation of allowances will be adjusted as necessary to account for any differential between the applicable reported greenhouse gas emissions for the prior years for which reporting data are available and verified in accordance with WAC 173-441 and the number of allowances that were allocated for the prior year through this process."	Responsive to energy agency consultation and comments received during the public comment period

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-230(2)(f)	Now 173-446-230(2)(g); Revised to say "An additional number of allowances will be allocated to account for the administrative costs of the program. Administrative costs of the program are limited solely to those costs associated with establishing and maintaining compliance accounts, tracking compliance, managing compliance instruments, and meeting the reporting and verification requirements of this chapter. Program costs, such as those related to energy efficiency or renewable energy programs, are not qualifying administrative costs, including any administrative requirements of those programs. The number of allowances allocated for this purpose will be determined by ecology based on documented and verified administrative costs derived from audited financial statements from utilities. The mean allowance auction price from the time period for which administrative costs are documented will be used to translate administrative costs into the appropriate number of allowances. To ensure consistency, Ecology will consult with the utilities and transportation commission in its calculations for the administrative costs for investor-owned utilities."	Responsive to numerous comments and consultation with energy agencies

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-230(2)(h)	Subsection added; "The schedule of allowances to be allocated to qualifying utilities will be published on the ecology web site no later than October 1 in the calendar year prior to each compliance period. Public notice of the availability of this information will also be made available concurrently with publishing of this information on the web site."	Consultation with energy agencies and responsive to comments
173-446-230(2)(i)	Subsection added; "The number of allowances will be updated by October 1 of each calendar year as necessary to accommodate the requirements of the adjustment processes described in this subsection. In addition, if a revised forecast of supply or demand is approved in a form and manner consistent with the requirements of this section by July 30 of the same calendar year, then Ecology may adjust the schedule of allowances to reflect the revised information provided by an updated forecast. "	Consultation with energy agencies and responsive to comments
173-446-230(3)	Now 173-446-230(4); Removed "and to the facility"	Correction
173-446-230(5)(c)	New subsection; "The consumer-owned utility notifies ecology of the existence of the qualifying contract no later than December 16, 2022 in a format as specified by ecology."	Procedural clarity and consultation with energy agencies
173-446-230(5)	Renumbered to (6); Added "The utilities and transportation commission retains oversight and jurisdiction over the use of revenues collected from an investor-owned utility through the consignment and auction of no cost allowances for the benefit of ratepayers."	Clarity about agency jurisdiction

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-240	Changed "supplier" to "utility" throughout	Statutory consistency. Several edits to the section.
173-446-240(3)	Added "The utilities and transportation commission retains jurisdiction over the use of the revenues collected by investor-owned utilities from allowances consigned for the benefit of ratepayers."	Changed in response to consultation with UTC
173-446-250(2)(a)(i)	New subsection; "For each determination, ecology will provide notice to the public of ecology's analysis of the state's progress toward the greenhouse gas limits and ecology's preliminary determination on whether or not to remove and retire allowances and how many allowances to remove if any."	In response to comment asking for public process on this determination.
173-446-250(2)(a)(ii)	New subsection; "Ecology will allow 30 calendar days for public comment on the preliminary determination before making a final determination."	In response to comment asking for public process on this determination.
173-446-250(3)(d)(i)	Changed "of" to "under"	Corrected typographical error.
173-446-250(3)(d)(ii)	Added "Except as provided in (d)(iii) of this subsection"	Added due to changes made to WAC 173-446-050(3)(d)-(e), -055(3)(b)-(c), and -520(3)(d)-(e)
173-446-250(3)(d)(iii)	Added section; "For federally recognized tribes who elect to participate as opt-in entities or general market participants pursuant to RCW 70A.65.090(5), a signed attestation to ecology stating: "I understand I am voluntarily participating in the Washington state Greenhouse Gas Cap and Invest Program under chapter 70A.65 RCW and this	This replaces the following from the required attestation in (3)(d)(ii): "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."

Rule Changes		
Section	**Change**	**Reason for Change**
	chapter. The tribal government on whose behalf I am authorized to make this submission has entered into a written agreement, negotiated on an individual basis between ecology and the tribal government, that establishes a dispute resolution process and/or other compliance mechanisms in order to ensure the enforceability of all program requirements applicable to the tribe in its role as an opt-in entity or a general market participant, as applicable."	
173-446-260(1)	Removed "in the electronic compliance instrument tracking system"	In response to comment that this phrase (which is not used elsewhere in the rule) causes confusion.

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-260(1)	Revised to say "(a) For mass-based EITE facilities: By September 1, 2023 (b) For natural gas utilities: (i) By July 1, 2023 a total of 35 percent of vintage 2023 no cost allowances will be allocated, based on Ecology's best estimate of the final total as of this date. (ii) By September 1, 2023 the remaining vintage 2023 no cost allowances will be allocated, taking into account the quantity of no cost allowances already allocated. (c) For investor-owned electric utilities, within 60 days of the utilities and transportation commission approving the forecasts of supply and demand to be used for the purposes WAC 173-446-230, or by July 1, 2023 if the utilities and transportation commission chooses to take no action. (d) For consumer-owned electric utilities, within 60 days of the governing board of the consumer-owned utility approving the forecasts of supply and demand to be used for the purposes WAC 173-446-230, or no later than July 1, 2023 if the governing board takes no action."	Split into sections by distribution date
173-446-300(1)	Added "s" to "purposes"	Corrected typographical error.
173-446-300(1)(b)	Changed "power entities" to "utilities"	Corrected typographical error.
173-446-300(1)(b)(i)	Changed "power entities" to "utilities" and added ", which, for investor-owned utilities, will be determined by the utilities and transportation commission, and with the first priority the mitigation of any rate impacts to low-income customers."	In response to comment – to reflect statutory language about how proceeds from the sale of allowances consigned by electric utilities must be used. Also, to be clear about UTC jurisdiction.

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-300(1)(b)(ii)(H)	Added "and subsequent years"	For clarity
173-446-300(1)(b)(iii)	Added "as determined by the utilities and transportation commission for investor-owned natural gas utilities"	Changed in response to consultation with UTC
173-446-300(1)(b)(iv)	Renumbered to 173-446-300(1)(b)(iii)(A); subsections following also renumbered	In response to comment asking Ecology to clarify that the paragraph now numbered WAC 173-446-300(10(b)(iii)(A) pertains only to natural gas utilities and not electric utilities.
173-446-300(1)(b)(iv)	Added "consigned by natural gas utilities and"	In response to comment to make it clear that this paragraph pertains only to revenues from allowances consigned to auction by natural gas utilities and not electric utilities.
173-446-300(1)(b)(iv)	Added "Investor-owned utility compliance with this subsection will be determined by the utilities and transportation commission. Nothing in this subsection amends the utilities and transportation commission's jurisdiction over investor-owned utilities"	Changed in response to consultation with UTC
173-446-300(1)(b)(iv)(A)	Renumbered; Added "by natural gas utilities"	In response to comment to make it clear that this paragraph pertains only to revenues from allowances consigned to auction by natural gas utilities and not electric utilities.
173-446-300(1)(b)(iv)(A)	Added ", as determined for investor-owned utilities by the utilities and transportation commission. Nothing in this sub-section amends the commission's jurisdiction over investor-owned utilities."	Changed in response to consultation with UTC

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-300(1)(b)(iv)(B)	Renumbered; Added "Investor-owned utility compliance with this section will be determined by the utilities and transportation commission. Nothing in this sub-section amends the utility and transportation commission's jurisdiction over investor-owned utilities."	Changed in response to consultation with UTC
173-446-310(3)	Revised "change" to "delay"	In response to comments pointing out the problems with this process if the auction date is moved forward by 10 or fewer days.
173-446-310(5)	Changed "in" to "for"	For clarity
173-446-310(5)	Added comma	For clarity
173-446-310(6)	Changed "of" to "to"	For clarity
173-446-315(1)(b)	Changed "no later" to "By the auction application deadline, which is no later"	Clarity
173-446-317(1)	Added subsection; renumbered remaining subsections; "Collusion among bidders and/or market manipulation are prohibited."	Clarity – to make sure these are included as prohibited actions.
173-446-320(1)(e)	Changed to "173-446-320(1)(g)"	Corrected typographical error.
173-446-320(4)	Revised to say "If the percentage of holding limits and/or purchase limits allotted to a registered entity that is a member of a direct corporate association changes during the period beginning 39 calendar days before the auction and ending on the day of the auction, the registered entity is prohibited from bidding in the auction."	In response to comment that this provision was too broad. Changed to be compatible with California's similar regulation.
173-446-335(1)	Added "as of the first business day in December, 2022"	To clarify – most recent as of when.
173-446-335(2)	Added "as of the first business day in December of the prior year."	To clarify- most recent as of when.
173-446-335(5)	Added "as of the first business day in December of the prior year."	To clarify- most recent as of when.

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-360(2)	Revised to say "If the registered entity provided more than one form of bid guarantee, the bid guarantee instruments must be applied to a registered entity's unpaid balance in the order the instruments are listed in WAC 173-446-325(1)(c)."	Changing to California language because it is simpler and shorter, and takes into account bonds used as bid guarantees.
173-446-360(3)	Subsection removed	Changing to California language because it is simpler and shorter, and takes into account bonds used as bid guarantees.
173-446-360(4)	Subsection removed	Changing to California language because it is simpler and shorter, and takes into account bonds used as bid guarantees.
173-446-360(5)	Changed "through (4)" to "and (2)"	Match new numbering
173-446-362(2)	Subsection added; "No later than 60 days following the conclusion of each auction, ecology shall transmit to the environmental justice council a summary results report and a post-auction public proceeds report. (3) Beginning in 2024, ecology shall communicate the results of the previous calendar year's auctions to the environmental justice council on an annual basis."	In response to comment to add language to the rule concerning the environmental justice council.
173-446-365(3)(a)	Added "of future vintage allowances"	For clarity
173-446-365(3)(b)	Added "of future vintage allowances"	For clarity
173-446-365(3)(c)	Added "of future vintage allowances"	For clarity
173-446-365(3)(d)	Added "of future vintage allowances"	For clarity
173-446-365(3)(e)	Added "of future vintage allowances"	For clarity

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-365(4)	Added "If future vintage allowances remain unsold at the end of the calendar year for which they were designated for sale at auction, they shall be returned to the pool of allowances of their vintage and not be offered for sale until that year."	Align with auction format
173-446-370(2)(c)	Removed "after the final auction of current vintage allowances for the year and"	Clarifying that allowances from, e.g., 2024 quarterly auctions, can't be used to meet compliance obligations for 2023 emissions that come due in Nov 2024.
173-446-370(4)(b)(iii)	Added "as of the first business day in December of the prior year."	To clarify – most recently available 12 months of the consumer price index as of when.
173-446-370(4)(i)	Added section; Allowances remaining unsold at the end of an allowance price containment reserve auction remain in the allowance price containment reserve to be available for sale at the next allowance price containment reserve auction."	The addition of this provision was triggered by a statement in the FRA – that unsold APCR allowances go back into the general pool of allowances.
173-446-375(1)(d)	Changed "using" to "emitting"	For clarity
173-446-375(2)(b)	Added "covered emissions for the first applicable compliance period for"	For clarity
173-446-380(1)	Changed "each compliance deadline" to "the deadline for each compliance period"	To reflect the fact that price ceiling units can only be sold to meet compliance obligations for a compliance period – not annual compliance obligations.
173-446-380(1)	Removed "and opt-in"	CCA only authorizes covered entities to buy price ceiling units.
173-446-380(3)	Removed "and opt-in" in both uses	CCA only authorizes covered entities to buy price ceiling units.
173-446-380(3)	Changed "deadline" to "period compliance obligation"	To reflect that price ceiling units may only be sold to meet compliance period compliance obligations – not annual compliance obligations.

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-380(3)	Changed "next compliance deadline" to "upcoming compliance period deadline"	To clarify that price ceiling units may only be sold to meet compliance period compliance obligations – not annual compliance obligations.
173-446-380(3)	Replaced "surrender" with "use"	Consistency
173-446-385(1)	Revised to say "Price ceiling unit sales shall only be held between the last allowance price containment reserve auction before the compliance deadline for a compliance period and the compliance period deadline itself."	To be consistent with statutory updates (SB 5842, 2021-2022), which authorizes the sale of price ceiling units only to fill compliance obligations for the current compliance period. The term compliance period refers to the 4-year compliance periods– not for annual compliance obligations.
173-446-385(3)	Removed "or opt-in"	Under RCW 70A.65.160, only covered entities may purchase price ceiling units.
173-446-385(3)	Changed "upcoming compliance deadline" to "upcoming deadline for a compliance period deadline"	To clarify that price ceiling units may only be sold to facilitate compliance at the end of a compliance period.
173-446-385(4)	Removed "or opt-in" in both instances	Per statute, opt in entities may not purchase price ceiling units.
173-446-385(4)	Changed "upcoming compliance deadline" to "upcoming deadline for a compliance period"	To clarify that price ceiling units may only be sold to facilitate compliance at the end of a compliance period.
173-446-385(5)	Removed; remaining subsections renumbered	In response to comment to remove any perceived Ecology discretion about agreeing to sell price ceiling units when the statutory conditions are met.
173-446-385(6)	Renumbered to 173-446-385(5); Added "If the statutory conditions for the sale of price ceiling units outlined above are met," and removed "if ecology agrees to sell price ceiling units,"	In response to comment to remove any perceived Ecology discretion about agreeing to sell price ceiling units when the statutory conditions are met.
173-446-400(2)	First sentence revised to say "By 5:00 pm Pacific Time November 1st of 2024 and each year thereafter, each covered entity and opt-in entity must have in its compliance account sufficient	In response to comment that the rule language concerning the mechanism of compliance was confusing and consistency with WAC 173-446-600.

Rule Changes		
Section	**Change**	**Reason for Change**
	compliance instruments of former vintage years to cover at least 30 percent of its covered emissions for the previous calendar year."	
173-446-400(2)	Changed "submitted" to "used"	In response to comment asking Ecology to clarify the compliance process means transferring allowances to the compliance account - not to Ecology.
173-446-400(3)	Revised to say "By 5:00 pm Pacific Time November 1st of the year following the final year of each compliance period, each covered entity and each opt-in entity must have transferred to its compliance account at least one compliance instrument for each metric ton of covered emissions of carbon dioxide equivalent emitted by that party during the compliance period. Except as provided in subsections (4) and (5) of this section, allowances used for compliance under this provision must be of the vintage of any year of the compliance period or of any prior year."	In response to comment that the rule language concerning the mechanism of compliance was confusing and consistency with WAC-173-446-600.
173-446-400(4)	Changed "surrendering" to "using"	In response to comment that the rule language concerning the mechanism of compliance was confusing.
173-446-400(5)	Revised to say "Allowances obtained from the allowance price containment reserve may be used for compliance at any time."	In response to comment that the rule language concerning the mechanism of compliance was confusing.

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-400(9)	Replaced “transferred to ecology to cover GHG emissions” with “removed by ecology”	Changed to be consistent with the compliance process.

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-400(11)	Subsection added “Deferred compliance requirement for electricity exported to an external GHG emissions trading program for first compliance period. For any portion of covered emissions from a first jurisdictional deliverer in Washington state exported from Washington and imported into an external GHG emissions trading program, as demonstrated to Ecology’s satisfaction through means established under WAC 173-441, the requirements of subsection (2) of this section do not apply. Only the requirements of subsection (3) of this section apply to that portion of covered emissions. This deferral is only in effect for the first compliance period, and for subsequent compliance periods subsections (2) and (3) both apply."	Requested by numerous commenters. Provides time for a more comprehensive solution to be put in place that is consistent with the FJD framework and potential future linkage scenarios.
173-446-415(4)(a)	Added "Except as provided in (b) of this subsection"	Due to the changes made to WAC 173-446-050(3)(d)-(e), -055(3)(b)-(c), and -520(3)(d)-(e)
173-446-415(4)(b)	Added section; "For federally recognized tribes who elect to participate as opt-in entities or general market participants pursuant to RCW 70A.65.090(5), each transaction request submitted under WAC 173-446-410 must include the following attestation statement made and signed by the primary account representative or the alternate account representative making the	Due to the changes made to WAC 173-446-050(3)(d)-(e), -055(3)(b)-(c), and -520(3)(d)-(e)

Rule Changes		
Section	**Change**	**Reason for Change**
	submission: "I certify under penalty of perjury under the laws of the state of Washington that I am authorized to make this submission on behalf of the tribal government that owns the compliance instruments held in the account. I certify under penalty of perjury under the laws of the state of Washington that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify under penalty of perjury under the laws of the state of Washington that the statements and information submitted to Ecology are true, accurate, and complete. The tribal government on whose behalf I am authorized to make this submission has entered into a written agreement, negotiated on an individual basis between ecology and the tribal government, that establishes a dispute resolution process and/or other compliance mechanisms in order to ensure the enforceability of all program requirements applicable to the tribe in its role as an opt-in entity or a general market participant, as applicable. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."	

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-415(7)	Changed "registered entity" to "party"	For consistency with the attestation required in WAC 173-446-130.
173-446-415(7)	Changed "Washington" to "Washington state"	For consistency with the attestation required in WAC 173-446-130.
173-446-415(7)	Removed "and"	For consistency with the attestation required in WAC 173-446-130.
173-446-415(7)	Added "and the pollution control hearings board"	For consistency with the attestation required in WAC 173-446-130.
173-446-415(7)	Added an "s" to "chapters"	For consistency with the attestation required in WAC 173-446-130.
173-446-415(7)	Added "70A.65 RCW"	For consistency with the attestation required in WAC 173-446-130.
173-446-420	Changed "ecology" to "a compliance account"	In response to comment asking Ecology to clarify the compliance process means transferring allowances to the compliance account - not to Ecology.
173-446-420(2)	Changed "ecology" to "a compliance account"	In response to comment asking Ecology to clarify the compliance process means transferring allowances to the compliance account - not to Ecology.
173-446-500(1)(f)	Added "When analysis under Washington's State Environmental Policy Act (SEPA) is required for an offset project, a project-level SEPA analysis finding no significant adverse environmental impact after mitigation fulfills this requirement; and"	In response to comment to clarify whether the finding required by this provision is in addition to SEPA.
173-446-505(3)(a)	Added "All new offsets projects with a commencement date after September 30, 2022, must use the most recent version of the adopted protocol."	Clarifying that superseded protocols cannot be used, in response to comments.

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-505(3)(a)(i)(M)	Revised to say "Section 3.2 (b) is not adopted and is replaced with: "If any portion of the offset project is located on land over which the state of Washington does not have jurisdiction, the offset project operator must demonstrate that the landowner(s) consent(s) to regulation pursuant to WAC 173-446-520(3) (d) or has entered into an agreement with ecology pursuant to WAC 173-446-520(3)(e)."	Clarifying throughout in response to comments on perceived tribal exclusion and limited waiver of sovereign immunity.
173-446-505(3)(a)(ii)(C)	Revised to say "Section 3.1 is not adopted and is replaced with: "If any portion of the offset project is located on land over which the state of Washington does not have jurisdiction, the offset project operator must demonstrate that the landowner(s) consent(s) to regulation pursuant to WAC 173-446-520(3)(d) or has entered into an agreement with ecology pursuant to WAC 173-446-520(3)(e)."	Clarifying throughout in response to comments on perceived tribal exclusion and limited waiver of sovereign immunity.
173-446-505(3)(b)	Added "All new offsets projects with a commencement date after September 30, 2022, must use the most recent version of the adopted protocol."	Clarifying that superseded protocols cannot be used, in response to comments.
173-446-505(3)(b)(i)(N)	Revised to say "Section 3.2(f) is not adopted and is replaced with: "If any portion of the offset project is located on land over which the state of Washington does not have jurisdiction, the offset project operator must demonstrate that the landowner(s) consent(s) to regulation pursuant to WAC 173-446-520(3)(d) or has entered into an agreement with ecology pursuant to WAC 173-446-520(3)(e)."	Clarifying throughout in response to comments on perceived tribal exclusion and limited waiver of sovereign immunity

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-505(3)(b)(i)(P)	Section added; "Section 3.6.(a)(2)(C)(1) is not adopted."	Removes language allowing conservation easements from 2006-2010 to be component of offset project crediting – in response to comments
173-446-505(3)(b)(ii)(J)	Revised to say "Section 3.5 Paragraph 3 text stating "The recordation of a conservation easement may be used to denote the commencement date of pre-existing projects between December 31, 2006 and December 31, 2010." is not adopted."	Removes language allowing conservation easements from 2006-2010 to be component of offset project crediting – in response to comments
173-446-505(3)(b)(ii)(K)	Section added; "Section 3.6. Paragraph 3 is not adopted and is replaced with: “If any portion of the offset project is located on land over which the state of Washington does not have jurisdiction, the offset project operator must demonstrate that the landowner(s) consent(s) to regulation pursuant to WAC 173-446-520(3)(d) or has entered into an agreement with ecology pursuant to WAC 173-446-520(3)(e).”	Clarifying throughout in response to comments on perceived tribal exclusion and limited waiver of sovereign immunity
173-446-505(3)(b)(iii)(N)	Revised to say "Section 3.5. Paragraph 3 text stating “The recordation of a conservation easement may be used to denote the commencement date of pre-existing projects between December 31, 2006 and December 31, 2010.” is not adopted. "	Removes language allowing conservation easements from 2006-2010 to be component of offset project crediting – in response to comments

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-505(3)(b)(iii)(O)	Inserted new subsection (O); remaining subsections renumbered; "Section 3.6. Paragraph 3 is not adopted and is replaced with: “If any portion of the offset project is located on land over which the state of Washington does not have jurisdiction, the offset project operator must demonstrate that the landowner(s) consent(s) to regulation pursuant to WAC 173-446-520(3)(d) or has entered into an agreement with ecology pursuant to WAC 173-446-520(3)(e). "	Clarifying throughout in response to comments on perceived tribal exclusion and limited waiver of sovereign immunity
173-446-505(3)(b)(iii)(P)	Replaced “Pool” with “Account”	Correction
173-446-505(3)(c)	Added "All new offsets projects with a commencement date after September 30, 2022, must use the most recent version of the adopted protocol."	Clarifying that superseded protocols cannot be used, in response to comments

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-505(3)(c)(i)(K)	Revised to say "Section 3.2(d.) is not adopted and is replaced with: “If any portion of the offset project is located on land over which the state of Washington does not have jurisdiction, the offset project operator must demonstrate that the landowner(s) consent(s) to regulation pursuant to WAC 173-446-520(3)(d) or has entered into an agreement with ecology pursuant to WAC 173-446-520(3)(e). "	Clarifying participation requirements, as in previous comments
173-446-505(3)(c)(ii)(A)	Replaced "Livestock" with "Ozone Depleting Substance"	Correcting protocol type.
173-446-505(3)(c)(ii)(F)	Revised to say "Section 3.1 is not adopted and is replaced with: “If any portion of the offset project is located on land over which the state of Washington does not have jurisdiction, the offset project operator must demonstrate that the landowner(s) consent(s) to regulation pursuant to WAC 173-446-520(3)(d) or has entered into an agreement with ecology pursuant to WAC 173-446-520(3)(e)."	Clarifying throughout in response to comments on perceived tribal exclusion and limited waiver of sovereign immunity.
173-446-505(3)(d)	Added "All new offsets projects with a commencement date after 30, 2022, must use the most recent version of the adopted protocol."	Clarifying that superseded protocols cannot be used, in response to comments.

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-505(3)(d)(E)	Revised to say "Section 3.1 is not adopted and is replaced with: “If any portion of the offset project is located on land over which the state of Washington does not have jurisdiction, the offset project operator must demonstrate that the landowner(s) consent(s) to regulation pursuant to WAC 173-446-520(3)(d) or has entered into an agreement with ecology pursuant to WAC 173-446-520(3)(e). "	Clarifying throughout in response to comments on perceived tribal exclusion and limited waiver of sovereign immunity
173-446-520(3)(a)(ii)	Moved section up from former (3)(b)(iii)	Clarity
173-446-520(3)(a)(iii)	Added “Except as provided in (b)(iv) of this subsection”	Due to the changes made to WAC 173-446-050(3)(d)-(e), -055(3)(b)-(c), and -520(3)(d)-(e).
173-446-520(3)(a)(iv)	Added section; "For federally recognized tribes who elect to participate as offset project operators pursuant to RCW 70A.65.090(5), the following attestation may be submitted in lieu of the attestation required by (b)(iii) of this subsection: “I understand I am voluntarily participating in this program. The tribal government on whose behalf I am authorized to make this submission has entered into a written agreement, negotiated on an individual basis between ecology and the tribal government, that establishes a dispute resolution process and/or other compliance mechanisms in order to ensure the enforceability of all program requirements applicable to the tribe in its role as an offset project operator. ”	This replaces the following required attestation in (3)(b)(iii): “and by doing so, I am now subject to all regulatory requirements and enforcement mechanisms of this program and subject myself to the jurisdiction of Washington as the exclusive venue to resolve any and all disputes arising from the enforcement of provisions in this chapter.”
173-446-520(3)(d)	Added "Except as provided in subsection (e) below"	In response to comments from Tribes concerning their sovereign immunity.

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-520(3)(e)	Subsection added; "For offset projects located on tribal land, land that is owned by a tribe, or land that is subject to an ownership or possessory interest of a tribe, the offset project operator must demonstrate that the tribe has entered into a written agreement, negotiated on an individual basis between ecology and the tribal government, that establishes a dispute resolution process and/or other compliance mechanisms in order to ensure the enforceability of all program requirements applicable to the tribe in its role as the owner of land on which an offset project is located. "	In response to comments from Tribes concerning their sovereign immunity.
173-446-520(13)(a)(ii)	Added "on its website"	Clarifying retention requirements, in line with (13)(i) and (13)(iii), in response to comment
173-446-525(10)(f)	Removed "or is not capable of being verified to a reasonable level of assurance"	Removing this clause to strengthen alternative monitoring requirements, in response to comment
173-446-535(4)(c)(v)(II)	Revised to say "Assess whether the offset project meets the requirements for additionality set forth in WAC 173-446-510(1)(d) and that it meets all the requirements set forth in the applicable compliance offset protocol pursuant to WAC 173-446-510(1)(a)"	Clarity & Consistency
173-446-535(4)(c)(v)(VII)(B)	Removed comma	Correction
173-446-535(4)(c)(xii)(D)	Replaced "by" with "in"	Consistency
173-446-555(4)(b)	Subsection moved to new (4)(e); following sections renumbered	Clarity
173-446-555(4)(f)	Subsection added; "For federally recognized tribes who elect to participate as offset project	Due to the changes made to WAC 173-446-050(3)(d)-(e), -055(3)(b)-(c), and -520(3)(d)-(e).

Rule Changes		
Section	**Change**	**Reason for Change**
	operators pursuant to RCW 70A.65.090(5), the following attestation may be submitted in lieu of the attestation required by (e) of this subsection: "I understand I am voluntarily participating in this program. The tribal government on whose behalf I am authorized to make this submission has entered into a written agreement, negotiated on an individual basis between ecology and the tribal government, that establishes a dispute resolution process and/or other compliance mechanisms in order to ensure the enforceability of all program requirements applicable to the tribe in its role as an offset project operator. "	
173-446-575(1)	Replaced "surrendered" with "used" for compliance"	Consistency
173-446-595(3)	Added "or prior to"	Allowing for earlier submission of DEBs application, in response to comment
173-446-600(2)	Added "unless otherwise required by specific provisions of this regulation,"	Added to ensure compatibility with other requests for information in the rule with other response deadlines.
173-446-600(3)	Changed from "November 1st of each year" to "November 1st of 2024 and each year thereafter"	Added in response to comment asking that Ecology specify that the first compliance obligation is in 2024.
173-446-600(3)	Changed "transfer to ecology" to "have in its compliance account"	In response to comment that rule language concerning the mechanism of compliance was confusing.
173-446-600(4)	Changed "transferred to ecology" to "transferred to its compliance account"	In response to comment that the rule language concerning the mechanism of compliance was confusing.
173-446-600(4)	Changed "submitted" to "used"	In response to comment that the rule language concerning the mechanism of compliance was confusing.

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-600(4)	Changed "may" to "must"	In response to comment that the rule language concerning the mechanism of compliance was confusing.
173-446-600(4)	Changed “or” to “of”	Typographical Correction
173-446-600(4)(a)	Changed "surrendering" to "using"	In response to comment that the rule language concerning the mechanism of compliance was confusing.
173-446-600(4)(b)	Revised to say "Allowances obtained from the allowance price containment reserve may be used for compliance at any time."	In response to comment that the rule language concerning the mechanism of compliance was confusing.
173-446-600(6)	Subsection added; “Deferred compliance requirement for electricity exported to an external GHG emissions trading program for first compliance period. For any portion of covered emissions from a first jurisdictional deliverer in Washington state exported from Washington and imported into an external GHG emissions trading program, as demonstrated to ecology's satisfaction through means established under chapter 173-441 WAC, the requirements of subsection (2) of this section do not apply. Only the requirements of subsection (3) of this section apply to that portion of covered emissions. This deferral is only in effect for the first compliance period, and for subsequent compliance periods subsections (2) and (3) both apply.”	Clarification and Consistency
173-446-600(6)	Now (7); Changed from "obligation may be met by transferring to ecology offset credits" to "obligation may be met by offset credits placed in the covered entity's or opt-in entity's compliance account"	In response to comment that the language in the rule concerning compliance mechanisms was confusing.

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-600(6)(a)	Now (7)(a); Reformatted into list	Formatting changes are to accommodate rule change in accordance with the statute which specifies that these reductions only apply to non-tribal credits, in response to comments.
173-446-600(6)(a)	Now (7)(a); Added "not located"	Formatting changes are accommodate rule change in accordance with the statute which specifies that these reductions only apply to non-tribal credits, in response to comments.
173-446-600(6)(a)	Now (7)(a); Added "in (a)(i) of this subsection"	Formatting changes are to accommodate rule change in accordance with the statute which specifies that these reductions only apply to non-tribal credits, in response to comments.
173-446-600(6)(b)	Now (7)(b); Added "not located"	Formatting changes are to accommodate rule change in accordance with the statute which specifies that these reductions only apply to non-tribal credits, in response to comments.
173-446-600(6)(b)	Now (7)(b); Added "in (b)(i) of this subsection"	Formatting changes are to accommodate rule change in accordance with the statute which specifies that these reductions only apply to non-tribal credits, in response to comments.
173-446-600(6)(d)	Now (7)(d); Changed "(a), (b), and (c)" to "(a)(i), (b)(i), and (c)(i)"	Rule change in accordance with the statute which specifies that these reductions only apply to non-tribal credits, in response to comments.
173-446-600(6)(d)(i)	Now (7)(d)(i); Removed "identified by ecology pursuant to RCW 70A.65.020 (1) (a)"	Rule change to broaden definition of overburdened communities, in response to comments.

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-600(6)(d)	Now (7)(d); Removed “and (c)(i)”	Statutory analysis that determined this provision can't be used to reduce offset credits from tribal land.
173-446-600(6)(d)(i)	Now (7)(d)(i); Added “identified by ecology”	Clarity

Rule Changes		
Section	**Change**	**Reason for Change**
173-446-610(1)	Revised to say "If a covered or opt-in entity does not have sufficient compliance instruments in its compliance account to meet its compliance obligation by the compliance deadlines specified in Section WAC 173-446-600(3) and (4), it has violated its compliance obligation and correction is not possible. As a result of such noncompliance, the covered or opt-in entity must, within six months after the compliance deadline submit to ecology four penalty allowances for every one compliance instrument that it failed to have in its compliance account by the specified compliance deadline."	In response to comment that the rule language concerning the mechanism for compliance was confusing and specifies the compliance deadlines being referred to.

List of Commenters

Last Name	First Name	Submitted By	Code	Category	Topic	Sub-Topic
Abolins	Talis		I-18	II. General CCA	1. Support for rulemaking	
Adams	Byron		I-16	II. General CCA	4. Investment of program revenue	
Anderson	Glen		I-85	II. General CCA	2. Concern for environmental degradation	
Anderson	Glen		I-85	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	B. Cap integrity
Anderson	Glen		I-85	I. Environmental Justice	1. Impacts on overburdened communities	
Anholt	Marcy		I-3	II. General CCA	1. Support for rulemaking	
Anonymous			I-17	II. General CCA	3. Opposed to rulemaking	
Anonymous			I-14	II. General CCA	1. Support for rulemaking	
Astrachan	Ira		I-11	II. General CCA	3. Opposed to rulemaking	
Aufrecht	M		I-287	II. General CCA	1. Support for rulemaking	
Aufrecht	M		I-287	I. Environmental Justice	3. Data and information gathering and dissemination	
Avery	Jean		I-320	I. Environmental Justice	1. Impacts on overburdened communities	
Avery	Jean		I-320	I. Environmental Justice	4. Comments on Tribal Rights	

Last Name	First Name	Submitted By	Code	Category	Topic	Sub-Topic
Avery	Jean M.		I-176	II. General CCA	1. Support for rulemaking	
Bagley	Charles		I-6	II. General CCA	1. Support for rulemaking	
Baker	Rachel	Washington Environmental Council and The Nature Conservancy Washington	O-34	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	A. Significant adverse environmental impacts
Baker	Rachel	Washington Environmental Council and The Nature Conservancy Washington	O-34	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	B. Adoption of new protocols or revision of proposed protocols
Baker	Rachel	Washington Environmental Council and The Nature Conservancy Washington	O-34	I. Environmental Justice	4. Comments on Tribal Rights	
Baker	Rachel	Washington Environmental Council and The Nature Conservancy Washington	O-34	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	C. Effectiveness of CARB protocols
Baker	Rachel	Washington Environmental Council and The Nature Conservancy Washington	O-34	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	D. Project aggregation

Last Name	First Name	Submitted By	Code	Category	Topic	Sub-Topic
Baker	Rachel	Washington Environmental Council and The Nature Conservancy Washington	O-34	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	F. Alternate monitoring methodologies
Baker	Rachel	Washington Environmental Council and The Nature Conservancy Washington	O-34	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	K. Direct Environmental Benefits
Baker	Rachel	Washington Environmental Council and The Nature Conservancy Washington	O-34	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	L. Clarify process for reducing offset limits
Baker	Rachel	Washington Environmental Council and The Nature Conservancy Washington	O-34	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	M. Tribal use of urban forestry protocol
Baker	Carl		I-166	II. General CCA	1. Support for rulemaking	
Barrow	Pamela	Food Northwest	O-12	IV. Comments on specific sections of WAC 173-446	8. Covered emissions (WAC 173-446-040)	B. Biofuels
Barrow	Pamela	Food Northwest	O-12	IV. Comments on specific sections of WAC 173-446	12. General requirements (WAC 173-446-000's)	D. Exiting the program

Last Name	First Name	Submitted By	Code	Category	Topic	Sub-Topic
Barrow	Pamela	Food Northwest	O-12	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	B. Baseline
Barrow	Pamela	Food Northwest	O-12	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	C. Allocation and adjustments
Barrow	Pamela	Food Northwest	O-12	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	F. Requirement notice and confidentiality
Bartow	Sally		I-281	II. General CCA	2. Concern for environmental degradation	
Baughman	Jacob		I-132	IV. Comments on specific sections of WAC 173-446	13. Natural gas suppliers, utilities (WAC 173-446-220)	
Baughman	Jacob		I-132	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	A. Allowance allocation
Bear	Christy		I-167	I. Environmental Justice	1. Impacts on overburdened communities	
bear	christy		I-15	II. General CCA	1. Support for rulemaking	
Bee	Brandon		I-161	II. General CCA	5. Scope of the program	
Belcher	Kjellen	Environmental Defense Fund	O-29	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	D. Price ceiling units
Belcher	Kjellen	Environmental Defense Fund	O-29	III. General WAC 173-446	2. Linkage	

Last Name	First Name	Submitted By	Code	Category	Topic	Sub-Topic
Belcher	Kjellen	Environmental Defense Fund	O-29	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	C. Distribution dates
Belcher	Kjellen	Environmental Defense Fund	O-29	III. General WAC 173-446	3. Future review of the program	
Belcher	Kjellen	Environmental Defense Fund	O-29	I. Environmental Justice	2. Environmental Justice Council	
Belcher	Kjellen	Environmental Defense Fund	O-29	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	B. ECR
Belcher	Kjellen	Environmental Defense Fund	O-29	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	C. Prices
Belcher	Kjellen	Environmental Defense Fund	O-29	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	A. APCR
Belcher	Kjellen	Environmental Defense Fund	O-29	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	C. Allocation and adjustments
Belcher	Kjellen	Environmental Defense Fund	O-29	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	B. Adoption of new protocols or revision of proposed protocols
Belcher	Kjellen	Environmental Defense Fund	O-29	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	D. Project aggregation
Belcher	Kjellen	Environmental Defense Fund	O-29	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	L. Clarify process for reducing offset limits

Last Name	First Name	Submitted By	Code	Category	Topic	Sub-Topic
Belcher	Kjellen	Environmental Defense Fund	O-29	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	B. Baseline
Belcher	Kjellen	Environmental Defense Fund	O-29	IV. Comments on specific sections of WAC 173-446	6. Compliance and enforcement (WAC 173-446-600's)	B. Enforcement
Belcher	Kjellen		I-130	II. General CCA	1. Support for rulemaking	
Belcher	Kjellen		I-130	III. General WAC 173-446	2. Linkage	
Belcher	Kjellen		I-130	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	B. ECR
Benedict	Derek		I-45	II. General CCA	2. Concern for environmental degradation	
Benemann	Tom		I-93	II. General CCA	1. Support for rulemaking	
Bergey	Heather		I-271	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	C. Effectiveness of CARB protocols
Bergey	Heather		I-271	I. Environmental Justice	4. Comments on Tribal Rights	
Bhakti	Sara		I-91	II. General CCA	2. Concern for environmental degradation	
Bliley	Chris	Growth Energy	O-18	IV. Comments on specific sections of WAC 173-446	8. Covered emissions (WAC 173-446-040)	B. Biofuels
Bond	Susan		I-604	II. General CCA	5. Scope of the program	

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Bond	Susan		I-604	III. General WAC 173-446	6. Scope of the rule	
Borries	Stanley		I-434	II. General CCA	5. Scope of the program	
Breidenich	Clare	Western Power Trading Forum	O-28	IV. Comments on specific sections of WAC 173-446	5. Baseline (WAC 173-446-200)	C. Electricity baseline
Breidenich	Clare	Western Power Trading Forum	O-28	IV. Comments on specific sections of WAC 173-446	3. Applicability (WAC 173-446-030)	
Breidenich	Clare	Western Power Trading Forum	O-28	IV. Comments on specific sections of WAC 173-446	8. Covered emissions (WAC 173-446-040)	A. Allotment of covered emissions
Breidenich	Clare	Western Power Trading Forum	O-28	IV. Comments on specific sections of WAC 173-446	12. General requirements (WAC 173-446-000's)	D. Exiting the program
Breidenich	Clare	Western Power Trading Forum	O-28	IV. Comments on specific sections of WAC 173-446	12. General requirements (WAC 173-446-000's)	E. Allowances
Breidenich	Clare	Western Power Trading Forum	O-28	IV. Comments on specific sections of WAC 173-446	1. Account requirements (WAC 173-446-100's)	B. Account uses contents and limits
Breidenich	Clare	Western Power Trading Forum	O-28	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	D. Removal of allowances
Breidenich	Clare	Western Power Trading Forum	O-28	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	F. Requirement notice and confidentiality

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Breidenich	Clare	Western Power Trading Forum	O-28	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	B. ECR
Breidenich	Clare	Western Power Trading Forum	O-28	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	A. Allowance allocation
Buckingham	Robert		I-135	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	B. Adoption of new protocols or revision of proposed protocols
Byrne	Jim		I-116	II. General CCA	1. Support for rulemaking	
Call	Sheri	Washington Trucking Associations	O-42	III. General WAC 173-446	4. Implementation	
Callen	Logan		I-42	II. General CCA	6. Program coverage	
Canny	Maureen		I-13	II. General CCA	1. Support for rulemaking	
Capan	Cigdem		I-305	II. General CCA	1. Support for rulemaking	
Capan	Cigdem		I-305	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	B. Adoption of new protocols or revision of proposed protocols
Capizzi	Nicole		I-317	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	B. Adoption of new protocols or revision of proposed protocols
Chadd	Ed		I-51	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	C. Effectiveness of CARB protocols
Chadd	Ed		I-34	II. General CCA	2. Concern for environmental degradation	
Chance	Robyn		I-20	II. General CCA	1. Support for rulemaking	

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Clipper	Clarence	CenTrio Energy	B-18	III. General WAC 173-446	4. Implementation	
Clipper	Clarence	CenTrio Energy	B-18	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	A. APCR
Cody	Heidi		I-36	I. Environmental Justice	1. Impacts on overburdened communities	
Coenen	Steffen		I-5	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	C. Prices
Compton	Patty		I-106	II. General CCA	2. Concern for environmental degradation	
Courtney	Linda		I-554	II. General CCA	3. Opposed to rulemaking	
Cullenward	Danny	CarbonPlan	O-41	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	C. Effectiveness of CARB protocols
Curtz	Thad		I-222	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	C. Effectiveness of CARB protocols
Darilek	Marilyn		I-165	II. General CCA	1. Support for rulemaking	
Darilek	Marilyn		I-165	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	B. Cap integrity
Darilek	Marilyn		I-165	I. Environmental Justice	2. Environmental Justice Council	

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Davis	Tom	Washington Forest Protection Association	O-14	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	D. Project aggregation
Davis	Tom	Washington Forest Protection Association	O-14	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	I. Invalidation risk
Davis	Tom	Washington Forest Protection Association	O-14	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	B. Adoption of new protocols or revision of proposed protocols
Dawson	Ann		I-59	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	B. Cap integrity
Dawson	Ann		I-59	I. Environmental Justice	1. Impacts on overburdened communities	
Dawson	Ann		I-59	I. Environmental Justice	2. Environmental Justice Council	
DeFord	David		I-564	II. General CCA	3. Opposed to rulemaking	
DeRivi	Tanya	Western States Petroleum Association	O-32	IV. Comments on specific sections of WAC 173-446	8. Covered emissions (WAC 173-446-040)	B. Biofuels
DeRivi	Tanya	Western States Petroleum Association	O-32	IV. Comments on specific sections of WAC 173-446	5. Baseline (WAC 173-446-200)	B. Data availability
DeRivi	Tanya	Western States Petroleum Association	O-32	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	C. Prices

Last Name	First Name	Submitted By	Code	Category	Topic	Sub-Topic
DeRivi	Tanya	Western States Petroleum Association	O-32	IV. Comments on specific sections of WAC 173-446	1. Account requirements (WAC 173-446-100's)	B. Account uses contents and limits
DeRivi	Tanya	Western States Petroleum Association	O-32	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	A. APCR
DeRivi	Tanya	Western States Petroleum Association	O-32	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	B. ECR
DeRivi	Tanya	Western States Petroleum Association	O-32	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	D. Price ceiling units
DeRivi	Tanya	Western States Petroleum Association	O-32	IV. Comments on specific sections of WAC 173-446	6. Compliance and enforcement (WAC 173-446-600's)	B. Enforcement
DeRivi	Tanya	Western States Petroleum Association	O-32	III. General WAC 173-446	5. Preliminary regulatory analysis	
Dexheimer	Derek		I-201	II. General CCA	5. Scope of the program	
Dexheimer	Derek		I-201	III. General WAC 173-446	6. Scope of the rule	
Donnelly	Richard		I-207	I. Environmental Justice	1. Impacts on overburdened communities	
Downey	Brent	Kaiser Aluminum	B-13	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	B. Baseline
Downey	Brent	Kaiser Aluminum	B-13	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	C. Allocation and adjustments

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Drayton	Annabel	NW Energy Coalition	O-27	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	B. Cost burden calculation
Drayton	Annabel	NW Energy Coalition	O-27	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	A. Allowance allocation
Droke	Mendy	Seattle City Light	OTH-1	IV. Comments on specific sections of WAC 173-446	5. Baseline (WAC 173-446-200)	C. Electricity baseline
Droke	Mendy	Seattle City Light	OTH-1	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	I. Invalidation risk
Droke	Mendy	Seattle City Light	OTH-1	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	C. Distribution dates
Droke	Mendy	Seattle City Light	OTH-1	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	B. Cost burden calculation
Droke	Mendy	Seattle City Light	OTH-1	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	A. Allowance allocation
Dziadek	Tammy		I-254	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	C. Effectiveness of CARB protocols
Edmark	Kristin		I-225	I. Environmental Justice	1. Impacts on overburdened communities	

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Edmark	Kristin		I-225	I. Environmental Justice	3. Data and information gathering and dissemination	
Engelfried	Nick		I-175	II. General CCA	1. Support for rulemaking	
Engelfried	Nick		I-175	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	B. Cap integrity
Engelfried	Nick		I-175	II. General CCA	4. Investment of program revenue	
ETTER	JACQUELINE	WEST STAR CONSTRUCTION OF SPOKANE INC	B-1	II. General CCA	5. Scope of the program	
Euler	Ursula		I-216	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	C. Effectiveness of CARB protocols
Evans	Denny		I-308	II. General CCA	5. Scope of the program	
Evans	John		I-300	II. General CCA	5. Scope of the program	
Evans	John		I-300	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	C. Allocation and adjustments
Fagerness	Tom		I-38	IV. Comments on specific sections of WAC 173-446	3. Applicability (WAC 173-446-030)	
Fasnacht	Sharon		I-111	II. General CCA	1. Support for rulemaking	
Fasnacht	Sharon		I-111	II. General CCA	5. Scope of the program	
Faste	Andrea		I-96	II. General CCA	2. Concern for environmental degradation	

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Fay	Alex		I-298	I. Environmental Justice	1. Impacts on overburdened communities	
Fay	Tess		I-229	IV. Comments on specific sections of WAC 173-446	9. Definitions (WAC 173-446-020)	
Fay	Tess		I-229	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	D. New or expanded facilities
Feist	Marlene	Municipality	OTH-5	IV. Comments on specific sections of WAC 173-446	9. Definitions (WAC 173-446-020)	
Feist	Marlene	Municipality	OTH-5	IV. Comments on specific sections of WAC 173-446	3. Applicability (WAC 173-446-030)	
Feist	Marlene	Municipality	OTH-5	IV. Comments on specific sections of WAC 173-446	12. General requirements (WAC 173-446-000's)	A. Registration
Feist	Marlene	Municipality	OTH-5	IV. Comments on specific sections of WAC 173-446	1. Account requirements (WAC 173-446-100's)	A. Submitting information
Feist	Marlene	Municipality	OTH-5	IV. Comments on specific sections of WAC 173-446	5. Baseline (WAC 173-446-200)	A. Determining the baseline
Feist	Marlene	Municipality	OTH-5	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	A. Calculation

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Feist	Marlene	Municipality	OTH-5	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	A. APCR
ffitch	Eric	The Northwest Seaport Alliance-Port of Tacoma-Port of Seattle	O-19	II. General CCA	1. Support for rulemaking	
ffitch	Eric	The Northwest Seaport Alliance-Port of Tacoma-Port of Seattle	O-19	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	B. Adoption of new protocols or revision of proposed protocols
ffitch	Eric	The Northwest Seaport Alliance-Port of Tacoma-Port of Seattle	O-19	III. General WAC 173-446	2. Linkage	
Fields	Katie		I-133	I. Environmental Justice	1. Impacts on overburdened communities	
Fields	Katie		I-133	I. Environmental Justice	3. Data and information gathering and dissemination	
Fink	Carl	Northwest & Intermountain Power Producers Coalition	O-26	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	A. Allowance allocation
Fosback	Rodney		I-8	II. General CCA	3. Opposed to rulemaking	
Foster	Michael		I-19	II. General CCA	3. Opposed to rulemaking	
Frasca	John		I-294	II. General CCA	2. Concern for environmental degradation	

Last Name	First Name	Submitted By	Code	Category	Topic	Sub-Topic
Fruland	Ruth		I-319	II. General CCA	6. Program coverage	
Fruland	Ruth		I-319	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	C. Effectiveness of CARB protocols
Furtado	Kathy		I-90	II. General CCA	2. Concern for environmental degradation	
Germain	Carmen		I-290	I. Environmental Justice	4. Comments on Tribal Rights	
Ghoshal	Orijit	Grays Harbor Energy, LLC	B-23	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	B. Cost burden calculation
Ghoshal	Orijit	Grays Harbor Energy, LLC	B-23	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	A. Allowance allocation
Ghoshal	Orijit	Grays Harbor Energy, LLC	B-23	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	B. Adoption of new protocols or revision of proposed protocols
Ghoshal	Orijit	Grays Harbor Energy, LLC	B-23	IV. Comments on specific sections of WAC 173-446	5. Baseline (WAC 173-446-200)	C. Electricity baseline
Ghoshal	Orijit	Grays Harbor Energy, LLC	B-23	IV. Comments on specific sections of WAC 173-446	12. General requirements (WAC 173-446-000's)	B. Consultants and advisors
Ghoshal	Orijit	Grays Harbor Energy, LLC	B-23	IV. Comments on specific sections of WAC 173-446	1. Account requirements (WAC 173-446-100's)	B. Account uses contents and limits
Gibbins	Martin	League of Women Voters of Washington	O-20	II. General CCA	4. Investment of program revenue	

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Gibbins	Martin	League of Women Voters of Washington	O-20	III. General WAC 173-446	3. Future review of the program	
Godlewski	Peter	Association of Washington Business	O-37	III. General WAC 173-446	5. Preliminary regulatory analysis	
Godlewski	Peter	Association of Washington Business	O-37	IV. Comments on specific sections of WAC 173-446	9. Definitions (WAC 173-446-020)	
Godlewski	Peter	Association of Washington Business	O-37	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	A. Calculation
Godlewski	Peter	Association of Washington Business	O-37	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	C. Allocation and adjustments
Godlewski	Peter	Association of Washington Business	O-37	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	C. Prices
Godlewski	Peter	Association of Washington Business	O-37	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	A. APCR
Godlewski	Peter	Association of Washington Business	O-37	IV. Comments on specific sections of WAC 173-446	6. Compliance and enforcement (WAC 173-446-600's)	B. Enforcement
Goehner	Duane		I-4	II. General CCA	3. Opposed to rulemaking	
Gould	Tim		I-318	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	L. Clarify process for reducing offset limits

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Gould	Tim		I-318	I. Environmental Justice	1. Impacts on overburdened communities	
Gould	Tim		I-318	III. General WAC 173-446	2. Linkage	
Gould	Tim		I-318	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	B. Adoption of new protocols or revision of proposed protocols
Gould	Tim		I-318	I. Environmental Justice	3. Data and information gathering and dissemination	
Gould	Tim		I-318	I. Environmental Justice	2. Environmental Justice Council	
Gould	Paul		I-174	II. General CCA	5. Scope of the program	
Gould	Paul		I-174	II. General CCA	6. Program coverage	
Grimes	Lucas	Center for Resource Solutions	O-6	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	
Grimes	Lucas	Center for Resource Solutions	O-6	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	
Grimes	Lucas	Center for Resource Solutions	O-6	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	C. Voluntary renewable electricity
Hall	Kelly	Climate Solutions	O-33	IV. Comments on specific sections of WAC 173-446	13. Natural gas suppliers, utilities (WAC 173-446-220)	

Last Name	First Name	Submitted By	Code	Category	Topic	Sub-Topic
Hall	Kelly	Climate Solutions	O-33	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	B. Cap integrity
Hall	Kelly	Climate Solutions	O-33	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	B. ECR
Hall	Kelly	Climate Solutions	O-33	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	B. Cost burden calculation
Hall	Kelly	Climate Solutions	O-33	I. Environmental Justice	1. Impacts on overburdened communities	
Hall	Kelly	Climate Solutions	O-33	III. General WAC 173-446	2. Linkage	
Hall	Kelly	Climate Solutions	O-33	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	C. Allocation and adjustments
Hall	Kelly	Climate Solutions	O-33	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	C. Voluntary renewable electricity
Hall	Kelly	Climate Solutions	O-33	I. Environmental Justice	2. Environmental Justice Council	
Hall	Kelly	Climate Solutions	O-33	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	A. Allowance allocation
Hall	Dorothy		I-94	II. General CCA	1. Support for rulemaking	

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Hamilton	Ross		I-122	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	A. Allowance allocation
Hamm	Jeff		I-512	II. General CCA	3. Opposed to rulemaking	
Hartman	Brice	Washington State Attorney General, Public Counsel Unit	A-5	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	A. Allowance allocation
Hartman	Brice	Washington State Attorney General, Public Counsel Unit	A-5	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	B. Cost burden calculation
Hastings	Pamela		I-178	II. General CCA	5. Scope of the program	
Hatton	Terry		I-29	II. General CCA	3. Opposed to rulemaking	
Haun	Cause		I-250	I. Environmental Justice	1. Impacts on overburdened communities	
Hawthorne	Ed	City of Enumclaw	OTH-7	IV. Comments on specific sections of WAC 173-446	8. Covered emissions (WAC 173-446-040)	B. Biofuels
Hawthorne	Ed	City of Enumclaw	OTH-7	IV. Comments on specific sections of WAC 173-446	3. Applicability (WAC 173-446-030)	
Hawthorne	Ed	City of Enumclaw	OTH-7	IV. Comments on specific sections of WAC 173-446	12. General requirements (WAC 173-446-000's)	D. Exiting the program
Hawthorne	Ed	City of Enumclaw	OTH-7	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	A. Calculation

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Hawthorne	Ed	City of Enumclaw	OTH-7	IV. Comments on specific sections of WAC 173-446	13. Natural gas suppliers, utilities (WAC 173-446-220)	
Hawthorne	Ed	City of Enumclaw	OTH-7	III. General WAC 173-446	5. Preliminary regulatory analysis	
Heikkila	Heath	American Forest Resource Council	O-13	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	H. Forestry protocol alignment with RCW 70A.45
Heikkila	Heath	American Forest Resource Council	O-13	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	B. Adoption of new protocols or revision of proposed protocols
Heikkila	Heath	American Forest Resource Council	O-13	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	C. Effectiveness of CARB protocols
Heitzman	Jerry		I-581	II. General CCA	5. Scope of the program	
Heitzman	Jerry		I-581	III. General WAC 173-446	6. Scope of the rule	
Hinton	Steve	The Tulalip Tribes	T-3	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	B. Adoption of new protocols or revision of proposed protocols
Hinton	Steve	The Tulalip Tribes	T-3	I. Environmental Justice	4. Comments on Tribal Rights	
Hinton	Steve	The Tulalip Tribes	T-3	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	D. Project aggregation
Hinton	Steve	The Tulalip Tribes	T-3	I. Environmental Justice	3. Data and information gathering and dissemination	

Last Name	First Name	Submitted By	Code	Category	Topic	Sub-Topic
Hinton	Steve	The Tulalip Tribes	T-3	III. General WAC 173-446	3. Future review of the program	
Hinton	Steve	The Tulalip Tribes	T-3	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	M. Tribal use of urban forestry protocol
Hinton	Steve	The Tulalip Tribes	T-3	IV. Comments on specific sections of WAC 173-446	12. General requirements (WAC 173-446-000's)	A. Registration
Hinton	Steve	The Tulalip Tribes	T-3	III. General WAC 173-446	2. Linkage	
Hinton	Colleen		I-150	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	B. Cap integrity
Hinton	Colleen		I-150	I. Environmental Justice	2. Environmental Justice Council	
Holman	Melinda		I-26	II. General CCA	1. Support for rulemaking	
Houskeeper	Brandon	Alliance of Western Energy Consumers	O-39	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	B. Cost burden calculation
Houskeeper	Brandon	Alliance of Western Energy Consumers	O-39	IV. Comments on specific sections of WAC 173-446	13. Natural gas suppliers, utilities (WAC 173-446-220)	
Houskeeper	Brandon	Alliance of Western Energy Consumers	O-39	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	C. Distribution dates

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Houskeeper	Brandon	Alliance of Western Energy Consumers	O-39	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	D. Price ceiling units
Houskeeper	Brandon	Alliance of Western Energy Consumers	O-39	III. General WAC 173-446	5. Preliminary regulatory analysis	
Houskeeper	Brandon	Alliance of Western Energy Consumers	O-39	IV. Comments on specific sections of WAC 173-446	12. General requirements (WAC 173-446-000's)	C. New or modified entity
Houskeeper	Brandon	Alliance of Western Energy Consumers	O-39	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	B. Baseline
Houskeeper	Brandon	Alliance of Western Energy Consumers	O-39	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	C. Allocation and adjustments
Houskeeper	Brandon	Alliance of Western Energy Consumers	O-39	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	D. New or expanded facilities
Houskeeper	Brandon	Alliance of Western Energy Consumers	O-39	IV. Comments on specific sections of WAC 173-446	1. Account requirements (WAC 173-446-100's)	A. Submitting information
Houskeeper	Brandon	Alliance of Western Energy Consumers	O-39	IV. Comments on specific sections of WAC 173-446	1. Account requirements (WAC 173-446-100's)	B. Account uses contents and limits
Houskeeper	Brandon	Alliance of Western Energy Consumers	O-39	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	F. Requirement notice and confidentiality
Houskeeper	Brandon	Alliance of Western Energy Consumers	O-39	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	A. Allowance allocation

Last Name	First Name	Submitted By	Code	Category	Topic	Sub-Topic
Hubbard	Glen		I-25	II. General CCA	1. Support for rulemaking	
Hudson	Dorothy		I-159	I. Environmental Justice	1. Impacts on overburdened communities	
Hughes	Nancy	California Urban Forests Council	O-3	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	B. Adoption of new protocols or revision of proposed protocols
Hughes	Nikkole	Joint Utilities (Avista, NRU, PacifiCorp, PGP, PSE, WPUDA)	O-22	IV. Comments on specific sections of WAC 173-446	8. Covered emissions (WAC 173-446-040)	A. Allotment of covered emissions
Hughes	Nikkole	Joint Utilities (Avista, NRU, PacifiCorp, PGP, PSE, WPUDA)	O-22	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	C. Distribution dates
Hughes	Nikkole	Joint Utilities (Avista, NRU, PacifiCorp, PGP, PSE, WPUDA)	O-22	III. General WAC 173-446	2. Linkage	
Hughes	Nikkole	Joint Utilities (Avista, NRU, PacifiCorp, PGP, PSE, WPUDA)	O-22	IV. Comments on specific sections of WAC 173-446	12. General requirements (WAC 173-446-000's)	C. New or modified entity
Hughes	Nikkole	Joint Utilities (Avista, NRU, PacifiCorp, PGP, PSE, WPUDA)	O-22	IV. Comments on specific sections of WAC 173-446	1. Account requirements (WAC 173-446-100's)	B. Account uses contents and limits
Hughes	Nikkole	Joint Utilities (Avista, NRU, PacifiCorp, PGP, PSE, WPUDA)	O-22	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	D. Price ceiling units
Hughes	Nikkole	Joint Utilities (Avista, NRU, PacifiCorp, PGP, PSE, WPUDA)	O-22	IV. Comments on specific sections of WAC 173-446	5. Baseline (WAC 173-446-200)	C. Electricity baseline

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Hughes	Nikkole	Joint Utilities (Avista, NRU, PacifiCorp, PGP, PSE, WPUDA)	O-22	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	B. Cost burden calculation
Hughes	Nikkole	Joint Utilities (Avista, NRU, PacifiCorp, PGP, PSE, WPUDA)	O-22	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	A. Allowance allocation
Hughes	Nikkole		I-129	IV. Comments on specific sections of WAC 173-446	5. Baseline (WAC 173-446-200)	C. Electricity baseline
Hughes	Nikkole		I-129	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	B. Cost burden calculation
Hughes	Nikkole		I-129	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	A. Allowance allocation
Hunt	Kerri		I-478	II. General CCA	3. Opposed to rulemaking	
Hurst	Sally	WaferTech LLC	B-14	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	B. Baseline
Hurst	Sally	WaferTech LLC	B-14	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	C. Distribution dates
Jablonski	Patrick	Nucor Steel Seattle, Inc.	B-8	IV. Comments on specific sections of WAC 173-446	9. Definitions (WAC 173-446-020)	
Jablonski	Patrick	Nucor Steel Seattle, Inc.	B-8	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	C. Allocation and adjustments

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Jablonski	Patrick	Nucor Steel Seattle, Inc.	B-8	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	D. New or expanded facilities
Jablonski	Patrick	Nucor Steel Seattle, Inc.	B-8	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	A. General
Jablonski	Patrick	Nucor Steel Seattle, Inc.	B-8	IV. Comments on specific sections of WAC 173-446	6. Compliance and enforcement (WAC 173-446-600's)	A. Compliance obligation
Jatul	Cynthia		I-280	I. Environmental Justice	1. Impacts on overburdened communities	
Jemente	Joshua	HF Sinclair Corporation	B-11	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	A. APCR
Jemente	Joshua	HF Sinclair Corporation	B-11	IV. Comments on specific sections of WAC 173-446	1. Account requirements (WAC 173-446-100's)	B. Account uses contents and limits
Jemente	Joshua	HF Sinclair Corporation	B-11	IV. Comments on specific sections of WAC 173-446	8. Covered emissions (WAC 173-446-040)	B. Biofuels
Jemente	Joshua	HF Sinclair Corporation	B-11	III. General WAC 173-446	2. Linkage	
John	Steve		I-530	II. General CCA	5. Scope of the program	
John	Steve		I-530	III. General WAC 173-446	6. Scope of the rule	
John	Steve		I-530	II. General CCA	3. Opposed to rulemaking	

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Johnson	Lorraine		I-62	II. General CCA	2. Concern for environmental degradation	
Johnson	Art	New World Communications	B-2	II. General CCA	5. Scope of the program	
Johnston	Emily		I-258	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	C. Effectiveness of CARB protocols
Jordan	Kim		I-2	II. General CCA	3. Opposed to rulemaking	
k	Olah		I-97	II. General CCA	1. Support for rulemaking	
k	Olah		I-97	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	B. Cap integrity
Kaseweter	Alisa	Bonneville Power Administration	A-3	IV. Comments on specific sections of WAC 173-446	8. Covered emissions (WAC 173-446-040)	A. Allotment of covered emissions
Kaseweter	Alisa	Bonneville Power Administration	A-3	IV. Comments on specific sections of WAC 173-446	12. General requirements (WAC 173-446-000's)	A. Registration
Kaseweter	Alisa	Bonneville Power Administration	A-3	IV. Comments on specific sections of WAC 173-446	1. Account requirements (WAC 173-446-100's)	A. Submitting information
Kaseweter	Alisa	Bonneville Power Administration	A-3	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	C. Distribution dates

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Kaseweter	Alisa	Bonneville Power Administration	A-3	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	F. Requirement notice and confidentiality
Kaseweter	Alisa	Bonneville Power Administration	A-3	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	C. Prices
Kaseweter	Alisa	Bonneville Power Administration	A-3	IV. Comments on specific sections of WAC 173-446	7. Compliance instrument transactions (WAC 173-446-400's)	
Kaseweter	Alisa	Bonneville Power Administration	A-3	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	E. Purchase limits
Kaseweter	Alisa	Bonneville Power Administration	A-3	IV. Comments on specific sections of WAC 173-446	1. Account requirements (WAC 173-446-100's)	B. Account uses contents and limits
Kaseweter	Alisa	Bonneville Power Administration	A-3	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	A. Allowance allocation
Kaufman	Jeffrey		I-108	II. General CCA	2. Concern for environmental degradation	
Kennard	Haley	Makah Tribal Council	T-6	I. Environmental Justice	4. Comments on Tribal Rights	
Kennard	Haley	Makah Tribal Council	T-6	III. General WAC 173-446	3. Future review of the program	
Kennard	Haley	Makah Tribal Council	T-6	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	B. Adoption of new protocols or revision of proposed protocols

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Kennard	Haley	Makah Tribal Council	T-6	I. Environmental Justice	4. Comments on Tribal Rights	
Kennard	Haley	Makah Tribal Council	T-6	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	D. Project aggregation
Kennard	Haley	Makah Tribal Council	T-6	I. Environmental Justice	2. Environmental Justice Council	
Kennard	Haley	Makah Tribal Council	T-6	I. Environmental Justice	3. Data and information gathering and dissemination	
Kennard	Haley	Makah Tribal Council	T-6	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	C. Prices
Kennard	Haley	Makah Tribal Council	T-6	IV. Comments on specific sections of WAC 173-446	12. General requirements (WAC 173-446-000's)	A. Registration
Khalil	Ra'id		I-57	II. General CCA	2. Concern for environmental degradation	
Kilgore	Janie	POET, LLC	B-9	IV. Comments on specific sections of WAC 173-446	8. Covered emissions (WAC 173-446-040)	B. Biofuels
King	Mikki		I-477	II. General CCA	3. Opposed to rulemaking	
Kozal	Sarah	California Independent System Operator Corporation	OTH-6	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	A. Allowance allocation
Kueffler	Dolores		I-277	II. General CCA	1. Support for rulemaking	

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Kueffler	Dolores		I-277	I. Environmental Justice	3. Data and information gathering and dissemination	
Kuhnua	Kyle		I-601	II. General CCA	3. Opposed to rulemaking	
Kulzer	Louise		I-170	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	E. Project verification
Kulzer	Louise		I-170	I. Environmental Justice	1. Impacts on overburdened communities	
Kulzer	Louise		I-170	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	B. Adoption of new protocols or revision of proposed protocols
Kulzer	Louise		I-170	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	C. Effectiveness of CARB protocols
Kulzer	Louise		I-170	I. Environmental Justice	2. Environmental Justice Council	
Kulzer	Louise		I-126	I. Environmental Justice	1. Impacts on overburdened communities	
Kulzer	Louise		I-126	I. Environmental Justice	1. Impacts on overburdened communities	
LaChapelle	Chana		I-1	II. General CCA	3. Opposed to rulemaking	
LaFleur	Chance		I-134	II. General CCA	6. Program coverage	
Leadingham	Timothy		I-140	II. General CCA	6. Program coverage	

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Lehr	Sam	Coalition for Renewable Natural Gas	O-5	IV. Comments on specific sections of WAC 173-446	8. Covered emissions (WAC 173-446-040)	B. Biofuels
Lehr	Sam	Coalition for Renewable Natural Gas	O-2	IV. Comments on specific sections of WAC 173-446	8. Covered emissions (WAC 173-446-040)	B. Biofuels
Levine	Arthur		I-253	I. Environmental Justice	3. Data and information gathering and dissemination	
Lichtenstein	Wolf		I-123	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	K. Direct Environmental Benefits
Lichtenstein	Wolf		I-123	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	B. Adoption of new protocols or revision of proposed protocols
Lichtenstein	Wolf	Evergreen Carbon	B-10	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	B. Adoption of new protocols or revision of proposed protocols
Lichtenstein	Wolf	Evergreen Carbon	B-10	IV. Comments on specific sections of WAC 173-446	12. General requirements (WAC 173-446-000's)	E. Allowances
Lichtenstein	Wolf	Evergreen Carbon	B-10	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	M. Tribal use of urban forestry protocol
Lund	Bernedine		I-264	II. General CCA	5. Scope of the program	
Lund	Bernedine		I-264	I. Environmental Justice	3. Data and information gathering and dissemination	

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Lund	Bernedine		I-264	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	K. Direct Environmental Benefits
Luton	Lawrence		I-345	I. Environmental Justice	1. Impacts on overburdened communities	
Luton	Lawrence		I-345	I. Environmental Justice	2. Environmental Justice Council	
Marino	Robert		I-151	I. Environmental Justice	2. Environmental Justice Council	
Marion	Bob		I-598	II. General CCA	3. Opposed to rulemaking	
Marsanyi	Robert		I-214	II. General CCA	1. Support for rulemaking	
Martin	Patsy	Washington Public Ports Association	O-10	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	F. Requirement notice and confidentiality
Martin	Patsy	Washington Public Ports Association	O-10	III. General WAC 173-446	2. Linkage	
Martin	Sherry		I-31	II. General CCA	3. Opposed to rulemaking	
Martin	Phil		I-30	II. General CCA	3. Opposed to rulemaking	
martinez	priscilla		I-46	II. General CCA	2. Concern for environmental degradation	
McAdams	Sunnie		I-706	II. General CCA	3. Opposed to rulemaking	
McCabe	Chris	Northwest Pulp & Paper Association	O-16	IV. Comments on specific sections of WAC 173-446	9. Definitions (WAC 173-446-020)	
McCabe	Chris	Northwest Pulp & Paper Association	O-16	IV. Comments on specific sections of WAC 173-446	9. Definitions (WAC 173-446-020)	

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McCabe	Chris	Northwest Pulp & Paper Association	O-16	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	B. Baseline
McCabe	Chris	Northwest Pulp & Paper Association	O-16	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	C. Allocation and adjustments
McCabe	Chris	Northwest Pulp & Paper Association	O-16	IV. Comments on specific sections of WAC 173-446	12. General requirements (WAC 173-446-000's)	B. Consultants and advisors
McCabe	Chris	Northwest Pulp & Paper Association	O-16	IV. Comments on specific sections of WAC 173-446	12. General requirements (WAC 173-446-000's)	C. New or modified entity
McCabe	Chris	Northwest Pulp & Paper Association	O-16	IV. Comments on specific sections of WAC 173-446	1. Account requirements (WAC 173-446-100's)	A. Submitting information
McCabe	Chris	Northwest Pulp & Paper Association	O-16	IV. Comments on specific sections of WAC 173-446	1. Account requirements (WAC 173-446-100's)	B. Account uses contents and limits
McCabe	Chris	Northwest Pulp & Paper Association	O-16	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	F. Requirement notice and confidentiality
McCabe	Chris	Northwest Pulp & Paper Association	O-16	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	E. Purchase limits
McCabe	Chris	Northwest Pulp & Paper Association	O-16	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	C. Prices

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McCabe	Chris	Northwest Pulp & Paper Association	O-16	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	F. Requirement notice and confidentiality
McCabe	Chris	Northwest Pulp & Paper Association	O-16	IV. Comments on specific sections of WAC 173-446	7. Compliance instrument transactions (WAC 173-446-400's)	
McCabe	Chris	Northwest Pulp & Paper Association	O-16	IV. Comments on specific sections of WAC 173-446	6. Compliance and enforcement (WAC 173-446-600's)	A. Compliance obligation
McKee	Patrick		I-192	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	C. Effectiveness of CARB protocols
McPherson	Mark		I-50	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	B. Adoption of new protocols or revision of proposed protocols
Mendoza	David	The Nature Conservancy - Washington	O-24	I. Environmental Justice	1. Impacts on overburdened communities	
Mendoza	David	The Nature Conservancy - Washington	O-24	I. Environmental Justice	3. Data and information gathering and dissemination	
Mendoza	David	The Nature Conservancy - Washington	O-24	I. Environmental Justice	2. Environmental Justice Council	
Meraki	Vanessa		I-67	II. General CCA	1. Support for rulemaking	
Michlig	Ray		I-637	II. General CCA	3. Opposed to rulemaking	
Mielke	Torie		I-120	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	A. Allowance allocation

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Minton	Mary		I-309	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	C. Effectiveness of CARB protocols
Molloy	Rachel		I-172	I. Environmental Justice	1. Impacts on overburdened communities	
Molloy	Rachel		I-172	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	B. Cap integrity
Morgan	Bobbie		I-60	II. General CCA	1. Support for rulemaking	
Morris	Arvia		I-279	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	C. Effectiveness of CARB protocols
Morris	Arvia		I-279	II. General CCA	4. Investment of program revenue	
Morris	Arvia		I-128	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	C. Effectiveness of CARB protocols
Munnings	Clayton	International Emissions Trading Association	O-40	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	A. APCR
Munnings	Clayton	International Emissions Trading Association	O-40	III. General WAC 173-446	2. Linkage	
Munnings	Clayton	International Emissions Trading Association	O-40	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	B. Adoption of new protocols or revision of proposed protocols

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Munnings	Clayton	International Emissions Trading Association	O-40	IV. Comments on specific sections of WAC 173-446	9. Definitions (WAC 173-446-020)	
Munnings	Clayton	International Emissions Trading Association	O-40	IV. Comments on specific sections of WAC 173-446	6. Compliance and enforcement (WAC 173-446-600's)	B. Enforcement
Murillo	Kim		I-23	II. General CCA	1. Support for rulemaking	
Myers	Todd	Washington Policy Center	O-30	III. General WAC 173-446	5. Preliminary regulatory analysis	
Nelson	Elizabeth		I-275	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	C. Effectiveness of CARB protocols
Novak	Scott	Puget Sound Energy, Avista Corporation	B-22	IV. Comments on specific sections of WAC 173-446	5. Baseline (WAC 173-446-200)	C. Electricity baseline
Novak	Scott	Puget Sound Energy, Avista Corporation	B-22	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	C. Distribution dates
Novak	Scott	Puget Sound Energy, Avista Corporation	B-22	IV. Comments on specific sections of WAC 173-446	9. Definitions (WAC 173-446-020)	
Novak	Scott	Puget Sound Energy, Avista Corporation	B-22	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	F. Requirement notice and confidentiality
Novak	Scott	Puget Sound Energy, Avista Corporation	B-22	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	D. Price ceiling units

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Novak	Scott	Puget Sound Energy, Avista Corporation	B-22	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	B. Cost burden calculation
Novak	Scott	Puget Sound Energy, Avista Corporation	B-22	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	A. Allowance allocation
Novak	Scott	Puget Sound Energy, Avista Corporation, Cascade Natural Gas Corporation, and NW Natural	B-21	IV. Comments on specific sections of WAC 173-446	1. Account requirements (WAC 173-446-100's)	A. Submitting information
Novak	Scott	Puget Sound Energy, Avista Corporation, Cascade Natural Gas Corporation, and NW Natural	B-21	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	A. Calculation
Novak	Scott	Puget Sound Energy, Avista Corporation, Cascade Natural Gas Corporation, and NW Natural	B-21	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	D. Removal of allowances
Novak	Scott	Puget Sound Energy, Avista Corporation, Cascade Natural Gas Corporation, and NW Natural	B-21	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	C. Distribution dates
Novak	Scott	Puget Sound Energy, Avista Corporation, Cascade Natural Gas	B-21	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	C. Prices

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		Corporation, and NW Natural				
Novak	Scott	Puget Sound Energy, Avista Corporation, Cascade Natural Gas Corporation, and NW Natural	B-21	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	D. Price ceiling units
Novak	Scott	Puget Sound Energy, Avista Corporation, Cascade Natural Gas Corporation, and NW Natural	B-21	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	A. Allowance allocation
Novak	Scott	Puget Sound Energy, Avista Corporation, Cascade Natural Gas Corporation, and NW Natural	B-21	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	F. Requirement notice and confidentiality
Nuccio	Theresa		I-200	I. Environmental Justice	1. Impacts on overburdened communities	
Nuccio	Theresa		I-200	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	B. Cap integrity
NUTT	GARY		I-47	II. General CCA	3. Opposed to rulemaking	
Olmstead	Judy		I-28	II. General CCA	1. Support for rulemaking	
Olson	Carl		I-61	II. General CCA	2. Concern for environmental degradation	

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Olson	Isaac		I-311	II. General CCA	1. Support for rulemaking	
Olson	Isaac		I-311	I. Environmental Justice	3. Data and information gathering and dissemination	
Olson	Isaac		I-311	II. General CCA	6. Program coverage	
Ornstein	Lisa		I-22	II. General CCA	1. Support for rulemaking	
Pace	Eric		I-125	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	A. Allowance allocation
Package	Katherine		I-24	II. General CCA	1. Support for rulemaking	
Parker	Barry		I-249	II. General CCA	2. Concern for environmental degradation	
Perk	David	350 Seattle	O-9	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	C. Effectiveness of CARB protocols
Peters	Scott	Northwest Pipeline	B-17	IV. Comments on specific sections of WAC 173-446	13. Natural gas suppliers, utilities (WAC 173-446-220)	
Peters	Scott	Northwest Pipeline	B-17	IV. Comments on specific sections of WAC 173-446	5. Baseline (WAC 173-446-200)	A. Determining the baseline
Phillips	Annie		I-49	I. Environmental Justice	4. Comments on Tribal Rights	
Phillips	Annie		I-49	I. Environmental Justice	1. Impacts on overburdened communities	
Phillips	Annie		I-49	III. General WAC 173-446	3. Future review of the program	

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Phillips	Wade		I-37	IV. Comments on specific sections of WAC 173-446	3. Applicability (WAC 173-446-030)	
Phipps	William		I-138	II. General CCA	5. Scope of the program	
Phipps	William		I-138	III. General WAC 173-446	6. Scope of the rule	
Piening	Carol		I-164	I. Environmental Justice	2. Environmental Justice Council	
Piening	Carol		I-164	I. Environmental Justice	1. Impacts on overburdened communities	
Piening	Carol		I-164	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	B. Cap integrity
Pogin	Beatrice		I-295	II. General CCA	5. Scope of the program	
Poirier	Jeanne		I-12	II. General CCA	3. Opposed to rulemaking	
Poirier	Jeanne		I-12	I. Environmental Justice	2. Environmental Justice Council	
Ponzio	Rebecca	Washington Environmental Council	O-23	I. Environmental Justice	1. Impacts on overburdened communities	
Ponzio	Rebecca	Washington Environmental Council	O-23	I. Environmental Justice	3. Data and information gathering and dissemination	
Ponzio	Rebecca	Washington Environmental Council	O-23	IV. Comments on specific sections of WAC 173-446	13. Natural gas suppliers, utilities (WAC 173-446-220)	

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Ponzio	Rebecca	Washington Environmental Council	O-23	III. General WAC 173-446	2. Linkage	
Ponzio	Rebecca	Washington Environmental Council	O-23	I. Environmental Justice	2. Environmental Justice Council	
Ponzio	Rebecca	Washington Environmental Council	O-23	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	B. ECR
R Mendoza	Jean	Friends of Toppenish Creek	O-11	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	C. Effectiveness of CARB protocols
Randall	David		I-70	II. General CCA	2. Concern for environmental degradation	
Randazzo	Matthew	Snoqualmie Indian Tribe	T-7	I. Environmental Justice	4. Comments on Tribal Rights	
Randazzo	Matthew	Snoqualmie Indian Tribe	T-7	I. Environmental Justice	2. Environmental Justice Council	
Randazzo	Matthew	Snoqualmie Indian Tribe	T-7	II. General CCA	4. Investment of program revenue	
Randazzo	Matthew	Snoqualmie Indian Tribe	T-7	IV. Comments on specific sections of WAC 173-446	12. General requirements (WAC 173-446-000's)	A. Registration
Rathbone	Lora		I-156	I. Environmental Justice	1. Impacts on overburdened communities	
Ray	Laura	AAA Washington	B-20	II. General CCA	4. Investment of program revenue	
Ray	Laura	AAA Washington	B-20	III. General WAC 173-446	6. Scope of the rule	

Last Name	First Name	Submitted By	Code	Category	Topic	Sub-Topic
Rehrmann	James		I-53	III. General WAC 173-446	3. Future review of the program	
Rehrmann	James		I-53	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	B. Cap integrity
Rozwod	Thomas	North Pacific Paper Company LLC (NORPAC)	B-7	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	B. Adoption of new protocols or revision of proposed protocols
Ryan	Pat		I-196	II. General CCA	3. Opposed to rulemaking	
Salerno	Rhonda		I-104	II. General CCA	1. Support for rulemaking	
Sappington	Robert		I-286	III. General WAC 173-446	5. Preliminary regulatory analysis	
Sappington	Robert		I-286	IV. Comments on specific sections of WAC 173-446	9. Definitions (WAC 173-446-020)	
Saul	Kathleen		I-83	II. General CCA	2. Concern for environmental degradation	
Saul	Kathleen		I-83	I. Environmental Justice	1. Impacts on overburdened communities	
Saul	Kathleen		I-83	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	B. Cap integrity
Schneider	Daniel		I-9	II. General CCA	4. Investment of program revenue	

Last Name	First Name	Submitted By	Code	Category	Topic	Sub-Topic
Seeley	Lane		I-10	III. General WAC 173-446	5. Preliminary regulatory analysis	
Seeley	Lane		I-10	I. Environmental Justice	1. Impacts on overburdened communities	
Shahbazi	Donna		I-32	II. General CCA	1. Support for rulemaking	
Sheehan	Fiona		I-7	I. Environmental Justice	3. Data and information gathering and dissemination	
Sheehan	Fiona		I-7	I. Environmental Justice	1. Impacts on overburdened communities	
Sherin	Chris		I-118	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	A. Allowance allocation
Shestag	Steven	The Boeing Company	B-15	IV. Comments on specific sections of WAC 173-446	9. Definitions (WAC 173-446-020)	
Shestag	Steven	The Boeing Company	B-15	IV. Comments on specific sections of WAC 173-446	1. Account requirements (WAC 173-446-100's)	A. Submitting information
Shestag	Steven	The Boeing Company	B-15	IV. Comments on specific sections of WAC 173-446	8. Covered emissions (WAC 173-446-040)	B. Biofuels
Shestag	Steven	The Boeing Company	B-15	IV. Comments on specific sections of WAC 173-446	1. Account requirements (WAC 173-446-100's)	A. Submitting information

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Shestag	Steven	The Boeing Company	B-15	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	B. Baseline
Shestag	Steven	The Boeing Company	B-15	IV. Comments on specific sections of WAC 173-446	9. Definitions (WAC 173-446-020)	
Shestag	Steven	The Boeing Company	B-15	IV. Comments on specific sections of WAC 173-446	9. Definitions (WAC 173-446-020)	
Shestag	Steven	The Boeing Company	B-15	IV. Comments on specific sections of WAC 173-446	1. Account requirements (WAC 173-446-100's)	A. Submitting information
Shestag	Steven	The Boeing Company	B-15	IV. Comments on specific sections of WAC 173-446	5. Baseline (WAC 173-446-200)	A. Determining the baseline
Shestag	Steven	The Boeing Company	B-15	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	C. Allocation and adjustments
Shestag	Steven	The Boeing Company	B-15	IV. Comments on specific sections of WAC 173-446	9. Definitions (WAC 173-446-020)	
Shestag	Steven	The Boeing Company	B-15	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	B. Baseline
Shobe	William		I-243	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	B. ECR

Last Name	First Name	Submitted By	Code	Category	Topic	Sub-Topic
Silver	Jill		I-255	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	C. Effectiveness of CARB protocols
Simone	Dorethea		I-177	II. General CCA	2. Concern for environmental degradation	
Siptroth	Michael		I-103	II. General CCA	2. Concern for environmental degradation	
SMITH	JUDY		I-653	II. General CCA	3. Opposed to rulemaking	
Smith	Jack		I-41	II. General CCA	3. Opposed to rulemaking	
Smith	Julia		I-269	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	C. Effectiveness of CARB protocols
Smith	Stephen		I-121	IV. Comments on specific sections of WAC 173-446	5. Baseline (WAC 173-446-200)	B. Data availability
Smith	Steven	Phillips 66	B-6	IV. Comments on specific sections of WAC 173-446	8. Covered emissions (WAC 173-446-040)	B. Biofuels
Smith	Steven	Phillips 66	B-6	IV. Comments on specific sections of WAC 173-446	1. Account requirements (WAC 173-446-100's)	B. Account uses contents and limits
Smith	Steven	Phillips 66	B-6	III. General WAC 173-446	6. Scope of the rule	
Smith	Steven	Phillips 66	B-6	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	E. Purchase limits
Snell	Ronald		I-149	II. General CCA	5. Scope of the program	

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Solak	Matt	Pacific Propane Gas Association	O-25	III. General WAC 173-446	6. Scope of the rule	
Solak	Matt	Pacific Propane Gas Association	O-25	IV. Comments on specific sections of WAC 173-446	8. Covered emissions (WAC 173-446-040)	B. Biofuels
Solak	Matt	Pacific Propane Gas Association	O-25	II. General CCA	4. Investment of program revenue	
Solak	Matt	Pacific Propane Gas Association	O-25	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	A. Calculation
Soltess	Robert		I-244	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	B. Cap integrity
Species	Scott		I-168	I. Environmental Justice	1. Impacts on overburdened communities	
Stanavich	Buddy	City of Ellensburg	O-15	II. General CCA	6. Program coverage	
Stanavich	Buddy	City of Ellensburg	O-15	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	A. Calculation
Stanavich	Buddy	City of Ellensburg	O-15	IV. Comments on specific sections of WAC 173-446	8. Covered emissions (WAC 173-446-040)	B. Biofuels
Strid	Eric		I-52	III. General WAC 173-446	5. Preliminary regulatory analysis	
Strid	Eric		I-39	II. General CCA	3. Opposed to rulemaking	

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Sweeney	Rosemary	A small group of individuals	OTH-2	I. Environmental Justice	2. Environmental Justice Council	
Sweeney	Rosemary		I-262	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	C. Effectiveness of CARB protocols
Sweeney	Rosemary		I-262	IV. Comments on specific sections of WAC 173-446	1. Account requirements (WAC 173-446-100's)	B. Account uses contents and limits
Sweeney	Rosemary		I-262	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	C. Voluntary renewable electricity
Sweeney	Rosemary		I-262	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	A. Calculation
Sweeney	Rosemary		I-262	I. Environmental Justice	2. Environmental Justice Council	
Sweeney	Rosemary		I-262	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	
Sweeney	Rosemary		I-262	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	B. ECR
Sweeney	Rosemary		I-262	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	F. Requirement notice and confidentiality
Sweeney	Daimon		I-158	II. General CCA	5. Scope of the program	
Sweeney	Daimon		I-157	II. General CCA	5. Scope of the program	

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Sweeney	Daimon		I-155	III. General WAC 173-446	3. Future review of the program	
Sweeney	Rosemary		I-136	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	C. Effectiveness of CARB protocols
Swihart	Janet		I-99	II. General CCA	5. Scope of the program	
Tatsumi	Garrett		I-21	II. General CCA	1. Support for rulemaking	
Taylor	Ken	bp America, Inc.	B-5	IV. Comments on specific sections of WAC 173-446	8. Covered emissions (WAC 173-446-040)	B. Biofuels
Taylor	Ken	bp America, Inc.	B-5	IV. Comments on specific sections of WAC 173-446	8. Covered emissions (WAC 173-446-040)	C. Sequestration and supplied carbon dioxide
Taylor	Ken	bp America, Inc.	B-5	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	B. Baseline
Taylor	Ken	bp America, Inc.	B-5	IV. Comments on specific sections of WAC 173-446	9. Definitions (WAC 173-446-020)	
Taylor	Ken	bp America, Inc.	B-5	IV. Comments on specific sections of WAC 173-446	9. Definitions (WAC 173-446-020)	
Taylor	Ken	bp America, Inc.	B-5	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	F. Requirement notice and confidentiality
Taylor	Ken	bp America, Inc.	B-5	IV. Comments on specific sections of WAC 173-446	8. Covered emissions (WAC 173-446-040)	B. Biofuels

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Taylor	Ken	bp America, Inc.	B-5	IV. Comments on specific sections of WAC 173-446	8. Covered emissions (WAC 173-446-040)	D. Exemptions
Taylor	Ken	bp America, Inc.	B-5	IV. Comments on specific sections of WAC 173-446	9. Definitions (WAC 173-446-020)	
Taylor	Ken	bp America, Inc.	B-5	IV. Comments on specific sections of WAC 173-446	5. Baseline (WAC 173-446-200)	A. Determining the baseline
Taylor	Ken	bp America, Inc.	B-5	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	J. Adoption of superseded protocols
Taylor	Ken	bp America, Inc.	B-5	IV. Comments on specific sections of WAC 173-446	6. Compliance and enforcement (WAC 173-446-600's)	B. Enforcement
Taylor	Ken	bp America, Inc.	B-5	IV. Comments on specific sections of WAC 173-446	8. Covered emissions (WAC 173-446-040)	C. Sequestration and supplied carbon dioxide
Taylor	Ken	bp America, Inc.	B-5	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	C. Allocation and adjustments
Taylor	Ken	bp America, Inc.	B-5	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	C. Allocation and adjustments
Taylor	Ken	bp America, Inc.	B-5	IV. Comments on specific sections of WAC 173-446	6. Compliance and enforcement (WAC 173-446-600's)	A. Compliance obligation

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Taylor	Steve	Cowlitz Public Utility District No. 1	A-2	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	B. Cost burden calculation
Taylor	Steve	Cowlitz Public Utility District No. 1	A-2	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	A. Allowance allocation
Tempest	Kevin	Clean and Prosperous Institute	O-35	I. Environmental Justice	1. Impacts on overburdened communities	
Tempest	Kevin	Clean and Prosperous Institute	O-35	III. General WAC 173-446	5. Preliminary regulatory analysis	
Tempest	Kevin	Clean and Prosperous Institute	O-35	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	A. APCR
Tempest	Kevin	Clean and Prosperous Institute	O-35	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	A. Calculation
Tempest	Kevin	Clean and Prosperous Institute	O-35	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	D. Price ceiling units
Trainer	Amy	Swinomish Indian Tribal Community	T-1	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	A. Significant adverse environmental impacts
Trainer	Amy	Swinomish Indian Tribal Community	T-1	I. Environmental Justice	1. Impacts on overburdened communities	

Last Name	First Name	Submitted By	Code	Category	Topic	Sub-Topic
Trainer	Amy	Swinomish Indian Tribal Community	T-1	IV. Comments on specific sections of WAC 173-446	12. General requirements (WAC 173-446-000's)	A. Registration
Trainer	Amy	Swinomish Indian Tribal Community	T-1	I. Environmental Justice	4. Comments on Tribal Rights	
Trainer	Amy	Swinomish Indian Tribal Community	T-1	I. Environmental Justice	2. Environmental Justice Council	
Trainer	Amy	Swinomish Indian Tribal Community	T-1	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	Environmental justice
Trainer	Amy	Swinomish Indian Tribal Community	T-1	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	D. Project aggregation
Trainer	Amy	Swinomish Indian Tribal Community	T-1	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	M. Tribal use of urban forestry protocol
Trimberger	Bryan	United States Department of Energy Hanford Site	O-7	IV. Comments on specific sections of WAC 173-446	3. Applicability (WAC 173-446-030)	
Trimberger	Bryan	United States Department of Energy Hanford Site	O-7	IV. Comments on specific sections of WAC 173-446	12. General requirements (WAC 173-446-000's)	B. Consultants and advisors
Trimberger	Bryan	United States Department of Energy Hanford Site	O-7	IV. Comments on specific sections of WAC 173-446	1. Account requirements (WAC 173-446-100's)	A. Submitting information
Trimberger	Bryan	United States Department of Energy Hanford Site	O-7	IV. Comments on specific sections of WAC 173-446	5. Baseline (WAC 173-446-200)	A. Determining the baseline

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Trimberger	Bryan	United States Department of Energy Hanford Site	O-7	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	A. Calculation
Trimberger	Bryan	United States Department of Energy Hanford Site	O-7	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	B. Baseline
Trimberger	Bryan	United States Department of Energy Hanford Site	O-7	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	N. Offset document recordkeeping
Trimberger	Bryan	United States Department of Energy Hanford Site	O-7	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	F. Requirement notice and confidentiality
Troske	Andrew	U.S. Oil & Refining Co.	B-12	IV. Comments on specific sections of WAC 173-446	4. Auctions (WAC 173-446-300s)	C. Prices
Troske	Andrew	U.S. Oil & Refining Co.	B-12	IV. Comments on specific sections of WAC 173-446	5. Baseline (WAC 173-446-200)	A. Determining the baseline
Troske	Andrew	U.S. Oil & Refining Co.	B-12	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	B. Baseline
Troske	Andrew	U.S. Oil & Refining Co.	B-12	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	C. Allocation and adjustments
Valenzuela	Stacey		I-124	II. General CCA	4. Investment of program revenue	

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Van Slyke	Steven	Puget Sound Clean Air Agency	A-1	IV. Comments on specific sections of WAC 173-446	8. Covered emissions (WAC 173-446-040)	D. Exemptions
Van Slyke	Steven	Puget Sound Clean Air Agency	A-1	IV. Comments on specific sections of WAC 173-446	6. Compliance and enforcement (WAC 173-446-600's)	A. Compliance obligation
Voget	Richard		I-173	I. Environmental Justice	1. Impacts on overburdened communities	
Voget	Richard		I-173	I. Environmental Justice	3. Data and information gathering and dissemination	
Voter	Registered		I-171	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	C. Effectiveness of CARB protocols
Vrana	Dominic	D Grease LLC	B-4	I. Environmental Justice	1. Impacts on overburdened communities	
Vrana	Dominic	D Grease LLC	B-4	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	B. Cap integrity
Vrana	Dominic	D Grease LLC	B-4	II. General CCA	4. Investment of program revenue	
Vrana	Dominic	D Grease LLC	B-4	I. Environmental Justice	2. Environmental Justice Council	
Vyvyan	Dawn	Puyallup Tribe of Indians	T-5	I. Environmental Justice	1. Impacts on overburdened communities	

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Waddington	Jeff		I-89	II. General CCA	2. Concern for environmental degradation	
Wagner	Christina		I-107	II. General CCA	2. Concern for environmental degradation	
Warren	Brad	Global Ocean Health/NFCC, joined by others as indicated	O-38	IV. Comments on specific sections of WAC 173-446	15. Purpose (WAC 173-446-010)	
warren	alicelia		I-1149	II. General CCA	1. Support for rulemaking	
warren	alicelia		I-1149	II. General CCA	5. Scope of the program	
Wells	Christine		I-27	II. General CCA	1. Support for rulemaking	
Wescott	Sarah	Finite Carbon	B-19	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	B. Adoption of new protocols or revision of proposed protocols
Wescott	Sarah	Finite Carbon	B-19	IV. Comments on specific sections of WAC 173-446	9. Definitions (WAC 173-446-020)	
Wescott	Sarah	Finite Carbon	B-19	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	G. Offset usage limits on Tribal lands
Wescott	Sarah	Finite Carbon	B-19	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	K. Direct Environmental Benefits
Wescott	Sarah	Finite Carbon	B-19	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	M. Tribal use of urban forestry protocol

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Whittaker	Rod	Washington Refuse & Recycling Association (WRRA)	O-31	IV. Comments on specific sections of WAC 173-446	8. Covered emissions (WAC 173-446-040)	B. Biofuels
Wichar	Den Mark		I-55	II. General CCA	1. Support for rulemaking	
Williams	Paul	Suquamish Tribe	T-2	IV. Comments on specific sections of WAC 173-446	12. General requirements (WAC 173-446-000's)	A. Registration
Williams	Paul	Suquamish Tribe	T-2	I. Environmental Justice	4. Comments on Tribal Rights	
Williams	Paul	Suquamish Tribe	T-2	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	D. Project aggregation
Williams	Paul	Suquamish Tribe	T-2	IV. Comments on specific sections of WAC 173-446	9. Definitions (WAC 173-446-020)	
Williams	Dedra	J.R. Simplot Company	O-21	IV. Comments on specific sections of WAC 173-446	12. General requirements (WAC 173-446-000's)	D. Exiting the program
Williams	Dedra	J.R. Simplot Company	O-21	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	B. Baseline
Williams	Dedra	J.R. Simplot Company	O-21	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	B. Adoption of new protocols or revision of proposed protocols
Williams	Dedra	J.R. Simplot Company	O-21	III. General WAC 173-446	5. Preliminary regulatory analysis	
Williams	Dedra	J.R. Simplot Company	O-21	IV. Comments on specific sections of WAC 173-446	9. Definitions (WAC 173-446-020)	

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Williams	Dedra	J.R. Simplot Company	O-21	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	I. Invalidation risk
Williams	Martha		I-113	II. General CCA	2. Concern for environmental degradation	
Woolverton	Katherine	350 Seattle	O-8	I. Environmental Justice	1. Impacts on overburdened communities	
Woolverton	Katherine	350 Seattle	O-8	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	B. Adoption of new protocols or revision of proposed protocols
Woolverton	Katherine	350 Seattle	O-8	IV. Comments on specific sections of WAC 173-446	1. Account requirements (WAC 173-446-100's)	B. Account uses contents and limits
Woolverton	Katherine	350 Seattle	O-8	I. Environmental Justice	3. Data and information gathering and dissemination	
Woolverton	Katherine	350 Seattle	O-8	I. Environmental Justice	2. Environmental Justice Council	
Wright	Anthony		I-131	II. General CCA	6. Program coverage	
Zakai	Yochanan	The Energy Project	O-36	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	A. Allowance allocation
Zazueta	Monica		I-40	II. General CCA	1. Support for rulemaking	
Zazueta	Monica		I-40	I. Environmental Justice	1. Impacts on overburdened communities	

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Zazueta	Monica		I-40	I. Environmental Justice	1. Impacts on overburdened communities	
Zazueta	Monica		I-127	II. General CCA	1. Support for rulemaking	
Zimmerle	Jessica	Earth Ministry/Washington Interfaith Power & Light	O-17	I. Environmental Justice	1. Impacts on overburdened communities	
Zimmerle	Jessica	Earth Ministry/Washington Interfaith Power & Light	O-17	IV. Comments on specific sections of WAC 173-446	9. Definitions (WAC 173-446-020)	
Zimmerle	Jessica	Earth Ministry/Washington Interfaith Power & Light	O-17	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	B. Adoption of new protocols or revision of proposed protocols
Zimmerle	Jessica	Earth Ministry/Washington Interfaith Power & Light	O-17	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	D. Project aggregation
Zimmerle	Jessica	Earth Ministry/Washington Interfaith Power & Light	O-17	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	L. Clarify process for reducing offset limits
Zimmerle	Jessica	Earth Ministry/Washington Interfaith Power & Light	O-17	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	D. New or expanded facilities

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Zimmerle	Jessica	Earth Ministry/Washington Interfaith Power & Light	O-17	IV. Comments on specific sections of WAC 173-446	11. EITEs (WAC 173-446-220)	Environmental justice
Zimmerle	Jessica	Earth Ministry/Washington Interfaith Power & Light	O-17	I. Environmental Justice	3. Data and information gathering and dissemination	
Zimmerle	Jessica	Earth Ministry/Washington Interfaith Power & Light	O-17	I. Environmental Justice	2. Environmental Justice Council	
		Quinault Indian Nation	T-4	I. Environmental Justice	4. Comments on Tribal Rights	
		Quinault Indian Nation	T-4	IV. Comments on specific sections of WAC 173-446	12. General requirements (WAC 173-446-000's)	A. Registration
		Wildlife Forever Fund	OTH-9	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	B. Adoption of new protocols or revision of proposed protocols
		Wildlife Forever Fund	OTH-9	III. General WAC 173-446	2. Linkage	
		Wildlife Forever Fund	OTH-9	I. Environmental Justice	1. Impacts on overburdened communities	
		Wildlife Forever Fund	OTH-9	I. Environmental Justice	4. Comments on Tribal Rights	

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		Wildlife Forever Fund	OTH-9	I. Environmental Justice	3. Data and information gathering and dissemination	
		Wildlife Forever Fund	OTH-9	I. Environmental Justice	3. Data and information gathering and dissemination	
		Wildlife Forever Fund	OTH-9	IV. Comments on specific sections of WAC 173-446	2. Allowance budgets (WAC 173-446-210), removal, and distribution dates	B. Cap integrity
		Wildlife Forever Fund	OTH-9	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	C. Effectiveness of CARB protocols
		Wildlife Forever Fund	OTH-9	I. Environmental Justice	2. Environmental Justice Council	
		Yale University Carbon Containment Lab	OTH-4	IV. Comments on specific sections of WAC 173-446	14. Offsets (WAC 173-446-500)	B. Adoption of new protocols or revision of proposed protocols
		19th and 24th Legislative District Legislators	OTH-3	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	A. Allowance allocation
		Association Washington Business	O-1	III. General WAC 173-446	1. Request for comment period extension	
		TC Energy	B-24	IV. Comments on specific sections of WAC 173-446	13. Natural gas suppliers, utilities (WAC 173-446-220)	
		PacifiCorp	B-16	IV. Comments on specific sections of WAC 173-446	10. Electric Utilities (WAC 173-446-230)	B. Cost burden calculation

Last Name	First Name	Submitted By	Code	Category	Topic	Sub-Topic
		Ports of Longview, Kalama, Woodland, and Vancouver	A-4	III. General WAC 173-446	6. Scope of the rule	
		Ports of Longview, Kalama, Woodland, and Vancouver	A-4	III. General WAC 173-446	3. Future review of the program	
		Ports of Longview, Kalama, Woodland, and Vancouver	A-4	III. General WAC 173-446	5. Preliminary regulatory analysis	
		Ports of Longview, Kalama, Woodland, and Vancouver	A-4	III. General WAC 173-446	6. Scope of the rule	
		Ports of Longview, Kalama, Woodland, and Vancouver	A-4	III. General WAC 173-446	5. Preliminary regulatory analysis	

Response to Comments

Ecology announced this rulemaking on August 4, 2021. On May 16, 2022, following a series of workshop-style virtual public meetings and an informal comment period, Ecology published a proposed rule for formal public comment. The public comment period occurred from May 16, 2022 to July 15, 2022. Public hearings were held on June 21, June 22, June 27, and June 28, 2022. This document responds to the public comments we received during the formal public comment period. Comments have been summarized for inclusion with Ecology's responses. You can view original comments in full at our online comment website.[3] These comments remain available online for two years after the rule adoption date, and are maintained as part of the permanent rulemaking record.

We grouped comments and organized them by topic. This is a complex rulemaking, with various issues and questions, many of which overlap multiple topics. We made great efforts to group and respond to comments in a logically organized manner. Additionally, we have attempted to reference where similar topics are addressed elsewhere in the document.

This rulemaking is the third of three separate rulemakings to implement the initial phase of the cap-and-invest program under the Climate Commitment Act (RCW 70A.65). The other two rulemakings are:

WAC 173-441, Greenhouse Gas Reporting Program, adopted February 9, 2022;

WAC 173-446A, Criteria for Emission-intensive, trade-exposed industries, adopted June 1, 2022

Multiple commenters requested changes or more information about the greenhouse gas reporting program (WAC 173-441), which provides requirements for submitting to Ecology information necessary for the implementation of the cap-and-invest program. Comments on that rulemaking were accepted from October 6, 2021 until November 16, 2021, and the rule was adopted on February 9, 2022. Because that rulemaking is now over, this document does not respond to comments about expanding or otherwise amending the greenhouse gas reporting program. Stakeholders who have concerns about the greenhouse gas reporting program are encouraged to provide comments when Ecology next amends WAC 173-441.

This rulemaking, to create WAC 173-446, implements specifically those sections of the CCA establishing a declining cap on GHG emissions from covered entities and a program to track, verify, and enforce compliance with the cap through the use of compliance instruments.

The Climate Commitment Act recognizes the importance of environmental justice and equity, and includes provisions requiring Ecology to work to reduce air pollution in overburdened communities. A number of commenters made suggestions and requested more details regarding Ecology's efforts to reduce impacts to overburdened communities. This is addressed

[3] https://aq.ecology.commentinput.com/?id=6Nx2J

in a number of places throughout the rule, including the addition of new language in WAC 173-446-010(2). However, significant work to reduce air pollution in overburdened communities under the Climate Commitment Act is proceeding separate from this rulemaking. Concurrent with this rulemaking, Ecology is engaged in a robust public and technical process to identify overburdened communities highly impacted by air pollution.

- This separate process includes multiple rounds for public input.
- Ecology will solicit feedback on draft indicators to identify overburdened communities highly impacted by air pollution.
- Ecology anticipates having a list of overburdened communities highly impacted by air pollution by the end of 2022.
- Ecology is working closely with the Environmental Justice Council on recommendations from the Council on draft indicators developed by the Air Quality Program to identify overburdened communities highly impacted by air pollution.
- Ecology invites government-to-government consultation with Tribal nations throughout the entire process. We will continue to consult with Tribal nations and organizations affiliated with Washington Tribes on the process to identify overburdened communities highly impacted by air pollution.

After identifying the overburdened communities highly impacted by air pollution, Ecology will start placing expanded air monitors in the identified communities.

The Climate Commitment Act requires that at least 35% of funds be invested in projects that benefit overburdened communities. Many commenters suggested how revenue from the auction of emission allowances should be spent. The legislature will appropriate auction revenues, and how this funding is used in outside the scope of this rulemaking.

RCW 70A.65.020 also directs Ecology to develop new emission standards and strategies to address criteria air pollution in the identified overburdened communities highly impacted by air pollution. These will be developed through an additional, separate process in future years, with multiple opportunities for input from the public, the Environmental Justice Council, Tribes, local governments, and other stakeholders.

Topics

We grouped and organized comments and responses together by topic. We used the following topics to group comments together:

I. Comments Regarding Environmental Justice

Ecology received more than 800 comments asking Ecology to include additional provisions in WAC 173-446 related to environmental justice. The Environmental Justice Council also submitted a letter to Ecology regarding this rulemaking. A copy of that letter, and the specific responses, can be found in Section VI of this document.

Ecology agrees with the commenters that environmental justice (EJ) is a significant part of the Climate Commitment Act (Act). Revised Code of Washington (RCW) 70A.65 sections .020, .030, .230, and .280 provide funding and other mechanisms to relieve the pollution burden and the

costs imposed on overburdened communities and vulnerable populations. The Act also creates a formal role for the Environmental Justice Council. RCW 70A.65.040.

Sections .060 through .210 of RCW 70A.65 create a cap on greenhouse gas emissions from covered entities, compliance obligations for covered entities, and a program authorizing covered entities to purchase compliance instruments and trade them with other participants in the program. This rule, WAC 173-446, implements the provisions of RCW 70A.65.060 through .210, as required by RCW 70A.65.220. However, this rule does not implement the requirements in RCW 70A.65 sections .020, .030, .040, .230, or .280. Therefore, many of the environmental justice provisions in the Act, and the comments invoking the requirements of those sections, are outside the scope of this rulemaking. Ecology has, however, initiated a process separate from this rulemaking to engage with overburdened communities and vulnerable populations to address environmental justice issues under RCW 70A.65 that fall outside the scope of this rulemaking. To find out more about that process, or to participate in that process, go to https://ecology.wa.gov/Air-Climate/Climate-Commitment-Act/Overburdened-communities.

The Act does include three specific environmental justice requirements for the cap-and-invest program that is the subject of this rulemaking. First, the Act authorizes Ecology to reduce the portion of a covered entity's compliance obligation that can be met with offset credits if Ecology determines, in consultation with the Environmental Justice Council, that the covered entity contributes substantively to the cumulative air pollution burden in an overburdened community or violates any permits in a way that results in an increase in emissions. (RCW 70A.65.170(3)(d)). Ecology has included these statutory requirements in the rule. WAC 173-446-600(6)(d).

Second, the Act requires Ecology, when determining whether a facility (other than the types of facilities named as EITEs by the legislature) qualifies to be an EITE facility, to consider the locations of the potential EITE facilities relative to overburdened communities. RCW 70A.65.110(2). Ecology included these provisions in WAC 173-446A, the rule setting out the criteria for determining whether a facility (other than the facilities named as EITEs by the legislature) qualifies to be an EITE facility.

Finally, the Act creates a role for the Environmental Justice Council in the implementation of the program created under RCW 70A.65 sections 080 through 210. The Act, under RCW 70A.65.040(2), empowers the Environmental Justice Council to:

(a) Provide recommendations to Ecology concerning the development and implementation of the program, including, but not limited to, protocols for establishing offset projects and securing offset credits, designation of EITE facilities, and administration of allowances under the program

(b) Provide a forum to analyze policies adopted by Ecology to determine if the policies lead to improvements within overburdened communities

As required by the Act, Ecology will:

(a) Provide 60-day notice of each auction to the Environmental Justice Council (RCW 70A.65.100(2)(a))

(b) Provide a summary results report and a post-auction public proceeds report to the Environmental Justice Council within 60 days after each auction (RCW 70A.65.100(2)(a))(incorporated into WAC 173-446-362(2))

(c) Consult with the Environmental Justice Council in establishing criteria for determining whether a specific covered or opt-in entity has contributed or is likely to contribute substantively to cumulative air pollution burden in an overburdened community (RCW 70A.65.170(3)(d))(incorporated into WAC 173-446-600(6)(d))

(d) Beginning in 2024, communicate the results of the previous calendar year's auctions to the Environmental Justice Council on an annual basis (RCW 70A.65.100(2)(a))(incorporated into WAC 173-446-362(3))

(e) Beginning in 2027, provide reports every four years that include a comprehensive review of program implementation to date, including outcomes relative to the state's emissions reduction limits, overburdened communities, covered entities, and EITE businesses to the Environmental Justice Council at the same time the reports are submitted to the legislature (RCW 70A.65.060(5))

Specific environmental justice issues raised in the 800+ comments are addressed below.

1. Impacts on Overburdened Communities

Commenters: T-5 (Puyallup Tribe of Indians)

Summary: The Puyallup Tribe asks Ecology to change the definition of "overburdened community" to remove the phrase "in ceded areas" after the phrase "treaty rights."

Response: The phrase, "treaty rights in ceded areas" is included in the statutory definition of overburdened community adopted by the legislature in RCW 70A.65.020 (54). The change requested here is not possible to make in the rule because it would first require an amendment to the statute by the legislature.

Commenters: I-36 (Cody); I-40, I-127 (Zazueta); I-133 (Washington Environmental Council, Fields); I-167 (Bear); I-168 (Species); I-173 (Voget); I-225(Edmark); I-250 (Haun); I-280 (Jatul); I-298 (Fay); I-318 (Gould); O-8 (350 Seattle); O-17 (Earth Ministry/WA Interfaith Power & Light); O-24 (The Nature Conservancy WA); OTH-9 (Wildlife Forever Fund).

Summary: Commenters note that the statute is clear that the program should benefit overburdened communities and not cause environmental harm, but the rules do not clearly articulate how this will be achieved.

Response: Ecology agrees with the commenters that environmental justice (EJ) is a significant part of the Climate Commitment Act (Act). Revised Code of Washington (RCW) 70A.65 sections .020, .030, .230, and .280 provide funding and other mechanisms to relieve the pollution burden and the cost burden on overburdened communities and vulnerable populations. The Act also creates a formal role for the Environmental Justice Council. RCW 70A.65.040.

However, many of the environmental justice provisions in the Act, and the comments invoking the requirements of those sections, are outside the scope of this rulemaking. This rule is authorized by RCW 70A.65.220, which requires Ecology to adopt rules to implement the program created in Sections 060 through 210 of Chapter 70A.65 RCW. These sections create a cap on greenhouse gas emissions from covered entities, compliance obligations for covered entities, and a program authorizing covered entities to purchase compliance instruments and trade them with other participants in the program. This rule, WAC 173-446, implements the provisions of RCW 70A.65.060 through .210, as required by RCW 70A.65.220. However, this rule does not implement the requirements in RCW 70A.65 sections .020, .030, .040, .230, or .280. Therefore, the concerns these commenters are raising related to environmental justice are outside the scope of this rulemaking. Ecology is, however, engaged in a process separate from this rulemaking to engage with overburdened communities and vulnerable populations to address environmental justice issues under RCW 70A.65 that fall outside the scope of this rulemaking. To find out more about that process, or to participate in that process, go to https://ecology.wa.gov/Air-Climate/Climate-Commitment-Act/Overburdened-communities.

See introduction to Section I. Comments Regarding Environmental Justice above.

Summary: Commenters ask that the rule clarify Ecology's role in evaluating impacts of all EITE facilities, regardless of when they become a covered entity, on overburdened communities.

Response: Under the CCA, Ecology has several requirements to evaluate impacts of EITE facilities on overburdened communities.

First, Section 3 of the Climate Commitment Act (RCW 70A.65.020) requires Ecology to identify overburdened communities, monitor criteria pollutants in those communities, develop air quality standards for those communities where appropriate, and issue orders to emitters to ensure that those air quality standards are met. Through this process, Ecology and the local air agencies will evaluate the impacts of all emitters, including EITE facilities, on overburdened communities. This process is not included in this rule, as it is outside the parts of the Act that this rule implements (RCW 70A.65 Sections 060 through 210). To find out more about the process Ecology is engaged in to implement Section 3 of the CCA (RCW 70A.65.020), or to participate in that process, go to https://ecology.wa.gov/Air-Climate/Climate-Commitment-Act/Overburdened-communities.

Second, all EITE facilities sited after July 25, 2021, must mitigate increases in particulate matter in overburdened communities due to their emissions. RCW 70A.65.020(3). The appropriate air permitting agency (either Ecology or a local air authority) must make sure this requirement is included in the air permits issued to the facility. This requirement is not in this rule, as it is outside the sections of the Act that this rule is authorized to implement.

Third, beginning in the second compliance period, Ecology must consider a facility's location relative to overburdened communities when responding to a petition from a facility to be an EITE. RCW 70A.65.110(2). Ecology included this requirement in the EITE rule, WAC 173-446A.040(2)(c), when that rule was adopted earlier this year.

Finally, Ecology can reduce a covered or opt-in entity's ability to use offset credits if they contribute substantively to the air pollution burden in an overburdened community or violate

any permits in a way that increases emissions. This provision applies to EITEs that are covered or opt-in entities. (RCW 70A.65.170(3)(d)). Ecology has included these requirements in the rule. WAC 173-446-600(6)(d).

Commenters: I-10 (Seeley); I-40, I-127 (Zazueta); I-49 (Phillips); I-133 (Washington Environmental Council, Fields); I-170 (Kulzer); I-173 (Voget); I-318 (Gould); I-345 (Luton); O-8 (350 Seattle); O-17 (Earth Ministry/WA Interfaith Power & Light); O-23 (Washington Environmental Council); O-24 (The Nature Conservancy WA); O-33 (Climate Solutions); T-1 (Swinomish Indian Tribal Community); OTH-9 (Wildlife Forever Fund)

Summary: Commenters ask that the rule establish an explicit review process for how the program is impacting overburdened communities and ensure Ecology has the information needed to conduct that review.

Response: The explicit review process commenters are asking for is not included in this rule because it is outside the scope of this rulemaking. Section 020 of the CCA requires Ecology to review how criteria pollutants are affecting overburdened communities every two years. RCW 70A.65.020(2). Requirements in section 020 are outside the scope of this rulemaking, which implements Sections 060 through 210. *See* RCW 70A.65.220.

In reviewing the impacts of the CCA, Ecology will be engaging with overburdened communities and vulnerable populations. Ecology will obtain the information it needs from emitters through the reports they are required to provide as conditions of the air permits they hold, and from their yearly reports of GHG emissions.

Commenters: I-40, I-127 (Zazueta); I-133 (Washington Environmental Council, Fields); I-318 (Gould); O-8 (350 Seattle); O-23 (Washington Environmental Council); OTH-9 (Wildlife Forever Fund).

Summary: Commenters ask that the rule clarify Ecology's role in evaluating the impact of linkage on overburdened communities and for achieving environmental benefits of the program.

Response: The CCA includes standards for linkage that protect overburdened communities and ensure the equitable distribution of environmental benefits. The CCA also requires a public process with opportunity for comment on any proposed linkage agreement before any linkage can occur. Prior to linkage, Ecology will conduct an environmental justice assessment (RCW 70A.65.060(3)), and ensure that the linking jurisdiction has adequate provisions to ensure the distribution of benefits from the program to vulnerable populations and overburdened communities (RCW 70A.65.210(3)(b)). In addition, Ecology cannot link with another program unless the agency is able to determine that linkage will not yield net adverse impacts to either Ecology's or any linking jurisdiction's highly impacted communities or analogous communities in the aggregate, relative to the baseline level of emissions (RCW 70A.65.210(3)(c)). The Environmental Justice Council is specifically tasked with providing recommendations to Ecology regarding linkage (RCW 70A.65.040(2)(a)(i)), and prior to linkage, Ecology must conduct a public process ensuring that all members of the public have an opportunity to weigh in on Ecology's determinations (RCW 70A.65.210(3)).

Commenters: I-225 (Edmark); I-318 (Gould); O-8 (350 Seattle); O-17 (Earth Ministry/WA Interfaith Power & Light); O-24 (The Nature Conservancy WA); T-1 (Swinomish Indian Tribal Community)

Summary: Commenters ask Ecology to require EITEs applying for an upward adjustment of no cost allowances to submit information on any excessive environmental impacts of the fuels, process, and equipment used by the facility. The rule should be clear that if the facility is found to create excessive environmental impacts, upward adjustments should be denied.

Response: Section 3 of the Climate Commitment Act (RCW 70A.65.020) provides a process for determining whether a facility is contributing too much to the air pollution in an overburdened community. The Act requires Ecology and the local air agencies to take measures, including issuing enforceable orders to emitters, to reduce air pollution in those communities. That process is outside the scope of the cap-and-invest program implemented by this rule. To find out more about that process, or to participate in that process, go to https://ecology.wa.gov/Air-Climate/Climate-Commitment-Act/Overburdened-communities.

Within the scope of this rule, RCW 70A.65.110(3)(f) authorizes Ecology to make an upward adjustment in the next compliance period for an EITE facility based on the facility's demonstration that additional reductions in carbon intensity or mass emissions are not technically or economically feasible or if there has been a significant change in manufacturing processes at the facility, a significant change in the competitive environment that leads to increased leakage risk, or the facility has had abnormal operating periods. The Act does not authorize Ecology to deny the upward adjustment based on excessive environmental impacts.

Commenters: I-85 (Anderson); I-156 (Rathbone); I-318 (Gould); I-320 (Avery); O-8 (350 Seattle); O-23 (Washington Environmental Council); O-35 (Clean and Prosperous).

Summary: Commenters suggest that the program should reduce health impacts from air pollution in overburdened communities, and ask that the rule include language to address health disparities.

Response: Ecology agrees that the Climate Commitment Act, in RCW 70A.65.020, has provisions designed to reduce health impacts from air pollution in overburdened communities. However, as required by RCW 70A.65.220, WAC 173-446 implements the provisions of RCW 70A.65.060 through .210, which create a cap on greenhouse gas emissions from covered entities, compliance obligations for covered entities, and a program authorizing covered entities to purchase compliance instruments and trade them with other participants in the program. WAC 173-446 does not implement the requirements in RCW 70A.65.020. Therefore, this comment is outside the scope of the rule. Ecology is engaged in a process separate from this rulemaking to engage with overburdened communities and vulnerable populations to address these issues. To find out more about that process, or to participate in that process, go to https://ecology.wa.gov/Air-Climate/Climate-Commitment-Act/Overburdened-communities.

Commenters: I-126 (Kulzer)

Summary: One commenter asked Ecology to include in the rule provisions concerning the identification of impacted communities, what pollutants should be monitored, what constitutes

improvement in air quality, and what the timeframe for such improvement would be. Ms. Kulzer also asked who would pay for the collection of data - Washington citizens or industry.

Response: These comments appear to be referring to the requirements in Section 3 of the CCA, RCW 70A.65.020, Environmental Justice Review. As required by the CCA (RCW 70A.65.220), this rule implements the portion of the cap-and-invest program established in RCW 70A.65.060 through .210 of the Act, and does not implement the requirements in RCW 70A.65.020. Therefore, these comments are outside the scope of this rule. Ecology is working with environmental justice communities in a different forum to identify impacted communities and address the other questions raised by this commenter. To find out more about that process, or to participate in that process, go to https://ecology.wa.gov/Air-Climate/Climate-Commitment-Act/Overburdened-communities.

Funding for collecting data as provided in Section 3 to identify overburdened communities highly impacted by air pollution is currently provided by General Fund – State funding, and will eventually be provided by funds from the Climate Investment Account. The Climate Investment Account will be funded with proceeds from the allowance auctions.

These comments may also be referring to the provision In Section 19 of the CCA (RCW 70A.65.170), authorizing Ecology to reduce a covered or opt-in entity's ability to use offset credits to satisfy its compliance obligation if Ecology, in consultation with the Environmental Justice Council, determines that the covered or opt-in entity has or is likely to contribute substantively to the cumulative air pollution burden in an overburdened community or violate any air permits in ways that increase emissions. This process is separate from the process in Section 3 of the CCA, and is within the scope of this rule. Ecology will be able to provide more information on how the program will assess and evaluate offset limit reductions for certain entities in the coming months. Ecology decided not to add more specific language on how this provision will be implemented at this time in order to allow for adequate consultation with the Environmental Justice Council, in accordance with Section 19 (RCW 70A.65.170).

Commenters: I-59 (Dawson); I-156 (Rathbone); I-159 (Hudson); I-164 (Piening); I-172 (Molloy); I-173 (Voget); I-200 (Nuccio); I-207 (Donnelly); B-4 (D Grease); O-8 (350 Seattle)

Summary: Commenters state that investments of revenue from the Act must prioritize significant improvements in air quality of overburdened communities.

Response: The use of revenue from the Act requires determinations by the legislature, and is therefore beyond the scope of this rule.

Commenters: I-7 (Sheehan); I-133 (Washington Environmental Council, Fields); I-170 (Kulzer); I-173 (Voget); I-225 (Edmark); O-8 (350 Seattle); O-17 (Earth Ministry/WA Interfaith Power & Light); O-23 (Washington Environmental Council)

Summary: Commenters ask that Ecology include in the rule a process for adding or modifying offset protocols.

Response: In order to allow sufficient time to thoroughly evaluate and solicit expert feedback on new and revised protocols, Ecology determined that the adoption of additional and revised protocols, beyond the four protocols adopted in the rule, will need to be done through a future

rulemaking. In making this determination, we have prioritized the performance of a thorough and thoughtful review prior to adoption of new or revised protocols, rather than prioritizing immediate availability of a broad diversity of protocols upon the launch of the program.

Ecology is committed to adopting and revising offset protocols as appropriate in the future. Ecology will begin considering new protocols and revisions to existing protocols in 2023, and in doing so will solicit feedback from subject matter experts, Tribes, and stakeholders. New and revised protocols will be developed and evaluated based on the strength of underlying scientific research, applicability and utility to project developers in Washington State, and potential impacts to Washington's environment, economy, and communities. When new and revised protocols are adopted through rule, public comment on these protocols will be solicited and incorporated throughout the rulemaking process.

Ecology will develop a more specific timeline and description of our approach to considering new and revised protocols in 2023.

Summary: Commenters ask Ecology to include provisions clarifying the process for reducing offset limits in response to cumulative air pollution in overburdened communities.

Response: Ecology will be able to provide more information on how the program will assess and evaluate offset limit reductions for certain entities in the coming months. Ecology opted not to add more specific language on how this provision will be implemented in order to allow for adequate consultation with the Environmental Justice Council, in accordance with RCW 70A.65.170.

Summary: One commenter suggests that the use of offsets perpetuates environmental injustices in communities located where extractive offset projects are located.

Response: The only "extractive" offset projects allowable under the proposed rule, and the adopted rule, are certain offset projects listed under the U.S. Forest Projects protocol. All offset projects must reduce GHG emissions and provide direct environmental benefits in the state, and Ecology will not issue offset credits for projects that have adverse environmental impacts after mitigation. An offset credit could not be generated by introducing timber harvesting to a forest that wasn't previously subject to timber harvesting. Instead, forestry offset projects typically reduce the level of timber harvesting in existing working forests. It is not clear to Ecology how offset projects that reduce timber harvesting in existing working forests could perpetuate environmental injustices in communities located near those projects.

To the extent the commenter is concerned that any type of offset project, regardless of whether it is characterized as "extractive," may perpetuate environmental injustices, Ecology believes the rule provides sufficient protection against such an outcome. For example, Ecology may reduce a specific covered or opt-in entity's ability to use offset credits to satisfy its compliance obligation if Ecology determines, in consultation with the Environmental Justice Council, that the entity is likely to contribute substantively to cumulative air pollution burden in an overburdened community (WAC 173-446-600(6)(d)).

To the extent the commenter is concerned that the usage of offset credits to satisfy a portion of an entity's compliance obligation will impact the integrity of the cap on emissions, Ecology

believes the rule provides sufficient protection against such an outcome. First, WAC 173-446-600(6) incorporates the statutory limits on the use of offset credits for purposes of compliance. Second, WAC 173-446-250(1) establishes the process for Ecology to remove and retire emission allowances from the market in order to account for the use of offset credits.

2. Environmental Justice Council

Commenters: I-12 (Poirier); I-150 (Hinton); I-151 (Marino); I-170 (Kulzer); B-4 (D Grease); I-262 (Sweeney); O-8 (350 Seattle); O-17 (Earth Ministry/WA Interfaith Power & Light); O-23 (Washington Environmental Council); I-165 (Darilek); O-24 (The Nature Conservancy – WA); O-29 (Environmental Defense Fund); O-33 (Climate Solutions); OTH-2 (Group of individuals); OTH-9 (Wildlife Forever Fund); T-1 (Swinomish Indian Tribal Community); T-6 (Makah Tribal Council)

Summary: Commenters ask Ecology to include in the rule provisions to provide adequate information to the Environmental Justice Council to enable the Council to fulfill its role of making recommendations to Ecology.

Response: Ecology greatly appreciates that the Environmental Justice Council has invested time and has focused, as a Council and through the Council's CCA committee, to share input and comments with Ecology. We are committed to continue working with the Council to ensure that we implement the cap-and-invest program, and other CCA initiatives, in a way that will allow for respectful and meaningful engagement across a range of issues related to funding, implementation, evaluation, and rulemaking.

Ecology has been engaged with the Environmental Justice Council since the Council's formation in the spring of 2022. Ecology presented information at the Council's first meeting, on April 4, 2022, and at subsequent meetings on May 13, May 16, and August 19. Ecology will seek to continue working with the Environmental Justice Council to establish a more formal process for future engagement to the development, implementation, and evaluation of the cap and invest program. As this process for future engagement has not yet been finalized, Ecology cannot incorporate it into the rule at this time. However, Ecology is including in the rule a provision recognizing the role of the Environmental Justice Council and stating that Ecology will engage with the Council. WAC 173-446-010(2).

Commenters: I-12 (Poirier); I-59 (Dawson); I-150 (Hinton); I-170 (Kulzer); I-164 (Piening); I-165 (Darilek); I-345 (Luton); I-318 (Gould); B-4 (D Grease); O-8 (350 Seattle); O-17 (Earth Ministry/WA Interfaith Power & Light); O-23 (Washington Environmental Council); O-24 (The Nature Conservancy – WA); O-33 (Climate Solutions); T-7 (Snoqualmie Indian Tribe); OTH-9 (Wildlife Forever Fund).

Summary: Commenters ask Ecology to include language in the rule to explicitly state how Ecology will engage with the Environmental Justice Council in the development, implementation, and evaluation of the full program.

Response: Ecology is grateful that after it convened, the Environmental Justice Council rapidly organized to invest time and focus as a Council and through the Council's CCA committee to share input and comments with Ecology. Ecology is committed to continue working with the Council to ensure that we implement the cap-and-invest program and other CCA initiatives in a

way that will allow for meaningful engagement across a range of issues related to funding, implementation, evaluation, and rulemaking.

Ecology has been engaged with the Environmental Justice Council since the Council's formation in the spring of 2022. Ecology presented information at the Council's first meeting, on April 4, 2022, and at subsequent meetings on May 13, May 16, and August 19. Ecology will seek to continue working with the Environmental Justice Council to establish a more formal process for engagement to enable the development, implementation, and evaluation of the cap and invest program. As this process for future engagement has not yet been finalized, Ecology cannot incorporate it into the rule at this time. However, Ecology is including, in the rule, a provision recognizing the role of the Environmental Justice Council and stating that Ecology will engage with the Council, WAC 173-446-010(2). We greatly appreciate and respect the role of the Environmental Justice Council, and look forward to working together as envisioned by the Climate Commitment Act for the benefit of the people of Washington.

Commenters: O-8 (350 Seattle); T-1 (Swinomish Indian Tribal Community)

Summary: Commenters ask Ecology to track information about the environmental and health impacts of all EITE facilities, including impacts on tribal lands and resources when setting the allocation baseline for EITEs and to inform Council review.

Response: The CCA includes several provisions requiring Ecology to track the environmental and health impacts of EITE facilities.

First, Section 3 of the Climate Commitment Act (RCW 70A.65.020, Environmental justice review) requires Ecology to identify overburdened communities, monitor criteria pollutants in those communities, develop air quality standards for those communities where appropriate, and issue orders to emitters to ensure that those air quality standards are met. Through this process, Ecology and the local air agencies will evaluate the impacts of all emitters, including EITE facilities, on overburdened communities. This process is not included in this rule, as it is outside the parts of the Act that Ecology is authorized to implement in this rulemaking (RCW 70A.65 Sections 060 through 210). To find out more about the process Ecology is engaged in to implement the environmental justice review section of the CCA, or to participate in that process, go to https://ecology.wa.gov/Air-Climate/Climate-Commitment-Act/Overburdened-communities.

Second, all EITE facilities sited after July 25, 2021, must mitigate increases in particulate matter in overburdened communities due to their emissions. RCW 70A.65.020(3). The appropriate air permitting agency (either Ecology or a local air authority) must make sure this requirement is included in the air permits issued to the facility. This requirement is not in this rule, as it is outside the sections of the Act that Ecology is authorized to implement in this rulemaking.

Third, beginning in the second compliance period, Ecology must consider a facility's location relative to overburdened communities when responding to a petition from a facility to be an EITE. RCW 70A.65.110(2). Ecology included this requirement in the EITE rule, WAC 173-446A.040(2)(c), which was adopted earlier this year.

Finally, Ecology can limit the ability of EITEs (and other covered or opt-in entities) to use offset credits to satisfy a portion of their compliance obligation if Ecology determines, in consultation with the Environmental Justice Council, that they contribute substantively to the air pollution burden in an overburdened community or violate any permits in a way that increases emissions. (RCW 70A.65.170(3)(d)). Ecology has included these provisions in the rule, WAC 173-446-600(6)(d).

Ecology also receives pollution-related information from EITE facilities as required by reporting requirements in the EITE facilities' environmental permits. Ecology will share such information with the Environmental Justice Council.

Commenters: O-23 (Washington Environmental Council); O-17 (Earth Ministry/Washington Interfaith Power & Light); OTH-9 (Wildlife Forever Fund); T-1 (Swinomish Indian Tribal Community)

Summary: Commenters ask Ecology to engage with the Environmental Justice Council when determining allocation baselines and no cost allowance allocations to EITE facilities. They also ask Ecology to consider potential environmental and health impacts on tribal and overburdened communities before allocating no cost allowances to EITE facilities.

Response: Ecology has added to the rule provisions recognizing the role of the Environmental Justice Council and stating that Ecology will engage with the Council. WAC 173-446-010:

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

On the specific question about the allocation of no cost allowances to EITE facilities, the CCA provides the criteria Ecology must use when allocating no cost allowances to EITE facilities. Under those criteria, Ecology must look at the EITE's emissions intensity baseline and production data. RCW 70A.65.110(3). The Act does not authorize Ecology to consider potential environmental and health impacts in this process However, Ecology can limit the ability of EITEs (and other covered or opt-in entities) to use offset credits to satisfy a portion of their compliance obligation if Ecology determines, in consultation with the Environmental Justice Council, that they contribute substantively to the air pollution burden in an overburdened community or violate any permits in a way that increases emissions. (RCW 70A.65.170(3)(d)). Ecology has included these provisions in the rule. WAC 173-446-600(6)(d).

Commenters: O-8 (350 Seattle)

Summary: Commenters ask Ecology to define when and how they will provide the Environmental Justice Council with information about how allowances will be administered to ensure overall declining GHG emissions under the cap, the appropriate amount of revenue generation from the allowance auctions, and the overall health and integrity of the cap and invest program.

Response: Ecology has added to the rule provisions recognizing the role of the Environmental Justice Council and stating that Ecology will be engaging with the Council on the Program. WAC 173-446-010.

In general, to ensure overall declining emissions under the cap, Ecology, as required by the CCA, is decreasing the annual allowance budget each year, and has designed the program to avoid as much as possible the need to sell price ceiling units.

There is no requirement in the CCA to generate an "appropriate" amount of revenue from the allowance auctions. The amount of revenue generated will depend on the number of allowances sold and the prices at which the allowances are sold. The point of the program is to let the market determine the price of an allowance. It is possible, however, to look at the market and predict what could happen or what is likely to happen. Ecology commissioned Vivid Economics to model Washington's market and determine likely allowance prices under several scenarios. That analysis is available on Ecology's rulemaking website for WAC 173-446.

Ecology agrees that it is critically important to maintain the integrity of the cap on GHG emissions. The legislature, in designing the Climate Commitment Act (CCA) also made it clear that maintaining the integrity of the cap is a central goal of the program. The CCA is clear that the cap in the cap and invest program must be based on emissions from the covered sectors of the economy. RCW 70A.65.070(1). The CCA requires the reductions in the cap to be designed so that covered entities as a whole meet their proportional share of the GHG emission limits in RCW 70A.45.020 for 2030, 2040, and 2050. *See, e.g*., RCW 70A.65.070. The CCA provides tools for adjusting the program if it looks like those limits will not be met. *See, e.g*., RCW 70A.65.100(11). Ecology has designed WAC 173-446 to meet these statutory requirements. For example, Ecology has taken steps to avoid the need to sell price ceiling units, which increase the cap. RCW 70A.65.160. According to the Vivid Economics analysis, the auction parameters Ecology has set, including front loading the Allowance Price Containment Reserve, will help minimize the need for selling price ceiling units.

3. Data and Information Gathering and Dissemination

Commenters: I-253(Levine); I-264 (Lund); I-318 (Gould); O-8 (350 Seattle); O-17 (Earth Ministry/WA Interfaith Power & Light); O-24 (The Nature Conservancy WA) T-6 (Makah Tribal Council); T-3 (The Tulalip Tribes)

Summary: Commenters ask Ecology to publicly share and document data being used to establish baseline information, subtotal baselines, and allocations. Other commenters ask that Ecology track and list the largest emitters.

Response: The data used to establish baseline information and subtotal baselines will be available to the public upon request once Ecology has established the baselines and subtotal baselines in the final rule, except for any data that is determined to be market-sensitive information. However, Ecology will not be determining no cost allowance allocations for 2023 until well into 2023. Once those allocations have been made, the data will be available to the public upon request, except for any data that is determined to be market-sensitive information.

A public record request can be made at: https://ecologywa.govqa.us/WEBAPP/_rs/(S(jzqvpnerl5xnbnnjklb1x0gx))/supporthome.aspx.

Greenhouse gas emission data can be viewed at: https://data.wa.gov/Natural-Resources-Environment/GHG-Reporting-Program-Publication/idhm-59de.

Commenters: I-318 (Gould); O-8 (350 Seattle); O-23 (Washington Environmental Council); O-24 (The Nature Conservancy – WA); O-36 (The Energy Project); OTH-9 (Wildlife Forever Fund).

Summary: Commenters ask Ecology to require gas and electric utilities to provide information on how they spend any revenue from the sale of no cost allowances.

Response Ecology agrees that transparency is important but, in the case of investor-owned utilities, this is an area where the Utilities and Transportation Commission (UTC) has the ability to regulate should they so choose, or should stakeholder involvement in their processes so dictate. Even if the UTC doesn't choose to expand on their current regulatory duties, the public process involved with their normal rate cases and operational proceedings should generate a considerable public record on this matter. The same is true of consumer-owned utilities, which have their own public process requirements. But at the onset of the program it is unknown whether this issue is a problem, or whether it will resolve itself utility by utility for the consumer-owned utilities, or through UTC action for the investor-owned utilities. As such, Ecology believes it is appropriate to let utilities establish their revenue-use programs and any reporting mechanisms on their own first, with appropriate oversight from their governing bodies and the associated public processes. If the lack of such programs or information on the use of revenues proves problematic and is not resolved through those processes, it can be addressed in a future rulemaking.

Commenters: I-7 (Sheehan); I-40, I-127 (Zazueta); I-49 (Phillips); I-83 (Saul); I-85 (Anderson); I-126 (Kulzer); I-150 (Hinton); I-159 (Hudson); I-164 (Piening); I-165 (Darilek); I-170 (Kulzer); I-172 (Molloy); I-200 (Nuccio); I-207 (Donnelly); I-277 (Kueffler); I-287 (Aufrecht); I-311 (Olson); O-8 (350 Seattle); O-17 (Earth Ministry/Washington Interfaith Power & Light); O-23 (Washington Environmental Council); O-24 (The Nature Conservancy); O-33 (Climate Solutions); O-35 (Clean and Prosperous); T-1 (Swinomish Indian Tribal Community).

Summary: Commenters would like to see the program provide benefits to overburdened communities that face increased health issues related to air pollution. They believe community members should be involved. The identity of overburdened communities, pollutants to be monitored, how improvements will be measured, and the timeframe of this process have yet to be revealed.

Response: Ecology agrees that the Climate Commitment Act includes provisions designed to provide benefits to overburdened communities that face increased health issues related to air pollution. However, as required by RCW 70A.65.220, this rule implements only the portions of the CCA that create a cap on greenhouse gas emissions from covered entities, compliance obligations for covered entities, and a program authorizing covered entities to purchase compliance instruments and trade them with other participants in the program. WAC 173-446 does not implement the requirements in RCW 70A.65.020. Therefore, this comment is outside the scope of the rule. Ecology is engaged in a process separate from this rulemaking to engage

with overburdened communities and vulnerable populations to address these issues. To find out more about that process, or to participate in that process, go to https://ecology.wa.gov/Air-Climate/Climate-Commitment-Act/Overburdened-communities.

Commenters: I-318 (Gould); O-8 (350 Seattle); O-17 (Earth Ministry/WA Interfaith Power & Light); T-6 (Makah Tribal Council); T-3 (The Tulalip Tribes)

Summary: Commenters ask Ecology to require all covered entities to provide information about their impacts on overburdened communities and on tribal lands and treaty rights, as well as information about the chemicals and pollutants they process and/or manage, and any violations under any permits they hold.

Response: Most covered entities are required to have air permits and other environmental permits that authorize them to emit and discharge pollutants. Those permits require the permittees to provide information on emissions and discharges of pollutants to Ecology or the local clean air agency on a regular basis, and require them to disclose the chemicals they process and/or manage. Ecology is currently engaged in a process to identify overburdened communities. To find out more about that process, or to participate in that process, go to https://ecology.wa.gov/Air-Climate/Climate-Commitment-Act/Overburdened-communities. Once the overburdened communities have been identified, it should be possible to correlate the pollution information Ecology and the local air agencies are getting from permit holders with the impacts on overburdened communities.

Commenters: I-133 (Washington Environmental Council, Fields); I-173 (Voget); I-225 (Edmark); I-318 (Gould); O-8 (350 Seattle); O-17 (Earth Ministry/WA Interfaith Power & Light)

Summary: Commenters ask Ecology to provide criteria for the selection of offset protocols, including risks and benefits.

Response: In order to allow sufficient time to thoroughly evaluate and solicit expert feedback on new and revised protocols, Ecology determined that additional and revised protocols, beyond the four protocols adopted in the rule, will need to be adopted through a future rulemaking. We have prioritized thorough and thoughtful review and adoption of future protocols, rather than prioritizing having a broad diversity of protocols ready in time for the launch of the program.

Ecology is committed to the adopting, revising, and updating of offset protocols in the future. Ecology will begin considering new protocols and revisions to existing protocols in 2023, with feedback from subject matter experts, Tribes, and stakeholders. New and revised protocols will be developed and evaluated based on the strength of underlying scientific research, applicability and utility to project developers in Washington state, and impacts to Washington's environment, economy, and communities. As new and revised protocols will be adopted through rule, public comment on these protocols will be solicited and incorporated throughout the rulemaking process.

Ecology will be able to provide a more specific timeline and approach to consider new and revised protocols after the rule has been adopted.

Summary: Commenters ask Ecology how the definition of adverse impacts relates to the rule definition of "environmental harm."

Response: The two terms are separate and independent and do not relate to one another. Ecology chose the term "significant adverse environmental impacts" to invoke the standard used in the State Environmental Policy Act (SEPA, RCW 43.21C). The term "significant adverse environmental impacts" is not defined in SEPA or in Ecology's rules implementing SEPA (WAC 197-11). In order to ensure that the interpretation of the in WAC 173-446 is consistent with the interpretation of the term under SEPA and to avoid confusion, Ecology is not defining the term in WAC 173-446.

4. Comments on Tribal Rights and Considerations

Ecology received multiple comments on Tribal impacts, participation, and rights within the program. Comments and responses on specific rule considerations can be found in their respective topic sections. We have compiled some of the overarching comments and responses here for ease of reading.

Commenter: T-7 (Snoqualmie Indian Tribe)

Summary: The Snoqualmie Tribe comments that there should be no discrimination against non-fish-treaty tribes.

Response: This rule does not distinguish between fish-treaty tribes and non-fish-treaty tribes.

Comment: The Snoqualmie Tribe comments that, in defining "tribal lands," it should be up to each Tribe to determine what it considers its tribal lands to be.

Response: The term "tribal lands" is defined in the CCA for the purposes of that Act and this rule at RCW 70A.65.010(65). Making a change to that definition will therefore require a change to the statutory definition by the legislature.

Commenters: T-1 (Swinomish Indian Tribal Community); T-2 (Suquamish Tribe); T-3 (The Tulalip Tribes); T-4 (Quinault Indian Nation); T-6 (Makah Tribal Council); T-7 (Snoqualmie Indian Tribe); I-49 (Phillips); I-271 (Bergey); I-290 (Germain); I-320 (Avery); O-34 (Washington Environmental Council and The Nature Conservancy - WA); OTH-9 (Wildlife Forever Fund).

Summary: Ecology received comments from six Tribes (Makah, Quinault, Snoqualmie, Suquamish, Swinomish, and Tulalip) objecting to the requirement in the rule that general market participants consent to regulation by Ecology and accept jurisdiction of Washington courts and administrative tribunals. A number of non-tribal comments also requested changes in order to more fully support tribal sovereignty.

Four Tribes (Swinomish, Suquamish, Quinault, and Makah) commented that Ecology should consult with each of Washington's 29 sovereign tribal governments individually on sovereign immunity issues. The Tribes believe that these consultations should lead to language and processes allowing Ecology to enforce compliance without violating tribal sovereignty. Several Tribes (e.g., Swinomish, Suquamish) stated that such consultations should be on a government-to-government basis.

Response: Ecology recognizes and respects that each Tribe is a separate sovereign government. Ecology agrees with the Tribes that meeting with each Tribe individually is the best way to work through the different Tribes' specific concerns about sovereign immunity. In fact, Ecology expected such individual consultation to be the mechanism by which the proposed rule's consent-to-regulation provisions would be implemented with respect to participating tribes.

In order to clarify the intent behind the proposed rule language, Ecology has amended these provisions to memorialize the agency's commitment to working individually with each participating tribal government in order to ensure compliance with applicable program requirements in an appropriate manner. The new subsections at WAC 173-446-050(3)(e), -055(3)(c), and -520(3)(e) provide that Ecology will work individually with each tribal government that elects to voluntarily participate in the program—whether as an opt-in entity, a general market participant, or a landowner hosting an offset project—to agree upon a dispute resolution process and/or other compliance mechanisms to ensure enforceability of applicable program requirements.

Each participating tribal government may decide whether or not to invoke the formal government-to-government consultation process to negotiate these agreements with Ecology. It is Ecology's hope that these consultations will lead to mutually acceptable language and processes allowing Ecology and the Tribes to resolve disputes and enforce compliance in a way that is as narrowly tailored as possible.

Ecology recognizes that some tribal governments requested that the consent-to-regulation provisions be removed from the rule entirely. In light of the amended rule provisions described above, Ecology does not think this is necessary. Moreover, these provisions are needed to ensure compliance by all other voluntary participants, including out-of-state landowners that develop offset projects, over whom Ecology may not otherwise have jurisdiction. While offset projects are required to provide direct environmental benefits to the state (or be located in a jurisdiction with which Washington has linked, which is not yet applicable) under RCW 70A.65.270(2)(a), it is possible that projects could be located in other states, in which case Ecology needs to ensure that all applicable offset project requirements are legally and practically enforceable against the landowner(s).

These provisions to ensure enforceability with respect to *all* voluntary program participants are necessary in light of the statutory mandate for Ecology to establish "a program to track, verify, ***and enforce*** compliance" with the cap on emissions [RCW 70A.65.060(1)] and to establish provisions in the rule "to enforce the program requirements" [RCW 70A.65.060(2)]. With respect to offset credits, Ecology also has a statutory mandate to ensure that all offset projects result in GHG reductions or removals that are "real, permanent, quantifiable, verifiable, ***and enforceable***." [RCW 70A.65.170(2)].

In light of these statutory mandates, the rule must include sufficient enforcement mechanisms to ensure that all program participants, including those participating voluntarily as opt-in entities and general market participants, can be held accountable for compliance with all applicable requirements of the program. When drafting the consent-to-regulation provisions in the proposed rule, Ecology intentionally limited its scope to be as narrowly tailored as possible, while still accomplishing its purpose of ensuring that Ecology will be able to enforce compliance

with program requirements with respect to voluntary participants as effectively as it can with respect to covered entities.

Commenters: T-6 (Makah Tribal Council); T-7 (Snoqualmie Indian Tribe)

Summary: The Makah Tribal Council and the Snoqualmie Tribe ask Ecology to add a framework for Tribal consultation to the rule, and suggest looking at the tribal consultation framework established in ESHB1753 (2022) as a model.

Response: Establishing a formal framework for tribal consultation is beyond the scope of this rulemaking, but Ecology remains committed to meaningful consultation and engagement with tribes throughout program implementation. Nothing in the adopted rule prevents a tribal government from requesting formal government-to-government consultation with Ecology.

Commenters: T-1 (Swinomish Indian Tribal Community); T-7 (Snoqualmie Indian Tribe)

Summary: Commenters ask Ecology to include in the rule a provision requiring consultation with affected Tribal nations for any facility on tribal lands or determined by Ecology through government-to-government consultation to impact tribal lands and resources. They also ask Ecology to include language concerning consultation with Tribes as necessary to protect Tribal cultural resource sites, sacred sites, and archeological sites.

Response: Ecology agrees that consultation between Ecology and Tribes concerning facilities located on tribal lands and facilities that impact tribal lands and resources is a good idea. Consultation is also appropriate to protect Tribal cultural resource sites, sacred sites, and archeological sites. The CCA does not address such consultations, and they are not included in WAC 173-446 at this time. However, such consultation could be considered in a future rulemaking, and should be considered in the context of the ongoing process to implement Section 3 of the CCA (RCW 70A.65.020). To find out more about that process, or to participate in that process, go to https://ecology.wa.gov/Air-Climate/Climate-Commitment-Act/Overburdened-communities. In addition, tribes may always request government –to-government consultations.

The protection of Tribal cultural resource sites, sacred sites, and archeological sites is addressed, in the context of offset projects, by the requirement that offset projects not result in significant adverse environmental impacts. Environmental impacts include impacts on historical and cultural resources such as Tribal cultural resource sites, sacred sites, and archeological sites.

II. General Comments on the Climate Commitment Act

1. Support for Rulemaking

Commenters: I-3 (Anholt); I-6 (Bagley); I-13 (Canny); I-14 (Anonymous); I-15 (Bear); I-18 (Abolins); I-20 (Chance); I-21 (Tatsumi); I-22 (Ornstein); I-23 (Murillo); I-24 (Package); I-25 (Hubbard); I-26 (Holman); I-27 (Wells); I-28 (Olmstead); I-32 (Shahbazi); I-40, I-127 (Zazueta); I-55 (Wichar); I-60 (Morgan); I-67 (Meraki); I-93 (Benemann); I-94 (Hall); I-97 (Olah), I-104 (Salerno); I-111 (Fasnacht); I-116 (Byrne); I-130 (Environmental Defense Fund, Belcher); I-165

(Darilek); I-166 (Baker); I-175 (Engelfried); I-176 (Avery); I-214 (Marsanyi); I-277 (Kueffler); I-287 (Aufrecht); I-305 (Capan); I-311 (Olson); I-1149 (Warren); O-19 (Northwest Seaport Alliance – Port of Tacoma, Port of Seattle)

Summary: These commenters provided support for implementing Chapter 173-446 WAC. Many of the commenters cited environmental, economic, and health concerns for current and future generations as reasons for their support.

Response: Thank you for your support. With the adoption of this rule, Ecology is implementing the portions of the Climate Commitment Act, RCW 70A.65, that are found in RCW 70A.65.060 through 70A.65.210 and create the cap and invest program to reduce GHG emissions.

2. Concern for Environmental Degradation

Commenters: I-34 (Chadd); I-45 (Benedict); I-46 (Martinez); I-57 (Khalil); I-61 (Olson); I-62 (Johnson); I-70 (Randall); I-83 (Saul); I-85 (Anderson); I-89 (Waddington); I-90 (Furtado); I-91 (Bhakti); I-96 (Faste); I-103 (Siptroth); I-106 (Compton); I-107 (Wagner); I-108 (Kaufman); I-113 (Williams); I-177 (Simone); I-249 (Parker); I-281 (Bartow); I-294 (Frasca)

Summary: The commenters are concerned about the climate crisis and other environmental issues and suggest the Department of Ecology should take meaningful action at the state level as soon as possible to implement a solution with a real impact.

Response: Ecology shares your concerns. Ecology is adopting Chapter 173-446 WAC, which will enable the cap-and-invest program created in RCW 70A.65 sections 060 through 210 to begin operation in January 2023.

3. Opposed to Rulemaking

Commenters: I-1 (LaChapelle); I-2 (Jordan); I-4 (Goehner); I-8 (Fosback); I-11 (Astrachan); I-12 (Poirier); I-17 (Anonymous); I-19 (Foster); I-29 (Hatton); I-30 (Martin); I-31 (Martin); I-39 (Strid); I-41 (Smith); I-47 (Nutt); I-196 (Ryan); I-477 (King); I-478 (Hunt); I-512 (Hamm); I-530 (John); I-554 (Courtney); I-564 (DeFord); I-598 (Marion); I-601 (Kuhnua); I-637 (Michlig); I-653 (Smith); I-706 (McAdams)

Summary: Some commenters expressed their opposition to the Climate Commitment Act, the resulting WAC 173-446 rulemaking, or both. A number of commenters are unhappy about the costs the program will impose on the people of Washington.

Response: Ecology is undertaking this rulemaking as directed by RCW 70A.65.220. As part of this rulemaking Ecology performed the necessary regulatory analyses, the results of which indicate the costs of the cap-and-invest program are outweighed by the benefits.

4. Investment of Program Revenue

Commenters: I-9 (Schneider), I-16 (Adams); I-53 (Rehrmann); I-124 (Valenzuela), I-149, I-175 (Engelfried), I-279 (Morris), B-4 (D Grease), O-20 (League of Women Voters of Washington), T-7 (Snoqualmie Indian Tribe)

Summary: Commenters suggested that Ecology clarify how funds raised through the program will be used. Some made suggestions for how the funds should be used, including:

1) to improve air quality in overburdened communities
2) to improve air quality monitoring
3) to subsidize weatherization, decarbonization, conservation, and efficiency improvements
4) to improve resources for workforce development
5) to lower/offset the cost of clean energy for lower- and middle-income residents
6) to invest in nuclear energy production or carbon capture

Many commenters urged Ecology to prioritize low-income residents and overburdened communities when considering how to use the funds.

Response: We appreciate that you took the time to comment on this rulemaking. The Climate Commitment Act requires that a minimum of 35% of total investments provide direct and meaningful benefits to vulnerable populations within boundaries of overburdened communities. Ecology cannot determine how funds generated by the program will be spent, as these funds will be subject to the appropriations process in the legislature before they can be spent. The state Legislature will make appropriation decisions for CCA funds as part of biennial budget adoptions. Therefore comments on spending of CCA funds are outside the scope of this rulemaking. In a future rulemaking required by RCW 70A.65.300(3), Ecology will be requiring recipients of funds generated by the cap and invest program to report to Ecology how they

have used those funds. Then Ecology will report on the use of these funds in an annual report to the appropriate committees of the legislature.

Commenters: B-20 (AAA Washington); I-138 (Phipps); I-581, I-161 (Bee); O-20 (League of Women Voters of Washington); O-25 (Pacific Propane Gas); I-175 (Engelfried)

Summary: Multiple commenters suggested that funds be invested in clean energy. Others suggested that reliance on solar and wind would not result in reduced emissions for the state.

Response: We appreciate that you took the time to comment on this rule. Clean energy investments are outside the scope of the current rulemaking. However, we would note that in 2019 Washington passed the Clean Energy Transformation Act, which commits Washington to an electricity supply free of greenhouse gas emissions by 2045 and provides safeguards to maintain affordable rates and reliable service.

Summary: The Pacific Propane Gas Association comments that funds raised by the CCA should be used to fund projects in the sectors of the economy where the costs are paid. The current disbursement structure of the Carbon Emissions Reduction Account and Investment Account don't place enough emphasis on funding decarbonization products in the energy sector. The League of Women Voters wants to ensure that the level of funding intended by the legislature (35% to vulnerable populations in overburdened communities; 10% for programs supported by Tribes) is met or exceeded. One commenter comments that funds raised need to prioritize helping low-income communities transition to clean energy.

Response: Ecology appreciates the care and concern expressed by commenters. However, these and other such comments about how the funds generated by the program should be used are outside the scope of this rule. The use of the funds generated by the program is determined by the legislature.

5. Scope of the Program

Commenters: I-99 (Swihart); I-111 (Fasnacht); I-138 (Phipps); I-149 (Snell); I-157 (Sweeney); I-158 (Sweeney); I-161 (Bee); I-178 (Hastings); I-201 (Dexheimer); I-264 (Lund); I-295 (Pogin); I-300 (Evans); I-308 (Evans); I-434 (Borries); I-530 (John); I-581 (Heitzman); I-604 (Bond); I-1149 (Warren); B-2 (New World Communications)

Summary: Commenters encouraged Ecology to:

1) promote wildlife conservation
2) take steps to clean up the Hanford Site
3) remember 2021's heat dome that killed hundreds of people and billions of marine fauna
4) reduce building emissions, including by promoting use of heat pumps and houses constructed using hemp
5) shut down Whidbey Naval Air Station
6) reduce military funding
7) reduce natural gas consumption

8) overhaul food policy

9) change the way education is funded

10) fund environmental education in schools

11) engage in business opportunities

12) regulate the aviation industry

13) protect Snake River Dams

14) alter land management policies

Response: We appreciate that you took the time to comment on this rule. However, these comments are outside the scope of this rulemaking, which concerns the implementation of the portion of the Climate Commitment Act's cap-and-invest program set forth in RCW 70A.65.060 through 70A.65.210 to reduce greenhouse gas emissions.

Commenter: I-174 (Gould)

Summary: Paul Gould comments that there should be a better way to incentivize EITE industries to reduce their carbon emissions than providing them with no cost allowances. He also commented that there should be ways of complying other than buying allowances. Also, the program should look at lifetime carbon emissions associated with energy; should include aviation fuel in the program as well as fuel for pleasure boats; use revenue to push for making homes and businesses more energy efficient; and more.

Response: These comments address decisions that were made by the legislature and embodied in the Climate Commitment Act. Those decisions are set in statute, and cannot be changed by Ecology. These comments are therefore outside the scope of this rulemaking.

Commenter: OTH-5 (Municipality)

Summary: The City of Spokane comments that it should be recognized for the additional environmental and environmental justice benefits its waste to energy program provides.

Response: Ecology applauds the City's waste-to-energy program. However, there is no provision in the CCA to recognize the benefits the waste-to-energy program provides.

Commenter: B-1 (West Star Construction)

Summary: The commenter would like to know how smaller companies can benefit from proactively reducing pollution.

Response: Ecology applauds efforts to reduce greenhouse gas emissions. While we cannot speculate on individual cases, the program has opportunities to participate as general market participants, opt-in entities, or offset project developers for example. Revenue from the auction of allowances will be appropriated by the legislature for projects for which the commenter may qualify.

6. Program Coverage

Commenters: I-140 (Leadingham); I-174 (Gould); I-311 (Olson); I-319 (Fruland)

Summary: Some commenters suggest that the program's exemptions are neither ethical nor effective. Others suggest exempted sectors be addressed.

Response: We appreciate that you took the time to comment on this rule. However, the exemptions in the program are mandated by the statute, RCW 70A.65, and Ecology cannot change them in this rule.

Commenter: O-7 (US Department of Energy, Hanford)

Summary: The US Department of Energy Hanford Site ("Hanford") asks that Hanford be exempted entirely from the cap-and-invest program.

Response: At this time, the bulk of the Hanford site's GHG emissions come from the burning of diesel fuel. The compliance obligation for the burning of that fuel rests with the fuel supplier, not with Hanford. Hanford's remaining GHG emissions are well below the 25,000 MTCO2e/year threshold. Therefore, Hanford is not a covered entity under the CCA.

Summary: Hanford comments that RCW 70A.65.080(7)(f) exempts from the Act "emissions from facilities with North American industry classification system code 92811 (national security)." In at least one data base -- EPA's Detailed Facility Report | ECHO | US EPA -- Hanford is classified under code 92811. In fact, for much of Hanford's history it was classified under the 92811 code because Hanford performed primarily national security work. While today Hanford's North American industry classification system codes include research and development, hazardous waste treatment, remediation, etc., the Hanford cleanup mission is a continuation of its original defense mission. In fact, Hanford's cleanup is authorized through the National Defense Authorization Act and funded primarily with defense funds. Like those of other national security installations in Washington, Hanford emissions should be explicitly exempted from this program.

Response: The 92811 NAICS code does not currently apply to Hanford. The 92811 NAICS code is only for government establishments of the Armed Forces, including the National Guard, primarily engaged in national security and related activities. As Hanford notes, although for much of its history Hanford did do national security work and was classified under the 92811 NAICS code, it no longer does such work, and is not currently classified under the 92811 NAICS code. Moreover, Hanford is now administered by the U.S. Department of Energy, which is not part of the Armed Forces or the National Guard. The United States Environmental Protection Agency lists four NAICS codes for Hanford in the RCRAInfo database: 92411 (administration of air and water resource and solid waste management programs), 325188 (all other basic inorganic chemical manufacturing), 562 (waste management and remediation services), and 562211 (hazardous waste treatment and disposal) Similarly, Ecology's Nuclear Waste Program reports that the U.S. Department of Energy has agreed to use the following NAICS codes for purposes of Hanford's Sitewide Resource Conservation and Recovery Act (RCRA) Permit: 562211 (waste treatment and disposal), 54715 (research and development in the physical, engineering, and life sciences), 924110 (administration of air and water resource and solid waste management programs), and 562910 (remediation services). None of these are the 92811 NAICS code for national security facilities.

Summary: Hanford comments that it does not appear to USDOE that the United States has unequivocally waived sovereign immunity for this program. The federal Clean Air Act at 42 U.S.C. § 7418(a), which generally waives sovereign immunity related to air pollutants, does not extend to financial obligations other than the obligation 'to pay a fee or charge imposed by any State or local agency to defray the costs of its air pollution regulatory program.' In this circumstance, sale of the allowances is designed to generate funds above the cost of the regulatory program and thus would not appear to constitute 'fees or charges imposed… to defray the costs of the air pollution regulatory program.'

Response: Ecology agrees with the U.S. Department of Energy that Section 118(a) of the federal Clean Air Act "generally waives sovereign immunity related to air pollutants." In particular, this statutory provision unequivocally waives the federal government's sovereign immunity with respect to "all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of air pollution" and specifically requires federal agencies to comply with such requirements "to the same extent as any nongovernmental entity." 42 U.S.C. § 7418(a).

The statute goes on to specify that this waiver of sovereign immunity "shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement whatsoever), (B) to any requirement to pay a fee or charge imposed by any State or local agency to defray the costs of its air pollution regulatory program, (C) to the exercise of any Federal, State, or local administrative authority, and (D) to any process and sanction, whether enforced in Federal, State, or local courts, or in any other manner." 42 U.S.C. § 7418(a).

In light of this expansive waiver of sovereign immunity with respect to state laws and "any other requirement whatsoever" related to the control and abatement of air pollution, Ecology disagrees that further Congressional action is needed to waive sovereign immunity with respect to the Climate Commitment Act. This is consistent with the conclusion reached by the California Air Resources Board (ARB) in response to requests from the Department of Defense and the Bonneville Power Administration (BPA) to be exempt from California's cap-and-trade program:

- "The response to Comment K-8 in Chapter III generally describes the waiver of sovereign immunity contained in section 118 of the Clean Air Act (CAA), and why ARB believes this provision applies to federal agencies and departments (like the Department of Defense (DOD)) that are subject to the cap-and-trade regulation."

- "**K-8. … Response**: Section 118 of the Clean Air Act constitutes a waiver of sovereign immunity for federal agencies such as BPA. … Section 118 is clear. Environmental laws of California apply to BPA 'notwithstanding any immunity of such agencies, officers, agents, or employees under any law or rule of law.' While ARB appreciations BPA's voluntary participation in the ARB programs, the language suggested by BPA is not necessary and appropriate because (1) sovereign immunity has been waived by section 118 of the CAA."

Based on this understanding of the scope of the Clean Air Act's waiver of sovereign immunity, ARB did not agree to exempt federal power providers such as BPA from its program. In contrast, ARB did ultimately agree to exempt military facilities from its program in the interest of avoiding "potential ramifications to national security interests." That exemption was based on the unique circumstances presented by military installations and operations, not the mere fact that they are federal facilities. The Climate Commitment Act also exempts military facilities from coverage. *See* RCW 70A.65.080(7)(f). This express exemption would not have been necessary to include in the statute if federal facilities were exempt from the law as a matter of sovereign immunity.

Ecology also disagrees with the U.S. Department of Energy's assertion that the Clean Air Act's waiver of sovereign immunity "does not extend to financial obligations" other than the payment of fees to cover administrative costs. First, in addition to waiving immunity from regulatory fees imposed to recover administrative costs, the Clean Air Act unequivocally waives sovereign immunity with respect to any "sanction, whether enforced in Federal, State, or local courts, or in any other manner." 42 U.S.C. § 7418(a). This waives sovereign immunity with respect to the payment of monetary penalties imposed for noncompliance, which is undoubtedly a "financial obligation." Federal courts have interpreted the waiver of sovereign immunity as applying to "*all* civil penalties assessed pursuant to state air pollution law," including coercive sanctions as well as "punitive penalties." *See, e.g.*, *N.C. Dep't of Envt'l Quality v. United States*, 7 F.4th 160, 171 (4th Cir. 2021) (emphasis in original).

Second, the Clean Air Act's waiver of sovereign immunity requires federal agencies to comply with "any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement whatsoever)." 42 U.S.C. § 7418(a). In order to comply with all substantive and procedural legal requirements, an agency will inherently incur compliance costs, just as any nongovernmental entity would. This statutory provision would be rendered meaningless by the U.S. Department of Energy's interpretation that it does not extend to any financial obligations other than administrative fees.

By expressly requiring compliance with all substantive and procedural requirements related to the control and abatement of air pollution, Congress understood that federal agencies would incur compliance costs. Indeed, Section 118 of the Clean Air Act goes on to indicate that the executive branch has an obligation to seek funding from Congress as necessary to comply with such requirements: subsection (b) prohibits the President of the United States from exempting a federal agency from specific air pollution requirements "due to lack of appropriation unless the President shall have specifically requested such appropriation as part of the budgetary process and the Congress shall have failed to make available such requested appropriation." Again, this statutory provision would be rendered meaningless by the U.S. Department of Energy's interpretation that the waiver of sovereign immunity does not extend to any financial obligations other than administrative fees.

In addition, Executive Order 12088 ("Federal Compliance with Pollution Control Standards") provides that "[t]he head of each Executive agency shall ensure that sufficient funds for compliance with applicable pollution control standards are requested in the agency budget."

This demonstrates that the executive branch itself recognizes that federal agencies will incur compliance costs as a result of waiving sovereign immunity from environmental laws, and that adequate funding must be requested by those agencies in furtherance of such compliance.

The cost of obtaining an allowance under the Climate Commitment Act—whether at auction or on the secondary market—is nothing more than a cost of compliance. The price of an allowance is not set by Ecology or any other governmental agency; it is determined by market forces that allow the price to fluctuate as necessary to optimize the reduction of emissions by those who can do so most cost effectively. The purpose of a cap-and-trade style program like the Climate Commitment Act is to achieve a certain level of emissions reductions while minimizing the costs of compliance in the aggregate, by incentivizing entities who can reduce or offset their emissions most cost-effectively to do so and allowing those who cannot to demonstrate compliance through the purchase of allowances and offset credits. Under this market-based regulatory framework, the cost of obtaining an allowance is no different from other types of compliance costs, such as the cost of installing and operating pollution control equipment or investing in energy efficiency upgrades. Because the Clean Air Act's expansive waiver of sovereign immunity includes the costs of compliance associated with all substantive and procedural requirements, it also extends to a federal agency's obligation to obtain and transfer compliance instruments such as allowances to account for their actual emissions as required by the Climate Commitment Act.

Summary: Hanford comments that USDOE is exploring questions related to whether the fees required might be taxes, and whether Congressional action would be necessary to unambiguously waive sovereign immunity and authorize payment of CCA fees, which could be viewed as an unauthorized tax.

Response: As a threshold matter, it is unclear what the term "CCA fees" is intended to reference. To the extent this is intended as a reference to the greenhouse gas reporting fee authorized by RCW 70A.15.2200, which was amended by Section 33 of the Climate Commitment Act [Laws of 2021, ch. 316, § 33], that fee is established in WAC 173-441 and is thus beyond the scope of the WAC 173-446 rulemaking. However, Ecology would like to note that the federal government's waiver of sovereign immunity in Section 118 of the federal Clean Air Act extends to a federal agency's obligation to pay this greenhouse gas reporting fee. RCW 70A.15.2200(2) provides that "the amount of the fee shall only be to compensate for the costs of administering such registration or reporting program." It is indisputable that this reporting fee is a "fee or charge imposed by any State or local agency to defray the costs of its air pollution regulatory program" within the meaning of 42 U.S.C. § 7418(a).

To the extent the phrase "CCA fees" is intended to reference the cost of an allowance purchased by a covered entity at auction or on the secondary market, Ecology disagrees that such costs of compliance are either fees or taxes. In particular, the Climate Commitment Act does not impose a state tax on the federal government.

First, the Climate Commitment Act was one of many climate initiatives considered by the legislature in 2021. Four different bills were introduced in the 2021 legislative session proposing to establish a "carbon pollution tax." HB 1513, HB 1534, HB 1577, and SB 5373 each would have established a carbon tax that would begin at a rate of $25 per metric ton of greenhouse gas

emissions and increase by five percent each year. None of these four bills proposing a carbon tax passed out of committee. Instead, the 2021 legislature opted to establish a cap-and-trade style program *instead of* a carbon tax.

Second, the Washington State Attorney General's Office is responsible for reviewing all legislation enacted each year and determining which bills constitute "legislative action raising taxes." RCW 43.135.041(2). If not already subject to a referendum petition, any bills identified by the Attorney General as "tax legislation" must be "placed on the next general election ballot" for an advisory vote. RCW 43.135.041(1)–(2). The Attorney General's Office internal review process involves assigning two Deputy Solicitors General to review legislation and make an initial determination about whether it raises taxes. In making the initial determination, the Deputy Solicitors General consult with the Office of Financial Management, an Assistant Attorney General who represents the Department of Revenue, and other Assistant Attorneys General with relevant subject matter expertise. The final determination is made by the Solicitor General. The Climate Commitment Act was enacted in 2021, and the Attorney General, through the Solicitor General, did not identify it as tax legislation requiring an advisory vote in the 2021 general election. The Act was amended in 2022, and again it was not identified as tax legislation requiring an advisory vote in the 2022 general election.

Third, the applicable standard for determining whether a particular bill constitutes "tax legislation" is set forth in *King County v. King County Water Districts*, 194 Wn.2d 830, 843 (2019) and *City of Snoqualmie v. King County Executive Dow Constantine*, 187 Wn.2d 289, 301 (2016). Whether a cost imposed by legislation constitutes a tax is determined by three factors: (1) the purpose of the cost, (2) where the money raised is spent, and (3) whether people pay the cost in exchange for a service or something of value.

Under the first factor, the Washington State Supreme Court has found that a cost is likely not a tax if the purpose of imposing the cost is to "alleviate a burden to which [the payors] contribute." *Snoqualmie*, 187 Wn.2d at 301. The primary purpose of the Climate Commitment Act is to ensure that the greenhouse gas emissions limits set forth in RCW 70A.45.020 are achieved. Virtually every aspect of the Act's cap-and-invest program was designed to reduce and mitigate the burdens of greenhouse gas emissions attributable to the regulated entities who must obtain allowances to cover their emissions.

The legislature's choice of a cap-and-trade style program rather than a carbon tax represents a deliberate policy preference for a regulatory framework focused primarily on emissions reductions rather than a program focused on raising revenue. Although there are many important differences between a cap-and-trade style program and a carbon tax, the principal distinction is the mechanism relied upon to drive emissions reductions. A carbon tax relies on the assessment of a specific amount of money to be collected for each unit of greenhouse gas emitted in order to send a market signal to incentivize some emitters to reduce their emissions in order to minimize their tax liability. A carbon tax may or may not lead to sufficient emissions reductions, signaling that the control of emissions is not the primary purpose of such a program.

In contrast, a cap-and-trade style program like the Climate Commitment Act relies on the regulatory imposition of a cap on allowable emissions to ensure that emissions are reduced by

a specific amount, and allows the cost of allowances to fluctuate in response to market forces as a way of optimizing the way in which such reductions are achieved—i.e., by those who can reduce their emissions most cost effectively. The primary purpose of a cap-and-trade style program is to control emissions, with a secondary purpose of achieving that objective in the most cost-effective way for regulated entities. The revenues generated by the sale of allowances at auction are a collateral benefit, enabling the state to invest some of the costs incurred by regulated entities into projects and programs that are designed to alleviate the burdens imposed on society by those entities' emissions.

The second factor—where the money raised is spent—also weighs strongly against the conclusion that the cost of an allowance is a tax, as the revenues generated by auctioning allowances are directed to specific climate-related accounts in the state treasury and not to the general fund. RCW 70A.65.100(7) requires the deposit of auction revenues into the "carbon emissions reduction account," the "climate investment account," and the "air quality and health disparities improvement account." RCW 70A.65.250 requires the funds deposited into the climate investment account to be used to cover program costs and then requires the deposit of excess funds into the "climate commitment account" and the "natural climate solutions account."

These dedicated accounts can only be used to fund projects or programs that further reduce greenhouse gas emissions or mitigate the negative impacts of climate change on the state's communities and ecosystems. For example, expenditures from the carbon emissions reduction account "may only be made for transportation carbon emission reducing purposes," RCW 70A.65.240, and expenditures from the air quality and health disparities account, the climate commitment account, and the natural climate solutions account "must result in long-term environmental benefits and increased resilience to the impacts of climate change." RCW 70A.65.260(2), .270(3), and .280(2).

Under the third factor, the Washington State Supreme Court has found that a cost is likely not a tax if it is imposed in exchange for something of value. *King County*, 194 Wn.2d at 844. Under the Climate Commitment Act, parties will purchase allowances at auction in order to directly obtain something of value. Covered and opt-in entities who purchase allowances at auction will generally do so because they have incurred a compliance obligation as a result of their emissions and have made a business decision that the purchase of allowances at auction is the most cost-effective way for them to satisfy that obligation. They also receive a valuable privilege in exchange, as each allowance represents "an authorization to emit up to one metric ton of carbon dioxide equivalent." RCW 70A.65.010(1). Other parties may choose to purchase allowances at auction in order to re-sell them on the secondary market or to retire them to provide environmental benefits. *See* RCW 70A.65.090(7)(b), (8).

In either case, parties will purchase allowances at auction in order to obtain something of value in exchange. Otherwise, there would be no need for the statute to provide for the sale or trading of allowances on the secondary market. The cost of an allowance sold at auction is set not by the State but by market forces, through a bidding process by which auction participants identify what they are willing to pay in exchange for an allowance—in other words, regulated entities and other auction participants determine the value of allowances sold at each auction.

This further distinguishes the costs of obtaining allowances under the Climate Commitment Act from taxes.

Finally, the Attorney General's determination that the Climate Commitment Act does not impose a tax is consistent with the characterization of auction revenues from California's cap-and-trade program. In 2017, the California Court of Appeals held that the cost of allowances sold at auction did not bear the essential hallmarks of taxation. *California Chamber of Commerce v. State Air Resources Board*, 10 Cal.App.5th 604, 614 (2017). As in California, "there is no vested right to pollute" in Washington, and an allowance authorizing the emission of greenhouse gases "is a valuable privilege for which a cost may properly be imposed." *Calif. Chamber of Commerce*, 10 Cal. App. 5th at 725.

Summary: Hanford comments, that USDOE is exploring whether use of congressional appropriations is authorized for activities required under the CCA, such as purchasing allowances or sponsoring projects that produce offset credits.

Response: Because the Hanford Site's emissions do not currently exceed the threshold to trigger regulation as a covered entity, it will not be necessary for the U.S. Department of Energy to purchase allowances when the program begins in January 2023. In the event that the Hanford Site's emissions exceed the threshold in future years and the U.S. Department Energy becomes a covered entity, Ecology expects that the agency will comply with its legal obligation to "ensure that sufficient funds for compliance with applicable pollution control standards are requested in the agency budget" pursuant to Section 1-501 of Executive Order 12088 ("Federal Compliance with Pollution Control Standards").

Summary: Hanford cites to WAC 173-446-600, Compliance Obligations as supporting its argument that Hanford should be exempt from the CCA. The commenter notes "Subsection 6(d) allows Ecology to reduce a covered entity's compliance obligations with offset credits, but those credits are capped at specified percentages or limits. The subsection, however, allows Ecology to reduce the limits, i.e., expand offset credits, if a covered entity is likely to 'violate any permits required by any federal, state, or local air pollution control agency where the violation may result in any increase in emissions.'" This provision recognizes the possibility that there may be competing environmental obligations, which Ecology must weigh. The commenter believes that is most certainly the case at Hanford.

Response: Ecology understands that this reference to WAC 173-446-600 in Hanford's comment is intended to support the U.S. Department of Energy's argument for why it should be explicitly exempt from the CCA. As described above, the U.S. Department of Energy will likely not be a covered entity when the program begins in January 2023 because the Hanford Site's covered emissions do not exceed the statutory threshold. However, Ecology would like to correct an apparent misunderstanding of the proposed rule language that is reflected in this part of the comment letter.

First, the cited rule provision does *not* allow Ecology "to reduce a covered entity's compliance obligations with offset credits." Rather, it allows covered entities and opt-in entities to use offset credits to *satisfy* a portion of their compliance obligation, consistent with the statute.

Like an allowance, an offset credit is a type of compliance instrument that is equal to one metric ton of carbon dioxide equivalent. *See* RCW 70A.65.010(18).

Second, the cited rule provision does *not* allow Ecology to "expand offset credits." Rather, it implements the statutory provision in RCW 70A.65.170(3), which establishes percentage limits on the amount of offset credits that a covered or opt-in entity may use to satisfy its compliance obligation. RCW 70A.65.170(3)(d) authorizes Ecology to "reduce" those limits for a specific covered or opt-in entity based on specified criteria. The effect of reducing these limits is to require that a higher percentage of the entity's compliance obligation be met by obtaining allowances, either at auction or on the secondary market. It thus shrinks rather than "expands" the entity's ability to use offset credits to comply with the law; it does not reduce the entity's compliance obligation as the U.S. Department of Energy's comment suggests.

Commenters: OTH-7 (City of Enumclaw); O-15 (City of Ellensburg); I-131 (Wright); I-134 (LaFleur)

Comment: Commenters, including the City of Enumclaw, ask that the city's natural gas utility be exempted from the program. Enumclaw believes it is not a covered entity because its emissions from 2015 through 2019 did not exceed the annual 25,000 MTCO2e threshold. Enumclaw believes RCW 70A.65.080(1) excludes GHG reporters that reported emissions below the 25,000 MTCO2e threshold for 2015 through 2019. Enumclaw acknowledges that its emissions since 2019 have been above the annual 25,000 MTCO2e threshold.

Response: The Climate Commitment Act covers all listed categories of parties with emissions over 25,000 metric tons of CO2e. Under the statute, this is the case whether a party has emissions over the 25,000 emissions threshold in the 2015-2019 reporting period or at a later date, as appears to be the case for Enumclaw.

The 2015-2019 period is specifically called out in the statute because the 2015 through 2019 time period is the key reference period for establishment of the baseline emissions upon which much of the program is built. RCW 70A.65.070(1)(a); (4).[4] Therefore, the CCA's section on program coverage, RCW 70A.65.080, starts in its first subsection by expressly covering all parties whose GHG emissions are part of the 2015 -2019 program baseline if their emissions meet the 25,000 Mt CO2e annual emissions threshold.[5] Next, subsection 5 sweeps in entities that begin or modify operations after the start of the program in 2023. And finally, subsection 6 sweeps in entities that were active in 2015-2019, but were not required to report emissions for that period. Subsections 5 and 6 also tie back to the 25,000 ton threshold as the key emissions threshold for coverage. These two subsections, complement subsection 1 to ensure that parties meeting the annual 25,000 MTCO2e threshold, but whose emissions are not included in

[4] The 2015-2019 time period reflects GHG emissions prior to the reductions in emissions from industrial operations and motor vehicle operations that occurred due to Covid.

[5] The program baseline is based on greenhouse gas emissions in the state during 2015 through 2019. RCW 70A.65.070(1)(a). RCW70A.65.070(4) states, "data reported to the department under RCW70A.15.2200 or provided as required under this chapter for **2015 through 2019** is deemed sufficient for the purpose of adopting annual allowance budgets and **serving as the baseline** by which covered entities demonstrate compliance under the first compliance period of the program." (emphasis added).

the baseline, are also covered entities under the CCA. Together they encompass the whole universe of covered parties whether they reported emissions in 2015-2019 or not.

Despite the plain language and structure of the statute, the commenter appears to argue that facilities that reported emissions in 2015-2019 that were under the 25,000 ton threshold at that time, but then exceeded the 25,000 ton threshold in a subsequent year are exempt from the program. This argument lacks support in the detailed language and structure of the statute, or in the purpose of the Act to provide comprehensive coverage of large emitters of greenhouse gas throughout Washington State.

RCW 70A.65.080(1) provides that where a person reported emissions in 2015-2019 and also owns or operates a facility that has emissions over 25,000, then they would be brought into the program. The statute provides the following:

> *(1) A person is a covered entity as of the beginning of the first compliance period and all subsequent compliance periods if the person reported emissions under RCW 70A.15.2200 for any calendar year from 2015 through 2019,*
>
> *or if additional data provided as required by this chapter indicates that emissions for any calendar year from 2015 through 2019 equaled or exceeded any of the following thresholds,*
>
> *or if the person is a first jurisdictional deliverer and imports electricity into the state during the compliance period:*
>
> *(a) Where the person owns or operates a facility and the facility's emissions equal or exceed 25,000 metric tons of carbon dioxide equivalent*

RCW 70A.65.080(1). The first sentence of subsection (1) sets out a parallel construction of three independent clauses linked in series by commas and the word "or". After the first clause beginning "A person is a covered entity… and ending with "for any calendar year from 2015 through 2019," the second clause of subsection (1), beginning after the comma, is set aside as an independent clause of its own and is introduced with the word "or." This indicates that the second clause (about data from 2015-2019 equaling or exceeding the thresholds) is independent from the first clause. This is further reinforced by the rest of the sentence structure which includes another comma and "or" introducing a third clause related to first jurisdictional deliverers. Thus, the sentence is constructed in a classic parallel construction of three independent clauses linked in series by commas and the word "or". Given this structure, each clause is independent and we can ascertain the meaning and function of the first clause alone by cutting out and skipping over the second and third clauses, yielding the following:

> *(1) A person is a covered entity as of the beginning of the first compliance period and all subsequent compliance periods if the person reported emissions under RCW 70A.15.2200 for any calendar year from 2015 through 2019 . . .*
>
> *(a) Where the person owns or operates a facility and the facility's emissions equal or exceed 25,000 metric tons of carbon dioxide equivalent*

RCW 70A.65.080(1). After parsing through this statutory language and its grammatical construction, the statutory language is clear that coverage under the first clause is triggered where a person: (1) "reported emissions under RCW 70A.15.2200 for any calendar year from 2015 through 2019" and (2) "and the facility's emissions equal or exceed 25,000 metric tons." Further, it is clear that the 25,000 tons threshold is not limited to the 2015-2019 period, but rather the facility simply has to have filed emissions reports during that time period and then have emissions that meet the 25,000 threshold. There is no additional requirement in the plain language of the statute that the 25,000 metric tons of CO2e be for the 2015-2019 period. Indeed, the tenses of the verbs support this analysis. A person must *have reported* emissions (past tense) during the 2015-2019 period, but emissions must "*equal or exceed*" (present tense) the 25,000 MTCO2e threshold.

This is both the unambiguous meaning of the plain language of the statute and also a meaning that is directly in line with the purpose and goals of the ACT to comprehensively cover large sources of greenhouse gas over a certain threshold in order to help the state achieve its statutory greenhouse gas reduction limits. RCW 70A.65.005 (2), RCW 70A.65.060 (1); *See* RCW 70A.45.020. In addition, this understanding of subsection 1 dovetails well with subsections (5) and (6) which sweep in other entities with emissions over the 25,000 ton threshold that did not report emission in the 2015-2019 period. These provisions ensure that, other than specific express exemptions for certain industries, large emitters are covered under the Act. *See* RCW 70A.65.080 (7)(listing exemptions).

Taken together, the three subsections, RCW 70A.65.080(1), (5) and (6) ensure that the program covers: (1) those emission sources that reported between 2015 and 2019 and have emissions above the threshold, (2) those emission sources that begin or modify operations after January 1, 2023 and have emissions above the threshold, and (3) those emission sources that were in operation between 2015 and 2019 but did not have sufficient emissions to report, when and if they ever do have emissions greater than the threshold. With these three provisions, the legislature designed a program that covers all facilities, suppliers, and first jurisdictional deliverers of electricity with emissions above the 25,000 MTCO2e per year threshold.

Comment: If they cannot be excluded altogether from the program, the Cities of Enumclaw and Ellensburg each ask for special treatment as small nonprofit municipal suppliers of natural gas. They ask Ecology to provide a less burdensome compliance obligation for them, and to provide no cost allowances to cover 100 percent of the emissions associated with the sale of their natural gas for the first two compliance periods.

Response: In their roles as municipal suppliers of natural gas, the City of Enumclaw and the City of Ellensburg are in the same position as other suppliers of natural gas. The challenges the Cities face (increased costs for customers, the desirability of time to develop pathways to decarbonization) are the same challenges faced by the other suppliers of natural gas in the state. There is no basis for Ecology to treat the Cities differently from other natural gas utilities. In addition, the Climate Commitment Act requires the number of no cost allowances distributed to natural gas utilities to "decline proportionally with the cap." RCW 70A.65.130(1)(a). Ecology could not provide no cost allowances to natural gas utilities to cover 100 percent of their emissions for the first two compliance periods unless the cap were to remain at 100 percent of

the baseline for the first two compliance periods. The statute is clear that the cap must decline at a rate that will ensure that the GHG limits in RCW 70A.45.020 for 2030, 2040 and 2050 will be met. In order to meet those limits, Ecology must decrease the cap every year, in the manner described in the proposed rule. The statute, however, is also clear that natural gas utilities, including the Cities of Enumclaw and Ellensburg, will receive no cost allowances to mitigate the impact of the program on their customers.

Comment: The City of Enumclaw comments that there is no evidence that Ecology has consulted with the UTC as the statute requires. The City of Ellensburg and the City of Enumclaw ask Ecology to meet with the governing authority of the municipal natural gas system and share with them the findings of the consultation between Ecology and the UTC.

Response: Ecology has been meeting with the Utilities and Transportation Commission (UTC), and with the Energy Policy Office at the Department of Commerce, on both a formal and informal basis since the rule writing process began in the fall of 2021. Formal meetings have occurred roughly monthly in the early stage of the rule process, and have accelerated as the final rule has taken shape. Stakeholders engaged in electric utility and natural gas utility issues have also been meeting with staff from all three agencies. Draft language for the allowance allocation and baseline sections of the rule was also discussed in advance with these agencies in both the informal and formal stages of the rulemaking. The helpful suggestions and technical assistance from these agencies is very much appreciated by Ecology, and the rule language has been substantially improved thanks to the assistance of these agencies.

Comment: The City of Ellensburg notes that the proposed rules fail to provide clarification on the treatment of no cost allowances when weather requires greater natural gas use for heating, and asks Ecology to provide a true-up mechanism to allow for the difference between forecasted natural gas use and actual natural gas use.

Response: The commenter confuses the requirements for distributing no cost allowances to electric utilities with the requirements for distributing no cost allowances to natural gas utilities. The distribution of no cost allowances to natural gas utilities is based solely on the cap decline rate, and, unlike distributions to electric utilities, is not based on forecasts. RCW 70A.65.030(1)(a). Therefore, there is no true-up process involved.

Commenters: OTH-5 (Municipality); I-42 (Callen)

Summary: The City of Spokane and Logan Callen comment that the proposed rule treats the City's waste to energy facility as an electrical power generating facility when it should be treated as a landfill.

Response: The proposed rule does not treat the City's waste to energy facility as an electrical power generating facility. Rather, the proposed rule treats the waste-to-energy facility as a waste-to-energy facility and notes (*see, e.g.*, WAC 173-446-030(1)(a)) that waste-to-energy facilities are not yet covered entities under the Climate Commitment Act - they come into the program at the beginning of the second compliance period in 2027. While the Spokane waste-to-energy facility is required to report its GHG emissions to Ecology under WAC 173-441, it will not be a covered entity in the cap-and-invest program until 2027.

Summary: The City of Spokane and Logan Callen ask Ecology to treat the Spokane waste to energy facility as a landfill, and provide similar treatment for all municipal solid waste management facilities across the state (i.e., treat waste-to-energy operations similarly to landfills).

Response: Ecology's treatment of landfills and waste-to-energy facilities under the Climate Commitment Act (CCA) has been set in statute by the legislature. RCW 70A.65.080(2) and (3) require waste to energy facilities to be treated differently from landfills. Ecology's rule cannot change or conflict with these statutory requirements.

Summary: Spokane asks Ecology to factor in an accounting of avoided emissions associated with waste-to-energy operations when determining the applicability of the CCA to waste-to-energy facilities. Spokane also asks Ecology to provide credits that account for lifecycle emission reductions at waste-to-energy operations.

Response: Under the CCA, the determination of whether an emitter of GHGs is in the program or not depends on whether the emitter emits more than 25,000 MTCO2e of covered emissions in a given year. There is no provision in the CCA for evaluating avoided GHG emissions attributable to a particular facility's operations. Likewise, there is no provision for evaluating lifecycle emission reductions at a particular facility.

Summary: Spokane asks Ecology to provide equitable relief from the unfair burdens arising from the proposed rule placed on the citizens of Spokane - like the relief that is provided to ratepaying customers of electric and natural gas utilities.

Response: Spokane is correct that the CCA (and consequently Ecology's rule) provides to electric utilities relief from the cost burden of the program in the form of no cost allowances. To the extent the City of Spokane acts as a utility for the electricity it generates, the City is eligible for no cost allowances. If the City does not act as a utility, the utilities that do distribute the electricity generated by the waste -to-energy operation will receive no cost allowances to cover the cost burden for their customers - including the citizens of Spokane. From the information provided, it appears that the City sells the electricity generated by the waste to energy facility to Avista, which is a utility and is eligible to receive no cost allowances.

III. General Comments on WAC 173-446 Rulemaking

1. Request for Comment Period Extension

Commenter: O-1 (Association Washington Business)

Summary: The Association of Washington Business requested a 15-day extension to the comment period.

Response: Ecology extended the comment period by the requested 15 days.

2. Linkage

Commenter: I-130 (Environmental Defense Fund, Belcher); O-10 (Washington Public Ports Association); B-11 (HF Sinclair); O-19 (The Northwest Seaport Alliance, Port of Tacoma, Port of

Seattle); O-22 (Joint Utilities: Avista, NRU, PacifiCorp, PGP, PSE, WPUDA); O-29 (Environmental Defense Fund); O-40 (International Emissions Trading Association)

Summary: A number of commenters including the Washington Public Ports Association, support linkage.

Response: Ecology has designed the rule as much as possible to support linkage. Additionally, Ecology has contracted with WCI Inc., which operates the California/Québec auction platform, to operate Washington's auctions platform, which will help facilitate any possible future linkage.

Commenter: O-33 (Climate Solutions); I-318 (Gould)

Summary: Climate Solutions comments that Ecology has not sufficiently explained what criteria and process it will apply when pursuing linkage, and how these criteria align with the requirements in statute. Tim Gould requests Ecology address the risks of linkage in this rulemaking.

Response: The requirements for linkage are specified in the Climate Commitment Act (RCW 70A.65.210 and RCW 70A.65.060(2)). As those provisions state, Ecology may not link with another GHG trading program unless Ecology makes a number of findings and engages in a public process. If and when Ecology moves forward with linking to another program, Ecology will complete the analyses required by the statute, determine whether or not the required findings can be made, and provide the required public process. Because the linkage process is laid out in statute, it is not addressed in this rule.

Commenter: Form letter # 4

Summary: Commenters suggest that the rule needs to address the impact of linkage on overburdened communities.

Response: As required by the CCA, Ecology will be addressing the impact of linkage on overburdened communities prior to linking with another GHG trading program. As required by the Climate Commitment Act, prior to linkage, Ecology will conduct an environmental justice assessment (RCW 70A.65.060(3)), and ensure that the linking jurisdiction has provisions to ensure the distribution of benefits from the program to vulnerable populations and overburdened communities (RCW 70A.65.210(3)(b)). In addition, Ecology cannot link with another program unless the agency is able to determine that linkage will not yield net adverse impacts to either Ecology's or any linking jurisdiction's highly impacted communities or analogous communities in the aggregate, relative to the baseline level of emissions (RCW 70A.65.210(3)(c)). Finally, the Environmental Justice Council is specifically tasked with providing recommendations to Ecology prior to linkage, and prior to linkage, Ecology must hold a public process ensuring that all members of the public have an opportunity to weigh in on Ecology's determinations. Because these processes are laid out in statute, Ecology has not included them in this rule.

Commenter: O-23 (Washington Environmental Council); OTH-9 (Wildlife Forever Fund)

Summary: Commenters ask that Ecology, when addressing linkage, take into consideration overburdened communities, engage with the Environmental Justice Council, uphold existing

requirements for meaningful tribal consultation, require adequate information, and make that information accessible.

Response: As required by the process for linkage spelled out in the Climate Commitment Act, when addressing linkage, Ecology will take into consideration overburdened communities, engage with the Environmental Justice Council, and provide for engagement with Tribes. Information gathered in performing the required analyses will be made available to the public as part of the required public process.

Commenter: T-3 (The Tulalip Tribes)

Summary: The Tulalip Tribes comment that there must be meaningful consultation with Tribes before linkage.

Response: Ecology agrees that there should be meaningful consultation with tribes prior to linkage. However, Ecology is not establishing a tribal consultation process in this rule. Ecology will work with Tribes on an acceptable consultation process and is willing to engage at any time in government to government consultations on any aspect the program, including issues related to linkage.

3. Future Review of the Program

Commenters: T-6 (Makah Tribal Council); T-3 (The Tulalip Tribes); A-4 (Ports of Longview, Kalama, Woodland, and Vancouver); O-29 (Environmental Defense Fund); O-20 (League of Women Voters of Washington); I-49 (Phillips); I-53 (Rehrmann); I-155 (Sweeney)

Summary: The Makah Tribal Council notes, after government to government consultation with Ecology, the strict deadline Ecology is required to meet to adopt this rule, and that Ecology is not able to make all the improvements to the rule that might be called for by that deadline. Therefore they ask Ecology to make adaptive management provisions explicit in the rule, including a program assessment at least every 2 years. The Ports of Longview, Kalama, Woodland, and Vancouver ask Ecology to build an adaptive management process into the proposed program and to include the ports in that process. The Environmental Defense Fund asks Ecology to provide more detail on program review processes for 2027 and after. The League of Women Voters states that the adopted rules should not hinder adjustments needed over time. One commenter asks Ecology to provide adequate information to the public to guide adaptations to new conditions. Another commenter asks Ecology to provide flexibility to make adjustments in the program.

Response: Ecology chose a narrow scope for this rulemaking in order to be able to allocate allowances and have the auctions up and running in accordance with the legislative deadlines, thoroughly anticipating subsequent rulemaking phases to address the additional components of the law. Because we anticipate and are planning for future rulemakings – indeed are required to do so according to the statute – we will have the opportunity to add provisions or make adjustments if appropriate.

The legislature set a number of program parameters in the CCA statute itself (sectors of the economy included in the program; program threshold; sectors that receive no cost allowances; etc.). These parameters cannot be changed without legislative action. The CCA requires Ecology

to set other parameters by rule (auction price parameters; holding limits, general limits on offset use, etc.). Ecology anticipates that further rulemaking will occur as the program develops. The legislature did leave some areas of the program that can be adjusted without rulemaking. One provision authorizes Ecology to remove and retire allowances if necessary to meet the limits in RCW 70A.45.020. Ecology has included that provision in the rule (WAC 173-446-260(2)), and added a public process to occur when Ecology anticipates making that determination. Another authorizes Ecology, in consultation with the Environmental Justice Council, to reduce the number of offset credits a given covered or opt-in entity may use to meet a compliance obligation based on that entity's impacts on overburdened communities. RCW 70A.65.170(3)(d). That provision is included in the rule (WAC 173-446-600(6)(d).

So while Ecology has not built adaptive management provisions explicitly into the rule, we appreciate that there may be provisions not addressed during this rulemaking and anticipate they will be part of the upcoming phases.

The Climate Commitment Act includes extensive program review requirements, with reports of various kinds required by 2026, 2027, 2029, 2030, 2034, 2035, 2038, 2042, 2046, and 2050,[6] in addition to the statewide inventory of GHG emissions required every even-numbered year. RCW 70A.45.020(2). These reports, which will be available to the public, will inform future rulemaking and possible future legislative changes to the program. In addition, throughout the life of the program, Ecology will be monitoring the market to ensure the program runs smoothly.

4. Implementation

Commenter: O-42 (Washington Trucking Associations)

Summary: The Washington Trucking Associations note that increased fuel costs today threaten the ability to invest in the new truck technologies of tomorrow. They have serious concerns over the projected added cost to fuel that will accompany the implementation of the cap and invest program. They therefore ask Ecology to delay the applicability of the cap and invest program to provide an opportunity for a rational progression toward a carbon neutral transportation system.

Response: The legislature requires the cap-and-invest program to be up and running by January 1, 2023. RCW 70A.65.070(1)(a). Ecology has found no provision in the statute (and the commenter has pointed to none) for delaying the implementation of the program for any

[6] RCW 70A.65.060(5) by Dec 1, 2027 and at least every 4 years thereafter, ECY submit report to leg - comprehensive review or the program. RCW 70A.65.070(3) ECY to evaluate the program by Dec 1, 2027 and again by Dec 31, 2035 including whether program is meeting 2030 and 2040 limits. If necessary, ECY can adjust annual allowance budgets to get there. RCW 70A.65.110(4)(a) By Dec 1, 2026, ECY to provide report to leg w/alternative methods for determining the amount and schedule of allowances to EITEs from Jan 1 2035 through Jan 1, 2050. RCW 70A.65.290(1) By Dec 1, 2029 the JLARC must analyze the impacts of the program and submit a report to leg. RCW 70A.45.020(2) requires Ecology to provide a statewide inventory of GHG emissions every even-numbered year (every 2 years).

particular sector of the economy. On the contrary, the statute repeats several times that the program must ensure that covered entities meet their share of the emission reductions required to meet the 2030, 2040, and 2050 limits in RCW 70A.45.020. *See, e.g.*, RCW 70A.65.070(2). The 2030 emission limits cannot be achieved if Ecology delays implementation of the program as requested. Therefore, Ecology is not changing the rule in response to this comment.

Commenter: B-18 (CenTrio Energy)

Summary: CenTrio points out that it is in a unique position as a supplier of energy, not through supplying electricity or fuel for combustion, but through combusting fuel itself and providing the resulting steam for heating, humidification, and sterilization. CenTrio asks Ecology to give special regulatory treatment to district energy facilities, as recognized by the legislature in HB 1682 (2022), which, had it passed, would have delayed the entrance of district energy facilities into the program until the second compliance period. CenTrio is working to decarbonize its operations, but this will take some time. CenTrio asks Ecology to afford CenTrio the time and opportunity to marshal investments necessary for transforming to a low-carbon future.

Response: Ecology agrees that CenTrio is in an unusual position. However, given that HB 1682 did not pass the legislature, at this time, Ecology has no basis for giving CenTrio the time it asks for by delaying its compliance obligations under the Climate Commitment Act.

5. Preliminary Regulatory Analyses and Vivid Report

Commenter: I-10 (Seeley)

Summary: The commenter requests a comprehensive analysis on the impacts of the program on low-income households.

Response: Ecology has conducted the regulatory analyses as required by the Administrative Procedures Act. The Final Regulatory Analyses (FRA) provides information on the costs and benefits of the program. The FRA can be found on our website at: https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-446

Commenter: I-286 (Sappington)

Summary: The commenter is concerned that the methodology for setting the auction floor, ceiling, and APCR prices decouples the auction floor and ceiling prices from pollution costs by not factoring in increasing costs of GHG pollution per ton.

Response: The CCA's carbon market is not intended to set a price for or tax emissions based on the costs of greenhouse gas pollution. The allowance price reflects marginal abatement costs, and emitters whose abatement costs are below the allowance price will choose to reduce emissions rather than purchase allowances. The externalities imposed in the form of social costs of GHG emissions that continue to be emitted would occur under the analytic baseline as well as under the rule, and so are not reflected in the costs or benefits of the rule.

We agree that understanding and methodology for calculating the social cost of carbon continues to evolve, and that price controls in the rule are not tied to the cost of carbon, which may or may not exceed the allowance price in any given year. It is also important to consider

the role of banking in the market, as it similarly decouples compliance costs in any given year from the cost of emissions reductions in that year. Because of the ability to bank credits and use them later, when emissions mitigation costs are potentially higher, the rule encourages more emissions reductions in later years that might not be efficiently achieved otherwise.

Note also that when discounted to current real dollars at its relevant discount rate – in order to make it comparable to the real current dollar estimates of allowance prices and price controls – the real current-dollar social cost of carbon decreases over time. In nominal terms, viewed from the perspective of a given year, this means even if allowance prices fall to the price floor, they do not necessarily fall below the social cost of carbon. We agree, however, as discussed in our analysis, that the quantified social cost of carbon is not all-encompassing, which does increase the likelihood of the full value exceeding allowance price.

Commenter: A-4 (Ports of Longview, Kalama, Woodland, and Vancouver)

Summary: The commenter is concerned with the inclusion of GHG reduction programs that have not yet been finalized by rulemaking in the baseline assumptions. Additionally, the commenter believes the regulatory analyses should be updated to reflect current inflation and status of the economy.

Response: Baseline assumptions

We agree that the realistic baseline for comparison is complex in the context of multiple statutes and rulemakings, particularly with ongoing rulemakings currently in their comment period. We set our baseline for analysis based on the regulatory scenario that results from the degree of specific direction in statutes, and the resulting degree to which we could identify the impacts of those regulations implementing those statutes. We also considered the impacts of alternative baseline assumptions (see appendices to Final Regulatory Analyses), and determined there would not be a significant impact to allowance prices and our determinations. We have added information in the Final Regulatory Analyses (publication 22-02-047) for this rulemaking to further clarify our rationale for the analytic baseline and sensitivity to assumptions.

Response: Current economic disruptions, inflation

Our analyses present results in real current dollars, in order to reflect the real purchasing power of a dollar, regardless of the level of inflation. Moreover, we present modeled impacts to price levels as percentage impacts to also allow for consistent interpretation regardless of economic disruptions. We agree that pandemic recovery, market factors, and inflation have resulted in economic disruption. Our results are presented to allow for interpretation in the face of this disruption, nonetheless. To reflect the most current economic situation and data possible, we have used the newest version of the REMI model available (July/August 2022) in our Final Regulatory Analyses of the impacts of the rule on the state economy.

Commenter: O-21 (J.R. Simplot)

Summary: The commenter asserts that consumer demand for motor fuel is price inelastic, and transportation fuel suppliers will likely have to pay higher prices than projected in the regulatory analyses.

Response: We used a dynamic macroeconomic model to model impacts to consumer prices that reflect consumer choice in consumption decisions, which reflect degrees of elasticity or inelasticity for motor fuel demand. The model did not address producer and intermediary prices directly (though they may be inferred from direct compliance costs). The primary analysis in the Revised Preliminary Regulatory Analyses applied elasticities reflecting classification of fuel transporters as wholesalers, and also included analyses that assumed less elasticity in the transportation fuels market (applying elasticities reflecting classification of fuel transporters as producers; see appendices to Final Regulatory Analyses). We have added information differentiating producer price impacts and consumer price impacts in the Final Regulatory Analyses (publication 22-02-047) for this rulemaking, as well as clarified discussion of different elasticity assumptions.

Commenter: O-30 (Washington Policy Center)

Summary: The commenter noted that Table 10 has a typo in labeling: "Impacts to output," should read "Impacts to employment."

Response: Ecology appreciates the commenter pointing this out. We have corrected it in the Final Regulatory Analyses.

Summary: The commenter states the values used for the social cost of carbon in the regulatory analyses are incorrect, or incorrectly applied. Furthermore, the commenter believes the discount rate selection for the social cost of carbon was inappropriate for use in the cost/benefit analysis. The commenter also questions Ecology's reliance on a decision by a Minnesota administrative law judge for determining the discount rate.

Response: We adjusted the SCC values from 2020 to 2022 for inflation using the most current Consumer Price Index levels at time of calculation. This resulted in a multiplier of approximately 1.11 in March 2022. We have updated these values in the Final Regulatory Analyses, and have included discussion of the role of inflation in current dollar values.

While we continue to believe the 2.5 percent discount rate is the appropriate rate for the SCC (see discussion in the PRA, section 2.5.11), we have added discussion to the Final Regulatory Analyses on the sensitivity of results to different choices of discount rate and percentile.

There are two elements to our choice of SCC values that should not be conflated:

1. Global values (see PRA section 2.5.8.1). Here we use the Minnesota ruling as part of a list of arguments and rulings in favor of using the global value. We do not assert that Washington is bound by this ruling or the others.
2. Choice of discount rate (see PRA section 2.5.11) Here we explain the historic social rate of time preference used in Ecology analyses, and the resulting choice of the 2.5% discount rate SCC.

Nonetheless, we have added discussion to the Final Regulatory Analyses on the sensitivity of results to different choices of discount rate and percentile. We have also more clearly organized these two elements of the determination in the text, to reduce conflation of the two issues.

Summary: The commenter suggests Ecology should estimate cost and benefits within Washington, and not include costs from harms associated with global warming. The commenter notes that, while it is appropriate to consider global benefits, that does not justify failing to provide a comparison of costs and benefits for Washington state.

Response: Ecology considers costs and benefits of activities in Washington State over which proposed rules would have regulatory coverage, but does not necessarily limit either costs or benefits to entities within Washington borders. When applying unit values, we typically use Washington-specific values as they are frequently appropriate and applicable to the impacts of most rulemakings (e.g., local wages paid to local workers). Much as we consider potential benefits to individuals and businesses that would be harmed by the impacts of climate change on the global economy (see PRA section 2.5.8.1), we also consider potential costs to entities located outside Washington. These include compliance costs to entities located outside of Washington that do business, sell product, or transit through the state.

The Administrative Procedure Act (APA) does not limit the economic analysis of costs and benefits to the territorial borders of Washington State. See RCW 34.05.328(1)(d). In effect, we do estimate the global costs and benefits, though they are presented based on different points in the economic chain. While benefits related to the SCC are global, they count each of the subcategories of costs that make up the SCC once. Were we to extend the direct costs to their subsequent impacts inside and outside of Washington, those costs would not count in addition to the direct costs. These indirect and induced costs would reflect how direct costs are passed through and distributed to customers, other businesses, and the public. We do actually do this via our use of the REMI model to estimate broader impacts to the state economy to address questions posed by the Regulatory Fairness Act (Chapter 19.85 RCW) regarding price levels, revenues, and employment. This model couches the state economy in the rest of the world and accounts for interstate and international transactions.

The Administrative Procedure Act (RCW 34.05.328(1)(d)) directs Ecology, before adopting a rule, to, "Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented." This means we are required to take into account values even if we cannot quantify them. We have attempted to make this transparent in the PRA, as noted in your comment.

In response to your concerns about tying Washington-specific emissions to Washington-specific impacts, we have added discussion to the Final Regulatory Analyses reflecting to a greater degree the nuanced relationship between emissions in Washington, global emissions, and climate change impacts, and clarifying that the rule would not fully eliminate the impacts of climate change and associated costs.

Summary: The commenter requests further discussion on what impact to the cost of compliance the use of offsets plays in the program.

Response: We have added discussion to the Final Regulatory Analyses about the role and scope of offsets, including their potential for reducing costs and meeting statutory goals.

Commenter: O-35 (Clean and Prosperous Institute)

Summary: Commenter "requests the following: 1. Increased transparency of assumptions, as the projections of near-term allowance prices are tied to these assumptions, and those projections have been influential in program design; and 2. Provide a complete dataset for each scenario described, including annual purchases and retirements of all allowance types (no-cost, current vintage, future vintage, and APCR allowances). Relevant information based on program design would extend to the banked inventory, unsold allowances, and allowances transferred to the emissions containment reserve after going unsold for 24 months."

Response: On (1), below is additional information across two areas: overall calibration approach and details for the transport sector.

Overall calibration approach: The key determinants of modeled prices are effectively the supply assumptions (cap trajectory, APCR and price ceiling specifications) and demand assumptions (baseline activity levels for each sector through to 2050, techno-economics of key abatement options available for each sector, and the technology mix within each sector). The model draws on the demand assumptions to compute the resulting decarbonization trend in each sector given the incentives provided by the carbon price.

- Supply assumptions are provided by Ecology to align with the proposed rules for the Cap-and-Invest program.
- Demand assumptions are calibrated using latest available information, drawing on Washington-specific sources where relevant. In this process, the abatement costs and initial technology mix for each sector are drawn from a proprietary database of methods used to reduce greenhouse gas emissions. This database draws from the most recent technology reviews and extensive knowledge of developing world-wide carbon markets, technology, and industrial sectors, compiled by sector experts that regularly work with industry. The model gives special attention to Washington-specific variables such as fuel costs and sectoral growth patterns by validating the assumptions with a range of experts.

Transportation sector: The calibration for the sector is done by (a) anchoring base year emissions on the 2015-2019 historical baseline estimate from Ecology, (b) accounting for the impact of COVID-19 and subsequent recovery towards a new longer-term trend, and (c) allowing the model to compute the rate of EV uptake based on fundamental techno-economics.

(a) Base year reference: At the time of the analysis, there is no official data on either 2020 or 2021 emissions from the transport sector. The base year (2019) calibration for the transport sector is therefore anchored on the program baseline emissions (2015-2019 average of 30.07MMT CO2) for fuel suppliers.

(b) COVID impact and recovery: As there is no official data that measures the impact and rebound in transportation sector emissions, the model relied on 2019-2020 VMT data that indicated the initial severity of the COVID-shock. Beyond 2020, the model assumed a gradual recovery towards a new longer-term trend. The combination of these assumptions implies that the modeled transport activity in 2023 has changed relative to

the 2019 base year: 6% higher for light commercial vehicles, 3% lower in passenger vehicles, and 2% lower in trucks.

(c) EV uptake: Modeled emissions are also lower in 2023 (relative to the 2015-2019 baseline) and continue to decline due to the increased adoption of EVs. Here, the model conservatively does *not* assume any zero emissions vehicles regulation in Washington (akin to Advance Clean Cars II in California), even though this will occur under current Washington law (RCW 70A.30.010). The model does assume that EVs become increasingly economical and appealing to consumers and businesses. This results in a significant uptake of EVs in modeling results, which occurs across BAU emissions, Frontloading scenario and transport policy scenario.

The pattern of EV adoption from the model is the primary difference from CTAM v4.2, which assumed a lower uptake of EVs, representing about 20% of new sales by 2050. The model considers the latest evidence on vehicles sales, vehicle registration, and manufacturer announcements. The model is therefore calibrated to reflect such technology trends and reflects a reduced (thought still major) market share for internal combustion engine vehicles of new sales of passenger cars by 2035.

Nonetheless, there is significant uncertainty around EV adoption speed and its influence over modeling results. Therefore, sensitivity tests were conducted using alternative assumptions regarding the frictions against EV adoption, and the results were shared under section 3.4 in the report.

It is worth noting that the analysis has not accounted for reduction in demand caused by recent increases in gasoline prices, which as of August 2022 became 65% higher than the historical monthly average between 2015 and 2020. In the academic literature, there are a wide range of estimates for elasticities, as noted in the report. Given the scale of recent price increases, there is the potential for these price movements to be reflected in a significant demand response which would reduce demand for gasoline.

On (2), although the model distinguishes the *supply* of different allowance types (auctions, no-cost allowances, APCR allowances, price ceiling units, etc.), they are treated as fungible on the *demand* side, with the exception of price ceiling units (which are prioritized for compliance purposes if they are released). Therefore, purchases and retirements cannot be separated into different allowance types in any of the model scenarios.

Annual banking and banked inventory may be derived by taking the difference between emissions (corresponding annual compliance obligations) and allowance supply, which are available in the report. There are no unsold allowances because modeled allowance prices exceed the auction reserve price for all scenarios, and therefore no additional transfers to the emissions containment reserve.

Commenter: O-37 (Association of Washington Business)

Summary: The commenter believes the use of real dollar values ignores the impact of inflation on cost of the program. Additionally, the commenter is concerned the SBEIS does not accurately reflect the cost of the program to those businesses.

Response: Our analyses present results in real current dollars, in order to reflect the real purchasing power of a dollar, regardless of the level of inflation. This way, if a future year's nominal costs are of interest, the expected inflation rate can be applied to the real dollar estimates, keeping in mind that inflation raises the general price level across the entire economy – including goods, services, and wages. Moreover, we present modeled impacts to price levels, as percentage impacts to also allow for consistent interpretation regardless of economic disruptions. We agree that recent market factors have resulted in economic disruption. Our results are presented to allow for interpretation in the face of this disruption, nonetheless. To reflect the most current economic situation and data possible, we have also used the newest version of the REMI model available (July/August 2022) in our Final Regulatory Analyses of the impacts of the rule on the state economy.

The SBEIS focuses on direct compliance costs to small businesses, potential disproportionate impacts of those costs, and impacts to price levels. As discussed in section 7.4, Ecology is limited by the authorizing statute in our ability to reduce substantive requirements of the rule, many of which are set or mandated by the Climate Commitment Act. We agree that the increases to general price levels will impact all businesses, including small businesses. We have added discussion to this effect in the Final Regulatory Analyses for this rulemaking.

Commenter: O-39 (Alliance of Western Energy Consumers)

Summary: The commenter expressed concern regarding the publication timing of the regulatory analyses, and the amount of detail included in the analyses. The commenter notes that, "to date, Ecology has yet to release the math or analysis behind the Preliminary Regulatory Analyses, allowing covered entities and the public the opportunity to scrutinize the methodology and inputs into the analysis. This is unusual in significant rule making efforts by Ecology. The resulting work makes it difficult to scrutinize the work developed by consultants on behalf of Ecology. Instead, we have had to rely on a plain reading of the text and findings." Further, the commenter notes the allowance price used in the fiscal note when developing the legislation is considerably lower than the estimates used by Ecology in the analyses. The commenter notes, "it appears the program will cost significantly more to comply with than originally forecasted when it was being debated in the legislature, which will likely drive higher consumer costs. Given this likely outcome, it is all the more important that Ecology ensure the greatest flexibility for covered entities to comply with the underlying program."

Response: Per the Administrative Procedure Act (RCW 34.05), we published the Preliminary Regulatory Analyses and provided the document for comment during the public comment period. All input values from market analysis performed by Vivid Economics were presented in the appendices.

We agree that the modeling performed by Vivid Economics estimates allowance prices higher than those estimated in the fiscal note. This is a result of modeling specific to the final law, the Washington economy and covered party marginal costs of mitigating emissions and additional specificity of the rule concerning important parameters such as allowance availability and price controls. This modeling attempted to realistically model the prices in the program under various program designs that are consistent with the statute. By contrast, the fiscal note was developed before the program existed, because the program was being designed and built by

the Legislature concurrently as the bill moved through the legislative process. Also the fiscal note had a different purpose – to provide a conservative estimate as to what revenue could be counted on from the statute, rather than a realistic estimate of what revenue might ultimately come in under the dynamic forces of this program. The estimated allowance prices in the fiscal note were based on prices in the California market at that time, and future allowances prices were derived from California's best estimate of allowance prices into the next decade. In short, the fiscal note used the California data as a proxy for what a cap-and-trade program might provide to Washington in terms of revenues, serving as the best available data in lieu of having a specific program design to work from. The use of the California data was also appropriate because the Legislature clearly signaled an interest in linking with California in the long-term, in which case the allowance price would move to harmonize with the California price – an expected economic result which the Vivid modeling would later verify as a likely outcome under a linkage scenario.

We agree that flexibility can improve the efficiency of compliance and emissions reductions. Ecology included elements in the rule, where discretion was possible beyond statutory specifications, to smooth allowance availability and allow for banking to reduce overall compliance costs through frontloading and still achieve the desired reduction in greenhouse gases. The option of using offsets also provides flexibility in compliance.

Commenter: OTH-7 (City of Enumclaw)

Summary: The commenter questions whether the regulatory analyses considered the costs to municipal gas distribution systems and their small business customers.

Response: The Cost-Benefit Analysis did not consider the costs to municipal gas distribution systems specifically or separately from the natural gas sector as a whole, due to the nature of the REMI macroeconomic model grouping of natural gas providers. As a general matter, the Cost-Benefit Analysis portion of the Regulatory Analyses considers impacts to all entities, while the SBEIS focuses on direct compliance costs to small businesses. The analyses include modeled impacts to price levels that would be incurred by all natural gas consumers (via their purchases from distributors/retailers), including small businesses purchasing from municipal distributors. Natural gas price impacts were modeled as percentage changes from baseline, and increase over time (see primary analysis and sensitivity analyses in Appendix G). We have added discussion in the Final Regulatory Analyses addressing the breadth of price impacts including small business consumers.

Commenter: O-32 (Western States Petroleum Association)

Summary: The commenter is concerned with the lack of modeling inputs and assumptions used for assessing the impacts of the program. The commenter also questions the use of regulatory programs in the baseline that have yet-to-be-authorized.

Response: The projected level of emissions from each sector (including transport) is inherently uncertain, and sensitivity tests were conducted to make sure the model is robust to these assumptions.

Overall calibration approach: The key determinants of modeled prices are effectively the supply assumptions (cap trajectory, APCR and price ceiling specifications) and demand assumptions (baseline activity levels for each sector through to 2050, techno-economics of key abatement options available for each sector, and the technology mix within each sector). The model draws on the demand assumptions to compute the resulting decarbonization trend in each sector given the incentives provided by the carbon price.

- Supply assumptions are provided by Ecology to align with the proposed rules for the Cap-and-Invest program.
- Demand assumptions are calibrated using latest available information, drawing on Washington-specific sources where relevant. In this process, the abatement costs and initial technology mix for each sector are drawn from a proprietary database of methods used to reduce greenhouse gas emissions. This database draws from the most recent technology reviews and extensive knowledge of developing world-wide carbon markets, technology, and industrial sectors, compiled by sector experts that regularly work with industry. The model gives special attention to Washington-specific variables such as fuel costs and sectoral growth patterns by validating the assumptions with a range of experts.

Transportation sector: The calibration for the sector is done by (a) anchoring base year emissions on the 2015-2019 historical baseline estimate from Ecology, (b) accounting for the impact of COVID-19 and subsequent recovery towards a new longer-term trend, and (c) allowing the model to compute the rate of EV uptake based on fundamental techno-economics.

(a) Base year reference: At the time of the analysis, there is no official data on either 2020 or 2021 emissions from the transport sector. The base year (2019) calibration for the transport sector is therefore anchored on the program baseline emissions (2015-2019 average of 30.07MMT CO2) for fuel suppliers.

(b) COVID impact and recovery: As there is no official data that measures the impact and rebound in transportation sector emissions, the model relied on 2019-2020 VMT data that indicated the initial severity of the COVID-shock. Beyond 2020, the model assumed a gradual recovery towards a new longer-term trend. The combination of these assumptions implies that the modeled transport activity in 2023 has changed relative to the 2019 base year: 6% higher for light commercial vehicles, 3% lower in passenger vehicles, and 2% lower in trucks.

(c) EV uptake: Modeled emissions are also lower in 2023 (relative to the 2015-2019 baseline) and continue to decline due to the increased adoption of EVs. Here, the model conservatively does *not* assume any zero emissions vehicles regulation in Washington (akin to Advance Clean Cars II in California), even though this will occur under current Washington law (RCW 70A.30.010). The model does assume that EVs become increasingly economical and appealing to consumers and businesses. This results in a significant uptake of EVs in modeling results, which occurs across BAU emissions, Frontloading scenario and transport policy scenario.

The pattern of EV adoption from the model is the primary difference from CTAM v4.2, which assumed a lower uptake of EVs, representing about 20% of new sales by 2050. The models considers the latest evidence on vehicles sales, vehicle registration, and manufacturer announcements. The model is therefore calibrated to reflect such technology trends and reflects a less major market share for internal combustion engine vehicles of new sales of passenger cars by 2035.

Nonetheless, there is significant uncertainty around EV adoption speed and its influence over modeling results. Therefore, sensitivity tests were conducted using alternative assumptions regarding the frictions against EV adoption, and the results were shared under section 3.4 in the report.

It is worth noting that the analysis has not accounted for reduction in demand caused by recent increases in gasoline prices, which as of August 2022 became 65% higher than the historical monthly average between 2015 and 2020. In the academic literature, there are a wide range of estimates for elasticities, as noted in the report. Given the scale of recent price increases, there is the potential for these price movements to be reflected in a significant demand response resulting in reduced demand for gasoline and associated downwards pressure on prices.

Summary: The commenter asks if program revenue was estimated in the regulatory analyses, and if the corresponding reduction in tax revenue was accounted for. The commenter also requests Ecology release more information regarding the economic modeling methodology.

Response: Yes, government revenues from the allowance market were estimated in the PRA. These did not include fuel tax or other tax revenues. Tax revenues that could decrease in the aggregate as a result of behavioral changes under the baseline or proposed rule (a cost to the state) would remain in the possession of consumers (a benefit to them). We have included expanded discussion of direct, indirect, and induced costs and benefits in the Final Regulatory Analyses.

Our estimated percentage changes in consumer fuel prices are based on a dynamic macroeconomic model of the state economy (REMI). The model allows for producer, intermediary, and consumer behavior and attributes to adjust in response to multiple changes to their options, actions, and incentives, beginning with compliance costs incurred, or revenues received, under the rule. These values are then reflected as transfers to the industries or entities from which purchases are made. Consumers consider the options available to them, what those options cost and their relative benefits, and make their demand choices in response to the overall impacts of the rule (rather than just within a given industry or product line). Consequently, we would expect estimates to differ from the results of other approaches that estimate maximum pass-through of producer or distributor costs to their customers based solely on carbon intensity and allowance price in any given year. The year here is relevant as well, since allowance banking decouples total compliance costs in any given year from allowance price in that year.

Summary: The commenter expressed concern over the wide range of abatement costs, and lack of modeling input details to further investigate such costs.

Response: The abatement module of the model draws from a technology database that contains a long list of technologies within each subsector, and their corresponding abatement costs. This is a proprietary database that draws from the most recent technology reviews and extensive knowledge of developing world-wide carbon markets, technology, and industrial sectors, compiled by sector experts that regularly work with industry.

Future abatement costs are fundamentally uncertain and is complicated by the presence of non-economic barriers to adoption that are hard to quantify. The calibration process for these variables involved extensive consultation with sector experts both internally and externally to ensure that the resulting model dynamics are robust. To understand the degree of uncertainty around baseline scenario assumptions, additional sensitivity tests were conducted, which were shared in the report.

Summary: The commenter asserts that using a Washington specific social cost of carbon would be more applicable than the use of an international social cost of carbon, and likely result in less benefits associated with the program.

Response: We disagree that the quantified social cost of carbon values used necessarily overestimate Washington benefits, despite being global estimates. We discuss also the myriad values not included in the quantified SCC due to uncertainty, including environmental justice, as well as illustrative or partially quantified values specific to Washington. While we are not able to fully quantify all of the real costs of climate change (globally or to Washington specifically) they only add to and are themselves potentially higher than the quantified SCC values. The Preliminary and Final Regulatory Analyses discuss the appropriateness of the global estimates.

Summary: [Analysis from Carr Bon-Neutral Consulting].

The commenter suggests the 'business as usual' scenario inclusion of other GHG reduction programs does not reflect the costs of the cap-and-invest program independently.

Response: The realistic baseline for comparison is complex in the context of multiple statutes and rulemakings, particularly with ongoing rulemakings currently in their comment period. We set our baseline for analysis based on the regulatory scenario that resulting from the degree of specific direction in statutes, and the resulting degree to which we could identify the impacts of those regulations implementing those statutes. We also considered the impacts of alternative baseline assumptions (see PRA appendices), and determined there would not be a significant impact to allowance prices and our determinations. We have added information in the Final Regulatory Analyses for this rulemaking to further clarify our rationale for the analytic baseline and sensitivity to assumptions.

Summary: The commenter notes the change in the emissions baseline value and lack of explanation.

Response: The PRA analyzes the rule language as proposed, and so did not include the previous placeholder values for the program baseline. The baseline emissions values are based on the most recent reported or estimated GHG emissions data. We acknowledge that this information has changed over the course of this rulemaking, across multiple entities in all covered sectors.

Estimates for electricity imports have similarly been subject to change, and continue to be so – emissions data for electricity imports will not be collected until 2023. We did identify an error in the electricity-related emissions summary table in the PRA, and have corrected it in the Final Regulatory Analyses. This error was not present in calculations, but was in the summary emissions table in the document.

We have added discussion to this effect to the Final Regulatory Analyses.

Summary: The commenter suggests that the sale of price ceiling units will increase the cost of the program, and across various abatement costs this could be underestimated.

Response: The analysis accounts for the sale of PCUs, in both the cost and benefit calculations, where their sale was identified in the Vivid modeling (see year 2023 in section H.21). Across multiple scenarios, the modeling identified significant need in early years to release allowances from the (frontloaded) APCR, and as a result, little or no need to sell PCUs.

Summary: The commenter questions the use of a social cost of carbon value on a global basis, and that a value specific to Washington would likely be much less.

Response: Ecology considers costs and benefits of activities in Washington State over which proposed rules would have regulatory coverage, but does not necessarily limit either costs or benefits to entities within Washington borders. When applying unit values, we typically use Washington-specific values as they are frequently appropriate and applicable to the impacts of most rulemakings (e.g., local wages paid to local workers). Much as we consider potential benefits to individuals and businesses that would be harmed by the impacts of climate change on the global economy (see PRA section 2.5.8.1), we also consider potential costs to entities located outside Washington. These include compliance costs to entities located outside of Washington that do business, sell product, or transit through the state.

The APA does not limit the economic analysis of costs and benefits to the territorial borders of Washington State. See RCW 34.05.328(1)(d). In effect, we do estimate the global costs and benefits, though they are presented based on different points in the economic chain. While benefits related to the SCC are global, they count each of the subcategories of costs that make up the SCC once. Were we to extend the direct costs to their subsequent impacts inside and outside of Washington, those costs would not count in addition to the direct costs. These indirect and induced costs would reflect how direct costs are passed through and distributed to customers, other businesses, and the public. We do actually do this via our use of the REMI model to estimate broader impacts to the state economy to address questions posed by the Regulatory Fairness Act (Chapter 19.85 RCW) regarding price levels, revenues, and employment. This model couches the state economy in the rest of the world and accounts for interstate and international transactions.

We have added discussion to the Final Regulatory Analyses reflecting to a greater degree the nuanced relationship between emissions in Washington, global emissions, and climate change impacts, and clarifying that the rule would not eliminate the impacts of climate change and associated costs.

Summary: The commenter asserts that price ceiling units will need to be sold, especially for fuel suppliers (constrained by purchase limits), to comply with the rule.

Response: We do not expect purchase limits to affect the ability of most covered parties to comply with the rule, though we acknowledge that very large fuel suppliers with corporate associations with other covered facilities may need to undertake additional decisions to comply using allowances. For most scenarios examined, the modeling also did not identify a need for sale of PCUs (although there would be releases from the APCR in multiple years). In years that allowance demand is high, rather than creating shortages, the market reflects this through higher prices, which in turn reflect higher marginal abatement costs faced by market participants.

Summary: The commenter indicates emission values used in modeling assumptions are not public information, and may be underestimated.

Response: Additional information follows across three areas: overall calibration approach, transport sector and industry. Natural gas is not modeled as a standalone sector. Instead, the reduction in natural gas usage is modeled by focusing downstream on industries, commercial buildings, and residential buildings.

Overall calibration approach: The key determinants of modeled prices are effectively the supply assumptions (cap trajectory, APCR and price ceiling specifications) and demand assumptions (baseline activity levels for each sector through to 2050, techno-economics of key abatement options available for each sector, and the technology mix within each sector). The model draws on the demand assumptions to compute the resulting decarbonization trend in each sector given the incentives provided by the carbon price.

- Supply assumptions are provided by Ecology to align with the proposed rules for the Cap-and-Invest program.
- Demand assumptions are calibrated using latest available information, drawing on Washington-specific sources where relevant. In this process, the abatement costs and initial technology mix for each sector are drawn from a proprietary database of methods used to reduce greenhouse gas emissions. This database draws from the most recent technology reviews and extensive knowledge of developing world-wide carbon markets, technology, and industrial sectors, compiled by sector experts that regularly work with industry. The model gives special attention to Washington-specific variables such as fuel costs and sectoral growth patterns by validating the assumptions with a range of experts.

Transportation sector: The calibration for the sector is done by (a) anchoring base year emissions on the 2015-2019 historical baseline estimate from Ecology, (b) accounting for the impact of COVID-19 and subsequent recovery towards a new longer-term trend, and (c) allowing the model to compute the rate of EV uptake based on fundamental techno-economics.

(a) Base year reference: At the time of the analysis, there is no official data on either 2020 or 2021 emissions from the transport sector. The base year (2019) calibration for the

transport sector is therefore anchored on the program baseline emissions (2015-2019 average of 30.07MMT CO2) for fuel suppliers.

(b) COVID impact and recovery: As there is no official data that measures the impact and rebound in transportation sector emissions, the model relied on 2019-2020 VMT data that indicated the initial severity of the COVID-shock. Beyond 2020, the model assumed a gradual recovery towards a new longer-term trend. The combination of these assumptions implies that the modeled transport activity in 2023 has changed relative to the 2019 base year: 6% higher for light commercial vehicles, 3% lower in passenger vehicles, and 2% lower in trucks.

(c) EV uptake: Modeled emissions are also lower in 2023 (relative to the 2015-2019 baseline) and continues to decline due to the increased adoption of EVs. Here, the model conservatively does *not* assume any zero emissions vehicles regulation in Washington (akin to Advance Clean Cars II in California), even though this will occur under current Washington law (RCW 70A.30.010). The model does assume that EVs become increasingly economical and appealing to consumers and businesses. This results in a significant uptake of EVs in modeling results, which occurs across BAU emissions, Frontloading scenario and transport policy scenario.

The pattern of EV adoption from the model is the primary difference from CTAM v4.2, which assumed a lower uptake of EVs, representing about 20% of new sales by 2050. The model considers the latest evidence on vehicles sales, vehicle registration, and manufacturer announcements. The model is therefore calibrated to reflect such technology trends and reflects a reduced (though still major) market share for internal combustion engine vehicles of new sales of passenger cars by 2035.

Nonetheless, there is significant uncertainty around EV adoption speed and its influence over modeling results. Therefore, sensitivity tests were conducted using alternative assumptions regarding the frictions against EV adoption, and the results were shared under section 3.4 in the report.

It is worth noting that the analysis has not accounted for reduction in demand caused by recent increases in gasoline prices, which as of August 2022 became 65% higher than the historical monthly average between 2015 and 2020. In the academic literature, there are a wide range of estimates for elasticities, as noted in the report. Given the scale of recent price increases, there is the potential for these price movements to be reflected in a significant demand response which would reduce demand for gasoline.

Industry: the calibration approach follows a similar process with the transport sector, anchoring on historical baseline emissions, consider their longer-term growth trajectory, and determine the techno-economics in each subsector that will shape its decarbonization profile. In the process, the techno-economics of abatement options for each sector are drawn from a proprietary database of decarbonization levers. This database draws from the most recent technology reviews and project-specific intelligence, compiled by sector experts that regularly work with industry players. The model gives special attention to Washington-specific variables

such as fuel costs and sectoral growth patterns by validating the assumptions with a range of experts.

On PCUs: If modeled emissions are underestimated, then the demand for allowances would be higher, which could use up more APCR allowances and raise prices towards the price ceiling earlier.

Summary: The commenter suggests drought years would increase the emission allowances being allocated to the electricity sector, thereby reducing those available for other covered entities.

Response: Electricity sector emissions will likely increase or decrease in different years, depending on in-state generation and imports. We agree that emissions and their need for no cost allowances would increase in years a greater proportion of electricity is imported when in state generation decreases and higher-emissions imports are used to compensate. This would put upward pressure on allowance market prices, but also change the shape of the overall price trajectory (reflecting market expectations, intertemporal tradeoffs, and banking). As illustrated in the modeled scenario that assumes slow decarbonization in the power sector (see PRA appendices), associated higher emissions in this sector were modeled to result in higher initial prices, but a lower peak price in 2030 as compared to the primary scenario. These higher allowance prices would result in additional releases from the APCR through 2034, as well as releases of price ceiling units in 2023 facilitating compliance.

Acknowledging this variability also underlies the rationale for multi-year compliance periods, which allow market participants to smooth their use of allowances across multiple years – some with higher or lower allocation of no-cost allowances to EPEs.

Summary: The commenter notes that costs are displayed in 2021 dollars, and that the costs in the future could be significantly higher depending on inflation.

Response: Our analyses present results in real current dollars, in order to reflect the real purchasing power of a dollar, regardless of the level of inflation. This way, if a future year's nominal costs are of interest, the expected inflation rate can be applied to the real dollar estimates, keeping in mind that inflation raises the general price level across the entire economy – including goods, services, and wages. Recent market factors have resulted in significant economic disruption. Our results are presented to allow for interpretation in the face of this disruption, nonetheless. We agree that real wages (rather than nominal) will matter to consumers facing inflation in other prices. While real wages remained roughly stagnant through the 2010s, they were rising until just after the 2020 recession (when sticky wages caught up with other inflation). Given current economic uncertainty, we acknowledge that disparity between wage inflation and other inflation will result in higher or lower real impacts to consumer purchasing power relative to their wages. To reflect the most current economic situation and data possible, we have also used the newest version of the REMI model available (July/August 2022) in our Final Regulatory Analyses of the impacts of the rule on the state economy.

Summary: The commenter notes the difference in the emission baseline value in the earlier draft rule from that in the proposed rule, and lack of explanation. The commenter notes, "The

program emissions baseline is still not defined. The draft rule has been issued with a "temporary placeholder value" of just over 68 million tons. This is a notable reduction of over 4% versus a previously advised placeholder value of 71 million tons in an informal draft rule issued earlier in 2022. It is reasonable to speculate that the difference lies in imported electricity emissions, for which Ecology has only been recently collecting the data they will utilize to establish the emissions baseline for this sector of the program. What is arguably more concerning, though, is the absence of explanation in the PRA for such large change at this late juncture in the rulemaking."

Response: The Preliminary Regulatory Analyses (PRA) analyzed the rule language as proposed, and so did not discuss the placeholder values for the program baseline in the informal draft rule, that was circulated for informal comment ahead of the draft rule with which the PRA was released. The baseline emissions values are based on the most recent reported or estimated GHG emissions data that Ecology has. We acknowledge that this information has changed over the course of this rulemaking, across multiple entities in all covered sectors.

Estimates for electricity imports have similarly been subject to change, and continue to be so – emissions data for electricity imports will not be collected until 2023. We did identify an error in the electricity-related emissions summary table in the PRA, and have corrected it in the Final Regulatory Analyses. This error was not present in calculations, but was in the summary emissions table in the document.

We have added discussion to this effect to the Final Regulatory Analyses.

Summary: The commenter notes that various different baselines were used in the regulatory analyses, economic modeling, and proposed rule. The commenter suggests detailed modeling inputs and outputs be made available.

Response: Uncertainty is inherent in any model, in that it will never predict the future with precision. This is why we examined multiple scenarios, varying baseline, linkage, decarbonization, and financial assumptions. Vivid Economics identified that the approximately 3% difference between the rule's total program baseline and that used in the model would not significantly impact the range of market modeling results across scenarios analyzed. Specifically, Vivid Economics identified that results are highly sensitive to allowance availability (through frontloading of allowances in the APCR, market linkage expectations, and price controls), banking horizons, financial sector demand, technology adoption interia by sector, and electricity sector emissions trajectory (see Vivid Economics report[7]). These scenarios (the impacts of which are presented in appendices to the Regulatory Analyses) reflect a broader range of allowance supply and demand interactions than the difference between the rule's total program baseline and the value used in allowance market modeling for our primary (frontloading) scenario. The total program baseline in the adopted rule reflects the most recent reporting data. The relationship between total program baseline, marginal abatement costs, and actual allowance demand will determine prices, and the most recent reported data will most accurately reflect actual emissions levels across covered entities.

[7] Ecology publication 22-02-038

Summary: The commenter notes that establishing a regulatory baseline for the analyses is important to get correct, and the multiple GHG reduction programs currently in rulemaking makes that process unclear.

Response: We agree that the realistic baseline for comparison is complex in the context of multiple statutes and rulemakings, particularly with ongoing rulemakings currently in their comment period. We set our baseline for analysis based on the regulatory scenario that resulting from the degree of specific direction in statutes, and the resulting degree to which we could identify the impacts of those regulations implementing those statutes. We also considered the impacts of alternative baseline assumptions (see PRA appendices), and determined there would not be a significant impact to allowance prices and our determinations. We have added information in the Final Regulatory Analyses for this rulemaking to further clarify our rationale for the analytic baseline and sensitivity to assumptions.

(In addition to the draft response above: An alternative baseline (CFS+ZEV) indeed would *not* have significant impact on key results. For ease of comparison across the modeled scenarios, the current baseline remains appropriate)

Summary: The commenter expressed concerns with the results of the cost/benefit analysis, especially given the range of abatement costs. Additionally, the commenter suggests a global social cost of carbon should not be used because it was not explicitly authorized by the legislature, such as in the 'Clean Buildings' bill. Commenter notes that without explicit authority to use a global value of the social cost of carbon by the legislature, as was explicitly provided for in the "Clean Buildings" bill (E3SHB 1257, 2019), the legality of this approach in a cost / benefit analysis can be called into question.

Response: We agree that some entities will face marginal abatement costs that are higher than the market allowance price. Others will face marginal abatement costs below the market allowance price. This interaction across the market and choice of market participation determines market prices. Entities with marginal abatement costs lower than the market allowance price would choose to reduce emissions rather than incur the costs of purchasing equivalent allowances. Entities with marginal abatement costs higher than the market allowance price would choose to purchase allowances and thus incur costs below their marginal abatement cost. The relationship between individual marginal abatement costs, allowance demand, and willingness to pay for allowances across market participants will determine how much upward or downward pressure exists on allowance prices. Thus in the aggregate, we can assume that prices reflect central abatement costs across market participants (who incur allowance prices), and other entities instead incur abatement costs at or below the market allowance price.

The APA does not limit the economic analysis of costs and benefits to the territorial borders of Washington State. See RCW 34.05.328(1)(d). Beyond the list of arguments provided in the Preliminary Regulatory Analyses regarding the use of the global SCC, consideration of impacts to entities that could then affect Washingtonians is not a significant departure from our usual practice. Ecology considers costs and benefits of activities in Washington State over which proposed rules would have regulatory coverage, but does not necessarily limit either costs or

benefits to entities within Washington borders. Under the Administrative Procedure Act (Chapter 34.05 RCW) there is no restriction of costs or benefits based on the physical borders of the state. When applying unit values, we typically use Washington-specific values as they are frequently appropriate and applicable to the impacts of most rulemakings (e.g., local wages paid to local workers). Much as we consider potential benefits to individuals and businesses that would be harmed by the impacts of climate change on the global economy (see PRA section 2.5.8.1), we also consider potential costs to entities located outside Washington. These include compliance costs to entities located outside of Washington that do business in, sell product in, or transit through the state.

The specific requirement for the cost-benefit analysis to incorporate the global SCC in E3SHB 1257 does not preclude Ecology from using the global SCC in our analyses under the Administrative Procedure Act or Regulatory Fairness Act. In fact, the Legislature requiring the use of the global SCC in E3SHB 1257 would suggest the opposite: The Legislature already believes agencies can rely on the global SCC and that the Legislature may require them to do so under the existing structure for agency consideration of costs and benefits.

We have added discussion to the Final Regulatory Analyses reflecting to a greater degree the nuanced relationship between emissions in Washington, global emissions, and climate change impacts, and clarifying that the rule would not eliminate the impacts of climate change and associated costs.

Summary: The commenter notes the proposal to bring forward APCR allowances from the first two compliance periods to make available at the outset of the program (referred to as 'frontloading'). The commenter expresses concern that this proposal, while helpful for early program stability, only pushes the compliance stress into the second compliance period. Additionally, the commenter is concerned with the 'central scenario' including linkage while no such rulemaking has been started.

Response:

The APCR expands allowance supply in compliance period 1 but does not have an equivalent tightening effect later because these allowances could be banked by firms and used for compliance later in CP2 and CP3 – which is reflected by the modeling results. In other words, frontloading of APCR allowances does not significantly impact the *cumulative* stringency of the program.

The frontloading of APCR allowances could be seen as a stability measure to ensure that the allowance market is given some buffer when launched in 2023, due to the risks associated with a cap that is too stringent. Similarly, if there are concerns that there are inadequate allowances in the market entering CP2 and CP3, the price ceiling could mitigate such risks.

Regarding total emissions and allowance availability, it is important to account for no cost emissions. Using the example cited with concerns for the second compliance period, and using Vivid Economics model results, total emissions of approximately 150 million MT CO_2e across the first compliance period of 2027-2030, less no cost emissions of approximately 60 million MT CO_2e total across that time period, leaves emissions needing reduction or purchase of

corresponding allowances of approximately 90 million MT CO_2e. In the Vivid model, if frontloading resulted in later allowance scarcity, this would put additional upward pressure on prices in the second compliance period. Based on the stringency of the program alone, and accounting for banking, prices are already forecast to peak over $100/allowance in 2030. But they do not trigger the price ceiling. Absent this ability to purchase allowances early to reduce later costs of compliance, this peak price would likely trigger the price ceiling and result in the sale of price ceiling units. As frontloading mitigates this need, later prices are kept lower than they would otherwise be, and there is no need for sale of price ceiling units or corresponding need for Ecology to identify offsets to fund with those revenues.

Under the Administrative Procedure Act (Chapter 34.05 RCW) the PRA must analyze the rule as proposed, and since the rule does not establish linkage, the primary PRA scenario is frontloading without linkage.

Summary: The commenter suggests that the modeling results demonstrating no need for the sale of price ceiling units may be inaccurately assuming allowance banking behavior. The commenter suggests further discussion on the impacts of allowance banking and potential for price ceiling unit sales.

Response: The analysis performed by Vivid Economics included assumptions of banking behavior and general market participation [See publication 22-02-038]. Banked allowances can be imputed from the market modeling results presented in Appendix H of the PRA. While accounting for banking and general market participation, the modeling indicates that price ceiling unit sales will not be necessary, primarily due to large early releases of APCR allowances.

Modeling results indicate significant banking by covered, opt-in, and general market participants across the first compliance period to over 23 million cumulative allowances, followed by gradual depletion of the banked credits until banking behavior resumes in the 4th compliance period. This banking behavior over time is incentivized by the allowance price trajectory, which in turn affects expected cost-savings for covered parties, and expected returns for general market participants, over time.

Ecology appreciates that the commenter provided assumptions and estimates of impacts of banking and holding limits on need for price ceiling unit sales. Note that allowances in compliance accounts that are needed for current or past year compliance are not subject to holding limits, and holding limits would thus not prevent entities from holding sufficient allowances to meet compliance obligations using banked allowances (in holding accounts subject to holding limit) and purchased allowances, in addition to any emissions reductions.

We do acknowledge that unexpectedly high levels of general market participation could lead to long holds on banked allowances if general market participants expect significant returns (compared to other investment opportunities) to holding allowances for sale at later dates. This would increase the likelihood of price ceiling unit sales, as well as put upward pressure on allowance prices, but Vivid's results do not bear this out. Accounting for banking and general market participants, the modeling further estimated price trajectories with varying assumptions about banking incentives (lower or higher covered party foresight) and the financial decisions made by such entities (see PRA appendices: lower or higher financial entity sensitivity to

allowance prices; lower or higher hurdle rate). Across all scenarios modeled, only in the case of slower decarbonization in the power sector did model results reflect sale of price ceiling units.

We have included additional discussion of the significance of banking and holding limits in the Final Regulatory Analyses.

Summary: The commenter questions the apparent assumptions of emissions reductions across various sectors of the economy, and the resulting price and availability of allowances to comply with the program. Again, the commenter has requested the release of economic modeling inputs and outputs.

Response: Assumptions of emissions reductions are a part of Vivid Economics proprietary model. Any data that Ecology provided can be requested at: https://ecology.wa.gov/Footer/Public-records-requests.

Summary: The commenter notes the use of present value when calculating costs, and asserts that program costs could be higher depending on the rate of inflation.

Response: Our analyses present results in real current dollars, in order to reflect the real purchasing power of a dollar, regardless of the level of inflation. This way, if a future year's nominal costs are of interest, the expected inflation rate can be applied to the real dollar estimates, keeping in mind that inflation raises the general price level across the entire economy – including goods, services, and wages. Recent market factors have resulted in significant economic disruption. Our results are presented to allow for interpretation in the face of this disruption, nonetheless. We agree that real wages (rather than nominal) will matter to consumers facing inflation in other prices. While real wages remained roughly stagnant through the 2010s, they were rising until just after the 2020 recession (when sticky wages caught up with other inflation). Given current economic uncertainty, we acknowledge that disparity between wage inflation and other inflation will result in higher or lower real impacts to consumer purchasing power relative to their wages. To reflect the most current economic situation and data possible, we have also used the newest version of the REMI model available (July/August 2022) in our Final Regulatory Analyses of the impacts of the rule on the state economy.

Commenter: I-52 (Strid)

Summary: The commenter requests clarity regarding the alternate scenarios that include other GHG reduction programs in the analyses.

Response: We have added clarifying language and additional discussion to the Final Regulatory Analyses detailing the rationale for the primary analytic baseline and alternative baseline assumptions, and how they correspond to Vivid Economics scenarios.

Summary: The commenter suggests a number of scenarios to be used in performing the regulatory analyses.

Response: Our analyses considered multiple scenarios, including many of those listed. In the PRA:

- The analytic baseline considers existing programs.

- The alternative analytic baseline (see appendices) considers additional programs including the current rulemaking underway for implementing statutory adoption of Advanced Clean Cars II (Washington's Clean Vehicles Program) and the Clean Fuel Standard.
- Central and sensitivity analysis scenarios excluding the alternative analytic baseline reflect CCA without the current Advanced Clean Cars II (Clean Vehicles Program) rulemaking.

Based on specific statutory direction (RCW 70A.30.010(1)) adopting Advanced Clean Cars II, which increases zero emission vehicle sales to 100 percent by 2035, we do not consider a different date a realistic baseline under current law.

Summary: Section 3.4 appropriately notes that "The sensitivity analysis focuses on the transport sector because this sector accounts for nearly 45% of covered emissions and has a relatively high technology switching friction. The default calibration of the transportation sector was chosen to represent a plausible pathway of electric vehicle adoption in the future." The footnote for this sentence states, "Under the default calibration of technology adoption frictions, adoption of electric vehicles (including hybrids) reach 41% of the total passenger vehicle stock by 2030." (This is unclear whether "hybrids" refers to gasoline-only hybrids or pluggable hybrids.) 41% is a convenient choice because fewer allowances are needed to achieve the cap. However, 41% implies a linear ramp to 100% EV sales around 2030. Thus the scenarios seem to assume at least the California Advanced Clean Cars II policy; otherwise, the allowance prices would be well above the price ceiling.

Response: In that statement, the reference is to plug-in hybrids.

Stakeholders do have differing opinions on what could be a realistic adoption pathway for electric vehicles. The default assumption as used in the central case ("Frontloading scenario") does *not* include the explicit assumption of a policy akin to the Advance Clean Cars II policy in California. However, based on latest trends in EV sales and manufacturer announcements on ramping up EV production, the model does assume that EVs become increasingly economical and appealing to consumers and businesses, and therefore plausibly EVs could gain market share rapidly in the coming years. This perspective has been validated with a range of experts.

Summary: The report is also unclear about other sector policies, such as the recent building code changes banning new natural gas hookups. Section 4 doesn't provide much insight, and section 4.2.2.6 cites a list of academic papers on price elasticities without stating what elasticities were used in the modeling. In 2014 the EIA noted a short-term price elasticity of gasoline around -0.02. In other words, price has very little impact—a 10% increase in price cuts consumption only around 0.2%. The EIA also noted that price elasticity is difficult to separate from other factors affecting consumption.

Response: Other policies: While the model does not have explicit representation of all policies, it actively considers the most significant policy choices (i.e., CETA for the electricity sector). For other policy choices such as building codes that are not explicitly considered by the model, the results have been stress-tested in terms of sub-sector technology pathways. For instance, the adoption of electric heating in buildings was scrutinized and tested against third-party views.

Elasticities: There is clearly uncertainty and some limitations around the academic estimates of elasticities. The EIA is one of several credible estimates, though several subsequent analyses indicate a much higher short run elasticity. Therefore, the model chooses mid-points around the range of reported estimates. In practice, this does not have significant impact on modeling results as the size of demand response is relatively small (in terms of emissions).

Commenter: B-12 (US Oil & Refining)

Summary: The commenter suggests setting a much lower ceiling price than proposed, to avoid capital investments competing with compliance costs. Additionally, the commenter cites economic modeling performed by NERA suggesting allowance prices will quickly reach the ceiling price.

Response: We acknowledge that access to broader or larger capital reserves and resources would facilitate managing compliance costs, particularly in light of where compliance expenditures (on emissions reductions, offsets, or allowance purchases) may compete with other investments.

While our analyses and underlying Vivid Economics allowance market modeling results are consistent with your attached NERA analysis in that linked prices would be lower than unlinked prices, and that prices are likely to increase through the first two compliance periods, we disagree that they would quickly hit the ceiling price. By design, large releases from the APCR in the first two compliance periods would mitigate the upward pressure on prices caused by the statutorily mandated emissions reduction goal. This holds true of all modeled scenarios except that in which the power sector was slow to decarbonize (price ceiling triggered only in 2023).

The attached NERA analysis also appears to assume all fuel price impacts will be based on a given year's allowance price and the carbon intensity of a fuel. While this may be a good proxy of costs per gallon to producers and transporters, these costs are unlikely to fully manifest in the consumer market. Our estimated percentage changes in consumer fuel prices are based on a dynamic macroeconomic model of the state economy (REMI). The model allows for producer, intermediary, and consumer behavior and attributes to adjust in response to multiple changes to their options, actions, and incentives, beginning with compliance costs incurred, or revenues received, under the rule. These values are then reflected as transfers to the industries or entities from which purchases are made. Consumers consider the options available to them, what those options cost and their relative benefits, and make their demand choices in response to the overall impacts of the rule (rather than just within a given industry or product line). Consequently, we would expect estimates to differ from the results of other approaches that estimate maximum pass-through of producer or distributor costs to their customers based solely on carbon intensity and allowance price in any given year. The year here is relevant as

well, since allowance banking decouples total compliance costs in any given year from allowance price in that year.

See also: Response in Section IV.4.C

Summary: The commenter has requested more information regarding the economic modeling performed for Ecology, and notes that modeling performed by others (e.g. NERA) have different results. The commenter is concerned that baseline assumptions are not clear, and requests further detail regarding what fuels are reported and covered in the program.

Response: We acknowledge your attached NERA estimates of allowance prices (at least for the years presented) are at least somewhat higher than the estimates from Vivid Economics used in Ecology's primary analysis ("frontload"). Note that prices also fall after 2030. Uncertainty is inherent in any model, in that it will never predict the future with precision. This is why we examined multiple scenarios, varying baseline, linkage, decarbonization, and behavioral or financial assumptions. Different assumptions, as well as different data, will inherently impact results. While we similarly were unable to deconstruct the attached NERA model using information provided, we note that their allowance price estimates fall within the overall range across scenarios modeled by Vivid Economics and used in our analyses. Specifically, NERA's trajectory better reflects pessimistic bounding assumptions, such as slow decarbonization in the transportation sector, or no price controls. (Note that price controls at any point in time affect market participant expectations, and affect entire price trajectories.) Most scenarios, including some full ranges of bounded assumptions (high/low financial variables, high/low foresight, degree of linkage expectation, etc.) result in allowance price trajectories lower (at least in the years presented) than in the NERA analysis.

The total program baseline in the adopted rule reflects the most recent vetted reporting data. This data changes over time, and has changed between the preliminary draft rule language, proposed rule, and adopted rule. It allows the program to be as realistic and tailored to actual emissions as possible. The individual likely covered emissions used to calculate the total program baseline are included in the rule file for this rulemaking.

6. Scope of the Rule

Commenter: O-25 (Pacific Propane Gas Association)

Summary: The commenter notes that the rule fails to include information about Section 47 of the Climate Commitment Act. This section, labeled the Residential Heating Assistance Program, directs Ecology to explore potential ways to protect consumers who rely on propane or fuel oil to heat their homes.

Response: The Residential Heating Assistance Program in Section 47 of the Climate Commitment Act falls outside the scope of the current rulemaking, which, as required by Section 25 of the Climate Commitment Act, implements Sections 8 through 24 of the Climate Commitment Act (RCW 70A.65.060 through .210). However, Ecology plans to hold stakeholder meetings about this issue in Fall 2022, and to provide informal recommendations by the end of 2022.

Commenters: I-201 (Dexheimer); I-138 (Phipps); I-530 (John); I-581 (Heitzman); I-604 (Bond); B-20 (AAA Washington)

Summary: Commenters suggest that Ecology reduce transportation emissions by cancelling road expansion projects and encouraging use of public transportation, electric vehicles, and carpooling. Others suggested Ecology rethink the role of electric vehicles in Washington's future.

Response: This rule implements the portion of the Climate Commitment Act in RCW 70A.65.060 through .210. This subject is outside the scope of the current rulemaking. However, Ecology is supporting numerous efforts to move Washington toward clean transportation. Ecology is currently conducting a rulemaking to implement the Motor Vehicle Emission Standards – Zero Emissions Vehicle bill, which instructs Ecology to adopt California's Advanced Clean Cars II vehicle emission standards. Additionally, Washington's Clean Fuel Standard will work beside the Climate Commitment Act by cutting greenhouse gas emissions from fuel use by 4.3 million metric tons per year by 2038. Finally, Ecology is investing $141 million from the Volkswagen federal settlement and state penalty in projects that reduce greenhouse gases and toxic diesel pollution.

Commenter: A-4 (Ports of Longview, Kalama, Woodland, and Vancouver); B-6 (Phillips 66)

Summary: The Ports of Longview, Kalama, Woodland, and Vancouver ask Ecology to provide accelerated permitting for port activities that support emissions reductions including large-scale fleet electrification, electric vehicle infrastructure transformation and upgrades and switching to low carbon fuels. Phillips 66 asks for expedited permitting for projects that reduce or enable reduction of GHG emissions.

Response: Ecology applauds efforts by the ports to reduce GHG emissions. However, the requests in these comments are outside the scope of this rulemaking, which implements RCW 70A.65.060 through .210 of the cap-and-invest program mandated by the Climate Commitment Act.

Commenter: O-10 (Washington Public Ports Association)

Summary: Washington Public Ports Association encourages Ecology to adopt rules that support and further additional investments in hard to decarbonize sectors, such as the maritime sector.

Response: The request in this comment is outside the scope of this rulemaking, which implements the portions of the cap-and-invest program mandated by RCW 70A.65.060 through .220 of the Climate Commitment Act. There is no provision in the Climate Commitment Act that makes it possible for Ecology to support and further additional investments in hard to decarbonize sectors, such as the maritime sector.

Commenter: OTH-5 (Municipality)

Summary: The City of Spokane comments that reported emissions should include lifecycle emissions, not just the emissions from a particular facility.

Response: This comment and other similar comments address issues related to the GHG reporting rule, WAC 173-441, rather than WAC 173-446. In addition, in the CCA, the legislature

has determined the emissions that need to be addressed, and those do not include lifecycle emissions.

Summary: The City of Spokane comments that Ecology should allow comment on WAC 173-446 and WAC 173-441 together since the two rules are so intertwined.

Response: Concurrent comment on the two rules was impossible since the timeframe for the program as required by the legislature required the two rules to be adopted on different timelines. The CCA requires the cap-and-invest program to commence on January 1, 2023. The changes to the reporting rule had to be adopted by early 2022 to enable Ecology to get the information needed to support the January 1, 2023 start date for the program. The CCA rule must be adopted by October 1, 2022.

Summary: The City of Spokane asks whether anything would prevent a source that enters the program during the second compliance period from registering as a general market participant during the first compliance period and then using any allowances obtained during the first compliance period to cover its obligations once it is in the program as a covered entity.

Response: The current rule does not include any process for changing status under the program. Ecology will be including those requirements in the next rulemaking for WAC 173-446, which must occur by 2026.

IV. Comments Specific to WAC 173-446 Rule Language

1. Account Requirements (WAC 173-446-100's)

A. Submitting information

Commenter: B-15 (Boeing)

Summary: Boeing comments that the schedule in WAC 173-446-100 and WAC 173-446-120(4)(a) (the time for providing information to Ecology after notice that an entity is a covered entity) is too short, and should be 90 days rather than 30 days.

Response: Ecology agrees that this deadline may be too short for some registered entities. However, 90 days is too long for a party wishing to participate in the first auction. Therefore, Ecology has changed the requirement from 30 days to 40 days. We note, however, that a party wishing to participate in the first auction (to be held in February of 2023), will need to have provided the required information to Ecology and obtained an account at least 30 days before the auction, so it can then register for the auction in a timely fashion. Ecology anticipates sending notice letters out in early November 2022, as soon as the rule is in effect. To participate in the February auction, a registered entity would need to have an account by January 2023, at the latest.

Comment: Boeing asks for additional clarity about who can and cannot apply for a consolidated entity account under WAC 173-446-100(2). Boeing notes that the sentence, "The applicant cannot be subsidiary to or controlled by another associated entity within the direct corporate association." is unclear, particularly for a large, global company like Boeing. For instance,

Boeing is unsure whether a subsidiary with multiple facilities (covered entities) can apply for a consolidated entity account for those facilities aggregated at the subsidiary's corporate level.

Response: Ecology has modified language in WAC 173-446-100(2) to clarify that the control required is over the other members of the consolidated entity account - not over the entire direct corporate association. "The applicant must be able to demonstrate that it has the controlling ownership or authority to act on behalf of all members of the *consolidated entity accoun*t ~~direct corporate association~~. The applicant cannot be subsidiary to or controlled by another associated entity *that is part of the consolidated entity account* ~~within the direct corporate association.~~"

Summary: Boeing comments that the requirement in WAC 173-446-120(1)(h) to provide "names and contact information for all employees of the party with knowledge of the party's ... current and expected covered emissions" is essentially all Boeing company employees.

Response: The ellipsis in the comment obscures the fact that what WAC 173-446-120(1)(h) is asking for is information about employees with knowledge of the party's market position. A party's market position is defined as the party's current and/or expected holdings of compliance instruments combined with the party's current and/or expected covered emissions. Ecology has clarified the rule language to make it clear that an employee must know both pieces of information in order to be an employee with knowledge of the party's market position.

Summary: Boeing suggests that WAC 173-446-120(4)(b) (the time for providing information to Ecology after Ecology has asked for additional information) should be changed to 30 days instead of 10 days.

Response: Sometimes Ecology needs the additional requested information quickly. In addition, this 10-day disclosure deadline is consistent with the disclosure deadlines in California's cap and trade regulations. Therefore Ecology has determined to leave the rule language as is, and note that a registered entity can ask for more time if necessary.

Summary: Boeing suggests that WAC 173-446-120(4)(c) (reports of changes in corporate associations involving registered entities) should be required once a year on a set annual date, no later than 30 days before an auction, rather than within one year of the change as currently required.

Response: Ecology understands why a report, due each year on a set date, might be more convenient for some large companies like Boeing. However, there are other registered entities for which the requirement as currently outlined in the rule would be more convenient. Boeing is the only commenter on this subject. In addition, this one-year disclosure deadline is consistent with the disclosure deadlines in California's cap and trade regulations. Therefore, Ecology is leaving the provision as is.

Summary: Boeing suggests that WAC 173-446-120(4)(d) (changes in corporate associations that only involve nonregistered entities) and (f) (requirement to provide all other information within one year of the change) should be required once a year on a set annual date, rather than one year after an event.

Response: Ecology understands why a report, due each year on a set date, might be more convenient for some large companies such as Boeing. However, there are other registered entities for which the requirement as currently outlined in the rule would be more convenient. Boeing is the only commenter on this subject. In addition, this one-year disclosure deadline is consistent with the disclosure deadlines in California's cap and trade regulations. Therefore, Ecology is leaving the provision as is.

Summary: Boeing asks what the term "modification" is referring to in WAC 173-446-120(4)(d).

Response: The term "modification" in WAC 173-446-120(4)(d) refers to modifications to the information provided to Ecology under WAC 173-446-120 concerning corporate associations. WAC 173-446-120(4)(d) states that a registered entity needs to provide the information within one year after the modification occurs if the modification involves only unregistered parties. By contrast, WAC 173-446-120(4)(c) provides that modifications in the information required under WAC 173-446-120 must be provided within 30 calendar days after they occur if the modifications involve registered entities under WAC 173-446-110(1) or (6)(b), or registered and unregistered parties under WAC 173-446-110(2) and (3).

Summary: Boeing requests that Ecology change WAC 173-446-130(1)(b)(v) to limit the criminal offense disclosure required for account representatives to offenses meeting the criteria in WAC 173-446-130(9).

Response: Account representatives will be acting in a multi-million dollar market. Because of the high dollar amounts involved in auctions and trades, considerable care needs to be taken to ensure that account representatives acting on behalf of registered entities are well vetted when they are designated. The criteria listed in WAC 173-446-130(9) prevent an individual from serving as an account representative. The more general criminal offense disclosure in WAC 173-446-130(1)(b)(v) is for informational purposes only.

Summary: Boeing comments that the attestation required in WAC 173-446-140(2)(c) for viewing agents is not needed.

Response: While an account viewing agent does not have the authority to take actions related to a registered entity's account, the account viewing agent does have access to all the information contained in that account. Care must be taken to ensure that the registered entity has duly selected the named individual to act as an account viewing agent. Therefore, Ecology is not deleting the requirement for the attestation in WAC 173-446-140(2)(c).

Commenters: B-15 (Boeing); O-16 (NW Pulp & Paper)

Summary: Two commenters (Boeing and Northwest Pulp and Paper) question the need for an attestation by an attorney establishing the link between an account representative and the registered entity for which it is acting. (WAC 173-446-130(1)(d)).

Response: Ecology agrees that, in light of the declaration of an officer of the registered entity and the attestation from a notary required in WAC 173-446-130(1)(b)(ii), an attestation by an attorney may not be necessary,. Ecology has therefore deleted WAC 173-446-130(1)(d).

Commenter: O-16 (NW Pulp & Paper)

Summary: Northwest Pulp and Paper comments that much of the information required for an account representative is personal and unnecessary, and asks how Ecology would keep the information confidential. The commenter also asks that Ecology provide more specificity on why this information is required and how it will be used. The commenter asks Ecology to consider less burdensome alternatives than the approach outlined in the rule.

Response: Account representatives will be acting in a multi-million dollar market. Because of the high dollar amounts involved in auctions and trades, considerable care needs to be taken to ensure that account representatives acting on behalf of registered entities are identifiable in case irregularities are found. Ecology will ensure confidentiality of the information by not publicizing any of the information concerning account representatives and by withholding in response to a Public Records Request all personal information that is exempt from disclosure under the state Public Records Act (RCW 42.56).

Commenter: OTH-5 (Municipality)

Summary: The City of Spokane comments that the registration and account requirements in WAC 173-446-050, and -100 through -150 will be difficult for a municipal entity such as the City of Spokane to follow.

Response: Ecology notes that several other municipalities are covered entities under this program, and believes that a municipality will be able to comply with the requirements in those provisions. However, Ecology will be engaged in further rulemaking before the second compliance period, when the City would become a covered entity, and invites the City to engage with Ecology before and during that rulemaking to determine if any accommodations for the City of Spokane are in fact required.

Commenter: A-3 (Bonneville Power Administration)

Summary: BPA notes that it is not a corporation, so this section is inapplicable to BPA.

Response: Ecology agrees that BPA is not a corporation, so in providing the information discussed in WAC 173-446-105, -110, and -120, BPA would need to provide only the information that is relevant to its situation.

Summary: BPA comments that some of the information required for designating and certifying account representatives is Personally Identifiable Information that BPA is not authorized to ask its employees to provide under the Federal Privacy Act. BPA notes that it has worked with CARB to fashion a solution to the problem to facilitate participation in the California cap and trade program.

Response: Should BPA choose to participate in Washington's Cap and Invest Program, Ecology would work with BPA outside the rulemaking process to resolve this question.

Commenters: B-21 (Puget Sound Energy, Avista Corp., Cascade Natural Gas, NW Natural Gas, commenting jointly)

Summary: The commenter asks Ecology to remove "percent of common owners, directors, or officers of the other party" from the criteria to determine when a corporate association exists under WAC 173-446-105(1). For companies like Cascade, that are owned by a parent company

with multiple unrelated businesses, this could create an enormous and unwarranted administrative burden for companies and Ecology with no corresponding benefit.

Response: Ecology cannot remove the provision because Ecology needs to know, for the purposes of preventing market manipulation and bidder collusion, who is related to whom. Under the rule, a direct corporate association exists if the percent of common owners, directors or officers of two parties is greater than 50 percent. The comments from the four investor-owned gas utilities point out that some companies are owned by a parent company with multiple unrelated businesses. The commenter is correct that if the unrelated companies are wholly owned subsidiaries of the same parent, they would be in direct corporate association with one another. If that is the case, Ecology needs to know who these related parties are as they could be participating in the market as general market participants.

Summary: To reduce the reporting burden for disclosures that would not have an impact on auction participation, the Gas Utilities ask Ecology to limit the disclosures required in WAC 173-446-110(2) to only those entities physically doing business in the state of Washington.

Response: WAC 173-446-110(2) requires registered entities to disclose all direct corporate associations with other parties not registered in the cap and invest program if those parties have the **degree of ownership in or control over** the registered entity to meet the requirements of having a direct corporate association. The purpose of the provision is to ensure that Ecology knows the parent companies of all registered entities. Ecology has changed the language of the proposed rule to make this point clear.

Summary: The Gas Utilities ask Ecology to remove the provision in WAC 173-446-120(1)(j) providing that registered entities must provide "any further information requested by Ecology concerning the corporate association." If Ecology does not wish to remove the provision, Ecology should provide clarity in the rule about what type of information Ecology might request under this provision.

Response: The provision in WAC 173-446-120(1)(j) is a catch-all provision to encompass any further information Ecology might need in order to assure that the market is not being manipulated and to prevent bidder collusion.

Commenter: O-7 (US Department of Energy, Hanford)

Summary: Hanford comments that the corporate association provisions need to be revised if those provisions are to apply to federal agencies, as the provisions do not appear to be applicable to a federal agency.

Response: Federal agencies participating in the cap-and-invest program will need to provide all the information requested that is applicable to them. If a federal agency is not part of a corporate association (direct or indirect), then, like any other program participant that is not part of a corporate association, the agency will not have any relevant information to provide.

Commenter: O-39 (Alliance of Western Energy Consumers)

Summary: The Alliance of Western Energy Consumers comments that too much information is required for account representatives, and asks Ecology to provide evidence of other programs requiring the same information.

Response: Both California and Québec require the same information for account representatives in their cap and trade programs. For California see Title 17 CCR Sections 95832 and 95834. For Québec, see Q-2.r.46.1 Section 10, 11.

B. Account uses, contents, and limits

Commenter: O-16 (NW Pulp & Paper)

Summary: Northwest Pulp and Paper comments that a registered entity should be able to trade allowances in its compliance account.

Response: WAC 173-446-150(1)(a)(i) states that compliance instruments in a compliance account may not be "sold, transferred, traded, or otherwise provided to another account of party." This prohibition mirrors the requirements of RCW 70A.65.090(7)(a), so Ecology will not change this provision in the rule.

Commenter: O-32 (Western States Petroleum Association)

Summary: Western States Petroleum Association (WSPA) expresses confusion over the provisions of WAC 173-446-150(2)(a), (c), and (d). WSPA cites WAC 173-446-150(2)(a) as stating that the holding limits apply except as provided in (2) (a) and (d) of the section.

Response: Please note that WAC 173-446-150(2)(a) states "except as provided in (c) and (d) of this subsection" - not "except as provided in (a) and (d) of this subsection." This clarification should clear up the confusion.

Summary: WSPA comments that the holding limits should not apply to allowances in compliance accounts, and the exemption from holding limits should not be restricted to allowances needed to cover emissions for previous and current compliance years.

Response: Holding limits are imposed on market participants to minimize a registered entity's opportunity to manipulate markets. If the holding limits did not apply to allowances held in a registered entity's compliance account, that registered entity could use its compliance account as a means of hoarding compliance instruments and could thereby gain too much control over the market.

Commenter: I-262 (Sweeney)

Summary: Rosemary Sweeney suggests that, when Ecology removes from a registered entity's account allowances that exceed that registered entity's holding limits, Ecology be able to retire the allowances, in addition to being able to offer the allowances for future auctions.

Response: Ecology agrees that it could be a good idea for Ecology to have the discretion to retire excess allowances it has removed, as an alternative to offering them for sale at auction. Ecology believes that for the first several years, there will not be a glut of allowances in the market, so using this mechanism to retire any excess allowances will not be needed in the short term. Ecology will revisit this question as the program progresses to see whether it would be useful to include in future rulemaking.

Commenters: I-262 (Sweeney); B-6 (Phillips 66); B-11 (HF Sinclair); B-23 (Grays Harbor Energy); O-8 (350 Seattle); O-16 (NW Pulp & Paper); O-32 (Western States Petroleum Association)

Summary: A number of commenters (Phillips 66, Grays Harbor Energy, HF Sinclair, WSPA) comment that the holding limits in WAC 173-446-150(2) are too stringent. Several other commenters (350 Seattle; Rosemary Sweeney) comment that the holding limits are too lenient. Both sets of commenters suggest that these holding limits should be a function of a registered entity's compliance obligation. Northwest Pulp and Paper comments that the formula for determining holding limits is too complex, and should be simplified.

Response: Holding limits are imposed on market participants to minimize a registered entity's opportunity to manipulate markets. The holding limits in the proposed rule are dependent on the number of allowances in the annual allowance budget according to the following formula: The holding limits are 10 percent of the first 25,000,000 allowances in the annual allowance budget for a given year, plus 2.5 percent of any additional allowances in the allowance budget for that year.

This formula comes from a study on holding limits prepared for WCI in 2010. Report on Holding Limits, To the Western Climate Initiative Markets Committee, Prepared by Jeffrey H. Harris, Alfred Lerner College of Business and Economics, University of Delaware, May 6, 2010, p. 16-17. As that report states, the recommended formula for holding limits uses "the two-tier structure applied to futures markets" (id at 16) and "falls back on tried and true mechanisms that have been applied successfully in U.S. futures markets." Id at 17.

This holding limits formula is the one used by both California and Québec in their GHG trading program, and is the formula Washington will have to use if we link with the California-Québec program.

Note that these holding limits do not apply to allowances held in a compliance account that are needed to cover emissions for the current year or preceding years. WAC 173-446-150(2)(c).

Commenter: O-28 (Western Power Trading Forum)

Summary: The Western Power Trading Forum asks Ecology to publish only aggregated information about holding accounts, and not to publish information on individual holding accounts. The commenter recognizes Ecology's proposal to provide anonymized information, but states that this is not enough to protect larger entities, who would likely be identified by the volume of their holdings.

Response: The Climate Commitment Act requires Ecology to publish "[i]nformation about the contents of *each* holding account, including but not limited to the number of allowances in the account." RCW 70A.65.090(6)(b) (emphasis added). Given this requirement, Ecology must publish information about individual holding accounts. As the commenter notes, to protect market sensitive information, Ecology has proposed to publish the contents of each account without identifying the owner of the account. There are several very large covered entities in Washington, so the anonymized information should provide some protection for them as well as for the smaller covered entities.

Commenters: O-22 (Joint Utilities: Avista, NRU, PacifiCorp, PGP, PSE, WPUDA); O-39 (Alliance of Western Energy Consumers)

Summary: The Joint Utilities and the Alliance of Western Energy Consumers specify that utilities that are not covered entities should register as general market participants to get no cost allowances that they consign to auction. They note that RCW 70A.65.090(3) prohibits opt in entities from receiving free allowances allocated to utilities under RCW 70A.65.120. They point out that WAC 173-446-150(1)(b) only provides limited use holding accounts to covered or opt in entities.

Response: The commenters are correct that WAC 173-446-150(1)(b) only provides limited use holding accounts to covered and opt-in entities. The language of WAC 173-446-150(1)(b) has been modified to authorize limited use holding accounts for utilities registering in the program.

Commenter: A-3 (Bonneville Power Administration)

Summary: BPA asks Ecology to exempt it from the holding limits and purchase limits in the program to enable BPA to deal with extenuating circumstances such as low water years.

Response: There is no basis in the CCA for exempting BPA from the holding limits and the purchase limits in the program. All covered entities face the possibility of extenuating circumstances that will affect their emissions from year to year.

2. Allowance Budgets (WAC 173-446-210), Removal (WAC 173-446-250), and Distribution Dates (WAC 173-446-260)

A. Calculation

Commenter: I-262 (Rosemary Sweeney)

Summary: The total covered emissions numbers in Table 210-1 are close, but do not exactly correspond to a 7% annual decrease. Please correct or explain.

Response: Ecology is unaware of a discrepancy in the values in Table 210-1. Your comment does not provide enough information to compare our calculations to yours. We did recalculate the values in the table using the most recent dataset and checked our calculations when recalculating.

Other than updating Table 210-1 with the most recent dataset, the rule was not changed in response to the comments.

Commenter: O-7 (US Department of Energy, Hanford)

Summary: Hanford asks why the allowance budget is lower than the baseline, and asks when and how the total program allowance budget will be established.

Response: The allowance budgets are lower than the baseline because the CCA requires the cap on emissions to decline every year at a rate designed to reach the 2030, 2040, and 2050 GHG limits in RCW 70A.45.020. The annual allowance budgets for the first compliance periods will be included in the final rule published with the CR-103.

Commenters: O-15 (City of Ellensburg); O-25 (Pacific Propane Gas Association); O-37 (Association of Washington Business); OTH-5 (Municipality); OTH-7 (City of Enumclaw); B-21 (Puget Sound Energy, Avista Corp., Cascade Natural Gas, NW Natural)

Summary: Several commenters question the 7 percent cap decline rate in the proposed rule. AWB, the Pacific Propane Gas Association, and the Cities of Spokane and Enumclaw claim the cap decline rate is too stringent. PSE, Avista, Cascade, and NW Natural (commenting jointly), and the Cities of Enumclaw, Ellensburg, and Spokane ask that Ecology make the cap decline rate less strict for the first compliance period, and more stringent for the second compliance period.

Response: The CCA requires the cap-and-invest program to meet the statutory GHG limits for 2030, 2040, and 2050 in RCW 70A.45.020. In order to meet the 2030 GHG limits in RCW 70A.45.020, a cap decline rate of 7 percent per year is necessary for the first two compliance periods. Ecology contemplated having a less stringent cap decline rate for the first compliance period, and a more stringent cap decline rate for the second compliance period, but providing the relief requested for the first compliance period makes the cap decline rate for the second compliance period prohibitively steep.

Commenter: O-35 (Clean and Prosperous Institute)

Summary: The Clean and Prosperous Institute has done its own calculations, and determined that a 6.1 percent cap decline rate for the first two compliance periods would meet the 2030 GHG limits. The Institute calculates that the 6.1 percent cap decline rate would reduce emissions by 49 percent over the 8 years of the first compliance period, while Ecology's proposed 7 percent decline rate would reduce emissions by 56 percent over those 8 years.

Response: RCW 70A.45.020 requires annual GHG emissions in Washington to be reduced to 50,000,000 MTCO2e by 2030. Ecology agrees that a decrease in emissions of approximately 50 percent is required to meet this 2030 GHG requirement. The difference between Ecology's calculation and the Institute's calculation lies in the fact that Ecology calculated the decrease in emissions needed to meet the 2030 GHG limits in RCW 70A.45.020 by the beginning of 2030, whereas the Institute calculation included an extra year where the goal would not be met until the end of 2030. This gives the program 7 years rather than 8 years to meet the 2030 target. Ecology's 7 percent cap decline rate over the 7 years between 2023 and the beginning of 2030 yields a cap decline of approximately 49 percent.

B. Cap integrity

Commenters: I-53 (Rehrmann); I-59 (Dawson); I-83 (Saul); I-85 (Anderson); I-97 (Olah k); I-150 (Hinton); I-164 (Piening); I-165 (Darilek); I-172 (Molloy); I-175 (Engelfried); I-200 (Nuccio); I-244 (Soltess); B-4 (D Grease); O-33 (Climate Solutions); OTH-9 (Wildlife Forever Fund); FL-6 (80 submitters)

Summary: A large number of commenters urged Ecology to maintain the integrity of the cap on greenhouse gas (GHG) emissions.

Response: Ecology agrees that it is important to maintain the integrity of the cap on GHG emissions. The legislature, in designing the Climate Commitment Act (CCA) also made it clear that maintaining the integrity of the cap is of the highest priority. The CCA is clear that the cap in the cap and invest program must be based on emissions from the covered sectors of the economy. RCW 70A.65.070(1). The CCA is also clear that the reductions in the cap must be designed so that covered entities meet their proportional share of the GHG emission limits in

RCW 70A.45.020 for 2030, 2040, and 2050. *See, e.g*., RCW 70A.65.070(2). The CCA provides tools for adjusting the program if it looks like those limits will not be met. *See, e.g*., RCW 70A.65.100(11). Ecology has designed WAC 173-446 to meet these statutory requirements. Importantly, Ecology has taken steps to avoid the sale of price ceiling units, which increase the cap. RCW 70A.65.160. According to the Vivid Economics analysis, the auction parameters Ecology has set, including front loading the Allowance Price Containment Reserve, should minimize the need for selling price ceiling units.

C. Distribution dates

Commenters: OTH-1 (Seattle City Light); O-29 (Environmental Defense Fund); O-39 (Alliance of Western Energy Consumers); B-22 (Puget Sound Energy & Avista Corp.); O-22 (Joint Utilities: Avista, NRU, PacifiCorp, PGP, PSE, WPUDA); B-21 (Puget Sound Energy, Avista Corp., Cascade Natural Gas, NW Natural)

Summary: A number of commenters (Seattle City Light, the Environmental Defense Fund, Alliance of Western Energy Consumers, Puget Sound Energy and Avista (commenting jointly), Joint Utilities, and the Gas Utilities) ask Ecology to distribute some or all of the no-cost allowances for 2023 earlier than the September 1, 2023 date proposed in the rule.

Response: Ecology agrees that the proposed date of September 1, 2023 is late in the year for distributing 2023 no-cost allowances. The late date is necessary for emission-intensive, trade-exposed (EITE) facilities, as Ecology will not have sufficient information from those facilities to determine their no-cost allowance allocation until after their emissions and production data have been verified, late in 2023. However, the information for distributing no cost allowances to natural gas utilities and electric utilities will be available on a different timeline from the EITE data. Therefore, Ecology revised the rule to provide three separate dates for the distribution of no cost allowances - a date for natural gas utilities, a date for electric utilities and a third date for EITE facilities. The date for EITE facilities remains September 1, 2023, the date for electric utilities will be within 60 days after UTC or governing board approval of the forecasts of supply and demand or by July 1, 2023 at the latest, and natural gas utilities will be July 1, 2023 (partial distribution).

Commenter: B-14 (WaferTech)

Summary: WaferTech comments that the draft rule calls for final reconciliation of no cost allowances for EITEs by October 24 each year, while the compliance deadline is November 1, which leaves very little time for EITE facilities to ensure they have enough allowances for compliance.

Response: Ecology agrees that the timeframe is short, However, Ecology cannot reconcile the number of no cost allowances to EITE facilities earlier than October 24 of each year because October 24 is the earliest Ecology will have sufficient data to calculate the reconciliations.

Summary: WaferTech comments that the initial distribution of no cost allowances should be earlier than October 24 each to allow for budgeting and planning. Many businesses set their budgets for the next year in September.

Response: Ecology cannot distribute no cost allowances to EITE facilities like WaferTech before October 24 of each year because October 24 is the earliest Ecology will have sufficient data to calculate the distributions.

Commenter: A-3 (Bonneville Power Administration)

Summary: BPA asks Ecology to include a deadline for utilities to receive no cost allowances. Bonneville notes that WAC 173-446-260 provides the timeline for distribution of no cost allowances to electric utilities that have authorized accounts in the electronic compliance instrument tracking system, but does not specify if or how electric utilities receive those authorized accounts.

Response: Ecology agrees that the provision in WAC 173-446-260 is unclear in its reference to the electronic compliance instrument tracking system. Ecology has deleted that phrase from the rule so that it now requires electric utilities (and others) to have authorized accounts. The provisions of WAC 173-446-100 specify what electric utilities (and others) must do to obtain authorized accounts.

D. Removal of allowances

Commenters: O-28 (Western Power Trading Forum); B-21 (Puget Sound Energy, Avista, Cascade Natural Gas, NW Natural (Gas Utilities)); B-22 (Puget Sound Energy and Avista commenting jointly)

Summary: The Western Power Trading Forum asks Ecology to include a public process before retiring allowances under WAC 173-446-250(2). Puget Sound Energy and Avista comment that there need to be detailed standards for removing allowances from the pool under WAC 173-446-250(2). The Gas Utilities note that the rule authorizes Ecology to remove and retire allowances when there has been insufficient progress toward the 2030, 2040, and 2050 GHG limits. The Gas Utilities ask Ecology to define in rule what "insufficient progress" means.

Response: Ecology agrees that it is a good idea to provide a process - including a public process - for retiring allowances under WAC 173-446-250(2). The final rule includes such a process.

3. Applicability (WAC 173-446-030)

Commenters: O-7 (US Department of Energy, Hanford); O-28 (Western Power Trading Forum)

Summary: Two commenters (Hanford and the Western Power Trading Forum) suggest that Ecology clarify the rule to include in the program in 2023 any reporters with covered emissions exceeding 25,000 MTCO2e in any year between 2015 and 2022.

Response: Ecology agrees with the need for clarification to properly reflect the program coverage as laid out by the statute. WAC 173-446-030(1)(a) has been changed to clarify that reporters with sufficient covered emissions up through 2022 are covered entities from the beginning of the program in 2023, and will be covered entities under the program.

Commenter: OTH-7 (City of Enumclaw)

Summary: The City of Enumclaw comments that it is not a covered entity because the natural gas supplier did not have emissions greater than 25,000 MTCO2e per year for any of the years from 2015 through 2019, and only exceeded the statutory threshold for the first time in 2021.

Response: The Climate Commitment Act covers all listed categories of parties with emissions over 25,000 metric tons of CO2e. Under the statute, this is the case whether a party has emissions over the 25,000 emissions threshold in the 2015-2019 reporting period or at a later date, as appears to be the case for Enumclaw.

The 2015-2019 period is specifically called out in the statute because the 2015 through 2019 time period is the key reference period for establishment of the baseline emissions upon which much of the program is built. RCW 70A.65.070(1)(a); (4).[8] Therefore, the CCA's section on program coverage, RCW 70A.65.080, starts in its first subsection by expressly covering all parties whose GHG emissions are part of the 2015 -2019 program baseline if their emissions meet the 25,000 Mt CO2e annual emissions threshold.[9] Next, subsection 5 sweeps in entities that begin or modify operations after the start of the program in 2023. And finally, subsection 6 sweeps in entities that were active in 2015-2019, but were not required to report emissions for that period. Subsections 5 and 6 also tie back to the 25,000 ton threshold as the key emissions threshold for coverage. These two subsections, compliment subsection 1 to ensure that parties meeting the annual 25,000 MTCO2e threshold, but whose emissions are not included in the baseline, are also covered entities under the CCA. Together they encompass the whole universe of covered parties whether they reported emissions in 2015-19 or not.

Despite the plain language and structure of the statute, the commenter appears to argue that facilities that reported emissions in 2015-2019 that were under the 25,000 ton threshold at that time, but then exceeded the 25,000 ton threshold in a subsequent year are exempt from the program. This argument lacks support in the detailed language and structure of the statute, or in the purpose of the Act to provide comprehensive coverage of large emitters of greenhouse gas throughout Washington State.

RCW 70A.65.080(1) provides that where a person reported emissions in 2015-19 and also owns or operates a facility that has emissions over 25,000 MT CO2e, then they would be brought into the program. The statute provides the following:

> *(1) A person is a covered entity as of the beginning of the first compliance period and all subsequent compliance periods if the person reported emissions under RCW 70A.15.2200 for any calendar year from 2015 through 2019*

[8] The 2015-2019 time period reflects GHG emissions prior to the reductions in emissions from industrial operations and motor vehicle operations that occurred due to Covid.

[9] The program baseline is based on greenhouse gas emissions in the state during 2015 through 2019. RCW 70A.65.070(1)(a). RCW70A.65.070(4) states, "data reported to the department under RCW70A.15.2200 or provided as required under this chapter for **2015 through 2019** is deemed sufficient for the purpose of adopting annual allowance budgets and **serving as the baseline** by which covered entities demonstrate compliance under the first compliance period of the program." (emphasis added).

or if additional data provided as required by this chapter indicates that emissions for any calendar year from 2015 through 2019 equaled or exceeded any of the following thresholds

or if the person is a first jurisdictional deliverer and imports electricity into the state during the compliance period:

(a) Where the person owns or operates a facility and the facility's emissions equal or exceed 25,000 metric tons of carbon dioxide equivalent

RCW 70A.65.080(1).

The first sentence of subsection (1) sets out a parallel construction of three independent clauses linked in series by commas and the word "or". After the first clause beginning "A person is a covered entity… and ending with "for any calendar year from 2015 through 2019," the second clause of subsection (1), beginning after the comma, is set aside as an independent clause of its own and is introduced with the word "or." This indicates that the second clause (about data from 2015-2019 equaling or exceeding the thresholds) is independent from the first clause. This is further reinforced by the rest of the sentence structure which includes another comma and "or" introducing a third clause related to first jurisdictional deliverers. Thus, the sentence is constructed in a classic parallel construction of three independent clauses linked in series by commas and the word "or". Given this structure, each clause is independent and we can ascertain the meaning and function of the first clause alone by cutting out and skipping over the second and third clauses, yielding the following:

(1) A person is a covered entity as of the beginning of the first compliance period and all subsequent compliance periods if the person reported emissions under RCW 70A.15.2200 for any calendar year from 2015 through 2019 . . .

(a) Where the person owns or operates a facility and the facility's emissions equal or exceed 25,000 metric tons of carbon dioxide equivalent

RCW 70A.65.080(1). After parsing through this statutory language and its grammatical construction, the statutory language is clear that coverage under the first clause is triggered where a person: (1) "reported emissions under RCW 70A.15.2200 for any calendar year from 2015 through 2019" and (2) "and the facility's emissions equal or exceed 25,000 metric tons." Further, it is clear that the 25,000 tons threshold is not limited to the 2015-2019 period, but rather the facility simply has to have filed emissions reports during that time period and then have emissions that meet the 25,000 threshold. There is no additional requirement in the plain language of the statute that the 25,000 metric tons of CO2e be for the 2015-2019 period. Indeed, the tenses of the verbs support this analysis. A person must *have reported* emissions (past tense) during the 2015-2019 period, but emissions must "*equal or exceed*" (present tense) the 25,000 MTCO2e threshold.

This is both the unambiguous meaning of the plain language of the statute and also a meaning that is directly in line with the purpose and goals of the ACT to comprehensively cover large sources of greenhouse gas over a certain threshold in order to help the state achieve its

statutory greenhouse gas reduction limits. RCW 70A.65.005 (2), RCW 70A.65.060 (1); *See* RCW 70A.45.020. In addition, this understanding of subsection 1 dovetails well with subsections (5) and (6) which sweep in other entities with emissions over the 25,000 ton threshold that did not report emission in the 2015-2019 period. These provisions ensure that, other than specific express exemptions for certain industries, large emitters are covered under the Act. *See* RCW 70A.65.080 (7)(listing exemptions).

Taken together, the three subsections, RCW 70A.65.080(1), (5) and (6) ensure that the program covers: (1) those emission sources that reported between 2015 and 2019 and have emissions above the threshold, (2) those emission sources that begin or modify operations after January 1, 2023 and have emissions above the threshold, and (3) those emission sources that were in operation between 2015 and 2019 but did not have sufficient emissions to report, when and if they ever do have emissions greater than the threshold. With these three provisions, the legislature designed a program that covers all facilities, suppliers, and first jurisdictional deliverers of electricity with emissions above the 25,000 MTCO2e per year threshold.

Commenter: OTH-5 (Municipality)

Summary: The City of Spokane notes that WAC 173-446-030(1)(a) excludes waste to energy operations from the first compliance period, and asks Ecology to add a provision to WAC 173-446-030(1)(b) to that same effect, since waste to energy facilities are first jurisdictional deliverers of electricity.

Response: Ecology has added the requested clarifying provision.

4. Auctions (WAC 173-446-300's)

A. Allowance price containment reserve (APCR)

Commenters: B-18 (CenTrio Energy); O-32 (Western States Petroleum Association); B-11 (HF Sinclair); O-29 (Environmental Defense Fund)

Summary: Several commenters expressed appreciation for Ecology's proposal to front load the APCR by, in 2023, placing into the APCR 5 percent of the annual allowance budgets from all the years 2023 through 2030. WSPA asked Ecology to expand that effort, and include allowances from the 2030s in the front loading as well.

Response: Ecology considered front loading the APCR with allowances from the 2030s as well as the 2020s, but concluded that front loading allowances from years beyond 2030 would jeopardize the ability of the program to meet its proportionate share of the 2030 limits in RCW 70A.45.020 by 2030. That is, if we pull allowances from years after 2030 and allow them to be used for compliance in the years before 2030, those allowances, because they come from years after 2030, will not be included in the cap, or in the annual allowance budgets for the years before 2030. Therefore, using them before 2030 would enable emissions in 2030 to exceed the cap, which is designed to meet the 2030 limits in RCW 70A.45.020. For this reason, Ecology is not adding allowances from the 2030s to the front loading of the APCR.

Commenter: O-35 (Clean and Prosperous Institute)

Summary: The Clean and Prosperous Institute comments that it would be better not to front load the APCR at all, as allowance prices will not be as high as Ecology's modeling shows. The Institute points out that the model does not take into account the fact that some of the auction proceeds will be spent on ways to reduce GHG emissions, which will enable covered entities to reduce their emissions faster and more cheaply than the model shows, thereby reducing the demand for allowances, and keeping prices lower than the model shows.

Response: The Vivid Economics modeling analysis took into account the deployment of GHG reduction measures. However, as the Institute notes, those GHG reduction measures may come into use sooner than expected due to the investment of auction revenue in GHG reduction technology. This is an area where there is considerable uncertainty, especially on the cost of GHG reduction measures and the time when they will become available. Ecology has determined to keep a careful watch on the market and for the time being to maintain the front loading of the APCR as proposed.

Commenters: B-18 (CenTrio Energy); O-32 (Western States Petroleum Association); O-35 (Clean and Prosperous Institute); O-37 (Association of Washington Business)

Summary: A number of commenters (WSPA, AWB, CenTrio) comment that Ecology needs to find additional ways to adjust the market in the future to alleviate high allowance prices. Suggestions include resetting program stringency measures and/or allowance prices if the APCR is depleted prior to linkage (WSPA), and delaying the entrance of general market participants into the program (Clean and Prosperous Institute).

Response: Mechanisms in statute and in rule authorize Ecology to adjust the number of allowances in annual allowance budgets (RCW 70A.65.070(3); WAC 173-446-250(2)) and the number of allowances available for auction (RCW 70A.65.100(11); WAC 173-446-300(3)) as needed to ensure that parties covered by the program will achieve their proportionate share of the emission reductions required in 2030, 2040, and 2050. In addition, Ecology is required to engage in another round of rulemaking for the cap-and-invest program prior to the second compliance period. If further adjustments are needed, they will be made during that rulemaking. In the meantime, during the first compliance period, Ecology will be closely monitoring the market, the allowances sold, and the emission reductions achieved, to determine whether more or different price controls are needed.

Commenter: O-40 (International Emissions Trading Association)

Summary: The International Emissions Trading Association asks Ecology to avoid the use of discretionary auctions for the sale of APCR allowances for regulated entities that are behind on their compliance efforts. In IETA's view, this not only introduces uncertainty, but also runs the risk of incentivizing greater levels of noncompliance and overreliance on this type of measure. This alignment would bring Washington's regulations closer to those implemented in California.

Response: The proposed rule includes an auction of APCR allowances once each year after the final auction of current and past vintage allowances and before the compliance deadline. WAC 173-446-370(2)(c). IETA is correct that the purpose of these auctions is to enable covered and opt-in entities to purchase allowances needed for compliance if they are short. As in Ecology's proposed rule, California offers APCR allowances for sale each year immediately preceding the

November 1 compliance deadline. Title 17 CCR Section 95913(d)(1)(B). Therefore, Ecology's proposal is consistent with California, and removing the annual APCR auction is not necessary to align with California. APCR allowance prices are considerably higher than prices paid so far in quarterly auctions of current and past vintage allowances in California/Québec quarterly auctions. Ecology believes this price difference is a sufficient incentive for covered entities to find cheaper means of meeting their compliance obligations than purchasing APCR allowances. Ecology will be monitoring the market, and will address this issue in the next round of rulemaking should it be necessary.

Commenter: OTH-5 (Municipality)

Summary: The City of Spokane asks Ecology to clarify how allowances in the APCR will be divided between Tier 1 priced allowances and Tier 2 priced allowances.

Response: For any given APCR auction, the APCR allowances will be divided evenly between those offered for sale and the Tier 1 price and those offered for sale at the Tier 2 price. Ecology has added language to the rule to clarify this point.

B. Emission containment reserve (ECR)

Commenters: O-29 (Environmental Defense Fund); O-33 (Climate Solutions); O-23 (Washington Environmental Council); I-130 (Environmental Defense Fund, Belcher); I-262 (Sweeney)

Summary: A number of commenters (Environmental Defense Fund, Climate Solutions, WEC, Kjellen Belcher, and Rosemary Sweeney) ask Ecology to reinstate the emissions containment reserve (ECR) trigger price. They believe that, in the long run, the trigger price will be necessary to keep allowance prices from remaining too low. Climate Solutions suggests that, as a condition of linkage, Washington should require any jurisdictions with which we link (likely California and Québec) to also establish an ECR trigger price.

Response: Modeling predicts (and current activity in the California/Québec market confirms) that allowance prices paid at auction will rise faster than the auction floor price, and an ECR trigger price is not needed. That situation may change. Therefore, Ecology will monitor the market over the next few years and explore the possibility of reinstating the ECR trigger price should it become useful to do so.

Commenters: I-243 (Shobe); O-29 (Environmental Defense Fund); O-33 (Climate Solutions)

Summary: Several commenters (Resources for the Future, Environmental Defense Fund, Climate Solutions) provided suggestions for changing the design of the emissions containment reserve. Those changes include not defining the ECR as a separate account, but as the 10% of allowances that can be removed from any allowance auction at the ECR trigger price; retiring allowances remaining unsold after auction rather than placing them in the ECR; and providing ECR allowances for sale at the regular quarterly auctions instead of only to covered and opt-in entities at separate auctions.

Response: The Climate Commitment Act statute provides detailed requirements for the design of the emissions containment reserve. The suggested redesign elements cannot be implemented without changes to those statutory requirements.

Commenter: O-28 (Western Power Trading Forum)

Summary: The Western Power Trading Forum is concerned that Ecology's rule provides for separate auctions when new covered and opt-in entities enter the program, noting that such separate auctions could give new entrants into the program special and potentially discriminatory access to allowances.

Response: RCW 70A.65.150(4) provides that only covered and opt-in entities can participate in auctions of allowances from the allowance price containment reserve held when new covered and opt in entities enter the program. Auctions held when new covered and opt-in entities enter the program must therefore be held separately from regular quarterly auctions, at which general market participants may participate. It appears that the commenter is under the impression that only new covered and opt-in entities may be participants in the auctions held when new covered and opt-in entities enter the program. In fact, any covered or opt-in entity may participate in such auctions; only general market participants may not participate in those auctions. Given that all covered and opt-in entities can participate in these auctions, the new covered and opt-in entities do not experience any special or potentially discriminatory access to allowances.

Summary: The Western Power Trading Forum asks Ecology to make allowances in the ECR available if the APCR is depleted.

Response: RCW 70A.65.140(5) dictates the circumstances in which allowances are to be made available from the ECR. That provision requires Ecology to distribute allowances from the ECR at no cost to new or expanded EITEs to cover their first compliance period; and requires Ecology to auction allowances from the ECR when new covered and opt-in entities enter the program. There is no authorization for Ecology to make allowances from the ECR available if there are no allowances in the APCR. Indeed, RCW 70A.65.150(3)(b) indicates that the system is intended to work in the opposite direction: Ecology is required to auction allowances from the APCR when new covered and opt-in entities enter the program and the ECR is empty.

Commenter: O-32 (Western States Petroleum Association)

Summary: The Western States Petroleum Association (WSPA) asks Ecology to provide a more predictable mechanism for releasing allowances from the ECR.

Response: RCW 70A.65.140(5) dictates the circumstances under which allowances are to be made available from the ECR: Ecology is required to distribute allowances from the ECR at no cost to new or expanded EITEs to cover their first compliance period, and to auction allowances from the ECR when new covered and opt-in entities enter the program. The proposed rule reflects these requirements and therefore is not being changed.

C. Prices

Commenter: O-16 (NW Pulp & Paper)

Summary: Northwest Pulp and Paper comments that Ecology should not increase the floor and ceiling prices by 5 percent for 2023.

Response: The 5 percent increase in the floor and ceiling prices in Ecology's proposed rule are necessary to match the California floor and ceiling prices for 2023. Ecology's proposed rule adopts the California floor and ceiling prices. California increases its floor and ceiling prices each year by 5 percent plus inflation. Therefore, California's floor and ceiling prices for 2023 will be its 2022 prices plus 5 percent plus inflation. Ecology's proposed rule adopts California's 2022 floor and ceiling prices and adjusts them by adding 5 percent plus inflation to be equal to California's 2023 floor and ceiling prices.

Commenter: A-3 (Bonneville Power Administration)

Summary: BPA comments that auction floor and ceiling prices that Ecology has proposed adopting for use in 2023 are the California prices for 2022.

Response: California's floor price for 2022 is $19.70; California's ceiling price for 2022 is $72.29. California increases its floor and ceiling prices each year by 5 percent plus inflation. The auction floor and ceiling prices in Ecology's proposed rule for auctions held in 2023 are California's floor price for 2022 ($19.70) plus 5 percent plus inflation, and California's ceiling price (&72.29) plus 5 percent plus inflation. WAC 173-446-335(1). These proposed prices are identical to California's for 2023.

Commenter: B-21 (Puget Sound Energy, Avista Corp., Cascade Natural Gas, NW Natural)

Summary: The commenter notes that the report, A Roadmap For Linkage, prepared by the Environmental Defense Fund and the International Emissions Trading Association, references California's three reserves, each with a trigger price. The commenter ask Ecology to adopt "the three ceiling prices in California's program rather than a single ceiling price."

Response: As noted in the report, A Roadmap for Linkage (Report), what the Gas Utilities call California's three ceiling prices are actually California's Tier 1 APCR price, Tier 2 APCR price and ceiling price. *See* Report at 10-11. Ecology has adopted these three prices. WAC 173-446-335 (ceiling price); WAC 173-446-370 (APCR Tier 1 and Tier 2 prices).

Commenters: I-5 (Coenen); B-12 (US Oil & Refining); O-32 (Western States Petroleum Association); O-29 (Environmental Defense Fund); T-6 (Makah Tribal Council)

Summary: Numerous commenters commented on Ecology's choices for the proposed price floor and price ceiling. Steffen Coenen comments that the price floor and price ceiling need to be significantly higher than Ecology's proposal. US Oil asked Ecology to set the price ceiling at or near the price floor. The Western States Petroleum Association asked Ecology to lower the price ceiling and the allowance price containment reserve (APCR) tier prices until Ecology links to California/Québec trading program. The Makah Tribe commented that the price floor must be high enough to ensure emission reductions, and the Environmental Defense Fund commented that the price ceiling must be high enough to avoid sales of price ceiling units and ensure ambitious environmental outcomes.

Response: The Climate Commitment Act creates a brand new market in Washington for GHG allowances. The Act requires Ecology to set an auction floor price, ceiling price, and APCR prices. RCW 70A.65.150(1), (6). The Climate Commitment Act also requires Ecology to design allowance auctions "so as to allow [linkage with another cap and trade program] to the

maximum extent practicable." RCW 70A.65.100(10). If Washington links with the California/Québec trading program, we will need to set the floor price, ceiling price, and APCR tier prices at values that are compatible with that program.

Because the market is new, it is impossible (pre-implementation) to know what the prices for allowances will be, what other market dynamics will act on the market participants once the program is up and running, and how therefore to set the floor price, ceiling price, and tier 1 and tier 2 APCR prices. To provide a basis for determining how Ecology should set these prices, Ecology hired Vivid Economics to do careful modeling to provide a best plausible estimate of how the market will behave based on an economic model of Washington State's expected GHG allowance market. The Vivid Economics report [See publication 22-20-038] on the results of that modeling can be found on Ecology's rulemaking website for WAC 173-446.

Vivid's model showed that the steep cap decline rate and the relatively small size of Washington's GHG market would drive allowance prices upwards for the first two compliance periods of Washington's cap-and-invest program (2023 through 2030). The model also showed that, if Ecology adopts California's floor price, ceiling price, and tier 1 and tier 2 APCR prices, and front-loaded the APCR as in the proposed rule, allowance prices in Washington's market would decrease somewhat, and would peak around 2030 at levels below the price ceiling. These results indicated that adopting the California floor price, ceiling price, and tier 1 and tier 2 APCR prices would result in a viable market, in addition to providing the compatibility needed should Ecology link with the California/Québec trading program. Therefore, we proposed to adopt the California prices. From the modeling, it appears that these price points will be high enough to ensure emission reductions and will avoid the sale of price ceiling units.

Commenter: O-37 (Association of Washington Business)

Summary: The Association of Washington Business (AWB) comments on the difference between the projected price of allowances assumed in the spreadsheet prepared by Ecology during the 2021 legislative session when the Climate Commitment Act was passed, and the much higher projected price of allowances shown in the Vivid Economics model completed for this rulemaking in 2022. AWB believes the difference in projected allowance prices is due to a lack of sufficient allowances to fully cover all emissions under the program.

Response: The number of allowances in the system will equal the annual allowance budgets for each year, which, are derived from the GHG emissions reported between 2015 and 2019 to determine the total program baseline, reduced as needed by the declining cap.

The difference in the projected prices in the two analyses is a result of the different purposes of the analyses. The spreadsheet prepared during the 2021 legislative session was designed to provide an estimate of possible revenue to the state from auctioning GHG allowances. The price used in that spreadsheet was the California floor price (the price below which allowances would not be sold) for auctions of allowances. The number of allowances projected to be sold in that spreadsheet derived from the 2015 through 2019 emissions from the sectors covered by the program. That analysis did not try to, and did not purport to, analyze the dynamics of a Washington market or predict what auction prices would be in that market - it was designed to provide a conservative estimate of the revenue if Washington allowances sold at the California

floor price in order to identify the dollars that could likely be counted on from the program in terms of state revenue. Additional revenue that could occur under the program if allowances sold above the floor price would not have the same level of certainty and was thus not estimated at that time.

The Vivid Analysis, by contrast, was undertaken precisely to analyze the dynamics of a Washington market for GHG allowances, and provide insight into what the prices in a Washington GHG market would look like. The number of allowances that the model assumed would be in the Washington market is very similar to the number of allowances in the 2021 spreadsheet describes above. For example, the 2021 spreadsheet assumed 65,596,707 allowances in the allowance budget for 2023, while the Vivid Analysis assumed approximately 63,363,226 allowances in the allowances budget for 2023. Rather than making a conservative estimate of the revenue that could be counted on from the program, as was done in the 2021 legislative spreadsheet, the Vivid Analysis sought to estimate likely prices based on market behavior and program design.

Commenter: I-286 (Sappington)

Summary: Ecology's pricing methodology exceeds the Department's authority in two aspects. First, RCW 70A.65.150 requires Ecology to "adopt by rule an auction floor price and a schedule for the floor price to increase by a predetermined amount every year." The Legislature has not authorized Ecology to set all auction prices prior to the first auction in the first year. The Legislature intended Ecology to set the auction price in advance of each auction. See the singular form of auction used in RCW 70A.65.150(6)(a).

Second, "[t]he [price] ceiling must be set at a level sufficient to facilitate investments to achieve further emission reductions beyond those enabled by the price ceiling, with the intent that investments accelerate the state's achievement of greenhouse gas limits." RCW 70A.65.160(1). A price ceiling that subsidizes polluters does not facilitate emissions reduction investments. Further, "[t]he price ceiling must increase annually in proportion to the reserve auction floor price established in RCW 70A.65.150(1)." RCW 70A.65.160(1). This proportionality requirement mandates the floor price increase sufficiently to maintain the ceiling price's ability to facilitate investments as the marginal costs of GHG emissions increase.

Response: Ecology set the price floor and price ceiling in accordance with statutory requirements. As the commenter points out, the statute requires Ecology to "adopt by rule an auction floor price and a schedule for the floor price to increase by a predetermined amount every year." That provision requires Ecology to set an *initial* floor price and to set a schedule by which this initial price will increase each year. Not only is this the best reading of the statute, it is the most reasonable result. Commenter's interpretation would require Ecology to set auction floor prices by rule for each auction, which would mean setting the prices four times a year – or once every three months. The rulemaking process itself takes longer than three months. Therefore, adopting a new auction floor price by rule for each auction is not feasible. Moreover, setting a new auction floor price for each auction would provide a high level of uncertainty to auction participants, which would greatly hinder the auction process.

In setting the price ceiling, Ecology must balance several factors. First, the statute requires Ecology to "establish a price ceiling to provide cost protection for covered entities obliged to comply with this chapter." RCW 70A.65.160(1). Second, this price ceiling must be set "at a level sufficient to facilitate investments to achieve further emission reductions beyond those enabled by the price ceiling." *Id*. These two provisions establish the bounding criteria for the price ceiling: (1) it must be low enough to provide cost protection for covered entities, and (2) it must be high enough level to encourage investments in GHG reduction measures. If the price ceiling is too high, it will not provide the cost protection required by statute; if set too low, it will not encourage investments in GHG reduction measures. Third, if there are no allowances left in the APCR, Ecology is required to sell price ceiling units to any covered entity that does not have sufficient compliance instruments to meet its compliance obligation at the end of a compliance period. RCW 70A.65.160(2). Price ceiling units are not included in annual allowance budgets, or in the cap on GHG emissions. While Ecology is required to use the revenue from the sale of price ceiling units to purchase GHG emission reductions to offset all price ceiling units sold, on a ton-for-ton basis (RCW 70A.65.160(3)), it is not clear where or when Ecology will find the required emission reductions. Therefore, selling price ceiling units jeopardizes the program's ability to meet the 2030, 2040, and 2050 GHG emission limits in RCW 70A.45.020.

Another consideration in setting the auction price parameters, including the price ceiling, is the steep cap decline rate for the first two compliance periods. This high cap decline rate will result in high allowance prices for the first two compliance periods.

After balancing these considerations, and reviewing the Vivid Economics modeling analysis, Ecology proposed to adopt the California price parameters, including setting the price ceiling at the same level as California's price ceiling. The Vivid Economics model indicates that adopting the California auction price parameters (including the price ceiling) and frontloading the APCR should provide cost protection for covered entities and avoid excessive sales of price ceiling units, while setting the price ceiling at an amount sufficiently higher than the other auction price parameters to encourage the adoption of GHG reduction measures. *See* Summary of the market modeling and analysis conducted by Vivid Economics for the Washington State Department of Ecology, June 2022, p. 15 Exhibit 5.

In addition, the price ceiling will need to harmonize with the California/Québec prices if we link with their GHG trading program.

The price ceiling, as set in WAC 173-446-335, increases annually by 5 percent plus inflation, just as the floor price does. Therefore, the price ceiling meets the statutory requirement that the price ceiling increase annually in proportion to the auction floor price.

D. Price ceiling units

Commenter: B-22 (Puget Sound Energy & Avista Corp.); O-39 (Alliance of Western Energy Consumers); O-22 (Joint Utilities: Avista, NRU, PacifiCorp, PGP, PSE, WPUDA); B-21 (Puget Sound Energy, Avista Corp., Cascade Natural Gas, NW Natural)

Summary: Several commenters (Puget Sound Energy and Avista (in joint comments), the Alliance of Western Energy Consumers, the Joint Utilities, and many natural gas utilities) comment that the proposed language in WAC 173-446-385(6) ("If Ecology agrees to sell price

ceiling units,") provides more discretion to Ecology than the statute allows in determining whether or not to sell price ceiling units.

Response: Ecology agrees that the proposed language could be read to provide more discretion than the statute provides for on this determination. It was not Ecology's intent to provide that level of discretion. Ecology has therefore revised the rule language to clarify this point. Ecology has deleted WAC 173-446-385(5), and the new WAC 173-446-385(5) (formerly 385(6) in the proposed rule) now states, "If the statutory conditions for the sale of price ceiling units outlined above are met, ecology shall instruct the financial administrator to begin to accept cash payment for purchases from price ceiling units …"

Commenter: O-32 (Western States Petroleum Association)

Summary: The Western States Petroleum Association comments that the process for selling price ceiling units is too rigorous and time-consuming for the time frame involved.

Response: The Climate Commitment Act restricts the sale of price ceiling units to covered entities that, at the end of a compliance period, do not have sufficient eligible compliance instruments in their holding and compliance accounts to meet their compliance obligations for that compliance period. RCW 70A.65.160(2). Price ceiling units may only be sold when there are no allowances left in the allowance price containment reserve (APCR). RCW 70A.65.160(2). Ecology's proposed rule provides that Ecology will sell price ceiling units immediately prior to the deadline for compliance for each compliance period at the request of a covered entity that can show that it has an insufficient number of compliance instruments to meet its compliance obligation. A request for the sale of price ceiling units must be made at least 10 days before the compliance deadline. Ecology believes that the requirements in the rule accurately reflect the requirements in the CCA, and that the time frame should be adequate. Covered entities will know at the end of the APCR auction whether or not they need price ceiling units, and can then request a price ceiling unit sale. Ecology will revisit these provisions if this process proves to be overly burdensome.

Commenter: O-29 (Environmental Defense Fund)

Summary: The Environmental Defense Fund asks Ecology to outline how it will secure the necessary ton-for-ton reductions in GHG emissions to offset the increase in the cap that will occur whenever price ceiling units are sold.

Response: Price ceiling units authorize emissions of GHGs that are in addition to those in annual allowance budgets (the cap). The Climate Commitment Act therefore requires Ecology to use the proceeds from the sale of price ceiling units to "achieve emission reductions on at least a metric ton for metric ton basis that are real, permanent, quantifiable, verifiable, enforceable by the state, and in addition to any GHG emission reduction otherwise required by regulation and any other GHG emission reduction that would otherwise occur." RCW 70A.65.160(3). Ecology is exploring options for securing the required GHG reductions but has not reached any determinations at this time. Ecology also recognizes that the availability of such GHG reductions is evolving over time, and believes that it is beneficial to retain as much flexibility as possible for the implementation of this requirement. Therefore, Ecology will not be adding any language to the rule on this subject.

Commenter: O-35 (Clean and Prosperous Institute)

Summary: The Clean and Prosperous Institute suggests that Ecology adopt a lower price ceiling, thereby enabling the sale of more price ceiling units, and find the required compensatory GHG reductions (RCW 70A.65.160(3)) by reducing future annual allowance budgets.

Response: The Climate Commitment Act requires Ecology to use the proceeds from the sales of price ceiling units to secure the required GHG reductions when selling price ceiling units. RCW 70A.65.160(3). Removing allowances from future allowance budgets would *not* require Ecology to use those proceeds. Moreover, covered and opt-in entities plan for the future based on the annual allowance budgets, and need the allowances associated with those budgets to meet their compliance obligations. Removing allowances from future annual allowance budgets to compensate for the sale of price ceiling units would penalize all covered and opt-in entities.

E. Purchase limits

Commenter: B-6 (Phillips 66)

Summary: Phillips 66 asks that the purchase limit be changed from 10 percent to 25 percent.

Response: The purchase limit is set by statute (RCW 70A.65.100(6)(a) and (b)). Because the purchase limit is set in statute, the legislature would need to update the statute to change it.

Commenter: O-16 (NW Pulp & Paper)

Summary: Northwest Pulp and Paper asks why WAC 173-446-330(3) provides that a direct corporate association needs to be considered a single party subject to the purchase limitation for a single covered entity.

Response: The purchase limits are in place to help prevent market manipulation and bidding collusion at auction. If different registered entities that are members of the same direct corporate association were not subject to a single purchase limit they could work together and use their combined market power to control and manipulate allowance prices.

Commenter: A-3 (Bonneville Power Administration)

Summary: BPA asks Ecology to exempt it from the holding limits and purchase limits in the program to enable BPA to deal with extenuating circumstances such as low water years.

Response: There is no basis in the CCA for exempting BPA from the holding limits and the purchase limits in the program. All covered entities face the possibility of extenuating circumstances that will affect their emissions from year to year.

F. Requirements, notice, and confidentiality

Commenter: O-28 (Western Power Trading Forum)

Summary: The Western Power Trading Forum asks Ecology to hold the first auction in November, 2022.

Response: It is not possible to hold a viable auction in November, 2022 because there is not enough time between the time the rule is adopted (October 1, 2022) and the end of November 2022 for parties wishing to participate in an auction to get the accounts required and register

for auctions. Before being eligible to participate in an auction, participants must (a) be registered with Ecology, (b) have accounts with Ecology, and (c) be registered for the auction. In order to get an account with Ecology, a registered entity must disclose to Ecology its direct and indirect corporate associations, and must designate account representatives. There is insufficient time for this to happen between the time the rule is adopted (Oct 1, 2022) and November 2022. Therefore, even if Ecology agreed to hold an auction in November 2022, no one would be able to participate.

Summary: The Western Power Trading Forum comments that Ecology is only offering for auction 5 percent of a future year allowance budget, while California and Québec offer 10 percent of a future year's allowance budget for auction, and suggests we should modify our rule to be consistent with California and Québec.

Response: In fact, our program is consistent with California and Québec on this issue. They offer for auction 10 percent of the annual allowance budget for a future year by offering 2.5 percent of the future year's budget at each of four quarterly auctions (2.5 x 4 = 10). Ecology offers for auction 5 percent of future allowances for a given year at each of two auctions, which adds up to 10 percent of the future year's allowance budget being available for auction in a given year (5 x 2 = 10). See, e.g., WAC 173-446-365(3)(a).

Commenter: A-3 (Bonneville Power Administration)

Summary: BPA comments that Ecology should use the same bidding platform as the one used in the California/Québec auctions.

Response: Ecology will be using the same bidding platform as the one used in the California/Québec auctions.

Summary: BPA suggests that Ecology should remove the requirement to post the ECR trigger price in the auction notice, since Ecology has chosen to suspend the ECR trigger price.

Response: Ecology is leaving the requirement to post an ECR trigger price in the notice regulation so that it is there if we reinstate the ECR trigger price.

Commenters: B-22 (Puget Sound Energy & Avista Corp.); O-39 (Alliance of Western Energy Consumers)

Summary: Puget Sound Energy and Avista (commenting together) and the Alliance of Western Energy Consumers point out that the language in proposed WAC 173-446-300(2)(b)(iv) erroneously subjects electric utilities to provisions that only apply to natural gas utilities concerning the uses to which they may put revenues from the sale of allowances consigned to auction.

Response: Commenters are correct. Ecology has changed WAC 173-446-300(2)(b)(iv) to make it clear that the criteria for the uses of auction revenue from the sale of consigned allowances pertinent to natural gas utilities does not apply to the sale of allowances consigned to auction by electric utilities.

Commenter: O-10 (Washington Public Ports Association)

Summary: The Washington Public Ports Association asks Ecology to modify WAC 173-446-300(1)(ii)(H)(iv) to read: weatherization, decarbonization, conservation and efficiency services, bill assistance, *and to prevent or mitigate impacts to overburdened communities*.

Response: WAC 173-446-300(1)(ii)(H)(iv) does not exist. The language called out by the commenter is in WAC 173-446-300(2)(b)(iv). That language comes directly from the Climate Commitment Act, RCW 70A.65.130(2)(b). Ecology does not have the authority to change this language as requested.

Commenter: I-262 (Sweeney)

Summary: Rosemary Sweeney suggests that the public should have the opportunity to comment on auction notices, and that Ecology should consider more than the allowances in the market before adjusting the number of allowances to submit for auctions.

Response: Under Ecology's proposed rule, by January 15, 2024, and each year thereafter, Ecology will notify the public of the number of allowances that Ecology will submit for auction for the year's auctions. WAC 173-446-300(3)(b). This announcement of the allowances for the upcoming year is necessary to provide some predictability and a planning horizon for covered entities participating in the program. To provide opportunity for public input, Ecology is adding a public process to accompany adjustments in the number of allowances in an annual allowance budget described in WAC 173-446-250.

Commenter: O-16 (NW Pulp & Paper)

Summary: Northwest Pulp and Paper notes that WAC 173-446-310(3) provides an expedited process for Ecology to change the auction date up to 10 business days. The commenter notes that using this process to move the auction to an earlier date would cause a number of problems with auction notice, auction registration and bid guarantees.

Response: Ecology agrees and has modified the rule language to clarify that the expedited process can be used only to delay an auction by up to 10 business days and does not apply to moving the auction to an earlier date.

Summary: Northwest Pulp and Paper comments that Ecology should not be able to place allowances into a successful bidder's compliance account after auction.

Response: WAC 173-446-360(7) says that Ecology may place allowances into a bidder's compliance account if two requirements are met: (a) the allowances are current or past vintage; and (b) holding limits would not apply to the allowances once they are in the compliance account. The provision is for the benefit of covered and opt-in entities to enable them to buy more allowances than they would otherwise be able to without exceeding their holding limits.

Commenters: O-7 (US Department of Energy, Hanford); O-16 (NW Pulp & Paper)

Summary: Northwest Pulp and Paper and Hanford note that WAC 173-446-320(4) states, "If any of the information provided by a registered entity under WAC 173-446-120 changes during the period beginning 39 calendar days before the auction and ending on the day of the auction, the person is prohibited from bidding in the auction." The commenter asks Ecology to allow for

notification of changes either up to the actual auction or up to 10 days before the auction, because the limitations of the requirement could create a compliance problem for a registered entity before the last auction during a compliance period, when the registered entity needs to purchase allowances to comply.

Response: Ecology agrees. The prohibition should not be as broad as it is in the proposed rule. Ecology has changed the rule to limit the information a change in which 39 calendar days before an auction would trigger exclusion from auction to changes in the percentage of holding limits and or purchase limits allotted to a member of a direct corporate association.

Commenter: O-7 (US Department Of Energy, Hanford)

Summary: Hanford comments that a federal agency may not be able to provide a bid guarantee in any of the forms required by the proposed rule (wire transfer, irrevocable letter of credit, bond).

Response: Hanford provides no detail about why it could not provide a bid guarantee in any of the currently required forms, or what type of bid guarantee it could provide. Absent these details, Ecology has no means of responding. Should Hanford become a participant in the program, Ecology and Hanford will work on this question outside this rulemaking.

Summary: Hanford comments that seven calendar days is generally not enough to get an invoice through the federal invoicing system.

Response: The rule requires payment for allowances awarded at auction no later than seven calendar days after the successful bidder receives notice of the allowances awarded. The provision goes on to note that the financial instruments provided as bid guarantees will be used to pay the amount if the successful bidder does not otherwise pay within the allotted seven days. If Hanford becomes a participant in the program, and if these provisions prove to be unworkable for Hanford, Ecology will work with Hanford to work out how to handle the situation outside this rulemaking.

Commenter: B-21 (Puget Sound Energy, Avista Corp., Cascade Natural Gas, NW Natural)

Summary: The commenter asks Ecology to permit regulated utilities to provide a letter of commitment or attestation as their bid guarantees. Utilities are heavily regulated by the WUTC and aim to minimize ratepayer costs. Providing bid guarantees in the form of a wire transfer, irrevocable letter of credit or a bond (the currently allowed means of providing bid guarantees) will add unnecessary costs for regulated utilities and their ratepayers.

Response: A bid guarantee must be a negotiable instrument that can be used to actually pay for allowances. A letter of commitment or attestation does not fill this role, and therefore cannot be used.

Commenters: B-5 (bp America); O-12 (Food Northwest); O-16 (NW Pulp & Paper)

Summary: Commenters suggest that the provisions in WAC 173-446-390 regarding confidentiality do not go far enough, because more information needs to be held confidential. They ask that Ecology include in the Climate Commitment Act regulations provisions similar to

those in Ecology's GHG reporting rule (WAC 173-441) providing a process for covered and opt in entities to request that more information (including production data) be kept confidential.

Response: The provisions in WAC 173-446-390 are focused solely on the market-related information that must be held confidential. They do not purport to be the only authority for holding information confidential under the Climate Commitment Act. For example, any information designated as confidential under Ecology's GHG reporting rule will remain confidential in the context of the cap and invest program. In addition, all the relevant confidentiality provisions in the state Public Records Act (RCW 42.56) apply. Finally, a covered or opt-in entity is free to request confidentiality for information it believes is eligible for exemption from the Public Records Act.

5. Baseline (WAC 173-446-200)

For responses regarding the EITE baseline see 10(b) of this section.

A. Determining the baseline

Commenters: B-5 (bp); B-12 (US Oil); B-15 (Boeing); B-17 (NW Pipeline)

Summary: Commenters have several concerns with the proposed rule. First, they question WAC 173-446-200(2) ("Ecology may elect not to apply all methods in WAC 173-446-040(3) when calculating subtotal baselines since the total program baseline is the sum of the subtotal baselines."). Baselines should be specific to individual covered entities as these numbers may be used for tracking or assessment in the future.

Older Transportation Fuel Supplier Reporting should not be used for the total program baseline for fuel suppliers because it is different from how emissions will be calculated for fuel suppliers in compliance years. Even if the total is in alignment, it could impact individual facility compliance requirements.

Why are baselines averaged over three years for covered entities entering the program at a later data instead of the five year average for existing covered entities?

Some emissions that may be part of the total program baseline (natural gas supplied by interstate pipelines) have not yet been reported. The timeline should be extended to give time to include those emissions if applicable.

Response: WAC 173-446 contains two types of baselines: the total program baseline, and baselines used for calculating no cost allowances. Baselines used for no cost allowance allocation are specific to individual covered entities and are calculated and published separately. WAC 173-446-200 concerns the total program baseline, which is not specific to any individual covered entity but is used to set the cap on allowances. Subtotal baselines are summed to get the total program baseline. Not all individual covered entities have subtotal baselines, as some sectors only use a single sector wide value. In many cases, individual numbers are not available or are inaccurate due to changes in calculation methodologies or the unavailability of reporting data for the baseline period. Ecology does not plan to use these values for future tracking or program evaluation, but acknowledges this type of use may occur. If this type of use occurs, agency publications with this type of use would include disclaimers.

The provision of concern in WAC 173-446-200(2) does not change how emissions are calculated or change any exemptions or coverage. The provision is limited to WAC 173-446-040(3), which only covers which party gets allotted a given amount of emissions. It simply means that Ecology is not required to subtract emissions from one subtotal baseline only to add the same number to another subtotal baseline before summing all the subtotal baselines. The total program baseline is the same in either case. Ecology cannot use this provision any time individual baselines are required. The rule includes an example to explicitly describe this process:

> "For example, when calculating subtotal baselines, ecology may attribute fuel product combustion described in WAC 173-446-040(3)(a)(ii)(A) to facilities instead of reallocating those emissions to fuel suppliers. Ecology must apply WAC 173-446-040(3) to make sure that each metric ton of emissions is included in the total program baseline and avoid double counting. Ecology must fully apply WAC 173-446-040(3) any time emissions calculations are specific to a given covered party, such as calculating compliance obligations or allocation baselines."

The commenter is correct, values derived from the older transportation fuel supplier reporting program in WAC 173-441-130 (since repealed) used a different methodology than the newer WAC 173-441-122 based reporting that will be used for compliance years. RCW 70A.65.070(1)(a) establishes a January 1, 2023 program start date and a 2015 through 2019 default baseline period. It also requires Ecology to adopt annual allowance budgets for the first compliance period of the program by October 1, 2022. Modifications to RCW 70A.15.2200 that changed the basis for reporting for this sector did not become effective until July 25, 2021, with the associated changes to WAC 173-441 becoming effective March 12, 2022. The new reporting methods become partially effective for the 2022 emissions year reported by March 31, 2023 and fully effective for the 2023 emissions year reported by March 31, 2024, a phase-in requested by reporters concerned they would be unable to fully comply in emissions year 2022. These dates are well after the baseline period

The Legislature understood this problem and provided in RCW 70A.65.070(4) that:

> "Data reported to the department under RCW 70A.15.2200 or provided as required by this chapter for 2015 through 2019 is deemed sufficient for the purpose of adopting annual allowance budgets and serving as the baseline by which covered entities demonstrate compliance under the first compliance period of the program. Data reported to the department under RCW 70A.15.2200 or provided as required by this chapter for 2023 through 2025 is deemed sufficient for adopting annual allowance budgets and serving as the baseline by which covered entities demonstrate compliance under the second compliance period of the program."

Ecology is using this provision to determine the total program baseline for suppliers of fuels other than natural gas based on the data reported under RCW 70A.15.2200 for that sector during 2015 through 2019, the transportation fuel supplier dataset. This is the highest quality dataset available and while it is inaccurate for any given organization, it is the most accurate option currently available for the entire sector, as individual errors tend to cancel out and statewide totals are the most accurate available numbers. These individual organization

inaccuracies provide another reason for not tracking or widely publishing baseline numbers on an individual covered entity basis. Individual compliance obligations are not based on the total program baseline and suppliers of other fuel products are not eligible for no cost allowance allocation, so there are no direct impacts to individual covered entities from this approach.

Subtotal baseline periods for covered entities entering after the first compliance period were designed to conform to rulemaking requirements in RCW 70A.65.070 and provide current information using updated methods. This includes the three year averaging period.

Ecology updated the total program baseline values in Table 200-1 during the rulemaking process, and the adopted values reflect the most current data available. Each pre-proposal draft of rule language provided for stakeholder review reflected updated data. Suppliers of natural gas submitted new reports for the baseline period by March 31, 2022 in order to qualify for no cost allowances. The information from the most current version of those reports is included in the final rule. The numbers use our best estimate values for all covered entities, including interstate pipelines, available in time to meet the statutory October 1, 2022 deadline.

Other than updating Table 200-1 with the most recent dataset, the rule was not changed in response to the comments.

Commenter: O-7 (US Department of Energy, Hanford)

Summary: Hanford asks when the final total program baseline will be made available.

Response: The final total program baseline will be included in the final rule, published with the CR-103. Ecology is currently working through data to determine the most accurate total program baseline possible.

Commenter: OTH-5 (Municipality)

Summary: The City of Spokane asks Ecology to exercise its discretion as provided in WAC 173-446-200(1) to adjust the baseline for the waste to energy facility if one or more of the years 2023-2025 is exceptional for some reason.

Response: The City's waste to energy facility is not a covered entity for the first compliance period. RCW 70A.65.080(2); WAC 173-446-030(1). Before the beginning of the second compliance period, when the City becomes a covered entity, Ecology will work with the City as the agency determines the appropriate adjustment to the baseline.

B. Data availability

Commenters: I-121 (Stephen Smith); O-32 (Western States Petroleum Association)

Summary: Detailed company-by-company emissions values used to calculate the total program baseline should be made public.

Response: You may obtain a copy of the calculations by submitting a public records request using the process described on the Ecology Public records requests and disclosure website.

C. Electricity baseline

Commenters: I-129 (Public Generating Pool, Hughes); B-22 (Puget Sound Energy, Avista Corp.); O-22 (Joint Utilities: Avista, NRU, PacifiCorp, PGP, PSE, WPUDA); O-28 (Western Power Trading Forum); OTH-1 (Seattle City Light)

Summary: The electricity baseline setting approach is unclear or incorrect.

Response: As recognized by many commenters, setting the baseline for the electricity sector is particularly challenging because there are no reported data for imports of electricity in the baseline years of 2015 through 2019. Moreover, there will be no data until the greenhouse gas reporting program begins receiving those data in 2023. This part of the rule language is also somewhat unique in that it is describing what Ecology was doing through the rulemaking process, which is now in the past, but does not have actionable meaning going forward because the final baseline is established through this rule. However, it is important to understand and explain how the baseline was developed given the context noted above.

There has been substantial confusion about the data set that Ecology used as an information source to establish the baseline. The only data set available to Ecology and the general public, and that is not confidential and proprietary, are the data collected through the Fuel Mix Disclosure (FMD) process run by the Department of Commerce Energy Policy Office. There are several elements to these data. The purpose of this data set is to understand the resources that are used to supply power to Washington customers, based on the power contracts and sources of power procurement for Washington utilities. The data are itemized by "claims" on power plants, so that it is understood what quantity of electrical energy (MWh) is used to serve electrical load in Washington from each power plant, or if not from a known power plant (a "specified source") then the other major sources of electricity – notably the general power market and the Bonneville Power Administration (BPA) federal power marketer. In all cases if there is no known power plant associated with the delivered power, or other known source, the power falls into a broad bucket known as "unspecified power." Importantly, the FMD data are not greenhouse gas emissions data, and are not intended to be treated as such. Historically the data were used to generate an emissions estimate for statewide electricity emissions, for lack of more specific data and to inform the state greenhouse gas inventory process. Going forward, there are now more specific emission attribution methods that will be used, including the beginning of greenhouse gas reporting for electricity imports noted above.

Commenters correctly note that the baseline for electricity should reflect the compliance approach in the cap and invest program, i.e., the first jurisdictional deliverer (FJD) of electricity. Commenters are also correct that the emissions total should be greater than one derived from a consumption-based inventory approach, i.e., one based only on the emissions associated with the use of electricity in Washington (which is the approach under the state inventory). A "FJD inventory" approach is appropriate, which represents the sum of in-state generation and the separate sum of imported electricity. This will be larger than a consumption-based approach, if for no other reason than emissions associated with exported electricity is by definition not part of the consumption-based approach. Some commenters incorrectly interpret the usage and modification of FMD emissions data as a crude proxy for lack of any other data during the legislative process and early analyses as an intent by Ecology to continue using those data in the baseline setting process.

In fact, Ecology does not use the FMD emissions data for any of the baseline setting process. As described in the rule, Ecology uses the *identified power plants* and associated *energy* data ("claims") from the FMD process, but does not use any associated *emissions* data. Instead, Ecology constructs a "FJD inventory" from whole cloth by combining the emissions data for in-state electrical generation from the existing greenhouse gas reporting program with emissions generated by multiplying the electrical energy imported from the associated power plant by the actual emissions factor for that power plant based on the methods used under the CETA greenhouse gas attribution rules (WAC 173-444-030-). In both cases, and for both in-state generation and for out-of-state generation that is imported into Washington, the associated greenhouse gas emissions are based on actual reported greenhouse gas emissions (except for a few small sources which are based on other methods, per the CETA rules).

While estimating emissions from specified sources is reasonably straightforward, since power contracts with major generating sources are generally well understood, it is more challenging to estimate so-called unspecified power (and associated emissions) where the source of the power is unknown or unknowable. Here the FMD data are useful, as is the process used to generate the data. Ecology obtained the raw data used for the FMD process from the Department of Commerce, and one of the elements of those data is the amount of power from each power plant that is not claimed by a utility. This power is considered unspecified power or, more generally, "market power." Ecology took the total of this market power that was generated by power plants with emissions in Washington, subtracted it from the total of market power that was used by Washington utilities, and assumed the difference was made up by importing out of state market power into Washington. Ecology then applied the unspecified emission factor from the CETA rule process to this estimate of imported unspecified market power, and the result is an estimate of imported unspecified electricity emissions. An additional component is included, which is the portion of Bonneville Power Administration (BPA) power purchases that are derived from market power purchases. This small amount (a few percent of BPA power) is included in the unspecified emissions total, using the same unspecified emissions factor.

From all of this, the final unspecified electricity import baseline estimate is generated. To summarize, the electricity import baseline is the sum of the total greenhouse gas emissions reported from contracted delivery from specified out-of-state sources, an estimate of unspecified ("market") power imported into Washington with associated emissions, and market power reported by BPA as being delivered to its Washington customers. This estimate is higher than earlier estimates used in the legislative process (and in some early analyses of the cap and invest program). Intuitively, however, it aligns with expectations and comments from stakeholders that the FJD inventory should be higher than a consumption-based inventory approach.

Some commenters suggest an alternative approach using data associated with transactions across electric balancing authorities, which are tracked through a construct called "e-tags". Basically, this means that imports of electricity that move from one part of the western electricity grid to another part of the grid, where each of those parts is managed by a different entity, are tracked through this method. These data are maintained by a private organization called Open Access Technology International (OATI), and are not available or accessible to the

public. A group of commenters attempted to organize the release of these data, but ultimately was only able to offer data for five utilities that are highly hydro-dependent. Because of Washington's immense hydropower resources, it is well understood that very large quantities of electricity move through the state, and much of that power eventually moves on to other destinations, particularly Southern California. However, the cap and invest program does not require compliance for emissions-free power. In addition, these data were unable to provide information on the largest source of uncertainty in understanding imported electricity, which is the role and magnitude of imports associated with the two large multijurisdictional utilities serving Washington load. Given that the OATI data were ultimately only able to provide information on five utilities, and unable to provide statewide estimates, these data are not considered to be a sufficient substitute for the FMD data process described. Moreover, Ecology believes that it can best serve the public interest by using publicly-available data so that the baseline setting process and source is transparent and replicable.

Commenters: B-22 (Puget Sound Energy, Avista Corp.); B-23 (Grays Harbor Energy); O-22 (Joint Utilities (Avista, NRU, PacifiCorp, PGP, PSE, WPUDA)

Summary: Electricity that is generated in Washington, and covered by the CCA cap and invest program, and then exported to California, where it is covered by the California cap and trade program, should be exempt.

Response: Under the first jurisdictional deliverer (FJD) construct, as agreed to by the partners of the Western Climate Initiative (WCI) over a decade ago, it is a fundamental tenet of that regulatory construct that electricity should be regulated "upstream" at the point of generation to the greatest degree possible. Part of that agreement was that if multiple jurisdictions linked together, electricity would be regulated first at the point of its generation within that footprint in such a way that "imported" electricity meant that any electricity crossing those geographic boundaries would be considered covered already, and that only electricity originating from outside of those multiple geographic boundaries would be considered truly "imported" power. However, that original agreement, and the CCA statute, does not anticipate a situation where two separate jurisdictions have two separate greenhouse gas emissions trading programs and emissions caps without being linked. Even if such a situation is only transitional, if two jurisdictions are tied together by the same electrical grid it creates the possibility for double regulation, once at the point of generation in the first state and as the same electricity is imported in the second.

Numerous commenters requested a variety of accommodations to address this fact, with most suggesting exempting the electricity under Washington's program. However, both the CCA statute and the FJD framework that is part of the WCI agreement are clear that the preferred situation is the one that exists now, where the electricity in question is regulated at the point of generation. As such, Ecology has maintained the point of regulation, but has made one change to allow more time for California, should it so choose, to address this issue downstream. Normally all covered emissions are subject to an annual compliance obligation (30 percent of the emissions), with the full balance of the compliance obligation due at the end of the compliance period. For any portion of a covered entity's compliance obligation that is being double regulated in this manner, as demonstrated to Ecology, the 30 percent annual obligation

is deferred until the end of the first compliance period. In this way a covered entity can hold off on the compliance obligation associated with that electricity until such time that it may be addressed by California through its own processes, should it elect to do so. If there is a future linkage, the issue would also be addressed by default, as the electricity in question is addressed through the WCI construct.

6. Compliance and Enforcement (WAC 173-446-600)

A. Compliance obligation

Commenter: B-5 (bp)

Summary: We would like an extra step that allows covered entities an opportunity to confirm their compliance obligation with Ecology before it must submit their compliance instruments. This could help clarify when situations require information must meet the "demonstrate to ecology's satisfaction" standard. We request that Ecology verifies and confirms the organization's covered emissions before the compliance deadline, in line with deadlines in WAC 173-441.

Response: The commenter is correct that Ecology will verify and confirm an organization's covered emissions before the compliance deadline as part of the reporting and verification process under WAC 173-441. A covered entity's compliance obligation is its covered emissions based on its reported emissions. A covered entity submits those reports to Ecology, so the covered entity will know the preliminary results before Ecology does. Ecology is building covered emissions calculations into new reporting tools whenever possible to further give a quality preliminary value. These numbers will be refined through the third party and agency verification process, again with covered entities often seeing results before Ecology. Ecology maintains contact with covered entities throughout this process, to both inform the covered entities as well as actively engage with them and allow an exchange of information. This process gives multiple opportunities to confirm their compliance obligation before final issuance.

Commenter: B-8 (Nucor Steel)

Summary: Nucor Steel asks Ecology to clarify in the rule that the first compliance obligation is in 2024.

Response: Ecology has added language to the rule to clarify that the first compliance obligation is in 2024.

Commenter: O-16 (NW Pulp & Paper)

Summary: Northwest Pulp and Paper asks Ecology to provide a means for registered entities to ask for an extension of the requirement to provide information requested by Ecology within 14-days under WAC 173-446-600(2).

Response: WAC 173-446-600(2) provides that "All parties participating in the program must provide to Ecology within 14 calendar days any additional information requested by Ecology concerning their participation in the program." Ecology is not adding a process for requesting an extension, if parties have specific circumstances that justify an extension they may provide

that information to Ecology and request such an extension, and Ecology will consider the request.

Summary: Northwest Pulp and Paper asks Ecology to clarify the mechanism for meeting compliance obligations. The regulation references both transfers to a covered entity's compliance account, and submitting compliance instruments to Ecology.

Response: Ecology agrees that the proposed regulation was confusing. Ecology has changed the rule language to clarify that a covered or opt-in entity is in compliance when it has sufficient compliance instruments in its compliance account on the compliance deadline to meet its compliance obligation. See changes to WAC 173-446-400, 420, 600; and 610.

Summary: Northwest Pulp and Paper comments that WAC 173-446-600 is written as if Ecology will link with the California/Québec program and asks what happens if we don't link?

Response: It's not clear what the commenter is referring to. WAC 173-446-600 as written will to a certain extent accommodate linkage if it happens. However, there is nothing in this section that assumes linkage or that requires linkage. If Washington does not link with the California/Québec program, the section will remain as it is.

Commenter: A-1 (Puget Sound Clean Air Agency)

Summary: The Puget Sound Clean Air Agency (PSCAA) comments that the term "substantively" in WAC 173-446-600(6)(d) is not defined. That provision authorizes Ecology to reduce the percent of a registered entity's compliance obligation that can be met using offset credits if the registered entity contributes substantively to the cumulative air pollution burden in an overburdened community. PSCAA suggests that the term "substantively" could cause confusion, and suggests adding a provision stating Ecology will reduce a covered entity's ability to use offset credits for compliance only after Ecology has issued to and served on a covered entity a written order with specified corrective actions.

Response: Ecology believes it is premature to add such a provision at this time. Ecology has a duty to consult with the Environmental Justice Council on these cases. Additionally, the program is new, and Ecology does not know how these situations will arise, and how they will play out. For the time being, Ecology, in consultation with the Environmental Justice Council, will review possible reductions in a registered entity's ability to use offset credits on a case-by-case basis and allow the process to evolve as the program develops.

B. Enforcement

Commenter: O-40 (International Emissions Trading Association); O-29 (Environmental Defense Fund)

Summary: Two commenters (International Emissions Trading Association, Environmental Defense Fund) commented in favor of strict penalties, noting the penalties must be strong enough to ensure compliance and urging Ecology not to lower penalties during the first compliance period.

Response: A fair and transparent market requires all market participants to comply with the rules for market participation. Ecology will work hard to establish a culture of compliance with

the program. Ecology will use all the tools it has in this effort, beginning with education and outreach, followed by notice when there is evidence of a violation, followed by penalties. Ecology agrees that penalties must be strong enough to ensure compliance.

Commenter: O-29 (Environmental Defense Fund)

Summary: The Environmental Defense Fund notes that the amounts of possible penalties must be clear and predictable to regulated parties.

Response: The penalties for failure to meet compliance obligations are clear. The noncompliant party must provide 4 allowances for each allowance missing at the compliance deadline, followed by penalties of up to $10,000 per day per violation. Penalties for other types of violations will depend on the extent of the violation, whether the violator has violated before, and whether the violation impacts other entities in the market.

Commenter: O-37 (Association of Washington Business); B-5 (bp America)

Summary: The Association of Washington Business comments that penalties are set at $100,000 per day for not surrendering allowances by the deadline, and that this is too high. AWB believes it would be better to have a sliding scale of penalties that increases over time based on the amount being penalized. bp America comments that the failure to surrender sufficient penalty allowances by the deadline should not be an automatic and non-correctable error, and asks us to follow California in saying violations accrue every 45 days after a missed compliance deadline under 17 CCR Section 95014 [sic - should be 96014].

Response: Ecology is authorized to assess a penalty of up to $10,000 per day per violation (not $100,000 per day) if a covered or opt-in entity fails to provide the penalty allowances called for by statute. RCW 70A.65. 200(3); WAC 173-446-610(3). Ecology will use its prosecutorial discretion to determine actual penalty amounts for violations.

Commenter: O-32 (Western States Petroleum Association)

Summary: WSPA asks Ecology to add a reasonableness test for penalties, and to add a provision stating that any entity subject to an enforcement action is able to submit additional information to Ecology.

Response: A fair and transparent market requires all market participants to comply with the rule for market participation. Ecology will work hard to establish a culture of compliance with the program. Ecology will use all the tools it has in this effort, beginning with education and outreach, followed by notice when there is evidence of a violation, followed by penalties. Ecology will determine penalty amounts based on the extent of the violation, whether the violator has violated before, and whether the violation impacts other entities in the market. An entity subject to an enforcement action is always able to submit additional information to Ecology.

7. Compliance Instrument Transactions (WAC 173-446-400's)

Commenter: O-16 (NW Pulp & Paper)

Summary: Northwest Pulp and Paper comments that the provision of future vintage allowances obtained via the EITE reconciliation mechanism is too complex and difficult to implement. The commenter suggests that Ecology just distribute the corresponding vintage year allowances when doing the production reconciliation.

Response: Ecology agrees that the process would be simpler if Ecology could just distribute the corresponding vintage year allowances when doing the production reconciliation for EITEs. Unfortunately, that process is unworkable. In all likelihood the allowances for the corresponding vintage year will have already been distributed or auctioned and will not be available to use for the EITE reconciliation process.

Summary: Northwest Pulp and Paper finds unreasonable and unnecessary the prohibition in WAC 173-446-400(9) of the transfer of compliance instruments from a compliance account back into a holding account.

Response: The prohibition referenced in WAC 173-446-400(9) is required by statute. RCW 70A.65.090(7)(a) states, "Compliance instruments in compliance accounts may not be sold, traded, or otherwise provided to another account or person." Ecology will not change the rule.

Summary: Northwest Pulp and Paper comments that the transfer of allowances from one of a company's facilities to another of its facilities, should not need the complex transfer mechanism required in this section.

Response: A company that owns multiple facilities that are covered entities in the cap and invest program is encouraged to put all its facilities into one consolidated entity account. (*See* WAC 173-446-100(2)). Once the facilities are in one consolidated entity account, all allowances associated with any of those facilities will be in the one account and the company need not use the mechanism in WAC 173-446-410 to transfer them from one facility to another.

Summary: Northwest Pulp and Paper asks Ecology to clarify whether WAC 173-446-420 is about transfers to a covered entity's compliance account, or transfers to Ecology.

Response: Northwest Pulp and Paper is correct that the provision in the proposed rule was confusing. Ecology has revised both the heading and the language for this section to make it clear that the transfers referenced in the section are transfers to a registered entity's compliance account, not transfers to Ecology.

Summary: Northwest Pulp and Paper asks Ecology to include a deadline for Ecology to complete the transfer of allowances into a registered entity's compliance account.

Response: Ecology is not adding a deadline for these transaction requests. The requests will be handled expeditiously unless Ecology finds a problem with the request.

Commenter: A-3 (Bonneville Power Administration)

Summary: BPA comments that, because of federal sovereign immunity, its primary account representative will not be able to provide the consent to jurisdiction of Washington and its courts required in the attestations that must accompany compliance instrument transfer requests. See WAC 173-446-415(7).

Response: Should BPA choose to participate in Washington's Cap and Invest Program Ecology will work with BPA outside the rulemaking process to resolve this question.

Summary: BPA asks Ecology to streamline the transfer of no cost allowances to BPA, in WAC 173-446-425.

Response: Ecology needs to be able to keep track of who holds allowances and when allowances change hands. Ecology also needs to ensure that the number of allowances in all accounts doesn't exceed the applicable holding limits. The transaction process in the draft rule provides Ecology with the information necessary to carry out these monitoring requirements. Therefore, Ecology is leaving in place the process for the transfer of no cost allowances from an electric utility to BPA.

8. Covered Emissions (WAC 173-446-040)

A. Allotment of covered emissions

Commenters: A-3 (Bonneville Power Administration); O-22 (Joint Utilities: Avista, NRU, PacifiCorp, PGP, PSE, WPUDA); O-28 (Western Power Trading Forum)

Summary: The Western Power Trading Forum, BPA, and the Joint Utilities point out that the proposed provision in WAC 173-446-040(3)(e)(ii) describing who takes on the compliance obligation if BPA elects not to participate in the program does not accurately follow the requirements in RCW 70A.65.020(27)(e).

Response: Ecology agrees that the provision in the proposed rule is incomplete, and has revised the provision to accurately reflect the statutory requirements.

B. Biofuels

Commenters: B-5 (bp); B-6 (Phillips 66); B-9 (POET); B-11 (HF Sinclair); O-12 (Food NW); O-18 (Growth Energy); O-25 (PPGA); B-15 (Boeing); O-2 (Coalition for RNG); O-5 (Coalition for RNG); O-15 (City of Ellensburg); O-39 (AWEC); OTH-7 (City of Enumclaw); O-31 (WRRA); O-32 (Western States Petroleum Association)

Summary: Multiple commenters asked for clarity on the exemption for biomass, biofuels, and/or renewable natural gas (RNG). Questions included how to account for blended fuels. Similar questions focus on how to account for co-processed fuels and suggest that the language is adequate if the facility can work with Ecology 1:1 on how to account for the biogenic portion of the activity. Another question was how to handle biofuels allotted to fuel suppliers if they are exempt from the program (why does 040(3)(a)(i)(C) include: landfill gas and biogas?). Commenters suggested all three rules work together (WAC 173-441, 173-446, and 173-446A) on this issue and pointed out the reporting rule requires biofuels to be reported separately from fossil fuels. Commenters also ask if all GHGs related to biofuels are exempt or only carbon dioxide.

Commenters ask about how the biogenic exemption applies to RNG. Is RNG subject to the 40% standard? Is RNG used for transportation treated differently than RNG used in stationary applications? How is RNG tracked, does the physical gas used by the end user have to be the RNG itself or are chain of custody methods acceptable? Since intermingled gas can be difficult

to track, commenters suggest using an established registry, preferably the M-RETS System, like California and Oregon.

The most significant concern raised regards the statutory requirement included in the biofuels definition regarding lifecycle assessment: "'Biomass-derived fuels, biomass fuels, 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." Commenters ask how this is factored into the biofuels exemption, how this applies to the baseline period where supporting data may be unavailable, and how it will be implemented going forward. Some commenters point out that fuel suppliers provide fuel to a variety of sectors, so the transportation focused analysis used in other programs such as the CFS may not directly apply. Others request consistency with the CFS. A recommendation was made to exempt all biofuels from historic baselines and at least the first compliance period. Detailed guidance is needed if the requirement is kept for the first compliance period. Other commenters strongly oppose the 40% standard and want it removed.

Response: CCA covered emissions are based on reported emissions under WAC 173-441. The reporting regulation is very clear that fuels are reported as their pure constituent parts, not as a blended fuel. Therefore, any blended fuel would be reported as two or more pure fuels and CCA status would be applied to each independently. For example, 100 units of blended gasoline with 10% ethanol would be reported as 90 units fossil gasoline and 10 units ethanol. CCA covered emissions would be based on all GHGs from the 90 fossil units and the methane and nitrous oxide from the 10 ethanol units. Co-processing is dealt with in a similar manner, the constituent parts are tracked separately. Any details or site specific issues would be addressed as part of the reporting and verification process under WAC 173-441.

WAC 173-446-040 is divided into several subsections. Subsection (2) describes exemptions, including the exemption for carbon dioxide emissions from the combustion of biomass, renewable fuels of biogenic origin, or biofuels. Subsection (3) does not cover exemptions, but describes how any non-exempt emissions would be allotted to various organizations to avoid double counting. The subsection explicitly states that "This subsection only describes the process for determining which covered entity is responsible for a given metric ton of covered emissions after the application of exemptions described in subsection (2) of this section, and does not expand the definition of covered emissions." WAC 173-446-040(3)(a)(i)(C) purposefully broadly lists fuel products that are often generated or modified on-site regardless of their exemption status in subsection (2). This provides clarity and consistency for allotment in cases where emissions may be present, either from the methane and nitrous oxide emissions from those activities or if the fuel does not meet the standards established in subsection (2). Including allotment text does not nullify any qualifying exemption in subsection (2).

WAC 173-446-040(2)(a)(i) only exempts carbon dioxide emissions from the combustion of biomass, renewable fuels of biogenic origin, or biofuels. The exemption states "emissions of other GHGs related to the combustion of biomass or biofuels are not exempt." Therefore, other GHGs associated with the combustion of those fuels, including methane and nitrous oxide, must be reported and are part of CCA covered emissions. This is consistent with other programs and statutory requirements (RCW 70A.65.080(7)(d)).

WAC 173-446-020 states “for those terms not listed in this section, the definitions found in chapters 173-441 and 173-446A WAC apply in this chapter.” Renewable natural gas is defined in WAC 173-441-122(2)(d) as “a gas consisting largely of methane and other hydrocarbons derived from the decomposition of organic material in landfills, wastewater treatment facilities, and anaerobic digesters.” The statutory exemption for biogenic emissions (RCW 70A.65.080(7)(d)) mentions “carbon dioxide emissions from the combustion of biomass or biofuels” but does not speak to “renewable” fuels. Ecology acknowledges these are often two terms for the same physical product and included “renewable fuels of biogenic origin” in WAC 173-446-040(2)(a)(i) to make it explicit that renewable fuels, including RNG, qualify as long as they meet the statutory biomass or biofuels standard. We expect this to occur in the majority of cases.

Emissions tracking, quantification, reporting, and verification requirements are established in WAC 173-441. Section 122 specifically covers requirements for suppliers of natural gas (Chapter 173-441 WAC, Reporting of emissions of greenhouse gases, was updated February 9, 2022, to add natural gas suppliers, carbon dioxide suppliers, and electric power entities to the Washington greenhouse gas reporting program). Current reporting guidance establishes that tracking actual molecules of gas is not required, but a physical connection between the origin of the gas and the end user in Washington with physical flow within or towards Washington as well as a reasonable distance between pipeline injection and the end user in Washington is required. This means a system like M-RETS may be used to support a reporting claim, but the additional geographic standard would also need to be met. Ecology received several comments while updating the GHG reporting rule, responding: “Regarding biomass-fuel derived contractual agreements: We recognize the validity of the comment and will address the topic in a future rulemaking to allow for the time and space the topic requires.” Since then we have worked with suppliers of natural gas and are receiving reports using a new reporting system. Reported biogenic natural gas to this point (including for the baseline years) has been minimal. We remain committed to further dialogue on this topic.

For fuel suppliers (including natural gas, petroleum, biomass-derived, and coal-based liquid fuel suppliers) WAC 173-441 and 173-446 are generally not concerned with the end use of fuel products. End uses are optionally reported and used to qualify for certain exemptions under WAC 173-446-040(2), but does not use different emissions factors or result in other compliance differences based on being used in transportation. This is fundamentally different from the proposed WAC 173-424 Clean Fuels Program Rule, which is transportation focused. The two programs differ in their emission calculation and accounting methodology. Additionally, the clean fuels and cap-and-invest programs cover different source categories and create different programmatic features.

RCW 70A.65.010 (11) and (12) provided definitions for biogenic substances. These definitions establish a new 40 percent life-cycle standard for biofuels, but not biomass. This is different from the GHG reporting program established under RCW 70A.15.2200 that only uses biomass.

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

biodegradable organic fractions of municipal wastewater and industrial waste, including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material. RCW 70A.65.010(11)

- "Biomass-derived fuels," "biomass fuels," or "biofuels" means fuels derived from biomass that have at least 40 percent lower greenhouse gas emissions based on a full life-cycle analysis when compared to petroleum fuels for which biofuels are capable as serving as a substitute. RCW 70A.65.010(12)

RCW 70A.65.080(7)(d) establishes a CCA exemption for "carbon dioxide emissions from the combustion of biomass or biofuels."

WAC 173-446 includes the new definition of biofuels with the 40 percent standard in conformance with the statute. The rule includes the exemption in WAC 173-446-040(2)(a)(i) with minor clarifying additions that do not change the statutory meaning ("Carbon dioxide emissions from the combustion of biomass, renewable fuels of biogenic origin, or biofuels from any facility, supplier, or first jurisdictional deliverer. Emissions of other GHGs related to the combustion of biomass or biofuels are not exempt.") This means that the new 40 percent life-cycle standard applies to biofuels, but not to non-biofuel biomass, before the fuel qualifies for the exemption.

WAC 173-446-020 states "for those terms not listed in this section, the definitions found in chapters 173-441 and 173-446A WAC apply in this chapter." WAC 173-441's definition for biomass is consistent with the definition in WAC 173-446 and is applied broadly. "Biofuels" appear to be a subset of "biomass", focusing on the fuel distinction. "Fuel products" is more specific and includes renewable or biogenic versions of fuel products listed in Tables MM-1 or NN-1 of 40 C.F.R. Part 98 that would normally be considered biofuels. Therefore, fuels of a biogenic origin that are not listed in Tables MM-1 or NN-1 (such as wood or wood residuals) are not subject to the 40 percent standard and qualify for the exemption. Biogenic versions of fuel products listed in Tables MM-1 or NN-1 (petroleum products, natural gas liquids, coal-based liquids, and natural gas) are "biofuels" and subject to the 40 percent standard before qualifying for the exemption. The 40 percent life-cycle standard is explicitly in comparison to petroleum fuels.

Ecology agrees with the commenters that this creates a confusing and difficult-to-implement pre-qualification for the biomass or biofuels exemption. The reporting program established by RCW 70A.15.2200 does not include life-cycle analysis, therefore this requirement is not part of WAC 173-441. Consequently, Ecology does not have the life-cycle information for baseline years or the infrastructure to collect that information for compliance years. The CCA is not transportation focused, often not even collecting the information on the end use of fuels that is necessary for a life-cycle analysis. WAC 173-424 Clean Fuels Program Rule does use life-cycle analysis, but the rule is still in development, has not yet collected data, and is specifically limited to transportation. Lack of historic data tracking and reporting make it very difficult to apply any standard to past baseline years even if a standard was available now. This issue cannot be resolved through further detail in the rule by the January 1, 2023 program start date

established in RCW 70A.65.070(1)(a), and so the rule relies upon the statutory definitions for the scope of the exemption at this time.

We expect that biofuels will contribute a significant and growing part of the state's emissions mix over the next few decades. Ecology plans to evaluate reported biofuels during the verification process for each reporter, understanding that the detailed data and extensive time needed for a true life-cycle analysis will not be available for past and near future years. Ecology's working assumption is that all biofuels meet the 40 percent standard for past and near future years unless that verification process clearly indicates otherwise. We recognize the validity of the comment and will address the topic in a future rulemaking to allow for the time and data the topic requires.

The rule was not changed in response to the comments.

C. Sequestration and supplied carbon dioxide

Commenters: B-5 (bp)

Summary: Sequestration is important and needs to be a viable CCA compliance option. The definition of sequestration should be expanded so that it is not limited to removal projects as onsite capture before release is also important. It appears that the current language comes from California, but modification should not limit the potential for linkage. There are related concerns about using the established criteria from WAC 173-407-110, which could restrict some uses like sequestering in cement. Suggested language is:

"Sequestered carbon dioxide when it can be demonstrated to ecology's satisfaction with a high degree of confidence that substantially ninety-nine percent of the greenhouse gases will remain contained for at least one thousand years that it qualifies as permanent sequestration, as defined in WAC 173-407-110, either through long-term geologic sequestration or by conversion into long-lived mineral form."

One commenter asked for clarity in WAC 173-446-040(3)(a) whether emissions from captured and supplied carbon dioxide are the responsibility of reporting facilities or potential third-party distributors which opt-in to the CCA Program. The commenter stated that the new language in WAC 173-446-040(3)(a)(ii)(B) resolves the issue and should be retained while pointing out "covered entity" does not include "opt-in entity".

Response: The commenter is correct, the definition in WAC 173-446 is similar to the definition from California, which also does not specifically mention onsite capture. Consistency is valuable for linkage and general administration of the program. Ecology does not believe the use of "removal" specifically prohibits onsite capture as an option. Moreover if greenhouse gases are captured prior to any release, then that type of emission control will result in reducing an entity's compliance obligation. We also do not see an issue with using the existing standard from WAC 173-407-110.

Ecology agrees that sequestration is important and has a place as a CCA compliance option. It is also an emerging option with very little actual use in Washington during the baseline period or expected use in early compliance years. That gives time for more detailed discussions and

revisions to address this important and complex issue while still meeting the January 1, 2023 program start date established in RCW 70A.65.070(1)(a). We recognize the validity of the comment and will address the topic in a future rulemaking to allow for the time and space the topic requires.

The purpose of WAC 173-446-040(3) is to make sure each metric ton of emissions that should be in the program is counted one time, no more or less. If a facility in the program collects carbon dioxide onsite and supplies it to another party, then the carbon dioxide must be reported by the facility under WAC 173-441. This allows the facility to subtract those reported emissions from its totals. Subsection (3) states this is also permitted for covered emissions if the carbon dioxide is then subsequently covered by another organization with a compliance obligation. The commenter points out the distinction between covered and opt-in entities. We agree this inadvertent omission in the rule is confusing as written and are clarifying that subsection (3) applies to either covered or opt-in entities, like other sections. A facility supplying carbon dioxide to either a covered or opt-in entity would be able to subtract that gas from their obligation. A facility supplying carbon dioxide to an organization that is neither a covered or opt-in entity would retain the compliance obligation for those emissions.

The rule was changed in response to the comments to clarify the adjustment applies to covered or opt-in entities.

Summary: The commenter asserts that carbon sequestration in asphalt should result in credits toward compliance with the program.

Response: Ecology applauds all actions that reduce GHG emissions. Any party wishing to receive credit for GHG reductions resulting from carbon sequestered in asphalt would need to demonstrate to Ecology's satisfaction that it qualifies as permanent sequestration, as defined in WAC 173-407-110, either through long-term geologic sequestration or by conversion into long-lived mineral form.

D. Exemptions

Commenters: B-5 (bp)

Summary: The commenter supports the exemption in WAC 173-446-030 related to the supply of certain petroleum products that will not ultimately be combusted or oxidized. There is concern over the requirement to demonstrate standards to Ecology’s satisfaction. The commenter would like the exemption to extend to include intermediate products used by another Washington refinery in order to avoid double counting. The commenter also prefers a list of exempt products or a specific set of criteria used in Ecology’s determination.

Response: The existing language already lists the products that Ecology believes meet the standard for not combusted or oxidized, asphalt and road oil. The other requested products, petrochemical feedstocks, can be combusted or oxidized and are not included in the pre-approved list. Washington does not have petrochemical facilities, so the vast majority of uncombusted petrochemical feedstocks should be excluded from covered emissions as exports without the need for additional determinations. Demonstration of non-combustion or oxidation would occur during the normal WAC 173-441 verification process. Information for submittal

would generally include the product type, amount, chain of custody, destination, and any other supporting information that demonstrates the final use of the product. This is similar to the information used to demonstrate exports or other exemptions such as marine or aircraft use.

Subpart MM already adjusts supplier emissions for intermediate products (non-crude feedstocks) entering a refinery. Ecology is clarifying the rule to use that process to explicitly avoid double counting by including non-crude feedstocks used by a Washington refinery in subsection (3) of WAC 173-446-030. This clarification does not fit in subsection (2) of WAC 173-446-030 because it is allotting emissions to avoid double counting and not an exemption. Emissions associated with processing non-crude feedstocks are not exempt, nor are the products (processed or not) leaving the refinery unless they qualify for another exemption. Consistent with Subpart MM, the adjustment applies to the supplier receiving the non-crude feedstock, not the supplier delivering the feedstock. The adjustment is limited to Washington refineries as an adjustment process already exists for exports.

WAC 173-446-040(3)(c)(ii) has been modified as follows in response to this comment:

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

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

(B) Emissions from products listed in Table MM-1 of 40 C.F.R. Part 98 Subpart MM as adopted in chapter 173-441 WAC when the supplier is also a refiner and can demonstrate to ecology's satisfaction that the product is used as a non-crude feedstock at a refinery in Washington under their operational control. These non-covered emissions must meet the standards described in Subpart MM, and are calculated using provisions described in § 98.393(b) and subtracted as described in § 98.393(d), which is limited to modifications due to non-crude feedstocks. Emissions occurring at the refinery due to processing the non-crude feedstock are part of the facility’s covered emissions. Processed or unprocessed products associated with the previously excluded non-crude feedstocks leaving the refinery are no longer excluded and part of the supplier’s covered emissions. Emissions covered under this provision are not also eligible for adjustments due to the product previously being delivered by a position holder or refiner out of an upstream WA terminal or refinery rack prior to delivery out of a second terminal rack

(C) Emissions that would result from the combustion of fuel products that are produced or imported with a documented final point of delivery outside of Washington and combusted outside of Washington

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

Commenter: A-1 (Puget Sound Clean Air Agency)

Summary: The Puget Sound Clean Air Agency (PSCAA) points to the exemption in WAC 173-446-040(2)(a)(ii)(C) for methane emissions from landfills "in compliance with RCW 70A.540." The commenter notes that the term "in compliance" is not defined, and suggests that the exemption be revoked only after Ecology has issued a written order to a landfill with corrective action specified. The commenter recognizes how disruptive a ping pong type of applicability would be under the Climate Commitment Act.

Response: Ecology agrees that participation in the cap-and-invest program must be consistent over a long term, and an in-again-out-again ping pong scenario for landfills would not be effective. However, Ecology believes it would be better at this time, to resolve this issue in future CCA rulemaking, after the program created under RCW 70A.540 has been up and running for a while, and Ecology has developed rules for the implementation of that program.

9. Definitions (WAC 173-446-020)

Commenter: B-15 (Boeing)

Summary: Boeing notes that the term "climate resilience" is defined in the Climate Commitment Act, but is not defined in the proposed rule.

Response: The term "climate resilience" is not used in the proposed rule, and therefore the definition of "climate resilience" was not included in the proposed rule

Commenter: B-15 (Boeing)

Summary: Boeing asks Ecology to add the phrase "or exceeded" after the word "offset" in the definition of "leakage."

Response: The definition of "leakage" in WAC 173-446-020 is identical to the definition of "leakage" in RCW 70A.65. While definitions in a rule can fill in detail and further refine the statutory definitions, Ecology has chosen to use the statutory definition unless there is a compelling and concrete need for refinement. In this case, Ecology believes the addition of "or exceeded" is not necessary, as it is clear from the terms of its definition that "leakage" includes situations in which in-state emissions are exceeded by out-of-state emissions.

Summary: Boeing requests that the definition of "carbon dioxide removal" be revised to include the removal of GHGs other than carbon dioxide.

Response: "Carbon dioxide removal" is defined in the Climate Commitment Act, RCW 70A.65.010(14). In order to maintain consistency with the Climate Commitment Act, Ecology adopted the same definition in the proposed rule. Ecology believes that this definition adequately encompasses the scope of carbon dioxide removal and greenhouse gas removal activities in this rule.

Commenter: B-15 (Boeing); O-37 (Association of Washington Business)

Summary: Boeing and AWB ask Ecology to ensure that the definitions in the rule are consistent with the definitions in RCW 70A.65. Boeing notes that the definition of "offset protocol" in the proposed rule is different than in the statute. AWB notes that the definitions of "retire" and

"emissions containment reserve allowance" are different in the proposed rule than they are in the statute.

Response: While definitions in a rule must be consistent with the parallel definitions in an authorizing statute, they need not be identical to those definitions. Definitions in a rule can fill in detail and further define the statutory definitions as long as they do not seek to amend or change the statutory definitions or otherwise conflict with the statute. *Littleton v. Whatcom Cty.*, 121 Wn. App. 108, 117 (2004), *Weyerhaeuser Co. v. State Dep't of Ecology*, 86 Wn.2d 310, 313–14 (1976).

The definition of "offset protocols" in the proposed rule is the same as the definition in RCW 70A.65 except that it adds some detail on the type of content included in offset protocols. The statutory definition states: "Offset protocols" means a set of procedures and standards to quantify GHG reductions or GHG removals achieved by an offset project." The proposed rule stated, "Offset protocols" means a set of procedures and standards to quantify GHG reductions or GHG removals achieved by an offset project, as well as addressing other aspects of the offset project in order to ensure the quality of the project." Ecology agrees to delete the added language, which will leave the definition consistent with the statute.

The statute defines the term "retire" to mean, "to permanently remove a compliance instrument such that the compliance instrument may never be sold, traded, or otherwise used again." The definition in the proposed rule is identical to the definition in RCW 70A.65 except that the proposed rule added the phrase "surrendered for compliance" to the list of actions that cannot be taken with retired compliance instruments. The statute makes it clear that a "retired" compliance instrument cannot be used again for anything, which means it cannot be used for compliance. Therefore, Ecology removed the phrase "surrendered for compliance" from the definition in the proposed rule, as it was unnecessary.

The definition of "Emissions containment reserve allowance" in the rule is identical to the definition in RCW 70A.65 except that the proposed rule removed the phrase "or its agent" from the description of who can withhold allowances from auction. Ecology believes that the phrase "or its agent" is superfluous, as an agent acting for Ecology would be able to remove the allowances without the reference in the definition. However, for consistency with the statute Ecology changed the proposed definition in the rule to add the phrase back in. Ecology also changed the proposed definition to ensure that the term "Emissions containment reserve allowance" includes allowances that, per statute (RCW 70A.65.140(4)), can be placed into the emissions containment reserve by the other mechanisms.

Commenter: B-22 (Puget Sound Energy and Avista Corp.)

Summary: PSE and Avista (commenting jointly) ask whether the term "revenue" as used in the proposed rule has the same meaning as the term "proceeds" as used in the proposed rule.

Response: The two terms are used interchangeably in RCW 70A.65, and the proposed rule repeats that statutory language and usage.

Commenter: O-16 (NW Pulp & Paper)

Summary: Northwest Pulp and Paper comments that the term "annual cap" should be defined.

Response: Ecology searched the rule and found the term "annual cap" used twice - both times in the equations for calculating holding limits in WAC 173-446-150. Ecology changed the term in the equation to "annual allowance budget." With that change, the term "annual cap" is no longer used in the rule, and need not be defined.

Commenter: OTH-5 (Municipality)

Summary: The City of Spokane asks Ecology to include a definition for the term "sector," and suggests using the definition in the California GHG reporting regulations.

Response: The term "sector" is used in section 200 - new sectors entering the program - to distinguish the new sectors entering the program, which cause an increase in the baseline, from new covered entities entering the program in sectors already covered by the program, which do not cause an increase in the baseline. Ecology agrees that a definition of the term "sector" would be useful. However the suggested California definition requires reference to other sections of California's regulations, and so will not work in Ecology's rule, Ecology has instead added a definition of "sector" that is complete in itself.

Commenters: B-5 (bp); O-16 (NW Pulp & Paper)

Summary: BP asks Ecology to clarify the definition of "Best available technology (BAT)" in the proposed rule. BP acknowledges that the definition in the proposed rule is identical to the rule in the Climate Commitment Act, but notes that BAT is a key term for EITEs, and asks Ecology to provide more insight into when a technology becomes technologically feasible, economically viable or commercially available.

Northwest Pulp and Paper asks Ecology to define the term "energy-intensive, trade-exposed industries."

Response: The term, "best available technology (BAT)" is not widely used in the regulation of air pollution. At this early stage in the cap and invest program, Ecology is not in a position to determine, beyond the provisions in the statutory definition, how BAT will develop. However, BAT contains elements that are similar to other defined levels of technology in the air pollution world, such as best available control technology (BACT) and reasonably available control technology (RACT). As Ecology implements the BAT-related provisions of the cap and invest program, Ecology will evaluate technology on a case-by-case basis to determine whether it is or is not BAT, drawing on any similar wording in other standards such as BACT and RACT to inform the analysis.

The term "energy-intensive, trade-exposed industries (EITE industries)" is not defined in the Climate Commitment Act, except through the list of the facility types that qualify to be treated as EITE facilities under the Act. To avoid confusion Ecology is following the legislature's lead and leaving the term undefined except through the criteria in WAC 173-446A that are used to determine which covered and opt-in entities qualify for EITE status.

Commenters: I-229 (Fay); B-5 (bp); B-8 (Nucor Steel); B-15 (Boeing); O-16 (NW Pulp & Paper); O-17 (Earth Ministry/WA Interfaith Power & Light)

Summary: Commenters request new definitions or clarity for several terms, including: "allocation baseline", and "product data".

Response: “Allocation baseline”, as used in WAC 173-446-220, means the carbon intensity or mass-based baseline used for allocation of no cost allowances to EITEs as described in that section. We added clarity to the rule clarifying when specifically mentioning either the carbon intensity or mass-based version.

Product data is a defined term in WAC 173-441-020(o): "Product data means data related to a facility's production that is part of the annual GHG report.” WAC 173-446-020 states that “for those terms not listed in this section, the definitions found in chapters 173-441 and 173-446A WAC apply in this chapter.” Clarifying language was added to WAC 173-446-220 to state that product data is used for the facility specific measure of production.

Commenters: J.R. Simplot and Company (0-21-3), International Emissions Trading Association (O-40), Robert Sappington (I-286-1), BP America (B-5-5), Finite Carbon (B-19-1)

Summary: Commenters recommended that Ecology should explicitly define the terms “Conservative” and “Business-as-Usual Scenario”.

Response: Ecology agrees that the rule can provide additional clarity by defining these terms. We have added definitions for “Conservative” and “Business-as-Usual Scenario” into the adopted rule, modeled after CARB’s definition of these terms.

The following definition are adopted in WAC 173-446-020:

> *“Conservative” means, in the context of offsets, utilizing project baseline assumptions, emission factors, and methodologies that are more likely than not to understate net GHG reductions or GHG removal enhancements for an offset project to address uncertainties affecting the calculation or measurement of GHG reductions or GHG removal enhancements*
>
> *“Business-as-Usual Scenario”, in the context of offsets, means the set of conditions reasonably expected to occur within the offset project boundary in the absence of the financial incentives provided by offset credits, taking into account all current laws and regulations, as well as current economic and technological trends.*

Commenters: BP America (B-5-5)

Summary: A commenter recommended that Ecology should clarify the difference between “Environmental benefits” and “Direct environmental benefits” as defined in the rule.

Response: We agree that the distinction between these two definitions should be clarified, as they are used in different contexts in the Climate Commitment Act. We have amended WAC 173-446-020 to state that:

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

The definition of “Environmental Benefits” in RCW 70A.65.010(31) and WAC 173-446-020 means activities that:

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

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

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

This distinction between the two terms is necessary, as offset projects are required by statute to provide "direct environmental benefits to the state," but are not required by statute to meet the criteria of producing "Environmental Benefits" as defined in RCW 70A.65.010(31).

Commenter: T-2 (Suquamish Tribe)

Summary: A commenter asked Ecology to change the definition of "forest owner" to explicitly include tribal lands held in trust.

Response: The term "forest owner" is defined in WAC 173-446-020 as:

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

The definition is also in the 2015 U.S. Forest Projects protocol, the 2014 U.S. Forest Projects protocol, and the 2011 U.S. Forest Projects protocol incorporated in the proposed rule. In order to retain the original intent of the U.S. Forest Projects protocol, Ecology decided that this definition should not be amended at this time. The U.S. Forest Projects protocol does not require the project owner also be the owner in fee of the project area, instead an eligible project owner may "explain how the entity identified as the offset project operator has the legal authority to implement the offset project and provide documentation supporting the explanation;" [2015 U.S. Forest Projects protocol, Section 7.1.1(6)(B)].

10. Electric Utilities (WAC 173-446-230)

A. Allowance allocation

Commenters: I-118 (Sherin); I-120 (Mielke); I-122 (Hamilton); I-125 (Pace); I-132 (Baughman); B-23 (Grays Harbor Energy); OTH-3 (19th and 24th Legislative District Legislators)

Summary: The Grays Harbor power plant is treated unfairly or unequally.

Response: Numerous commenters state that the Grays Harbor Energy Center (GHEC) electrical generating plant, owned by Invenergy, is treated differently than other electrical generating facilities located in Washington. In particular, many claim that other electrical generating facilities ("power plants") receive free allowances under the program, while the GHEC does not.

Ecology wishes to correct this misconception: no electrical generating facilities in Washington receive free ("no cost") allowances under the CCA cap and invest program. In this way the GHEC is treated identically to every other electrical generating facility in the state that is covered by the cap and invest program. This is a fundamental tenet of the First Jurisdictional Deliverer (FJD) approach to electricity: the carbon price is applied at the point of generation so that the environmental cost of generating that electricity is reflected in the cost of that electricity, and that environmental cost is applied equally across all generation sources.

Some commenters correctly identify that because electric utilities (not generation facilities) receive no cost allowances under the program as a means to mitigate the price impact of the program on their customers, there is a potential pathway by which the utility recipients of those no cost allowances could use those allowances to cover some or all of the emissions from an electrical generation facility that utility owns or operates, subject to their regulatory overseer's or governing body's approval. This would be especially true for a vertically-integrated utility that owns or operates a substantial fleet of generation resources that are in turn used to serve its customers' electrical load. However, a pathway also exists for the GHEC in that if it were to contract with a utility in Washington to provide power to Washington customers, it is eligible to obtain no cost allowances from that utility (for example, through contractual means). Moreover, for the portion of electricity generated from a utility-owned generating facility that is not used to serve Washington customers that utility – like the owners of GHEC if they export electricity – will need to pay the environmental cost of generating that electricity by procuring the required allowances for that generation. In this way, both electric generating facilities are treated the same, even if the business model underlying each facility is different.

Commenters: B-23 (Grays Harbor Energy); OTH-3 (19th and 24th Legislative District Legislators)

Summary: The Grays Harbor Energy Center should receive no cost allowances for serving an EITE, for legacy contracts, for Washington's CO_2 mitigation standard, for early action, and for other factors.

Response: The Grays Harbor Energy Center requests that no cost allowances be provided for a number of scenarios, which are addressed in more specifics below. Common to all of these requests, however, is that there is no supporting statute to underlie the request. The CCA statute is clear as to which entities are eligible to receive no cost allowances and under what circumstances. In all of these cases there is no clear statutory mandate or indication that supports modifying or expanding the statutory language through rule. Specific responses follow:

Providing electricity to an EITE – A clause in RCW 70A.65.120(5) that allows for the transfer of allowances in cases where an EITE is served by a utility or federal power marketer- is functionally irrelevant because EITEs do not receive free allowances based on electricity use. There is no need to modify this clause because it does not create an unequal opportunity for Grays Harbor Energy Center.

Legacy contracts – It is noted that a specific exemption related to consumer-owned utilities for legacy contracts exists in the law. No such clause exists for investor-owned utilities, or GHEC.

Given that statutory imbalance already exists between IOUs and COUs, it is consistent with the statutory language that the imbalance in question was intended to apply to GHEC.

Washington CO_2 mitigation standard – The requirement that GHEC continue to purchase carbon offsets to meet it greenhouse gas mitigation standard under its EFSEC site license is a requirement of a separate Washington law (RCW 80.70). Ecology cannot absolve GHEC of its legal obligations under a separate law through rulemaking that is authorized under a different statute (the CCA law). However, GHEC successfully obtained recourse through EFSEC on this topic, and this should no longer be an issue.

Early Action Offset Credit – Related to the above request, GHEC asks that its history of purchasing carbon offsets as part of its obligations under the Washington CO2 mitigation standard be recognized in a manner similar to the California Early Action offset program. Beyond the reasons noted above regarding offsets obtained and retired for the Washington CO2 mitigation standard for which EFSEC is the applicable regulatory body, the California Early Action offset credit program is a product of a different time. The early action program was part of the Western Climate Initiative program design to recognize early greenhouse gas reductions that happened before the existence of any cap and trade program. However, for over a decade the California program has been in place, and the opportunity has existed to create offsets for the California program, including from projects based in Washington. The early action incentive is unnecessary in the CCA, because an "actual action" incentive has existed as long as the California cap and trade program and its access to offset projects from all over the country has existed.

Commenters: B-23 (Grays Harbor Energy); O-26 (Northwest & Intermountain Power Producers)

Summary: Electric utilities should be required to transfer allowances to the Grays Harbor Energy Center if those utilities contract with that facility for electricity.

Response: Noting that electric utilities that own their electrical generation facilities are in a position to guarantee that the no cost allowances they receive as part of the cost burden mitigation process can cover some or all of the emissions from those facilities, some suggest requiring that electric utilities that contract with Grays' Harbor Energy Facility be required to transfer allowances sufficient to cover the associated emissions. Because Ecology is not a financial regulator of utilities, this would be a substantial new role for Ecology to take. In general, Ecology is hesitant to start interfering in contractual or financial negotiations in the power sector without substantial environmental reason to do so, grounded in its core missions. Moreover, it is not clear that putting such a mandate in rule actually helps, as it would eliminate the option of the two parties coming to a negotiated solution by themselves (e.g., transferring all but one percent of the allowances in question as some sort of overhead). There is not sufficient evidence at this time to make a case for such an intrusion into the electricity market. In addition, electric utilities may be required in the future to consign some of all of their no cost allowances to auction for the benefit of ratepayers. RCW 70A.65.120(2)(d) and (3)(a). If utilities are required to consign allowances to auction, they may not be in a position to also be required to provide them to Grays Harbor Energy.

Commenters: I-129 (Public Generating Pool, Hughes); O-22 (Joint Utilities: Avista, NRU, PacifiCorp, PGP, PSE, WPUDA); A-2 (Cowlitz PUD #1)

Summary: Ecology must consider, fully account for, or provide any necessary allowances to address increased electrification of the transportation or building sectors.

Response: The law requires that Ecology "consider the impacts" of electrification in the transportation, building, and other sectors which is, as is well documented in the literature, expected to become an increasingly important factor as Washington strives toward achieving its greenhouse gas reduction limits set in law. Contrary to the commenter's suggestion however, there is no requirement that Ecology automatically provide allowances to compensate for any increase in load which is claimed to be attributable to electrification for any reason. Ecology's duty in this regard is to take this factor into account in its allowance allocation rules. Ecology does this by using the best available load forecasts from utilities. Utilities have a "duty to serve" through a variety of laws and regulations, and must plan to be able to provide the necessary electricity needed by their customers – including increasing needs from customers' increased use of electric vehicles, heat pumps, or other increased loads that are occurring from the electrification transformation in Washington. There is no need for a separate process or forecast to take into account the impacts of electrification, because an electric utility that is properly planning its needs into the future will have already taken these factors into account. Therefore, to the extent possible, Ecology intends to use the latest and best load demand forecasts available to ensure that these electrification trends are accounted for.

Commenters: A-2 (Cowlitz PUD #1); A-5 (WA Attorney General - Public Counsel Unit); B-22 (Puget Sound Energy, Avista Corp.); B-23 (Grays Harbor Energy); O-39 (Alliance of Western Energy Consumers); O-33 (Climate Solutions)

Summary: Provide a "true-up" to correct allowance allocations for forecasted emissions with reported GHG emissions.

Response: Numerous commenters request a process for "truing up" allowance allocation over time to electric utilities, so that the forecasted emissions for an electric utility can be compared to actual emissions data. The statute does not provide such a process for electric utilities, but does include this concept in other sectors. However, the statute does give Ecology wide latitude, and a mandate, to adjust the pool of allowances over time to ensure that progress toward the goals of the program, and progress toward the state's greenhouse gas limits, is on track. Given these parameters, language has been added to the rule so that the allocation of allowances is adjusted over time to take into account the cumulative total of allowances a given utility has been given relative to its reported greenhouse gas emissions. In this way allowances are not removed from a utility's account, as some have suggested, but fewer allowances may be given in a given year if excess allowances exist in the account in such a way that the cumulative total over time should track a utility's greenhouse gas emissions over time. Because greenhouse gas reporting and verification will always lag the emissions forecasting process and allowance allocation by at least a year or more there will never be a direct connection for a given year between actual reported emissions and allocated emissions. But, over time, this continual process of allowance adjustment will provide assurances to all parties that the overall

pool of allowances in this sector should track the greenhouse gas reductions driven by the clean energy requirements of the Clean Energy Transformation Act (CETA).

Some commenters prefer a one-way adjustment, with excess allowances obtained through greater emissions reductions being kept by utilities as an incentive to reduce emissions below their required CETA compliance trajectory. While that makes sense from an academic perspective, the reality at the start of the program is that it will be unlikely to create a forecast with the level of precision from which one can reliably distinguish a differential in the marginal cost of compliance, as suggested by commenters, and from which Ecology and others will be able to separate unnecessary over-allocation from valid market optimization behavior. In other words, the risks of overallocation outweigh the benefits of trying create the economic incentives noted by commenters given the extreme difficulty of creating "perfect forecasts." Ecology believes that in the short term the importance of not creating a disincentive to the creation or submission of an accurate emissions forecast outweighs the valid ideal suggested here of creating an economic incentive to reduce more than is required by CETA. In the longer run, especially in the years past 2030 when CETA becomes more predictable, and with a strong understanding of the program's economic effects, it may be more realistic to take this approach to incentivize additional reductions.

Commenters: A-3 (Bonneville Power Administration); O-28 (Western Power Trading Forum); OTH-6 (CA Independent System Operator)

Summary: The compliance entity for electricity derived from the Energy Imbalance Market (EIM) is unclear or should be deferred to a later rulemaking.

Response: The greenhouse gas reporting rules (WAC 173-441) were updated earlier this year to allow for all categories of entities that participate in the Energy Imbalance Market (EIM) in Washington to be able to report on their purchases of electricity (retail providers, power marketers, and Asset Controlling Suppliers). However, for purposes of compliance, a single entity for a single transaction needs to be identified. The law requires that question to be addressed by rule by 2026. But because numerous Washington entities are participating in the EIM at this time, an interim solution is necessary. Moreover, Ecology can't exempt this portion of covered emissions by rule, as suggested by some commenters, without specific statutory authorization. Instead, this rule allocates, for the first compliance period only, the compliance obligation to the energy imbalance market purchasing entity that is the recipient of the EIM transaction in question. There are not yet other data available from California ISO that provide another option at this time. However it is hoped and expected that in the near future additional data will be available that can support potential compliance options from both or one of the entities importing the power and/or receiving the power, in a manner similar to how EIM transactions are handled in other jurisdictions with similar programs. It is anticipated that the future rulemaking on this topic referenced above will provide a long-term solution on this issue.

Commenters: B-22 (Puget Sound Energy, Avista Corp.); B-23 (Grays Harbor Energy); O-39 (Alliance of Western Energy Consumers)

Summary: The administrative cost portion of the cost burden allowance allocation should be allocated earlier than the second compliance period, should be construed broadly, should be limited, or should be estimated rather than having to rely on documented costs.

Response: Washington is unique in that it is required by the CCA statute to provide allowances to electric utilities to help offset their internal administrative costs related to complying with the cap and invest program. No other program (including the California cap and trade program) has a similar requirement. This facet is also unique in that it is tied to a financial cost, and not greenhouse gas emissions. As a result, because the overall pool of allowances is tied to actual greenhouse gas emissions, the allowances used to provide for this provision must, by necessity, result in fewer allowances being available for other purposes. For this reason, Ecology has limited the use of allowances for purposes clearly directly related to compliance with this program for electric utilities, and clearly documented by third-party audited financial statements as being directly related to this program. In line with other changes for the first compliance period, there is now an ability to receive those allowances sooner, but not before the costs are incurred and not before they are verified through standard financial auditing practices. These changes should, over time, allow electric utilities to recover costs for their actual, direct administrative costs related to the program at a level precisely tuned to those actual costs.

Commenter: O-26 (Northwest & Intermountain Power Producers)

Summary: The electricity trading hub in the middle of the Columbia River (the "Mid-C") presents unique issues.

Response: Numerous commenters note that the fact that the prominent electricity trading hub comprising the transmission area amongst the large hydroelectric dams in the middle of the Columbia River area (the "Mid-C") faces potentially unique challenges. One commenter provides specific areas of potential concern related to concerns about trades that are intended to pass through the hub to a final point of delivery being inaccurately recorded as a final delivery. The commenter also notes potential solutions to this issue being worked out amongst stakeholders without the need for regulatory oversight or resolution. Given this possibility Ecology's preference is to provide the opportunity for stakeholders to find potential resolution outside of rulemaking and to deal with any potential unresolved issues in a future rulemaking.

Commenters: O-22 (Joint Utilities: Avista, NRU, PacifiCorp, PGP, PSE, WPUDA); O-27 (NW Energy Coalition); O-39 (Alliance of Western Energy Consumers); OTH-1 (Seattle City Light); O-33 (Climate Solutions); B-21 (Puget Sound Energy, Avista Corp., Cascade Natural Gas); A-5 (WA Attorney General - Public Counsel Unit); O-36 (The Energy Project)

Summary: Ecology should have no involvement in, further limit the use of, or require the reporting of the uses of allowance consignment revenue that is returned to utilities.

Response: Numerous commenters suggest that Ecology should use the CCA as a basis for taking on a role that would be new to Ecology, the partial financial oversight of electric and natural gas utilities. This is a role that is currently played by the Utilities and Transportation Commission (UTC) for investor-owned utilities, and the governing boards of consumer-owned utilities for municipal utilities, cooperatives, public utility districts, mutual utilities, and so forth.

Specifically, a variety of commenters want Ecology to mandate, in more detail than exists in the current statute, how utilities can spend monies that are returned to them as part of the allowance consignment process. There is no clear mandate in the supporting statute for Ecology to take such a role, and Ecology is not well equipped to make determinations relevant to the enforcement of such language if it were inserted. For example, Ecology is not in a position to make a well informed determination as to the efficacy of particular energy efficiency savings methodology, or the appropriate cost recovery approach for energy performance contracting in commercial buildings. By contrast, the existing energy agencies in Washington are well positioned to make these kinds of determinations, and have been for decades. Therefore, consistent with some commenters' requests, language has been added to the rule language to amplify the role of the Utilities and Transportation Commission in determining how the investor-owned utilities under their purview should best use and invest the monies that are returned to them from the allowance consignment process. For concerns about consumer-owned utilities, there are existing public processes which can be worked through and, if it is felt that all other recourses have been pursued, there is statutory language in the CCA that can be pursued through judicial action.

Some commenters also suggest that a reporting requirement be put in place, to require that the utilities receiving the revenues from the consignment process be required to report how they use these monies. Ecology agrees that transparency is important but, in the case of investor-owned utilities, this is an area that where the Utilities and Transportation Commission has the ability to involve themselves should they so choose, or should stakeholder involvement in their processes so dictate. Even if they don't choose to expand on their current duties the public process involved with their normal rate cases and operational proceedings should generate a considerable public record on this matter regardless. The same is true of consumer-owned utilities, which have their own public process requirements. But at the onset of the program it is unknown whether this issue is even a problem, or whether it will resolve itself utility by utility for the consumer-owned utilities, or through UTC action for the investor-owned utilities. As such, Ecology believes it is appropriate to let utilities establish their revenue-use programs and any reporting mechanisms on their own first, with appropriate oversight from their governing bodies and the public processes that oversee those processes, and if the lack of such programs or information on the use of revenues proves problematic it can be addressed in a future rulemaking.

Commenters: A-2 (Cowlitz PUD #1); O-22 (Joint Utilities: Avista, NRU, PacifiCorp, PGP, PSE, WPUDA); A-3 (Bonneville Power Administration)

Summary: If the Bonneville Power Administration (BPA) voluntarily takes on the role of First Jurisdictional Deliverer (FJD) for its customers how it will affect its customer electric utilities is unclear, as are the ramifications of the timing of any such decision.

Response: The Bonneville Power Administration (BPA) is a federal power marketing administration that is responsible for selling the electricity generated by the large federally-owned hydroelectric dams located on the Columbia River system in the Pacific Northwest. Because BPA is a federal agency it has a unique role in the cap and invest program. BPA has the option of taking on the role of being the compliance entity (the first jurisdictional deliverer) in

lieu of its customers (the consumer-owned electric utilities that purchase its power). Numerous commenters requested more details as to how the transfer of a utility's compliance obligation would work should BPA elect to take on the role of the FJD, and what mechanism or mechanisms would allow that to happen. Ecology has addressed this question on two fronts. Ecology has noted elsewhere in this document that the pathway for BPA for take on the FJD role can be addressed outside of rulemaking. As to the compliance obligation for the customer utilities of the BPA, Ecology has elected to expand the options provided under RCW 70A.65.080 (8) for situations where implementation of the law has the effect of creating double coverage of the same covered emissions. This part of the law allows for the assumption of the compliance obligation of one entity by another entity if an agreement is reached between the two entities and notice is given to Ecology of such an agreement before the compliance period. In this way BPA and its customer utilities will be able to decide how best to divvy up the compliance obligations of each of the utilities in question, with the flexibility to address this issue one utility at a time.

B. Cost burden calculation

Commenters: I-129(Public Generating Pool, Hughes); A-2 (Cowlitz Public Utility District No.1); B-22 (Puget Sound Energy, Avista Corp.); O-22 (Joint Utilities: Avista, NRU, PacifiCorp, PGP, PSE, WPUDA); O-27 (NW Energy Coalition); O-33 (Climate Solutions); O-39 (Alliance of Western Energy Consumers); OTH-1 (Seattle City Light)

Summary: The cost burden concept, approach, or statutory basis, and the cost burden effect calculation process, methodology, transparency, or supporting data is unsupported, fundamentally flawed, incorrect, incomplete, on the right track, or generally satisfactory.

Response: The "cost burden" approach is a simple concept. One can imagine there is a bridge that needs to be crossed daily by an individual. The bridge has a toll, which is paid by tokens that cost a certain amount. Obtaining the tokens by that individual places a burden related to the monetary cost of those tokens. The total cost burden over time is simply the number of tokens that one guesses will be needed to pay that toll in the future, based on the predicted demand for trips over the bridge. By providing tokens in advance, and in sufficient quantity to cover the predicted demand for trips over the bridge, one is mitigating the "cost burden" that is put on that individual related to that bridge crossing.

The concept in the cap and invest program is similar, but the primary difference is that the cost burden effect in the cap and invest program is a greenhouse gas emissions calculation, and not a financial calculation. This is because the unit in question here are allowances, which are representations of one metric ton of greenhouse gas emissions. Many commenters incorrectly treat the cost burden effect calculation as a financial one, and it is not difficult to understand the confusion, since the law defines the cost burden as a financial cost that is, in simple terms, the "carbon cost" of the program on electricity prices (plus an administrative cost component dealt with separately). Specifically, the term "cost burden" is defined in the law as follows:

"Cost burden" means the impact on rates or charges to customers of electric utilities in Washington state for the incremental cost of electricity service to serve load due to the

compliance cost for greenhouse gas emissions caused by the program. Cost burden includes administrative costs from the utility's participation in the program.

Taking the administrative component out of this discussion (it is dealt with elsewhere in the CES), this means that for regulated parties with covered emissions from electricity they generate themselves the provisions of that allowance means that it may not be necessary to incur a financial cost to obtain the allowance, since it is provided for free. For electric utilities that don't have covered emissions, the embedded cost of carbon in the electricity price for market power is mitigated through the provision of allowances. But the mitigation of the cost burden – which is the heart of the process– is very simply the provision of an allowance to cover, in whole or in part, the carbon price passed through the cost of electricity to electricity customers. Importantly, there is no requirement that Ecology provide enough allowances to fully cover the emissions footprint, and thus the cost burden. Rather, Ecology is required to only "mitigate" that cost burden. The word "mitigate" has specific meaning, both as a term of art in this policy approach and in common use. It requires only that the applicable burden be lessened (or potentially eliminated), but does not require that all of the applicable burden be removed.

The program-related definition for "cost burden" was taken almost verbatim from a California guidance document (except for the language regarding administrative cost). The approach for cost burden with electric utilities is also adapted directly from the state of California, which is broadly described on CARB's website[10] and is more specifically described step by step in their December 21, 2016 release of proposed amendments to its cap-and-invest program (attachment C) [11]. The basic approach is relatively simple: (1) use an approved forecast of retail electricity demand (2) use an existing or soon to be approved forecast of the generation resource mix used to supply that demand that has been approved by appropriate governing body (3) multiply the two together to get forecasted emissions and (4) translate emissions to "cost burden" on an allowance for each metric ton of emissions basis. In other words, if a utility understands their emissions, they understand their cost burden.

There are two key elements at play. First, a forecast of each utility's supply and demand that has been approved by the appropriate governing body. Second, a computation of the cost burden effect based on those forecasts. Importantly, contrary to the claims of some commenters, the term "cost burden forecast" does not exist in the statute, and is not implied by the statutory language. Rather, the cost burden is a computed result that results from the use of the two primary forecasts noted in statute (supply and demand). In essence the cost burden is derived by taking the emissions footprint of the utility, and multiplying it by the carbon cost of those emissions. In a cap and invest system, the cost of those emissions is represented by the carbon price, which is in turn represented by the allowance price. By providing one allowance for every metric ton of greenhouse gas emissions one is mitigating the cost burden of the program. However, only two ingredients are needed to complete this task. A

[10] https://ww2.arb.ca.gov/our-work/programs/cap-and-trade-program/allowance-allocation/edu-ngs
[11] https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2016/capandtrade16/attachc.pdf?_ga=2.253490831.763998807.1651618909-730360998.1567551650

forecast of demand (i.e., retail electric load) and a forecast of supply (i.e., the electric generation resource mix used to supply that demand). You do not need an allowance price, nor do you need a "cost burden forecast."

Ecology does, however, acknowledge that the price of electricity is a critical component in the forecast of supply, i.e., that the cost of electrical generation specific to each resource type and generation facility is the most important factor in modeling resource dispatch over time. In simple terms, the forecast of resource supply used to inform the cost burden effect calculation must consider the costs of generation, and those costs of generation will be affected by the allowance price ("carbon cost"). In this way Ecology agrees with much of the complexity noted by commenters about the interaction of a cap and invest program and the effects and impacts of such a program on the Western power market and grid. However, the issue here is one of sequencing. Rather than trying to first estimate a financial cost of the program, and then trying to estimate what generation or supply resources were used to meet that cost, Ecology is requiring the reverse. In other words, the costs of electrical generation should be reflective of the addition of a carbon cost into the electrical market, reflecting the "cost burden" of having to procure allowances to cover the emission associated with electricity. Based on those revised costs of electrical generation, that now reflect the "carbon cost" associated with the program, forecasts of resource supply should be developed that reflect the generation resources, or power market supply, that is ultimately used to provide the retail electric load provided to customers.

A key issue noted by numerous commenters, and acknowledged by Ecology in the construction of the rule language and in numerous meetings with stakeholders, is the difficult timing that the CCA law provide to address these complicated issues in the first compliance period. Originally, the inclusion of imported electricity was to be in the second compliance period. The key rationale for delaying its inclusion was because reported data on the emissions associated with imported electricity did not exist – an issue that remains. The bill passed the Senate with coverage of imported electricity starting in the second compliance period. Under this framework the "allocation schedule" would not be published until before the second compliance period so that sufficient data could be collected to inform that calculation. But the "methods and procedures" for allocation would be part of the initial rulemaking, so that utilities would be able to forecast their allocations using those methods. However, in the House imported electricity was moved to the first compliance period, and ultimately the Senate concurred with all of the House amendments. All of the relevant allocation dates were simply switched to 2022, resulting in the existing requirement that both the "methods and procedures" and the "allocation schedule" be set simultaneously in 2022.

As a result, Ecology has worked to create a process that can meet the timing challenges of the first compliance period and is robust enough to deal with future compliance periods. Many commenters have asked Ecology to establish a separate process to deal with these issues, but because the law requires Ecology to address these issues "by rule", the only way to address these issues is through a rulemaking process. In other words, a separate process or processes would have required separate rulemakings, which would only increase the period of time necessary to address these topics. Similarly, many commenters asked Ecology to establish protocols or procedures to work with electric utilities to develop the necessary forecasts of

supply and demand but, again, the law requires Ecology to develop the "methods and procedures" for developing the forecasts "by rule." The resulting rule language represents Ecology's best attempt to address these timing challenges in a way that also creates a solid foundation for future forecasting needs and allocation of no cost allowances for this sector.

Given the significant timing issues associated with the first compliance period, Ecology has interpreted these requirements by including "methods and procedures," as the terms are used in the statute, detailed enough that a reasonable person would expect a regulated party under these rules to be able to sufficiently predict their allowance allocation using data and forecasts either already under their control, or that are developed for other purposes which result in approval by their appropriate governing body. Most importantly, Ecology proposes using data sources for the forecast of supply and demand that either exist today, or are expected to be approved in the short term. In particular, Ecology intended to leverage processes involved with the Clean Energy Transformation Act (CETA) given their explicit and central role in the CCA. This ability to use existing (or near-term) sources is critical. If Ecology was to meet its statutory deadline it must have at its disposal a variety of means to extract or derive the required supply and demand forecasts necessary to complete the calculation of cost burden. Based on stakeholder comments, and consultation with UTC and Commerce, Ecology has ultimately elected to rely on a combination of approaches, with the UTC committing to move forward on approving forecasts of supply and demand for the investor-owned utilities, and Ecology determining that the clean energy implementation plans for COUs provide sufficient detail for the initial calculation. The rule language allows for a year-by-year approach for the first compliance period, which should allow sufficient flexibility to address a variety of challenges.

In the longer term for the second compliance period and beyond, when the time pressures of the law are less extreme, Ecology expects to rely on the governing bodies of electrical utilities (both consumer-owned and investor-owned) to take on the primary role of generating and approving the forecasts of supply and demand used in the cost burden effect calculation. With the advantage of time and actual data to work from, in terms of the market having an established carbon price and greenhouse gas reporting data on imported electricity being available for the first time, the cost burden effect calculation should be a much more straightforward calculation. The language in the rule is broad enough in its final form to sufficiently allow for more complex forecasting processes to occur in the future, as well as to include data elements that do not yet exist but will in the future once processes in the greenhouse gas reporting rule are fully functional (e.g., asset controlling supplier emission factors). For those specific technical concerns from commenters that were not able to be addressed in the first compliance period due to time and resource constraints it is hoped that there will be a broader level of satisfaction with future processes.

Commenters: B-23 (Grays Harbor Energy); O-22; O-33 (Climate Solutions); O-39 (Alliance of Western Energy Consumers); OTH-8 (Joint Comments – Grant, Cowlitz, Douglas)

Summary: Emission factors used in the cost burden effect calculation are either high, low, correct, incomplete, or should be plant specific.

Response: Emission factors for the resource types used to generate or supply the electricity that is forecasted to supply Washington customers are used in the "cost burden effect"

calculation. Consistent with how California conducts its similar calculation for its cap and trade calculation, the emission factors are broad estimates applicable to the overall resource type (e.g., natural gas or coal), rather than to a specific generating facility or subset of generating facilities. Numerous commenters provide a wide range of comments on both the specific factors and the general approach taken. One commenter agrees with the approach and numbers used.

Many commenters ask that the emission factor reflect the precise power plant and the exact emissions that occur to produce the electricity in question. However, because this is a forecast of future events, and it is impossible to know what will happen in the future, it is not realistic to make that a requirement of the rule. One of the challenges in forecasting the power sector in general is that small changes in weather, fuel prices, and other factors that change every day or hour may cause a switch in the generating facility that is used to provide the electricity in question. This is different than historical emissions data, where the generating facility and the amount of generation from that facility are generally known with a high degree of accuracy.

In some cases there may be situations where there is substantial certainty as to what specific generating facility may be supplying power for a given utility to supply its customer's needs. However, in the majority of cases, and for the utilities that supply the majority of power with associated emissions to Washington customers, the portfolio of generating resources used to serve that load is likely to be complex. Moreover, because historical data do not reflect the introduction of a carbon price on those resources, the use of historical generation patterns to predict future generation trends under the cap and invest program is particularly problematic. One commenter who conducted a modeling exercise found that the use of plant-specific factors as opposed to the generic emission factors in the rule made only a one (1) percent difference in the result. Requiring guesses as to which specific power plants will be supplying power in the future likely introduces a higher margin of error than this relatively small difference.

As a more detailed and data-driven understanding of this program's effects on the power sector in Washington and the Pacific Northwest electric grid is developed over time, Ecology is not opposed to migrating to a more granular resource-specific emissions approach. But at this stage, with no carbon price yet established through price discovery at auction, and no real-world electric sector data to predict future dispatch decisions from this program, it is unrealistic to require utilities or stakeholders to conduct modeling at a level of detail that is likely unsupportable. Looking to California's program, this emissions factor methodology has worked well, and there is no reason to believe that it can't work well for Washington as a starting place.

The rule language was changed in several ways in relation to emissions factors. The ability to use an Asset Controlling Supplier (ACS) emission factor for future compliance periods was added, in situations where an ACS factor is appropriate. Since no ACS factor has been approved for an entity, and will not and cannot be until such time that procedures are put in place to do so under the greenhouse gas reporting program, using such a factor for the first compliance period cost burden effect calculation is likely not possible. But for future compliance periods, once one or more ACS factors have been established, the rule can now accommodate this option. In addition, various elements of the cost burden effect calculation and formula were revised to emphasize that the emission factors apply to retail electric load used to serve

Washington customers, and that the reference to generation means the resource type used to generate or provide the relevant power, and is not an indication that the amount of energy used in the calculation should be the generated energy (as opposed to the delivered electrical energy in MWh).

Commenter: B-16 (PacifiCorp)

Summary: Allowances for cost burden should be provided for exported electricity, not just for electricity that serves Washington customers.

Response: A commenter that is a vertically-integrated utility serving customers in multiple states comments that the cost burden of the program should include all costs associated with the program, including costs associated with a generating resource that is not used solely to serve Washington customers. However, the plain language of the law and legislative intent is clear that the concept of cost burden relates to how the costs associated with covered emissions are passed on to customers in the State of Washington. Ecology recognizes that the concept of splitting costs among multiple states is complicated, and that long-standing cost-sharing agreements and protocols exist for regulated utilities serving multiple states and the rule language provides for the application of such protocols. It is expected that those protocols will be applied through the existing means in the rule language, and that a Washington-specific allocation is possible.

Commenters: B-16 (PacifiCorp); A-5 (WA Attorney General – Public Counsel Unit)

Summary: Provide for the ability to provide forecasts of supply or demand for a single year, rather than doing such forecasts for a full compliance period (4 years) at one time.

Response: Several commenters requested the ability or flexibility to address the cost burden process through a forecasting process that is year by year. The statute assumes an allocation schedule for the full compliance period. However, the statute also makes a number of analytical and forecasting demands that are exceedingly challenging, and in some cases likely impossible, to accomplish before the program and the first compliance period begins. For this reason the final rule was expanded beyond initial draft rule language to include a two-stage approach. For the first compliance period a year-to-year approach is allowed, to accommodate the fact that as critical information about the program (such as the carbon price on electricity) becomes available, and settles over time the ability to accurately forecast will improve dramatically. For the second and future compliance periods, a full four-year forecast is required, but an annual adjustment process is allowed so that updated forecasts of supply or demand can be fed into the process and more recent information used to keep the allowance allocation forecast as up to date as possible. This phased approach balances the statutory concept of putting forward compliance schedules by compliance period with the significant challenges of implementing that approach in the first compliance period, while phasing in to a longer-term approach consistent with the overall direction in statute.

C. Voluntary renewable electricity reserve account

Commenter: I-262 (Sweeney)

Summary: What is the purpose of a voluntary renewable electricity (VRE) set aside?

Response: A commenter asks for an explanation of the purpose of the voluntary renewable electricity set aside component of the rule. The commenter asks a range of questions under the mistaken assumption that this component of the rule is intended to incent electrical generators to generate renewable energy. However, the purpose of a VRE set aside program is to assure, and ensure , that customers of electrical utilities that participate in renewable energy purchasing programs (typically called "green power programs") have their purchase of renewable energy (e.g., wind power) result in a real reduction of greenhouse gas emissions. This is because under a greenhouse gas cap program (such as the cap and invest program this rule puts in place) the only way to reduce greenhouse gas emissions under such a program is to permanently remove an allowance (the permit to pollute that comprises the cap). Otherwise the generation of the applicable emission-free renewable energy merely subsidizes the ability of the utility to emit more by freeing up room under the greenhouse gas emissions cap, and no actual reduction in greenhouse gas emissions occurs.

Commenters: O-6 (Center for Resource Solutions); O-33 (Climate Solutions)

Summary: The VRE reserve account "set aside" should be open ended rather than set at a fixed proportion of the allowance pool.

Response: Consistent with the design and implementation of other cap and trade programs that have an allowance reserve ("set aside") for the recognition of voluntary renewable electricity, the Voluntary Renewable Electricity Reserve Account is set at a fixed proportion of the overall allowance pool. Because the overall supply of allowances is a fixed number, an upper ceiling must be placed on any reserve account to ensure that the cap is not compromised in case the demand on the reserve account is greater than the supply of allowances. In addition, as inferred by the term "set aside", the number of allowance necessary to dedicate to the account has to be estimated in advance, since actual demand won't be known until the future. In this case, the proportion in the rule (1/3 of a percent) was determined by using data on green power programs from the National Renewable Energy Laboratory (NREL) to create an estimate of how much applicable voluntary "green power" would be necessary for this program to provide allowances for. The result demonstrated that the proportion of allowances in the rule should be sufficient to cover existing demand for green power in Washington for which this program would be applicable. The proportion is also consistent with California's analogous "set aside", which has been active for over a decade and has been successful in its objective. It is notable that no future proportion is established in this rule at this time. It is expected that actual program data, once the programs begins, will best inform how accurate this estimate is and whether the proportion of allowances that are "set aside" for future compliance periods should be the same, higher, or lower than the proportion established for the first period.

Commenter: O-6 (Center for Resource Solutions)

Summary: Provide details on administration of the Voluntary Renewable Electricity Reserve Account program.

Response: A commenter asks numerous questions regarding specific information as to how the Voluntary Renewable Electricity Reserve Account and the allowance retirement process will work on a program administration level. Details on the day-to-day functions of the VRERA

program, and the specific mechanism, administrative forms, and data analytics that will be part of the program, have yet to be determined and will be determined as Ecology works to implement the program. In general, it is rare for program administration details to be included in rule language. The rule language (and supporting statute) provide the framework by which the program operates, but the specific detail is left to program management decisions and the day-to-day needs of the program. That is consistent with how other jurisdictions are running similar programs addressing voluntary "green power" purchases.

11. Emissions Intensive Trade Exposed (EITEs) Entities (WAC 173-446-220)

A. General

Commenters: B-8 (Nucor Steel);

Summary: The commenter suggested that Ecology should break WAC 173-446-220 into two separate sections.

Response: Ecology made several edits to WAC 173-446-220 to improve clarity and readability, but did not split the section into two sections.

B. Baseline

Commenters: B-5 (bp); B-8 (Nucor Steel); B-12 (US Oil and Refining); B-13 (Kaiser Aluminum); B-14 (WaferTech); B-15 (Boeing); O-12 (Food Northwest); O-16 (NW Pulp & Paper); O-21 (J.R. Simplot); O-29 (Environmental Defense Fund); O-39 (Alliance of Western Energy Consumers)

Comment: A number of commenters request clarity on how Ecology will inform EITEs about their allocation baseline and request opportunities to confer with Ecology if the agency's calculations are different from those proposed by the facility. Commenters also desire a process for review or appeal. One suggestion was allowing facilities to submit their baseline materials 15-30 days before the September 15, 2022 deadline so Ecology can give feedback and allow them to resubmit an updated version by the deadline. Ecology should also give EITE's an opportunity to review the allocation baseline, respond and appeal, before Ecology issues the final baseline on November 15, 2022. This review and appeal process was emphasized for cases when Ecology uses data other than those provided by the facility.

Response: Ecology will inform EITE facilities of their allocation baselines as soon as possible, once those baselines have been established. Ecology intends to work with facilities during the process such that November 15, 2022 should not be the first time an EITE facility becomes aware of its baseline. Ecology has developed a calculator tool to help EITE facilities provide the information required by September 15, 2022. Ecology designed the calculator to be transparent and show the data Ecology plans to use by default in the process. Ecology released the calculator on August 8, 2022 and held training on how to use it on August 16, 2022. EITEs can use the tool and submit their information at any time. In addition, Ecology has been working with EITE facilities on the processes and the data, and will continue to work with EITE facilities both before the September 15, 2022 deadline and up through Ecology's November 15, 2022 deadline. An EITE facility should work with their Ecology verification contact on data issues

specific to its facility. Ecology is open to working with people before September 15, 2022 as resources and data availability allow.

Summary: Commenters believe that Ecology is misinterpreting RCW 70A.65.110 and that the EITE facilities determine their own baseline, not Ecology. RCW 70A.65.110(3)(c) directs that the EITE Facility will submit its carbon intensity baseline to the agency for review and approval. WAC 173-446-220(1)(b)(ii) and (iii) assigns the calculation of a carbon intensity or mass-based baseline to Ecology. The rule should be fixed to follow this approach.

One commenter expressed specific concern with the mass based allocation method for aerospace manufacturers. The commenter states that the linkage of WAC 173-441 Table 050-1 to WAC 173-446-220(1)(a)(ii), which defines which product data is used for each sector, is inappropriate. The ability to supply the product information established in Table 050-1 should not determine that it is feasible to use an intensity based baseline. Aerospace manufacturers should still be able to use the hybrid mass and intensity based approach.

One commenter requests the option to report carbon intensity baselines for different products or production lines in the same facility. The commenter also requests the opportunity to revise past reports and submit other data for the baseline determination. One commenter asked for clarity on how changes to 40 CFR Part 98 may influence updates to EITE baselines.

Commenters recommended that Washington use an allocation methodology that mirrors California's industry-wide product efficiency benchmarks. The commenter states: Paradoxically, and contrary to the spirit of the regulation, facility-level benchmarking gives the worst-emitting facilities the most reduction capacity and easiest path toward future compliance. Facilities like USOR that have prioritized and invested in emissions reduction may not be able to practicably further reduce emissions without idling units or shutting down with the net effect of more emissions.

There was also a request to remove the requirement for three consecutive years of data when applying for alternate baseline years.

Commenters expressed concern with WAC 173-446-220(1)(b), which specifies Ecology may "use professional judgment to adjust data sets and conform to this chapter when calculating subtotal baselines" and that one eligible data source is "other sources of information deemed significant by ecology."

Response: RCW 70A.65.110 outlines a process where EITE facilities submit baseline information for review by Ecology with Ecology having the final determination of the baseline value. The statute includes explicit agency review and approval with established criteria as well as a two month period for Ecology to complete the process. The proposed rule followed this directive while attempting to give as much detail on how Ecology would review submissions as possible. Ecology agrees that the proposed rule did not follow the terminology in the statute and has made clarifying revisions to use the submit, review, and approve terminology from statute while maintaining the same process and criteria in the statute and proposed rule.

The legislature envisioned the 2015-2019 carbon intensity based method as the default baseline. RCW 70A.65.110 consistently refers to the baseline used for EITE allowance allocation

as the “carbon intensity baseline”, only mentioning mass-based baselines when specifically discussing that method and excluding a generic term. RCW 70A.65.110(3)(c)(i) uses “carbon intensity baseline” when discussing submission requirements to Ecology as does (3)(c)(ii) when discussing Ecology’s approval. (3)(b)(i) explicitly defines “carbon intensity” as “the amount of carbon dioxide equivalent emissions from a facility in metric tons divided by the facility specific measure of production.” Mentions of the mass-based approach or alternate years are permissive, not required, and usually need some form of demonstration. Specifically, RCW 70A.65.110(3)(b)(ii) establishes that the EITE facility must first show that it “is not able to feasibly determine a carbon intensity benchmark based on its unique circumstances” as a pre-condition of having the elective of a mass-based approach.

The mass-based hybrid approach for facilities with NAICS codes beginning with 3364 in RCW 70A.65.110 (3)(b)(iii) is a special case for qualifying facilities of those NAICS codes for which an intensity-based baseline is infeasible and are on a mass-based baseline. For these facilities, the additional no cost allowance allocation achieves some attributes of the rate-based baseline, and requires production data in order to support an increase in allowance allocation. Like all mass-based baseline facilities, this method is only available when the carbon intensity method is not feasible. Aerospace manufacturers are welcome to submit mass-based baselines and Ecology will review those submissions for feasibility and other requirements before approving a baseline. WAC 173-446-220(2)(d)(iii) contains the process to adjust no cost allowance allocation for facilities with NAICS codes beginning with 3364 using a mass-based baseline.

We did not receive comments about product data for NAICS 3364XX: Aerospace Product and Parts Manufacturing during the WAC 173-441 rulemaking. Ecology established multiple production metrics in WAC 173-441 for facilities using these NAICS codes in order to give options. We did receive comments for other NAICS codes and made adjustments to the final rule to incorporate that feedback and provide desired production metrics. Ecology also attempted to keep product data metrics generic, both to make reporting easier and minimize confidentiality concerns.

The EITE baseline process designed in RCW 70A.65.110 is different from the process used in California and some other jurisdictions. The carbon intensity metric established in (3)(b)(i) is clearly comparing the facility to itself, not the facility’s peers. This means complex, data intensive methods that require detailed production data are not needed. A single broadly defined metric is sufficient as long as it is applied consistently for a given facility year to year. This system can give an accurate intensity value with less confidential business information exposure and more flexibility for future changes as the facility slightly changes operations over time. RCW 70A.65.110 gives a very compressed timeline for completing the EITE baseline process. Facilities are required to submit information by September 15, 2022, two weeks before RCW 70A.65.070(1)(a) requires rulemaking to be complete on October 1, 2022. Ecology then only has two months to review and approve the submissions before November 15, 2022. Complex, multi-product comparisons are not possible on that timeline and would result in lower quality assessments and less accurate baselines. Comparisons to other facilities takes substantial time as often there is only one facility of a given type in Washington making data acquisition difficult, our facility mix is different than other states making reusing existing factors problematic, and comparisons usually require multiple rounds of data gathering. Even

jurisdictions like California that have detailed methods to compare facilities to their peers have moved away from that approach over time. Facilities are welcome to submit additional product data for various processes, but Ecology intends to establish baselines based on a single broad production metric for a given facility with an emphasis on consistency over time instead of comparison to competitors.

RCW 70A.65 establishes the consecutive five year period of 2015-2019 as the default for baselines across the CCA, including for EITEs, with some exemptions and deviations. This consecutive multi-year period is standard for GHG programs. Having a longer period allows minor or routine variations to be averaged out. Combined with having the time period be consecutive years this allows for a more accurate long-term assessment of an organization's emissions. This is also reflected in having compliance periods (RCW 70A.65 uses a consecutive four year compliance period, longer than California's three year periods) to average out variations during the compliance phase of the program. WAC 173-446-220 allows for a shorter three year period if approved to use alternate baseline years, but retains a consecutive requirement to prevent misrepresenting long-term conditions by over selecting years. Non-consecutive years may be used for alternate year calculation as long as at least three consecutive years are part of that calculation.

We encourage all reporters to submit the most accurate information possible. Known errors are required to be corrected within 45 days per WAC 173-441-050(7). The sooner an EITE facility can submit a report revision, the more likely Ecology will be able to incorporate the new information into their baseline. WAC 173-446-220(1)(b)(v)(D)(III) provides a pathway for baseline updates based on reporting method changes, including changes to 40 CFR Part 98. This could occur when there are significant changes to emissions or product data. Ecology reporting and verification staff will work with reporters when reporting method changes occur to determine if baseline adjustments are needed.

Using professional judgement and supplemental data sources are normal practices during agency review. Ecology intends to use data submitted by EITE facilities whenever possible when conducting our review. Other data sources are only intended to assist in that review or supplement incomplete submissions. Ecology has added clarifying language to that provision to indicate that Ecology will rely on directly submitted data, either in the EITE baseline submission or from the reporting program whenever possible. "Ecology will rely on data provided in subsections (b)(i)(A) through (C) of this subsection whenever possible."

Commenter: O-7 (US Department of Energy, Hanford)

Summary: Hanford notes that the deadline in WAC 173-446-220(1)(a) is September 15, 2022, which is before the rule will be adopted or will go into effect, and suggests that the deadline should be changed.

Response: The September 15, 2022 deadline is in the Climate Commitment Act. RCW 70A.65.110(3)(c). This deadline is repeated in the rule for the convenience of stakeholders.

C. Allocation and adjustments

Commenter: O-16 (NW Pulp & Paper);

Summary: The allocation percentage for the third compliance period in WAC 173-446-220(2)(a) should be 94.1% instead of 94%.

Response: Ecology believes the values in WAC 173-446-220(2)(a) correctly reflect the rule and statute. The specific concern is 0.1% and for the third compliance period. Ecology will continue to review the matter and correct if necessary in future rulemakings.

Commenters: B-8 (Nucor Steel); B-12 (US Oil and Refining); B-13 (Kaiser Aluminum); B-15 (Boeing); O-12 (Food Northwest); O-16 (NW Pulp & Paper); O-29 (Environmental Defense Fund); O-37 (Association of Washington Business); O-39 (Alliance of Western Energy Consumers)

Summary: Commenters note the statute has two provisions for an upward adjustment of allowances. Commenters request that the rule summarize the two allocation adjustment processes in RCW 70A.65.110(3)(f) in separate subsections of WAC 173-446-220(2)(d). A new subsection (2)(d)(iii) could summarize the mandatory adjustment process, leaving the discretionary adjustment process for technical or economic infeasibility in (2)(d)(ii). Commenters ask that provisions be clear and robust. Adjustments should be to the baseline, not the reduction schedule.

Alternately, other commenters state that providing EITEs with such an upward adjustment is unnecessary, especially when stacked on top of an approach that is already extremely generous, particularly during the first three compliance periods. It is critical that any allowances that are part of an upward adjustment to a facility's direct allocation still come from under the overall program cap.

The CCA provides for adjustments using best available technology (BAT), but the draft rule provides no method to apply for and demonstrate BAT or criteria for adjustments. Such a method should be added. One commenter states that evaluation of BAT should be based on a rigorous, updating, comprehensive audit that considers impacts on neighboring communities, particularly overburdened communities. Another suggests BAT determinations should be made by an unspecified third party.

Response: WAC 173-446-220(2)(d)(ii) mirrors RCW 70A.65.110(3)(f). The biggest differences are:

- Cosmetic wording changes
- The addition of the statutorily required process for an EITE to submit an application
- A provision that adjustments are capped at the facility's original emissions if mass-based or intensity if intensity based. This is consistent with upwards adjustments being designed to stop the rate of reductions, not allow an increase from emissions rates that are currently proven possible
- An administrative change that the adjustment is directly applied to the allowance allocation instead of the benchmark, which is only used to calculate the allowance allocation

Ecology views all of those variations from the statute as reasonable and meeting all of the statutory goals and objectives. All provisions and conditions from the statute are included.

Ecology disagrees that this process is mandatory based on the plain language of the statute. RCW 70A.65.110(3)(f) does state that Ecology "shall by rule provide for emissions-intensive, trade-exposed facilities to apply to the department for an adjustment to the allocation for direct distribution of no cost allowances based on its facility-specific carbon intensity benchmark or mass emissions baseline." Ecology has met that mandatory requirement by including a process that allows EITE facilities to submit an application. (3)(f) states that "the department may make an upward adjustment in the next compliance period's benchmark for an emissions-intensive, trade-exposed facility based on the facility's demonstration to the department that additional reductions in carbon intensity or mass emissions are not technically or economically feasible." The permissive "may" combined with "based on the facility's demonstration to the department" clearly indicate agency review and final determination. The next sentence also uses the permissive "may" when referencing Ecology's use of the facility's analysis when making a decision. The sentence introducing subsections (3)(f)(i) through (iii) reads "the department shall make adjustments based on:", not "the department shall make adjustments". This means the determination of whether or not an adjustment is made is still up to Ecology, but if making an adjustment, the agency must use (3)(f)(i) through (iii) as the criteria for the adjustment. Ecology is making clarifying changes to the rule text to better reflect statutory language, but those changes do not change the meaning of the rule or statute.

Ecology acknowledges commenter concerns over unnecessary upward adjustments for this sector and will take such concerns into consideration when evaluating future applications. However, this process is defined in RCW 70A.65.110, so it is included in the rule and Ecology will carefully consider all perspectives when evaluating any future applications.

Ecology agrees more clarity on the best available technology process would be ideal. The topic is complex with commenters expressing differing opinions. Ecology was not able to reach a determination on how to evaluate BAT in time to meet the October 1, 2022 rulemaking deadline in RCW 70A.65.120. RCW 70A.65.110(3)(f) states that upwards adjustments are not available until "prior to the beginning of either the second, third, or subsequent compliance periods" which gives time to address this issue in future rulemakings.

See response at Section 5. Baseline

Commenter: B-5 (bp)

Summary: BP comments that the provisions of WAC 173-446-220(2)(e) are too extreme, given that Ecology already has enforcement authority for reporting violations under WAC 173-441.

Response: WAC 173-446-220(2)(e) provides that Ecology will withhold no-cost allowances from EITE facilities that have not provided timely and accurate verified emission reports under WAC 173-441. Ecology will issue the no-cost allowances to the EITE facility as soon as the EITE facility has come into compliance. As BP acknowledges, timely and accurate reporting of GHG emissions is of prime importance to the cap-and-invest program. Indeed, GHG reporting is the foundation upon which the program is built. Under the circumstances, Ecology believes that it is

necessary and appropriate to hold back allowances until the agency has the information it needs to determine the accurate number of no cost allowances the EITE facility can receive.

Commenter: I-300 (Evans); O-33 (Climate Solutions)

Summary: Climate Solutions asks Ecology to ensure that the allocation of no cost allowances does not exceed the annual allowance budget (cap). Another commenter is concerned with the amount of allowances allocated to EITE's.

Response: Under the current statutory requirements for EITE facilities, toward the end of the program (2040-2050), the number of no cost allowances allocated to EITE facilities could exceed the total annual allowance budget for each year. This situation is a result of current statutory requirements, and will need to be resolved by the legislature. Ecology proposed agency request legislation to address this in the 2022 legislative session, as required by the CCA, however it was not passed by the legislature. HB 1682 (2022). RCW 70A.65.060(4). While this legislation did not pass in the 2022 legislative session, future legislation to address this issue is critical to the long-term success of the program.

D. New or expanded facilities

Commenters: I-229 (Fay); B-8 (Nucor Steel); O-17 (Earth Ministry/WA Interfaith Power & Light); O-39 (Alliance of Western Energy Consumers)

Summary: Clarify provisions on establishing the baseline for new and expanded facilities. One recommendation was to make the baseline for a new or expanded facility similar to baselines for existing facilities. Another suggests baselines for new facilities should be based on their emissions from the first three years of operation once the facility has achieved expected production.

See response in Section I. Comments Regarding Environmental Justice

Response: WAC 173-446-220(1)(b)(v)(A) establishes conditions for adopting allocation baselines for new EITE facilities. This subsection includes several ordered methods that allow for accurate baselines under a wide variety of operating conditions and data availabilities. The methods intend to balance accuracy against getting new facilities into the program with a fair allotment of no cost allowances as soon as possible. These methods account for periods of abnormal operation at startup and are based on three years of data as suggested. The methods include consideration for other impacts as specified in statute.

EITEs using a carbon intensity based baseline will automatically have their allowance allocations adjusted if they expand based on changed production values. Adjustments to mass-based or carbon intensity baselines are described in WAC 173-446-220(1)(b)(v)(D).

12. General Requirements (WAC 173-446-000's)

A. Registration

Commenter: A-3 (Bonneville Power Administration)

Summary: BPA would like Ecology to add language to the rule exempting BPA from being automatically registered into the cap and invest program as a covered entity.

Response: WAC 173-446-050(5) provides that any party may notify Ecology if that party believes it should not be registered into the program as a covered entity, and may explain why. Because this mechanism already exists, and is open to BPA, Ecology will not change the language in the rule.

Commenter: OTH-5 (Municipality)

Summary: The City of Spokane asks for clarification on the registration timing for sources entering the program during the second or third compliance period.

Response: The current rule does not address the process for registration of new sectors into the program for the second and third compliance periods. That question will be addressed in the rulemaking that is required by October 1, 2026. RCW 70A.65.

Commenter: A-3 (Bonneville Power Administration)

Summary: BPA comments that Ecology should include a deadline for electric utility registration. BPA believes that EITEs must register by September 15, 2022. BPA also asks Ecology to provide utilities with an additional opportunity to register in the event BPA decides to be an FJD.

Response: BPA does not explain why there should be a deadline for electric utilities to register for the program, and absent such an explanation, Ecology does not believe there is a need for a deadline for electric utilities to register for the program. EITEs are not required to register by September 15, 2022. Rather, EITEs are required to provide Ecology with a proposed carbon intensity baseline and other information by September 15, 2022. Like other covered entities, EITEs will be automatically registered in the program once the program goes into effect.

Commenter: A-3 (Bonneville Power Administration)

Summary: BPA notes that Ecology should state how utilities that have between 10,000 MTCO2e but less than 25,000 MTCO2e of covered emissions may register.

Response: Ecology agrees, and has clarified WAC 173-446-053(1) to specify that it applies to utilities with between 10,000 MTCO2e and 25,000 MTCO2e as well as utilities that do not report under WAC 173-441.

Commenter: A-3 (Bonneville Power Administration)

Summary: BPA asks Ecology to provide a pathway for BPA to join the program.

Response: Ecology agrees that such a pathway should be worked out, and will work with BPA outside the rulemaking process to develop that pathway.

Commenter: A-3 (Bonneville Power Administration)

Summary: BPA is concerned that if it chooses to participate in the program, some of the information required for participation is not applicable to it - specifically, as a governmental entity, BPA is not corporation, so would not have corporate-style information to provide.

Response: If BPA chooses to participate in the program it would, like any other governmental entity in the program, provide the information that is relevant and explain why the other information requests are not relevant for BPA.

Commenters: T-1 (Swinomish Indian Tribal Community); T-2 (Suquamish Tribe); T-3 (The Tulalip Tribes); T-4 (Quinault Indian Nation); T-6 (Makah Tribal Council); T-7 (Snoqualmie Indian Tribe)

Summary: Ecology received comments from six Tribes (Makah, Quinault, Snoqualmie, Suquamish, Swinomish, and Tulalip) objecting to the requirement in the rule that general market participants consent to regulation by Ecology and accept jurisdiction of Washington courts and administrative tribunals. A number of non-tribal comments also requested changes in order to more fully support tribal sovereignty.

Four Tribes (Swinomish, Suquamish, Quinault, and Makah) commented that Ecology should consult with each of Washington's 29 sovereign tribal governments individually on sovereign immunity issues. The Tribes believe that these consultations should lead to language and processes allowing Ecology to enforce compliance without violating tribal sovereignty. Several Tribes (e.g., Swinomish, Suquamish) stated that such consultations should be on a government-to-government basis

Response: Ecology recognizes and respects that each Tribe has separate sovereignty. Ecology agrees with the Tribes that meeting with each Tribe individually is the best way to work through the different Tribes' specific concerns about sovereign immunity. In fact, Ecology expected such individual consultation to be the mechanism by which the proposed rule's consent-to-regulation provisions would be implemented with respect to participating tribes.

In order to clarify the intent behind the proposed rule language, Ecology has amended these provisions to memorialize the agency's commitment to working individually with each participating tribal government in order to ensure compliance with applicable program requirements in an appropriate manner. The new subsections at WAC 173-446-050(3)(e), -055(3)(c), and -520(3)(e) provide that Ecology will work individually with each tribal government that elects to voluntarily participate in the program—whether as an opt-in entity, a general market participant, or a landowner hosting an offset project—to agree upon a dispute resolution process and/or other compliance mechanisms to ensure enforceability of applicable program requirements.

Each participating tribal government may decide whether or not to invoke the formal government-to-government consultation process to negotiate these agreements with Ecology. It is Ecology's hope that these consultations will lead to mutually acceptable language and processes allowing Ecology and the Tribes to resolve disputes and enforce compliance in a way that is as narrowly tailored as possible.

Ecology recognizes that some tribal governments requested that the consent-to-regulation provisions be removed from the rule entirely. In light of the changes to the rule provisions described above, Ecology does not think this is necessary. Moreover, these provisions are needed to ensure compliance by all other voluntary participants, including out-of-state landowners that develop offset projects, over whom Ecology may not otherwise have jurisdiction. While offset projects are required to provide direct environmental benefits to the state (or be located in a jurisdiction with which Washington has linked, which is not yet applicable) under RCW 70A.65.270(2)(a), it is possible that projects could be located in other

states, in which case Ecology needs to ensure that all applicable offset project requirements are legally and practically enforceable against the landowner(s).

These provisions to ensure enforceability with respect to *all* voluntary program participants are necessary in light of the statutory mandate for Ecology to establish "a program to track, verify, ***and enforce*** compliance" with the cap on emissions [RCW 70A.65.060(1)] and to establish provisions in the rule "to enforce the program requirements" [RCW 70A.65.060(2)]. With respect to offset credits, Ecology also has a statutory mandate to ensure that all offset projects result in GHG reductions or removals that are "real, permanent, quantifiable, verifiable, ***and enforceable***." [RCW 70A.65.170(2)].

In light of these statutory mandates, the rule must include sufficient enforcement mechanisms to ensure that all program participants, including those participating voluntarily as opt-in entities and general market participants, can be held accountable for compliance with all applicable requirements of the program. When drafting the consent-to-regulation provisions in the proposed rule, Ecology intentionally limited its scope to be as narrowly tailored as possible, while still accomplishing its purpose of ensuring that Ecology will be able to enforce compliance with program requirements with respect to voluntary participants as effectively as it can with respect to covered entities.

B. Consultants and advisors

Commenters: B-23 (Grays Harbor Energy); O-16 (NW Pulp & Paper)

Summary: Grays Harbor Energy comments that Ecology has not justified the requirement for registered entities to provide information about such a broad range of cap and invest consulting and advisory services. Two commenters (Northwest Pulp and Paper; Grays Harbor Energy) commented that the criteria for determining cap and invest consultants and advisors are too broad.

Response: The Climate Commitment Act requires Ecology to include provisions in the program that minimize market manipulation, provide market oversight, and prevent bidder collusion at auctions. RCW 70A.65.090(6); RCW 70A.65.100(8). The information concerning cap and invest consultants and advisors is used to help ensure transparency in the market and minimize market manipulation and bidder collusion. Many (if not most) cap and invest consultants and advisors provide services for multiple registered entities. To help monitor the market, Ecology needs to know which cap and invest consultants and advisors are providing services to which registered entities. The aim is to be informed of consultants and advisors providing services to a registered entity who might have access concerning the registered entity's market position (Market position is defined as "the combination of the current and/or expected holdings of compliance instruments by a registered entity and the current and/or expected covered emissions of that registered entity.) The categories of services in the proposed rule the provision of which qualifies someone as a cap and invest consultant or advisor pulls in all activities that could provide the consultant or advisor with knowledge of a registered entity's current and/or expected holdings of compliance instruments or with knowledge of a registered entity's current or expected covered emissions. While not all consultants or advisors providing the services listed in the rule will have access to this information, all could have such access.

The rule is purposely broad in order to pull in all possible consultants and advisors who could have such knowledge. This provision is based on the parallel California provisions found at Title 17 CCR Section 95979(b)(2) and 95133(b)(2).

Commenter: O-7 (US Department of Energy, Hanford)

Summary: Hanford notes that it employs thousands of contractors to run the Hanford facility, and requests clarification on whether these contractors would need to be identified as cap and invest consultants and advisors.

Response: Cap and invest consultants and advisors are defined as parties that are not owners or employees of a registered entity but that provide specific services to that registered entity. Ecology does not have sufficient information at this time concerning the arrangements between Hanford and its contractors or the types of services the contractors provide to determine whether those contractors would qualify as cap and invest consultants and advisors if Hanford were a covered entity. At this time, Hanford is not a covered entity. If it looks like Hanford will become a covered entity, Ecology will work with Hanford to make the required determinations and arrangements.

C. New or modified covered entities

Commenters: O-16 (NW Pulp & Paper); O-39 (Alliance of Western Energy Consumers)

Summary: Two commenters (The Alliance of Western Energy Consumers and Northwest Pulp and Paper) comment that nothing in the Climate Commitment Act gives Ecology the authority for the provision in WAC 173-446-060(1) stating that a facility, supplier, or first jurisdictional deliverer of electricity becomes a covered entity "upon formal notice from Ecology that the facility, supplier, or first jurisdictional deliverer is expected to exceed" the statutory thresholds, and asked Ecology to remove the provision from the rule.

Response: RCW 70A.65.080(5) and (6) provide the statutory authority for the provision, stating, "coverage under the program starts in the calendar year in which emissions exceed ... or upon formal notice from Ecology that the source is expected to exceed thresholds." Ecology is therefore leaving the provision in the rule.

Commenter: O-22 (Joint Utilities: Avista, NRU, PacifiCorp, PGP, PSE, WPUDA)

Summary: The Joint Utilities ask how Ecology will determine that a facility, supplier, or first jurisdictional deliverer is expected to exceed the annual 25,000 MTCO2e threshold.

Response: The determination will be based on GHG reporting data and any other information that indicates that covered GHG emissions from a facility, supplier, or first jurisdictional deliverer will exceed the threshold.

D. Exiting the program

Commenter: O-28 (Western Power Trading Forum)

Summary: The Western Power Trading Forum (WPTF) notes that a covered entity that reports covered emissions below the 25,000 MTCO2e threshold continues to have a compliance obligation for the remainder of the compliance period. WPTF asks Ecology to clarify whether

that compliance obligation extends to all the covered entity's covered emissions, or only those emissions that exceed the 25,000 MTCO2e per year threshold.

Response: A covered entity whose covered emissions fall below the 25,000 MTCO2e threshold for a year during a compliance period has a compliance obligation for the remainder of the compliance period for all GHG emissions during that time, not just those emissions above 25,000 MTCO2e threshold. Ecology has modified WAC 173-446-070(1) to clarify that point.

Summary: The Western Power Trading Forum asks Ecology to delete the provisions in WAC 173-446-070(2)(b) authorizing Ecology to keep a covered entity in the program if the covered entity's emissions are within 10 percent of the 25,000 MTCO2e threshold and it is necessary to ensure equity among all covered entities.

Response: This requirement comes directly from RCW 70A.65.080(4):

> "When a covered entity reports emissions below the threshold for each year during an entire compliance period, or has ceased all processes at the facility requiring reporting under RCW 70A.15.2200, the entity is no longer a covered entity as of the beginning of the subsequent compliance period unless the department provides notice at least 12 months before the end of the compliance period that the facility's emissions were within 10 percent of the threshold and that the person will continue to be designated as a covered entity in order to ensure equity among all covered entities."

Because the requirement is in the Climate Commitment Act statute, Ecology will not delete the language from the proposed rule.

Summary: The Western Power Trading Forum asks Ecology to delete the provision in WAC 173-446-070(2)(c) stating that Ecology will notify the appropriate policy and fiscal committees of the legislature when a facility, supplier, or first jurisdictional supplier of electricity ceases to be a covered entity.

Response: Such notification is required under RCW 70A.65.080(4), which states, "Whenever a covered entity ceases to be a covered entity, the department shall notify the appropriate policy and fiscal committees of the legislature of the name of the entity and the reason the entity is no longer a covered entity." Ecology will therefore not delete this provision from the proposed rule.

Commenter: O-12 (Food Northwest)

Summary: Food Northwest asks for clarity concerning the provision that Ecology may provide notice at least 12 months before the end of the compliance period that the facility's emissions were within 10 percent of the threshold and that the person will continue to be designated as a covered entity in order to ensure equity among all covered entities covered if ECY says emissions are w/in 10% of the threshold. Food Northwest asks if "within 10 percent of the threshold" means within 10 percent above the threshold or within 10 percent below the threshold. Food Northwest also asks for clarity around Ecology's process implementing this provision.

Response: In this provision, within 10 percent of the threshold means below the threshold but within 10 percent of the threshold. Ecology will determine on a case-by-case basis whether a covered entity whose emissions are below the threshold but within 10 percent of the threshold must remain in the program to ensure equity among all covered entities.

Commenters: O-12 (Food Northwest); O-21 (J.R. Simplot Co.); O-28 (Western Power Trading Forum); OTH-7 (City of Enumclaw)

Summary: Several commenters (City of Enumclaw, Food Northwest, Western Power Trading Forum, JR Simplot) ask Ecology to provide a process for covered entities exiting the program.

Response: Ecology agrees that it would be a good idea to provide a process for exiting the program. Ecology is working on that process, and will include it in the next round of rulemaking for WAC 173-446, which must occur by 2026 at the latest. In the meantime, the statutory requirements for exiting the program provide that covered entities cannot exit the program due to low emissions before the next rulemaking, and Ecology will handle exits due to plant shut-downs on a case-by-case basis.

E. Allowances

Commenter: O-28 (Western Power Trading Forum)

Summary: The Western Power Trading Forum comments that the definition of "vintage" should tie vintage to the year from which allowances are issued rather than to the year of GHG emissions as currently written in WAC 173-446-080(3).

Response: The Commenter is correct that the definition of "vintage" should not be tied to the year of GHG emissions, but should be tied to the year of the allowance budget from which the allowance comes. Ecology has revised the rule language to reflect that change.

Commenter: B-10 (Evergreen Carbon)

Summary: Evergreen Carbon asks that there be a limit on how long an allowance may be banked, suggesting that CARB uses a 3-year window.

Response: Contrary to the commenter's claim, a California compliance instrument does not expire until it is used for compliance, it is voluntarily submitted to CARB for retirement, or it is retired by a trading system with which California has linked. Title 17 CCR Section 95922(c). In keeping with that requirement, and with the Climate Commitment Act, Ecology is not placing a limit on how long an allowance (or offset credit) may be banked.

13. Natural Gas Suppliers, Distribution of Allowances to Natural Gas Utilities (WAC 173-446-220)

Commenters: I-132 (Baughman); B-17 (NW Pipeline); B-24 (TC Energy); OTH-7 (City of Enumclaw); O-39 (AWEC); O-23 (WEC), O-33 (Climate Solutions)

Summary: How does this rule apply covered emissions to interstate natural gas pipelines? How does it interact with the reporting program, specifically WAC 173-441-122?

"Suppliers of natural gas" and "natural gas utility" seem to be used interchangeably, clarity would be helpful. The rule uses "suppliers of natural gas" when discussing organizations that are eligible for no cost allowances in this section while the statute uses "natural gas utilities". Some suppliers of natural gas, specifically interstate pipelines, are not natural gas utilities. Provide clarity on which types of suppliers of natural gas are eligible for no cost allowances. Several commenters request that it should apply broadly in order to meet legislative intent to minimize impacts to end use customers and avoid fuel switching to potentially higher emitting sources. One commenter requests it should be applied narrowly to reduce the amount of no cost allowances.

Response: WAC 173-441 uses the term "supplier of natural gas," which is based on California reporting requirements and RCW 70A.15.2200(5)(h)(ii)'s use of the term "supplier," and explicitly includes operators of interstate and intrastate pipelines, suppliers of liquefied or compressed natural gas, natural gas liquid fractionators, and local distribution companies. WAC 173-441-122 puts the reporting responsibility on the organization that delivers the gas. WAC 173-446-040(1) states that covered emissions are GHG emissions reported under chapter 173-441 WAC except as modified in subsections (2) through (4) of that section. Therefore, any supplier of natural gas that delivers enough gas to report emissions under WAC 173-441 must apply those reported emissions to the methods in WAC 173-446-040 to determine their covered emissions.

RCW 70A.65.080(1)(e) provides specific applicability language for when a "person supplies natural gas" that is part of WAC 173-446-030(1)(e) with slight clarifications. This language does not use the term "natural gas utility", but mostly relies on the terms "supplier" and "natural gas company". The rule also uses "party" where the statute uses "person", both are broadly applied terms. "Natural gas utility" is mostly used in the statute when referencing allowance allocation and notification requirements. The proposed rule only uses "natural gas utility" for registration and notification requirements.

The differing and parallel construction of "supplier" and "utility" comes from statute and indicates program coverage and emissions are based on the broad "suppliers of natural gas" while allocation and notification requirements are based on "natural gas utility". Ecology is retaining this construction in the final rule, while clarifying section 240 to match the statute for consistency. RCW 70A.65.130 is the primary source of "natural gas utility" and also references the Utilities and Transportation Commission (UTC), so Ecology will rely on the Commission's standard for "natural gas utility" instead of creating a new, potentially conflicting definition. Ecology consulted with UTC on allocation provisions and made adjustments to the rule reflecting that process.

Using this reading, if any supplier of natural gas (including interstate pipelines) exceeds the 25,000 MT CO_2e threshold for any of the activities described in WAC 173-446-030(1)(e) based on delivered gas, then it would be subject to the CCA. If it is considered a "natural gas utility" by the Utilities and Transportation Commission, then it would also be eligible for no cost allowances if it meets the requirements established in WAC 173-446-240. It is important to note that an interstate pipeline can move very large quantities of gas in Washington and still be below the threshold, as emissions calculations are based on deliveries and the reporting

methods allow the interstate pipeline to subtract emissions subsequently reported by other reporters before applying the threshold in many cases.

This response to comments document provides clarity on rule provisions but is not intended to provide applicability determinations for specific organizations. The emissions verification process described by the commenter is the correct venue for those specific threshold applicability determinations. Ecology reads RCW 70A.65 as applying to any listed organization that meets the listed threshold in any year beginning with emissions year 2015 and continuing through the baseline period, compliance years, and intermediate years between the baseline period and compliance years. We have modified the rule text to clarify this issue. RCW 70A.65 does not authorize Ecology to exempt specific organizations that meet statutory applicability requirements, nor is Ecology authorized to provide unique compliance pathways or no cost allowance allocation rates. Municipal gas utilities are not treated differently or unfairly under the CCA. All other natural gas customers in Washington, including those in other small communities with a large portion of low income residents, are subject to the CCA through their supplier of natural gas and would experience similar financial impacts. Smaller utilities may experience a higher administrative cost per metric ton of carbon dioxide equivalent, but that difference is expected to be small. The statute and rule give municipal gas utility customers the same access to no cost allowances as other customers, in an attempt to fairly offset those costs. Ecology conducted an economic analysis as part of this rulemaking and that document is available as part of the rule adoption packet.

The rule was modified due to these comments to remove ambiguity and ensure that the applicability sections of the rule are consistent with the statute. WAC 173-446-240 was also modified to replace "supplier of natural gas" with "natural gas utility" for clarity and statutory consistency.

14. Offsets (WAC 173-446-500's)

A. Significant adverse environmental impacts

Commenters: O-34 (Washington Environmental Council and The Nature Conservancy); T-1 (Swinomish Indian Tribal Community)

Comment: The Swinomish Tribe, WEC, and the Nature Conservancy ask Ecology to define the term "significant adverse environmental impacts," which is used in WAC 173-446-500(1)(f). They recommend aligning the term with the definition of "environmental harm" in the proposed rule; and to include loss or reduction of access to land and natural resources by Tribes as an unacceptable adverse environmental impact.

Response: Ecology chose the term "significant adverse environmental impacts" to invoke the standard used in the State Environmental Policy Act (SEPA, RCW 43.21C). The term "significant adverse environmental impacts" is not defined in SEPA or in Ecology's rules implementing SEPA (WAC 197-11). Instead, the term has been applied and interpreted through case law. In order to ensure that the interpretation of the term as used in WAC 173-446 is consistent with the interpretation of the term under SEPA and to avoid confusion, Ecology is not defining the term in WAC 173-446.

Comment: WEC and the Nature Conservancy (commenting jointly) comment that it is unclear whether the requirement in WAC 173-446-500(1)(f) that an offset project not result in significant adverse environmental impacts after mitigation is intended to be consistent with or additive to State Environmental Policy Act (SEPA) requirements.

Response: The provision is intended to be consistent with SEPA, and not additive to SEPA. Ecology has added rule language in WAC 173-446-500(1)(f) stating that when analysis under SEPA is required for an offset project, a project-level SEPA analysis finding no significant adverse environmental impact after mitigation fulfills this requirement.

Comment: WEC and the Nature Conservancy (commenting jointly) ask Ecology to, when determining whether an offset project will cause unmitigated significant adverse environmental impacts, include SEPA requirements (analysis of probable impacts, alternatives, mitigation measures; cumulative, short-term, long-term, direct and indirect impacts, impacts with mitigation and without mitigation, and so on) when SEPA is not required.

Response: The Climate Commitment Act does not authorize Ecology to require a SEPA analysis when RCW 43.21C does not otherwise require that a SEPA analysis be completed. Therefore, Ecology cannot require the suggested additional analyses.

Comment: WEC and the Nature Conservancy (commenting jointly) suggest that the analysis to determine whether an offset project will result in significant adverse environmental impacts after mitigation should be done during the development of the offset project, at the same time as the analysis to determine direct environmental benefits to the state.

Response: WAC 173-446-595(1) sets forth a presumption that offset projects located in the state of Washington will satisfy the requirement to provide direct environmental benefits in the state. For those projects, the submission of information to support a DEBs determination is not required. For offset projects located outside the state, we made the following change in the adopted rule in WAC 173-446-595(3):

> *"New offset projects. In order to be eligible to demonstrate that a new offset project located outside the state of Washington provides direct environmental benefits in the state, the offset project operator or authorized project designee shall submit all relevant materials listed in subsection (2)(b) of this section along with or prior to the first reporting period offset project data report."*

This clarification allows but does not require offset project operators of projects located in other states to submit the required information to request a DEBs determination in advance of project development and operation. The project proponent must provide the analysis needed to support a determination of direct environmental benefits, as well as demonstration of no significant adverse environmental impacts along with or prior to the first report period offset project data report. The above clarification in the adopted rule enables a project proponent to provide the information concerning those determinations to Ecology at the same time.

Comment: WEC and the Nature Conservancy (commenting jointly) comment that the rule needs to include a process to occur if an offset project will have a significant adverse environmental impact after mitigation. They suggest that Ecology have 30 calendar days to

notify an offset project operator if the project does not meet the requirement, followed by 30 calendar days for the offset project operator to submit an updated project listing with an amended mitigation plan.

Response: Ecology believes the suggested process is not needed, in light of the existing language in WAC 173-446-520(6)(b). If a proposed offset project were determined to have a significant adverse environmental impact after mitigation, Ecology would reject the listing application and notify the offset project operator or authorized project designee within 30 days as provided in WAC 173-446-520(6)(b). This subsection of the rule also specifies that "the offset project operator or authorized project designee may resubmit offset project listing information." Accordingly, an offset project operator is free at any time to submit new listing information for a revised offset project that does not have significant adverse environmental impact after mitigation.

Comment: WEC and the Nature Conservancy (commenting jointly) comment that Ecology should invalidate projects if significant adverse environmental impacts are found during project implementation.

Response: Ecology believes the suggested change is not needed, in light of existing rule provisions regarding invalidation of offset credits in WAC 173-446-580. Ecology chose the standard that there be no unmitigated significant adverse environmental impact from an offset project to reflect the standard in the State Environmental Policy Act (SEPA). As in SEPA, the standard is applied at the outset, before Ecology accepts offset credits from an offset project. Beyond that, WAC 173-446-580(3)(b) provides that offset credits can be invalidated if an offset project violates any permit requirements, or violates any local, state, or federal laws. Any adverse environmental impact caused by such a violation will be remedied by the invalidation of offset credits due to the violation of these permits or laws.

Comment: WEC and the Nature Conservancy (commenting jointly) comment that Ecology will need to collect information on adverse environmental impacts and mitigation measures and suggests that this information could be included with project verification. Information about anticipated and actual environmental impacts should be made public.

Response: The determination regarding adverse environmental impacts and mitigation needs to be made before an offset project's first reporting period data report. Ecology will collect information as needed to evaluate and determine whether the project proponent has made the required demonstration, pursuant to WAC 173-446-520(3)(c). Any information that is not exempt from disclosure will be made available to the public on request.

B. Adoption of new protocols or revision of proposed protocols

Commenters: I-50 (McPherson); I-135 (Buckingham); O-3 (California Urban Forests Council); O-29 (Environmental Defense Fund); B-19 (Finite Carbon); O-40 (International Emissions Trading Association); T-3 (The Tulalip Tribes); I-170 (Louise Kulzer); 0-8 (350 Seattle); I-305 (Cigdem Capan); I-317 (Nicole Capizzi); I-318 (Tim Gould); B-7 (North Pacific Paper Company); B-10 (Evergreen Carbon); O-13 (American Forest Resource Council); 0-14 (Washington Forest Protection Association); O-17 (Earth Ministry); 0-19 (Northwest Seaport Alliance); 0-21 (J.R. Simplot and Company); 0-34 (Washington Environmental Council); O-17 (Earth Ministry); I-123

(Wolf Lichtenstein); T-6 (Makah Tribal Council); OTH-4 (Yale Carbon Containment); OTH-9 (Wildlife Forever Fund); B-23 (Grays Harbor Energy)

Summary: Commenters made recommendations that Ecology should adopt additional offset protocols, or make specific revisions to existing programs to allow offsets to be generated from a greater diversity of activities. Specific recommendations from commenters included:

- Revisions to the urban forestry protocol
- Adoption of alternative approaches to the improved forest management protocol
- Adoption of a mine methane capture protocol
- Adoption of a paper recycling methodology
- Adoption of a soil organic carbon enhancement methodology
- Adoption of a biochar carbon removal methodology
- Adoption of an afforestation protocol
- Adoption of a direct air carbon capture methodology
- Adoption of a fuel switching offset methodology
- Adoption of a nitrous oxide reduction methodology
- Expansion of the ozone depleting substances protocol to include additional substances, including the refrigerant R-22
- Adoption of renewable energy offset methodology

Commenters also made recommendations regarding the process that Ecology should take to adopt and review protocols, including adopting an adaptive management approach to continually and routinely evaluate offset protocols.

Response: Ecology decided to initially adopt four offset protocols from CARB's program – the U.S. Forest Protocol, the Urban Forest Protocol, the Livestock Protocol, and the Ozone Depleting Substances Protocol (WAC 173-446-505(3)). We selected these four protocols because they have been extensively reviewed and evaluated for use in a compliance offset market by CARB, and have the highest likelihood of being used by offset project developers in Washington State. Two additional protocols in CARB's program (the Mine Methane Capture protocol and the Rice Cultivation protocol) were not adopted in Ecology's rule because they appeared unlikely to be applicable to projects in the state.

Ecology understands that the four offset protocols adopted in this rule reflect a subset of offset project types that could potentially be developed, and that the adopted protocols may not be suitable for all landowners interested in developing offset projects. Ecology needs to ensure that all future protocol adoptions or revisions reflect the high standard of rigor set forth in CARB's protocols, and have been informed by experts, landowners, and stakeholders in Washington State. In order to allow sufficient time to thoroughly evaluate and solicit expert feedback on new and revised protocols, we determined that the adoption of additional and

revised protocols, beyond the four protocols adopted in the rule, will need to be done through a future rulemaking. In making this determination, we have prioritized the performance of a thorough and thoughtful review prior to adoption of new or revised protocols, rather than prioritizing immediate availability of a broad diversity of protocols upon the launch of the program.

Ecology is committed to adopting and revising offset protocols as appropriate in the future. We will begin considering new protocols and revisions to existing protocols in 2023, and in doing so will solicit feedback from subject matter experts, Tribes, and stakeholders. New and revised protocols will be developed and evaluated based on the strength of underlying scientific research, applicability and utility to project developers in the Washington state, and potential impacts to Washington's environment, economy, and communities. When new and revised protocols are adopted through rule, public comment on these protocols will be solicited and incorporated throughout the rulemaking process.

Ecology will develop a more specific timeline and description of our approach to considering new and revised protocols in 2023.

C. Effectiveness of CARB protocols

Commenters: I-269 (Smith); I-192 (McKee); I-309 (Minton); I-255 (Silver); I-216 (Euler); I-275 (Nelson); I-51 (Chadd); I-128 (Morriss); I-136 (Sweeney); I-222 (Curtz); 0-9 (350 Seattle); I-254 (Dziadek); 0-41 (CarbonPlan); I-170 (Kulzer); I-171 (Registered Voter); I-258 (Johnston); I-262 (Sweeney); I-271 (Bergey); I-319 (Fruland); O-11 (Friends of Toppenish Creek); O-13 (American Forest Resource Council); 0-34 (Washington Environmental Council); OTH-9 (Wildlife Forever Fund)

Summary: Commenters recommended that Ecology not adopt CARB's protocols due to concerns of protocol effectiveness and integrity, particularly related to Improved Forest Management projects developed through the U.S. Forest Projects protocol.

Response: Ecology shares the view that offset protocols must require, and projects must achieve, real and verifiable emissions reductions or removals. Ecology has adopted four of CARB's protocols as a starting point for our offset program, and we are committed to continually reviewing and evaluating new protocols and revisions to existing protocols, with input and advisement from scientific experts, Tribes, and stakeholders. We chose to adopt four of CARB's existing protocols because they are rigorously reviewed and tested and have been in use for several years, and have the highest likelihood of being used by project developers in Washington State. Additionally, alignment between CARB and Ecology's programs is important to allow for the possibility of programmatic linkage in the future, as directed in RCW 70A.65.210.

All offset projects must result in emissions reductions or removals that are additional to what is required by law, or what would have otherwise occurred in a conservative business-as-usual scenario. Every project developed through the adopted protocols is also required to undergo

third-party verification. CARB's offset protocols and implementation have been upheld in court,[12] and are based on extensive review, revision, and consideration from experts.

Ecology has made two changes to the rule, in response to comments and concerns regarding the effectiveness of these protocols. First, a concern was raised about the absence of a definition of "Permanent" in the rule. In response to this request for clarification, Ecology added the following definition of "Permanent" to WAC 173-446-020:

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

A commenter noted that the U.S. Forest Projects protocol that Ecology proposed for adoption allows for *Avoided Conversion* projects that were commenced more than a decade ago by recording a conservation easement between 2006-2010. Ecology agrees this provision of CARB's protocol appears to be inconsistent with the additionality requirements of the Climate Commitment Act. Accordingly, we made changes in the adopted rule pertaining to the adoption of this protocol so that the sentence regarding old conservation easements is not adopted. The adopted protocol now specifies that previously recorded conservation easements may only be considered within the scope of the offset project if they were recorded no more than one year prior to the project commencement date. See changes in WAC 173-446-505: (3)(b)(i)(P), (3)(b)(ii)(J), and (3)(b)(iii)(N).

Some commenters raised concerns about the integrity of offset credits generated by forestry-related projects in the event of wildfire and disease. Ecology believes the adopted protocols and other provisions of the rule provide sufficient protection in the event of such unintentional reversals. For example, a portion of credits issued to projects operating under the U.S. Forest Projects protocol are placed in a "forest buffer account." The specific number of credits from each project that must be placed in the forest buffer account is determined using a project-specific "risk rating" calculated pursuant to the applicable offset protocol. The "risk rating" reflects the potential that a certain project will result in reversals. Offset credits placed in this forest buffer account are withdrawn and retired in the case of an unintentional reversal, such as forest loss due to disease or fire. WAC 173-446-570(2)(c) requires Ecology to retire the number of offset credits that equals the number of metric tons CO_2e reversed for all reporting periods.

Some commenters expressed concerns about the adequacy of the buffer pool to protect against increasing wildfire and disease related tree deaths. In CARB's program to date, only a small portion of credits in their forest buffer account have been withdrawn and retired. Ecology

[12] Our Children's Earth Foundation v. CA Air Resources Board: https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ocef-v-arb-offsets-case-1st-dca-opinion.pdf?

may adopt a revised approach to insuring offset credit integrity, should a new approach be warranted in the future. An important difference between this rule and CARB's program is that in Washington's cap-and-invest program, offset credit use is subtracted from the total program cap on emissions. This ensures that whether or not entities use offset credits to satisfy a portion of their compliance obligation, the cap-and-invest program will remain on-track to reach the state's emissions reduction goals.

Some commenters raised a concern regarding the potential for leakage for the Improved Forest Management projects under the U.S. Forest Projects protocol. Leakage refers to reducing emissions in one area, which are then emitted elsewhere. This is an important consideration for U.S. Forest projects. The U.S. Forest Projects protocol accounts for leakage in two ways. First, the protocol accounts for "activity shifting leakage" (leakage that occurs from the shifting of harvest activities from within the project boundaries to outside the project boundaries), by presuming a 20% leakage rate if actual harvests in the project area are less than baseline harvests. Second, the protocol includes "market shifting" leakage (leakage due to emissions moving outside the project area due to wood products being supplied by another source) when calculating an avoided conversion discount factor. This reflects an assumption that for every ton of reduced harvesting attributable to a forestry offset project, the market will compensate with an increase in harvesting of 0.2 tons on other lands. Ecology may consider updates or revisions to this approach to assessing leakage in the future, if additional research becomes available or alternative approaches and protocols are adopted.

Some commenters raised concerns about the baselines and additionality requirements established in the U.S. Forest Projects protocol for Improved Forest Management projects. We appreciate these comments, and agree that a valid baseline for forest projects developed through this protocol and any future protocols is essential to the integrity of offset credits used in the program. We refer the commenter to CARB's response[13] to the cited study regarding baseline calculations through the U.S. Forest Projects protocol, which explains that the baseline for forest offset projects must meet additionality requirements, include all legal constraints, be financially feasible, and it must meet a performance standard evaluation. Part of the performance standard evaluation is comparison against common practice. Legal requirements such as forest regulations or requirements in a conservation easement must be incorporated in the baseline. Common practice is used as a backstop to help address additionality. The protocol's approach to additionality incorporates project-specific (legal and financial constraints) and standardized (common practice) requirements.

A commenter raised concerns about the Livestock Projects protocol encouraging manure management practices that result in high levels of methane emissions. Ecology does not believe this is a likely scenario, as the adopted protocols may only be used in the context of specific types of operations where emissions from manure management are typically significant in common practice. Livestock Project offset credits are only generated for emissions reductions that occurred beyond the established baseline emissions of the operation. For example, Section 3.1 of the adopted 2014 Livestock Projects protocol specifies that all offset projects listed under

[13] https://ww2.arb.ca.gov/sites/default/files/2021-04/nc-carb-response-to-propublica-forest-questions.pdf

the protocol must "capture methane that would otherwise be emitted to the atmosphere." This requirement also appears in Section 2.2 of the adopted 2011 Livestock Projects protocol.

Ecology is committed to continually evaluating the efficacy and utility of all adopted offset protocols, and will make revisions and updates to these protocols as needed, to ensure the integrity of offset credits used for compliance.

D. Project aggregation

Commenters: I-318 (Gould); 0-14 (Washington Forest Protection Association); O-17 (Earth Ministry); O-29 (Environmental Defense Fund); T-1 (Swinomish Indian Tribal Community); T-2 (Suquamish Tribe); T-3 (The Tulalip Tribes); T-6 (Makah Tribal Council); 0-34 (Washington Environmental Council)

Summary: Commenters recommended that Ecology should adopt an approach for aggregation of small-scale carbon offset credit generating activities into larger scale offset projects, to reduce the cost for small land or property owners to participate in the offset market.

Response: Ecology believes the suggested change is not needed, in light of existing rule language that provides flexibility for aggregation in offset projects. In addition, Ecology's adoption of new and revised protocols in the future can further support project aggregation.

In the context of offset provisions in the rule, Ecology intentionally incorporated the plural form of terms related to the location or owner of land on which an offset project is located, to allow for the development of aggregated projects. For example, WAC 173-446-505(1)(j) refers to "the geographic area(s)" where a protocol is applicable; WAC 173-446-520(3)(d) refers to "landowner(s)" who must consent to regulation; and WAC 173-446-570: (3)(c), (3)(e), (3)(f)(i), (3)(f)(ii), (3)(f)(iii), and 173-446-580(5)(c) all refer to "forest owner(s)" in the context of invalidation of credits from a forest offset project.

The Livestock Protocol and the Ozone Depleting Substances Protocol adopted in the rule allow for specific types of project aggregation. The Livestock protocol allows offset credits to be generated through the installation of community digesters serving multiple farms. The Ozone Depleting Substances Protocol allows projects to receive offset credits for the destruction of ozone depleting substances sourced from a variety of sites (2014 Protocol, Chapter 4).

The U.S. Forest Protocol adopted in this rule does not prohibit aggregation of multiple tracts of land into a single offset project, in most situations. In fact, all three types of forestry projects permissible through the U.S. Forest Protocol (reforestation, improved forest management, and avoided conversion) have an express provision stating that the project area "can be contiguous or separated into tracts." (2015 U.S. Forests Projects protocol, Sections 2.1(c)(3), 2.2(b)(5), and 2.3(b)(6)).

While we believe the above sections of the rule and adopted protocols provide sufficient flexibility for aggregation in many situations, we agree that the monitoring, reporting, and verification requirements of the U.S. Forest Projects Protocol are not optimal for aggregation of smaller project areas. Accordingly, Ecology will prioritize future adoption of new protocols or updating existing protocols to further facilitate aggregation for projects listed under the U.S. Forest Projects protocol. We will look to nascent aggregated protocols used in the voluntary

market and will solicit feedback from Tribes and non-tribal landowners to ensure that the aggregation approaches adopted in future rulemakings reflect the needs of landowners and generate offset credits that are real, quantifiable, permanent, verifiable, enforceable, and additional.

We will look to the recommendations of the Washington State Department of Natural Resources' Small forestland owner work group (RCW 70A.65.190) to help guide Ecology's adoption of aggregation mechanisms that support small forestland owners in Washington state.

E. Project verification

Commenter: I-170 (Kulzer)

Summary: A commenter recommended that Ecology require more frequent third-party verification, or more frequent rotation of third-party verifiers for carbon offset projects.

Response: Ecology agrees that third-party verification is an important component to ensure the integrity of offset projects and the credits they generate. We believe that the existing requirements in the rule are sufficient to ensure effective third-party verification. The rule requires that offset projects use multiple third-party verification bodies over the life of the project (WAC 173-446-535(1). All third-party verifiers must have completed thorough training on the applicable offset protocols in order to provide verification services, and must be in compliance with the conflict of interest requirements established in WAC 173-446-545. Adding additional requirements for third-party verification, such as increasing verification frequency or increasing the frequently with which a project must rotate verification, would ultimately increase the cost and time associated with hiring third-party verifiers and place an unnecessary additional burden on offset project developers.

F. Alternate monitoring methodologies

Commenter: 0-34 (Washington Environmental Council)

Summary: A commenter recommended that Ecology amend language in the rule regarding usage of alternative methods of monitoring carbon offset projects, to ensure that any alternate methodologies be verifiable and approved by Ecology.

Response: Ecology agrees that a clarification of the proposed rule language will strengthen the alternative monitoring method approach described in the rule. WAC 173-446-525(10)(f) has been revised as follows:

"(f) If after using the alternate method for one reporting period ecology has determined that the alternate method is at least reasonably equivalent to the accuracy of the method(s) commonly employed when the applicable compliance offset protocol was adopted, ~~or is not capable of being verified to a reasonable level of assurance,~~ ecology may approve the alternate method, including any conditions, on a permanent basis."

A recommendation from the commenter to further change this language to state that the alternate methodology would be approved on a provisional basis was not adopted. WAC 173-446-525 (10)(c) (i) states that:

" (i) Ecology may approve an alternate method on an interim basis for one reporting period to review the accuracy of the method before approving it for subsequent reporting periods. Approval of an alternate method on an interim basis in and of itself does not provide any presumption of approval on a longer term basis. Ecology may also include other conditions it deems necessary as part of its interim approval."

This existing language provides Ecology with the discretion to provisionally approve alternate reporting methods for one reporting period, and thus would be duplicative to the commenter's recommended addition.

G. Offset usage limits on Tribal lands

Commenter: B-19 (Finite Carbon)

Summary: A commenter recommended Ecology should clarify limits of offset use on federally recognized tribal lands.

Response: The limits on the use of offset credits from projects located on federally recognized tribal lands are set by statute. RCW 70A.65.170(3)(e) states that:

> *"(i) No more than three percent of a covered or opt-in entity's compliance obligation may be met by transferring offset credits from projects on federally recognized tribal land during the first compliance period.*
>
> *(ii) No more than two percent of a covered or opt-in entity's compliance obligation may be met by transferring offset credits from projects on federally recognized tribal land during the second compliance period."*

These limits are additional to and separate from the statutory limits on the use of offset credits from projects not located on federally recognized tribal lands, which are set forth in RCW 70A.65.170(3)(a) and (3)(b). As a result, the statute provides for the following:

- First compliance period: Entities can satisfy up to a total of 8% of their compliance obligation with offset credits. Of this 8%, no more than 3% can come from offset projects located on federally recognized tribal lands, and no more than 5% can come from all other offset projects
- Second compliance period: Entities can satisfy up to a total of 6% of their compliance obligation with offset credits. Of this 6%, no more than 2% can come from offset projects located on federally recognized tribal lands, and no more than 4% can come from all other offset projects

The proposed rule incorporated these statutory limits, in WAC 173-446-600(6)(a) and (6)(b). In the adopted rule, Ecology clarified how these two distinct types of statutory limits relate to one another by creating new subsections for each type of limit in WAC 173-446-600(6)(a)(i)-(ii) and (6)(b)(i)-(ii).

In addition, RCW 70A.65.170(7) states that:

"Beginning in 2031, the limits established in subsection (3)(b) and (e)(ii) of this section apply unless modified by rule as adopted by the department after a public consultation process."

This creates a default scenario in which the statutory limits that apply during the second compliance period will continue to apply during the third and subsequent compliance periods unless Ecology adopts different limits by rule.

The proposed rule incorporated a modified version of the limits from RCW 70A.65.170(3)(b) and (3)(e)(ii) for the third and subsequent compliance periods, in WAC 173-446-600(6)(c). Ecology proposed adopting the four percent limit from RCW 70A.65.170(3)(b) and the two percent limit from RCW 70A.65.170(e)(ii), but proposed modifying how those limits apply to credits from offset projects located on federally recognized tribal lands. In particular, Ecology specified in WAC 173-446-600(6)(c) that the four percent limit applies to all types of offset credits, "including offset credits from projects on federally recognized tribal land," and that the two percent limit allows for that amount of additional credits from projects on federally recognized tribal land. As a result, entities may satisfy up to a total of six percent of their compliance obligation through offset credits, like during the second compliance period. But unlike during the second compliance period, that entire six percent can come from offset projects located on federally recognized tribal lands (WAC 173-446-600(6)(c)). This has the effect of expanding opportunities for tribal offset project operators without expanding the overall use of offset credits in Washington's compliance market.

In the adopted rule, Ecology further clarified this concept of additionality for the third and subsequent compliance periods by creating new subsections in WAC 173-446-600(6)(c)(i)-(ii).

H. Forestry protocol doesn't align with RCW 70A.45.090 and RCW 70A.45.100

Commenter: O-13 (American Forest Resource Council)

Summary: A commenter suggested that the offset protocols adopted in the rule are not in alignment with RCW 70A.45.090 and RCW 70A.45.100.

Response: RCW 70A.45.090 (1) states that:

"(c) It is the policy of the state to support the contributions of all working forests and the synergistic forest products sector to the state's climate response. This includes landowners, mills, bioenergy, pulp and paper, and the related harvesting and transportation infrastructure that is necessary for forestland owners to continue the rotational cycle of carbon capture and sequestration in growing trees and allows forest products manufacturers to store the captured carbon in wood products and maintain and enhance the forest sector's role in mitigating a significant percentage of the state's carbon emissions while providing other environmental and social benefits and supporting a strong rural economic base. It is further the policy of the state to support the participation of working forests in current and future carbon markets, strengthening the state's role as a valuable contributor to the global carbon response while supporting one of its largest manufacturing sectors.

(d) It is further the policy of the state to utilize carbon accounting land use, land use change, and forestry reporting principles consistent with established reporting guidelines, such as those used by the intergovernmental panel on climate change and the United States national greenhouse gas reporting inventories."

RCW 70A.45.100 states that:*"(1) Separate and apart from the emissions limits established in RCW 70A.45.020, it is the policy of the state to promote the removal of excess carbon from the atmosphere through voluntary and incentive-based sequestration activities in Washington including, but not limited to, on natural and working lands and by recognizing the potential for sequestration in products and product supply chains. It is the policy of the state to prioritize carbon sequestration in amounts necessary to achieve the carbon neutrality goal established in RCW 70A.45.020, and at a level consistent with pathways to limit global warming to one and one-half degrees."*

Ecology believes that adoption of the U.S. Forest Projects protocol is in alignment with the above policies. The regulatory framework established by the Climate Commitment Act and implemented through this rule incentivizes but does not compel the development of forestry offset projects. Any such projects will be undertaken voluntarily by offset project operators and landowners, incentivized by the prospect of making money on the sale of offset credits. This framework for incentivizing the voluntary development of forestry offset projects is intended "*to support the participation of working forests in current and future carbon markets*," consistent with RCW 70A.45.090(1)(c), and "to promote the removal of excess carbon from the atmosphere through voluntary and incentive-based sequestration activities in Washington," consistent with RCW 70A.45.100(1).

The U.S. Forest protocol is compatible with timber harvesting. In fact, the Improved Forest Management portion of that protocol is geared exclusively toward working forests. To the extent that a landowner's voluntary development of a Reforestation or Improved Forest Management project may restrict industry's ability to harvest timber on those lands, any such potential impacts to the wood products industry will likely be minimal. For example, although the U.S. Forest Projects protocol prohibits rotational harvesting of reforested trees during the first 30 years of a Reforestation project, it is unlikely that such projects will be developed in the vicinity of existing working forests, as the protocol also provides that Reforestation projects may not follow "a commercial harvest of healthy live trees within the Project Area that has occurred within the past 10 years." [2015 Protocol, Sec. 2.1(b)(2)]. In addition, the protocol's requirements for Improved Forest Management projects do not prohibit all timber harvesting in the project area(s)—in fact, the eligible management activities for such projects include "increasing the forest productivity by thinning diseased and suppressed trees." [2015 Protocol, Sec. 2.2(a)(2)]. The protocol also expressly allows for rotational harvesting of timber to continue under such a project, provided that the overall age of the forest is increased by "increasing rotation ages." [2015 Protocol, Sec. 2.2(a)(1)]. As a result, Improved Forest Management projects present an opportunity for existing working forests to serve a dual purpose and increase the revenue they generate, by allowing timber harvests to continue while also generating valuable, tradeable offset credits from improved management practices. This in turn

supports “the economic vitality of the sustainable forest products sector,” consistent with RCW 70A.45.090(1)(b).

Ecology’s adoption of the U.S. Forest Projects protocol is also unlikely to result in the loss of industry access to public lands for purposes of timber harvesting. All three types of eligible forestry projects are prohibited from being located on federal lands, other than tribal lands owned by the federal government [2015 Protocol, Section 2.1(c)(1), 2.2(b)(2), and 2.3(b)(2)]. Avoided Conversion projects must be developed on privately owned lands [2015 Protocol, Section 2.3(b)(2)], and must demonstrate avoidance of conversion to a non-forested land use [2015 Protocol, Sec. 1.2(a)(6)].

Ecology believes that the adopted offset protocols are strongly in alignment with the policies of the state as set forth in RCW 70A.45.090 and RCW 70A.45.100. The protocols are a method of promoting the removal of excess carbon from the atmosphere, in accordance with RCW 70A.45.100. As we consider adopting new protocols and revisions to existing protocols, we will do so in continued alignment with these policies.

I. Invalidation risk

Commenter: OTH-1 (Seattle City Light); 0-21 (J.R. Simplot and Company); 0-14 (Washington Forest Protection Association)

Summary: Commenters state that the offset invalidation mechanism described in the rule– where by a covered entity is required to replace an offset with another valid compliance instrument in the case of offset invalidation – places an unnecessary risk on the offset buyer.

Response: In CARB’s program, from which Ecology’s approach to invalidation was adopted, offset credit invalidation has been a very rare event. As of July 2022, only five projects had been involved in invalidation investigations, four of which resulted in offset credit invalidations. The invalidation mechanism is an important component of ensuring offset credit enforceability, as required in RCW 70A.65.170(2). The invalidation mechanism is an important tool to make sure that offsets are not overstated, are in accordance with all local, regional, state and national environmental health and safety laws and regulations, and have not been double counted. Additionally, maintaining alignment with CARB on offset procedures is a priority, to allow for the potential of Ecology’s program linking with CARB’s program in the future, as encouraged by the legislature in RCW 70A.65.210.

The invalidation mechanism does not preclude entities from establishing direct contracts with offset project developers to provide for the indemnification or otherwise ensure the replacement of an offset credit in the case of invalidation. These agreements have been common in CARB’s program.

J. Adoption of superseded protocols

Commenters: B-5 (BP America)

Summary: A commenter recommended that Ecology should remove superseded versions of the protocols adopted by reference in WAC 173-446-505.

Response: Ecology agrees that inclusion of these protocols in the rule may introduce confusion, as superseded protocols cannot be used to develop new offset projects within the Washington program. We have added language to the rule to clarify that all new offset projects must use the most recent version of the adopted protocol, in WAC 173-446-505(3)(a), WAC 173-446-505(3)(b), WAC 173-446-505(3)(c), and WAC 173-446-505(3)(d). We did not remove the adoption of earlier versions of these protocols in order to allow for the potential future recognition of offset credits generated by pre-existing offset projects that were originally listed under and earlier version of the applicable protocol.

K. Direct Environmental Benefits (DEBs) assessment

Commenters: 0-34 (Washington Environmental Council); I-123 (Lichtenstein); I-264 (Lund)

Summary: Commenters requested more clarity and specificity in how Ecology will assess Direct Environmental Benefits of offset projects.

Response: As required by the Climate Commitment Act and the proposed rule, all (100%) offset credits issued into the Washington Cap-and-Invest program must result from offset projects that provide Direct Environmental Benefits (DEBs) to the state (RCW 70A.65.170(2)(a)). If Ecology chooses to link with another jurisdiction in the future, then offset projects located in the linked jurisdiction(s) would also be eligible under RCW 70A.65.170(2)(a). However, in the event of such linkage during the first compliance period, RCW 70A.65.170(3)(a) requires that at least 50% of an entity's compliance obligation satisfied by offset credits "must be sourced from offset projects that provide direct environmental benefits in the state." In that scenario the remaining 50% of offset credits used for compliance can be sourced from the linked jurisdiction(s). During the second compliance period, RCW 70A.65.170(3) requires that at least 75% of an entity's compliance obligation satisfied by offset credits must be sourced from projects that provide DEBs to the state, in which case the remaining 25% could be sourced from projects in the linked jurisdictions(s).

In order to ensure that a sufficient supply of offset credits is able to reach the market, and also to ensure that offset projects generate direct environmental benefits in the state of Washington, Ecology agrees there is a need to establish a clear process and objective criteria to review and assign DEBS designations.

WAC 173-446-595(1) sets forth a presumption that offset projects located in the state of Washington, or that reduce or avoid GHG emissions that would otherwise occur within the state, will provide direct environmental benefits in the state. Accordingly, the following types of offset projects will *automatically* be considered to provide direct environmental benefits to the state of Washington:

- U.S. Forest projects that are located within the state of Washington
- Urban Forest projects that are located within the state of Washington
- Ozone Depleting Substances (ODS) projects that involve the destruction of pollutants sourced from Washington state
- Livestock projects that are located within the state of Washington

This approach is consistent with the DEBS implementation approach applied by the California Air Resources Board (CARB)[14]. Offset projects that do not meet the above criteria may submit the following information to support a determination of whether the project provides direct environmental benefits in the State. Such a determination must be based on a showing that the offset project or offset project type provides for the reduction or avoidance of any pollutant that could adversely impact the air or waters of the state, per WAC 173-446-595(2)(a). An applicant may support their application for DEBS with one or more of the following kinds of information, per WAC 173-446-595(2)(b):

- Scientific, peer-reviewed information or reports demonstrating that the offset project or offset project type results in this type of reduction or avoidance of any pollutant in the state of Washington
- Governmental reports from local, regional, state, or national environmental, health, or energy agencies, or multinational bodies (such as the intergovernmental panel on climate change) demonstrating that the offset project or offset project type results in this type of reduction or avoidance of any pollutant in the state of Washington
- Monitoring or other analytical data demonstrating that the offset project or offset project type results in this type of reduction or avoidance of any pollutant in the state of Washington

Over the next few months, Ecology anticipates being able to provide more information on the assessment process for out-of-state offset projects to demonstrate that they provide direct environmental benefits to the state, including more specific criteria for out of state projects to receive this designation. We value the feedback and recommendations provided to help inform our development of these criteria.

Commenter: B-19 (Finite Carbon)

Summary: A commenter noted that projects that do not receive "Direct Environmental Benefits to the state" (DEBs) designation will not be usable in the cap-and-invest program. Offset project developers should be able to have certainty of whether or not their project will receive "DEBs" designation prior to investing in the project.

Response: WAC 173-446-595(1) sets forth a presumption that offset projects located in the state of Washington will provide direct environmental benefits in the state. Ecology recognizes that offset project developers in other states would benefit from more certainty regarding the required assessment of Direct Environmental Benefits before significant investments in such an offset project are made. Accordingly, for offset projects located in other states, we made the following change in the adopted rule in WAC 173-446-595(3):

> *"New offset projects. In order to be eligible to demonstrate that a new offset project located outside the state of Washington provides direct environmental benefits in the*

[14] Direct Environmental Benefits in the State (DEBS) | California Air Resources Board

*state, the offset project operator or authorized project designee shall submit all relevant materials listed in subsection (2)(b) of this section along with **or prior to** the first reporting period offset project data report."*

This clarification allows but does not require offset project operators of projects located in other states to submit the required information to request a DEBs determination in advance of project development and operation. Additionally, Ecology will provide more information on our approach to assessing direct environmental benefits of offset projects, consistent with the provisions of WAC 173-446-595, with the intent of providing greater certainty and reducing barriers for prospective offset project developers.

L. Clarify process for reducing offset limits

Commenter: O-17 (Earth Ministry); I-318 (Gould); 0-34 (Washington Environmental Council); O-29 (Environmental Defense Fund)

Summary: Commenters asked Ecology to provide additional clarity on the process by which covered entities may have offset credit usage limits reduced if they contribute substantively to the cumulative pollution burden in overburdened communities. Specifically, commenters requested clarity on the definition of what constitutes a substantive contribution to air pollution, and how cumulative air pollution burdens will defined.

Response: Changes have been made to the adopted rule to make clear that reductions of the offset credit usage limits only apply to offset credits sourced from projects not located on federally recognized tribal land, as specified in RCW 70A.65.170. An additional clarification has been made to specify that the term "overburdened community" as used in this context refers to a community identified by Ecology, in consultation with the Environmental Justice Council, pursuant to RCW 70A.02.010. This process under RCW 70A.02.010 is included in the definition of "overburdened community" RCW 70A.65.010(54)(b) and WAC 173-446-010. WAC 173-446-600(6)(d) now states that:

"(d) Ecology may reduce the limits in (a)(i) and (b)(i) of this subsection for a specific covered 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 identified by ecology in consultation with the environmental justice council."

Ecology will be able to provide more information on how the program will assess and evaluate offset credit limit reductions for certain entities in the coming months. Ecology decided not to add more specific rule language on how this provision will be implemented in order to allow for adequate consultation with the Environmental Justice Council, in accordance with RCW 70A.65.170(3)(d).

M. Tribal use of urban forestry protocol

Commenters: 0-34 (Washington Environmental Council); T-1 (Swinomish Indian Tribal Community); T-3 (The Tulalip Tribes); B-10 (Evergreen Carbon); B-19 (Finite Carbon)

Summary: Commenters identified ambiguous language in WAC 173-446-505 regarding Tribal eligibility to participate to develop Urban Forest or US Forest offset projects.

Response: Ecology appreciates the commenters pointing out this ambiguity in the proposed rule language modifying the offset protocols being adopted from CARB's program. The proposed rule language was not intended to exclude tribal lands from eligibility. It was intended to exclude from adoption the language in the protocols that *restricts* the eligibility of tribal lands to only those who can show compliance with CARB's sovereign immunity provision (Section 95975(l) of their rule). Ecology's exclusion of the protocol's limitation tied to that sovereign immunity provision was intended to *expand* the eligibility of tribal lands under the adopted protocol.

Ecology has clarified text in the adopted rule to make clear that tribes and tribal lands are not excluded from any adopted offset protocol. Tribal participation is essential to the success of the cap-and-invest offset market, and we appreciate commenters pointing out the need for clarification in this protocol.

Additionally, the following language has been added to clarify the applicability of the consent to regulation and jurisdiction required by WAC 173-446-520(3)(d) and (3)(e), as they relate to offset project developers:

> "*If any portion of the offset project is located on land over which the state of Washington does not have jurisdiction, the offset project operator must demonstrate that the landowner(s) consent(s) to regulation pursuant to WAC 173-446-520(3)(d) or has entered into an agreement with ecology pursuant to WAC 173-446-520(3)(e).*"

Please see clarified text in the following subsections of WAC 173-446-505: (3)(a)(i)(M), (3)(a)(ii)(C), (3)(b)(i)(N), (3)(b)(ii)(J), (3)(b)(iii)(N), (3)(c)(i)(K), (3)(c)(ii)(F), and (3)(d)(i)(E).

N. Offset document recordkeeping

Commenter: O-7 (US Department of Energy, Hanford)

Summary: A commenter asked why Ecology is not required to retain records for listing documentation that is not approved by Ecology or the original project registry.

Response: Ecology has clarified in the adopted rule that the language refers to requirements for Ecology or the original offset project registry to retain this information on their *website,* consistent with WAC 173-446-520(13)(a)(i) and WAC 173-446-520(13)(a)(iii). Ecology's records retention policies, in addition to the Secretary of State's records retention policies for all state agencies, still apply for purposes of internal management and retention of these documents.

WAC 173-446-520(13)(a)(ii) now states:

"If the listing documentation was only submitted by the offset project operator or authorized project designee, but not approved by ecology or the original offset project registry, ecology or

*the original offset project registry, as applicable, does not need to retain the submitted listing documentation **on its website**."*

O. Ecology's invalidation and offsets reduction processes

Commenter: O-7 (US Department of Energy, Hanford)

Summary: A commenter suggests there is an inconsistency between the rule's requirement that offset projects must comply with all local, regional, state, or national regulatory requirements, including health and safety regulations, and the statutory provision in RCW 70A.65.173(3)(d)(ii). The commenter also asks why Ecology is able to require offset projects to comply with applicable health and safety regulations.

Response: The two offset-related provisions identified in this comment are separate and distinct, and they impact different parties in different ways. The first operates to invalidate offset credits in the event that the offset project operator violates applicable legal requirements, while the second operates to limit the ability of a specific regulated entity to use valid offset credits for compliance in the event that regulated entity violates applicable legal requirements.

Ecology is required to adopt a process by which offsets can be invalidated, per RCW 70A.65.170(4)(c). An offset *project* may have its offset credits invalidated within eight years of issuance (unless the invalidation period has been reduced, in line with WAC 173-446-580(2)(a)) if one of the following violations is found to have occurred:

- A portion of offsets issued to the offset projects were significantly overstated, per WAC 173-446-580(3)(a)
- The offset project was not in accordance with all local, regional, state, and national environmental and health and safety laws and regulations that apply in the jurisdiction where the offset project is located, per WAC 173-446-580(3)(b)
- Ecology determines that offset credits issued to this project have been double counted with credits issued to another offset program, per WAC 173-446-580(3)(c)

This ensures that offset credits generated by projects that are not in compliance with applicable laws and regulations cannot be used to satisfy a portion of a covered or opt-in entity's compliance obligation. This is necessary to maintain the integrity of the cap on emissions and the state's ability to meet the emission limits in RCW 70A.45.020. It is also necessary to ensure that offset credits are only sourced from projects that meet the requirement in WAC 173-446-500(1)(f) of not producing significant adverse environmental impacts after mitigation.

In contrast, RCW 70A.65.173(3)(d) describes circumstances under which Ecology, in consultation with the Environmental Justice Council, may reduce the amount of offset credits that a particular covered or opt-in entity can use for compliance. The effect of reducing these limits is to require that a higher percentage of that entity's compliance obligation be met by obtaining allowances, either at auction or on the secondary market. Unlike invalidation, this mechanism does not remove offset credits from the market. But, like invalidation, it is

necessary to maintain the integrity of the cap on emissions and the ability of the state to meet the emissions limits in RCW 70A.45.020.

Participation in Washington's offset market is entirely voluntary, both for the offset project operators who generate and sell credits and for the entities who purchase credits to trade or use for compliance. In exchange for the privilege of selling offset credits in Washington's market, offset project operators must comply with all applicable legal requirements, including health and safety laws that apply to the project in the jurisdiction in which it is located. These provisions were modeled after CARB's program and are important to include in the rule for purposes of facilitating potential future linkage.

P. Offset usage limits

Commenter: OTH-5 (Municipality)

Summary: A commenter recommended that Ecology should allow entities to fulfill a greater portion of their compliance obligation with offsets in the early years of the program.

Response: Offset credit usage limits for the first and second compliance periods are established in RCW 70A.65.170 (3) (a) and (b). Ecology does not have the authority to change these statutory limits except as specified in RCW 70A.65.170(3)(c), which states:

The limits in (a) and (b) of this subsection may be modified by rule as adopted by the department when appropriate to ensure achievement of the proportionate share of statewide emissions limits established in RCW 70A.45.020 and to provide for alignment with other jurisdictions to which the state has linked.

This provision contemplates needing to *further restrict* the usage of offset credits as compliance instruments if needed to meet the state's emissions limits or for purposes of linkage. Ecology does not believe that increasing the amount of offset credits that can be used in the compliance program would help ensure achievement of statewide emissions limits, nor would increasing offsets usage limits be necessary to align with any linked jurisdiction, if linkage is pursued. Accordingly, Ecology does not believe that an increase in offset credit usage limits is warranted at this time.

15. Purpose (WAC 173-446-010)

Commenter: O-38 (Global Ocean Health/NFCC)

Summary: Global Ocean Health asks Ecology to acknowledge the large environmental justice component of the Climate Commitment Act by adding the phrase "and to mitigate unintended impacts of carbon pricing on vulnerable communities, people, and enterprises identified by the legislature" to the purpose section of the rule.

Response: This rulemaking is authorized by RCW 70A.65.220, which requires Ecology to "adopt rules to implement the provisions of the program established in RCW 70A.65.060 through 70A.65.210." Those sections of the Climate Commitment Act spell out the mechanics of how the market-based program works (covered entities, registration, allowances, auctions, allowance trading, offsets, enforcement, and so on), and do not include the sections of the Act that describe how the Act as a whole is intended to mitigate impacts on overburdened

communities and how the funds from auction revenues will be invested. Therefore, while Ecology recognizes that mitigating the impacts of climate change and the transition to a clean energy economy on vulnerable populations and overburdened communities forms a large part of the Climate Commitment Act, Ecology is not adding the requested language to the purpose statement for this rule. Ecology will continue to work on implementing the other provisions of the Climate Commitment Act, such as RCW 70A.65.020, in other forums.

V. Form Letters

Ecology received a number of email submissions with identical or nearly identical content. Due to the large number of these submissions, we are providing the comment content and Ecology response here.

Form Letter #1

Commenters: The following form letter was received via email from 217 commenters. The content of each email was the same except for the submitter's contact information. Any substantial comments made in addition to the form letter are addressed in the respective topic sections.

Thank you for the opportunity to comment on rulemaking for Washington's new cap-and-trade program.

I urge you to adjust this costly new policy to help minimize the impacts on Washington families, small businesses and working people across our state.

Studies estimate that this program could increase the cost to manufacture gasoline and diesel fuels by as much as 47 cents per gallon in 2023. (Cap and Trade Program Analysis, Washington Research Council, Memo on E2SSB 5126, June 6, 2022.)

This is on top of record high fuel prices that consumers are already paying at the pump!

Washingtonians are burdened enough right now with skyrocketing inflation and an economy that is still suffering the consequences of the COVID-19 pandemic. Gas prices in Washington State are already some of the highest in the nation.

Please consider delaying the inclusion of gasoline and diesel fuel for at least the first few years – as California's program did in order to delay the impacts on consumer fuels.

Many experts believe the goals set by this program are too unrealistic. In order to meet its goals the program relies on a total ban of new gas, diesel and hybrid vehicles by 2035 – starting in 2026 with a requirement that 35% of new vehicles sold in Washington must be electric vehicles.

Surveys show that a majority of Washington voters believe the state legislature needs to go back to the drawing board and revise the Cap-and-Trade program to make sure it will

work as intended without placing such enormous cost burdens on Washington families and businesses.

When it was first introduced, the state originally estimated that the Cap-and-Trade program would cost up to $500 million per year – which the state would spend on a variety of climate-related programs. Recent estimates indicate that the program could now cost up to 4 times more – close to $2 billion a year. (OFM Fiscal Note 2021, Ecology Preliminary Analysis, May 2022)

Please do everything you can to reduce the costs of this new program to minimize burdens on Washington families and working people across our state.

Thank you.

Ecology Response: Thank you for your comments. We acknowledge that alternative analyses of the allowance market and impacts on prices, with different assumptions and/or using different data, may report estimates that are higher than the estimates from Vivid Economics and Ecology's primary analysis ("frontload"). Uncertainty is inherent in any model, in that it will never predict the future with precision. This is why we examined multiple scenarios, varying baseline, linkage, decarbonization, and behavioral or financial assumptions. Different assumptions, as well as different data, will inherently impact results. While we are unable to fully deconstruct alternative models using information provided, we note that alternative allowance price estimates often fall within the overall range across scenarios modeled by Vivid Economics and used in our analyses. Specifically, models estimating higher prices may better reflect pessimistic bounding assumptions, such as slow decarbonization in the transportation sector, or no/different price controls. (Note that price controls at any point in time affect market participant expectations, and affect entire price trajectories.) Most scenarios we assessed, including some full ranges of bounded assumptions (high/low financial variables, high/low foresight, degree of linkage expectation, etc.) result in lower allowance price trajectories. Note that frontloading of APCR allowances in the rule is intended to reduce burden on entities purchasing allowances for compliance, and by extension on the state economy and consumers. By design, large releases from the APCR in the first two compliance periods would mitigate the upward pressure on prices caused by the statutorily mandated emissions reduction goal.

Regarding prices to consumers, alternative analyses frequently assume all fuel price impacts will be based on a given year's allowance price and the carbon intensity of a fuel. While this may be a good proxy of costs per gallon to producers and transporters, they are unlikely to fully manifest in the market. Our estimated percentage changes in consumer fuel prices are based on a dynamic macroeconomic model of the state economy (REMI). The model allows for producer, intermediary, and consumer behavior and attributes to adjust in response to multiple changes to their options, actions, and incentives, beginning with compliance costs incurred, or revenues received, under the rule. These values are then reflected as transfers to the industries or entities from which

purchases are made. Consumers consider the options available to them, what those options cost and their relative benefits, and make their demand choices in response to the overall impacts of the rule (rather than just within a given industry or product line). Consequently, we would expect estimates to differ from the results of other approaches that estimate maximum pass-through of producer or distributor costs to their customers based solely on carbon intensity and allowance price in any given year. The year here is relevant as well, since allowance banking decouples total compliance costs in any given year from allowance price in that year.

Finally, while we did experience increased prices at the pump earlier this year (potentially at the time your comment was developed), these prices have since fallen as consumers purchased less fuel and also in dynamic response to global fuel conditions and perceived risk over time. Our analyses present results in real current dollars, in order to reflect the real purchasing power of a dollar, regardless of the level of inflation. This way, if a future year's nominal costs are of interest, the expected inflation rate can be applied to the real dollar estimates, keeping in mind that inflation raises the general price level across the entire economy – including goods, services, and wages. Moreover, we present modeled impacts to price levels, as percentage impacts to also allow for consistent interpretation regardless of economic disruptions and recovery. We agree that recent market factors have resulted in significant economic disruption. Our results are presented to allow for interpretation in the face of this disruption, nonetheless. This is also an aspect of alternative analyses of the costs created by the CCA – assumed base price and inflation – that can underlie higher estimated impacts to prices at the pump.

Note that hybrid and electric vehicles are out of scope of this rulemaking. Please refer to the Clean Vehicles Program statute and rulemaking (WAC173-423-400Jan18 - Washington State Department of Ecology) for more information on clean vehicle requirements adopted by the Legislature and to be implemented by Ecology rule.

The legislature requires the cap-and-invest program to be up and running by January 1, 2023. RCW 70A.65.070(1)(a). Ecology has found no provision in the statute (and the commenter has pointed to none) for delaying the implementation of the program for any particular sector of the economy. On the contrary, the statute repeats several times that the program must ensure that covered entities meet their share of the emission reductions required to meet the 2030, 2040, and 2050 limits in RCW 70A.45.020. *See, e.g.*, RCW 70A.65.070(2). The 2030 emission limits cannot be achieved if Ecology delays implementation of the program as requested.

We agree that estimated program revenues estimated in the Preliminary Regulatory Analyses are higher than those estimated in the fiscal note. This is a result of the modeling performed by Vivid Economics estimating higher allowance price trajectories than assumed in the fiscal note based on California's market experience to that date. The Vivid modeling is specific to the Washington economy and covered party marginal

costs of mitigating emissions. It is also informed by the additional specificity of the rule concerning, e.g., allowance availability and price controls.

Ecology included elements in the rule, where discretion was possible beyond statutory specifications, to reduce burden on those required to comply with the rule, and by extension to the state economy and consumers. Ecology also considered but did not include rule requirements that would have imposed additional burden. (See Chapter 6 of the Preliminary Regulatory Analyses.) The proposed rule smooths allowance availability and allows for banking to reduce overall compliance costs through frontloading. Frontloading APCR allowances also decouples price impacts from the allowance price in any given year, allowing entities to minimize their compliance costs and therefore any costs they are able to pass on to their customers. The option of using offsets also provides flexibility in compliance and potential to reduce average compliance costs.

Note also that revenues to the state, from allowance auctions, fund projects and activities that provide consumers with more options to choose from in terms of transportation availability and fuels over time. Revenues also contribute to mitigating natural gas price increase impacts, or funding work that supports new jobs.

Form Letter #1 Commenters

Ainsworth , Dennis
Alexander , Patrick
Allen , John
Anderson , Pamela
Anderson , Megan
Angell , Douglas
Asa , Rand
Asp , Terry
Babcock , Henry
bannon , kevin
Barton , Roy
Beiers , Sarah
belanger , john
belanger , mary
BELCHER , MICHELE
Benedetti , Andy
Bjorkman , Matthew
boeger , cheri
Bond , Susan
Bottts , Ed
Burhenn , Curt
Buttke , Jeffrey
Cannon , Robert
Chermak , Luke
Chin , Nora
CHRIS , A.
Christensen , Robert
Coe , Patricia
Cole , Donald
Conover , Keith
Coster , David
Coston , Nola
Courtney , Linda
Cowman , Charles
Cox , Troy
Coyne , Kevin
Croonquist , Dave
Dalrymple , Michael
Davis , Robert
Day , Krista
Dean , Dezri
DeBruin , Clarence
DULANEY , KENNETH
eliason , Jon
erwin , david
Fedore , Michelle
Ferris , Mildred
Fischer , Linda
Fitzgerald , Eileen
Flaaten , Lynn
Flabetich , Dennis
Fortier , Karen
France , Robert
Franke , Steven
Funk , Charles
Gatchell , Joseph
George , Philip
Gill , Lindsay
Godfrey , Glen
Gonzalez , Joshua
Goodwin , Jason
Gordon , Timothy
Gugeler , Dwane
Hackney , David
Haddick , John
Hadley , Howard
Hahn , Ronald
Hale , Sandra
Hale , Paul
Hallenbeck , Gary
Hamm , Jeff
Harris , Donald
Hastings , Zach
Hauschildt , Harv
Heitzman , Jerry
Hendricks , Kent
Herber , John
Herndon , Andrew
Hiatt , Marguerite
Hinton , Greg
Hogan , Sean
Holzman , Michael
Hooyer , David
Houger , Vaughan
Hubbeling , James
Hunt , Joseph
Hunt , Kerri
J , Stephen
Jay , Shawn
Johansen , Robin
John , Steve
John , Lindsey
Johnson , Ken
kain , alan

Keefe , Michael

KESSELRING , JERRY

Killian , Ronald

Kimball , Christopher

Kindness , Gary

King , Margaret

King , Mikki

Kinzel , Jay

Knoch , Patricia

Kuhnau , Kyle

Kushykov , Igor

Ladely , Donald

Lampe , Mark

Lane , Philip

Larsen , Glayde

Latimer , Geoff

LeBrun , Patrick

LeBrun , Cynthia

Lesser , John

Leutschaft , Theodore

Lewis , Sean

linville , Terry

Longstreth , Emory

Lowe , Louis

Lunkes , John

Mackenzie , Jeanine

Maddalosso , Philip

Malan , Chris

Marion , Bob

Martin , Glenn

Masingale , Ryan

MAZZEI , RICHARD

McAdams , Sunnie

McCarthy , Charles

McCotter , Ralph

McKinnon , Leonard

Meyer , Chuck

Michlig , Ray

Moan , Jon

MOLINA , TONY

Moreland , Jospeh

Motz , Dwight

Nartea , Margaret

Neal , Teresa

Newbold , Mark

Newton , Lorinda

Nykreim , Mike

O'Neal , Thomas

O'Neal , Margaret

Oakes , Gary

Olsen , Gary

Olson , Claudia

Owens , Dwayne

Padur , Neal

Palmer , Kathryn

Palmer , Lloyd

pangerl , s.f.

Paris , Stephen

Parrish , Bradley

PETROV , GEORGE

Phillips , Robert

pickens , bill

Pipkin , Yvonne

Pope , Andrew

Post , Donald

Quinsey , Amy

Roberts , Blain

Robinson , George

Robley , Shane

Rowell , Gary

Russell , Lyle

S , Karen

Saling , Loren

Sather , Jean

Saum , Mariko

Schauer , Margaret

SCHMITT , WILBUR

Schneider , Kristina

Schreiber , George

Sharrar , Taylor

Shearon , Storm

Sheehan , David

Sheehy , Chris

Shier , Daniel

Shopokov , Tilek

Sillivan , George

Sillivan , Mike

Small , Rebecca

Smith , Charles

Smith , Jeremy

smith , mike

Southworth , Sally

Starkey , Brad
staudinger , ken
Stewart , Ray
Stibbs , Luke
Strait , DJ
Sturtz , Hannah
Styrwold , Richard
Swartout , Gary
Tamaccio , Tony
Tomlinson , Cecil
Tropp , Ed
Tutor , Robert
Vance , Frank
VanderWaal , Eric
Ward , Kyle
Warner , Gary
Waslohn , Mark
Watkinson , Ross
Weir , Dale
Weise , Kristen
Weller , Timothy
Wendt , Rich
White , Fredrick
Wilkinson , Lori
Wilson , Eric
Wissel , Sydney
Woodcock , Christina
zarelli , carl
Zeller , Michael
Zibin , Lydia
Ziemann , James

Form Letter #2

Commenters: The following form letter was received via email from 778 commenters. The content of each email was the same except for the submitter's contact information. Any substantial comments made in addition to the form letter are addressed in the respective topic sections.

Dear Mr. Joshua Grice WA Dept. of Ecology,

Thank you for the opportunity to comment on this critical rule that will shape implementation of our state's cap & invest program. The Climate Commitment Act is the strongest carbon pricing program in the country, and I am excited about its potential to reduce carbon, grow the economy, and invest in overburdened communities. The state legislature intentionally integrated environmental justice, tribal sovereignty, and tools to address environmental impacts into the structure of the law. I appreciate the work that Ecology has undertaken to translate this far-reaching statute and faithfully implement its directives.

The program rules are important to get right so that Ecology has the clear authority to act, the responsibilities of covered entities are clear, and the people of Washington have clarity on this program. Overall, I support the general direction of the proposed rule and urge Ecology to strengthen it in the following ways:

Overburdened communities and environmental harm:
- Articulate Ecology's responsibility to ensure the cap-and-invest program avoids negative impacts to overburdened communities and describe how information will be gathered and used to fulfill that responsibility.
- Clarify Ecology's role in evaluating impacts of all Emission-Intensive Trade-Exposed

facilities (EITEs) on overburdened communities, regardless of when each facility becomes a covered entity.
- Establish an explicit process to review impacts of program implementation on outcomes relative to overburdened communities, in order to inform Ecology's mandatory reporting to the legislature required by RCW 70A.65.060(5). The rule must provide information sufficient to conduct a meaningful and thorough review. This process should be separate from the "Improving Air Quality in Overburdened Communities" initiative, be inclusive of the full range of overburdened communities as defined by the law, and focus on disparities of impacts across the entire program.

Tribal Sovereignty:
- Explicitly incorporate Ecology's existing obligation to proactively engage and consult with federally recognized tribes.

Information to enable review and accountability:
- Require all covered entities to provide information about: a) their impacts to overburdened communities and to tribal lands and treaty rights; b) the chemicals and pollutants they process and/or manage; and c) if there are any violations under any permits they hold.
- Provide guidance and establish reporting requirements for consumer-owned utilities on the use of the value of no cost allowances and engage with the UTC on its regulation of investor-owned utilities' use of the value of no cost allowances.
- Best available technology: Require EITEs applying for an upward adjustment of no cost allowances to submit information on any excessive environmental impacts of the fuels, processes, and equipment used by each facility. The rule should be clear that if the facility is found to create excessive environmental impacts, upward adjustments should be denied.
- Establish requirements for Ecology to publicly share and document data being used to establish baseline information, subtotal baselines, and allocations.

Environmental Justice Council:
- Include explicit language describing how Ecology will engage with the Environmental Justice Council in the development, implementation, and evaluation of the full program.
- Track information about the environmental and health impacts of all covered entities to inform Council review.

Offsets:
- Establish a process for future modification of offset protocols, including: 1) Adaptation of existing carbon offset protocols in response to lessons learned in California and Washington. For example, updating the existing Urban Forestry Protocol, which is not currently implementable, to provide benefits in urban communities hardest hit by facilities and pollution; and 2) Creation of new protocols to harness climate mitigation potential of other ecosystems and land uses, such as blue carbon or agriculture.
- Provide mechanisms for aggregation of landowners who would otherwise face barriers to participation in carbon offsets—particularly Tribal Nations and small forest landowners— in order to maximize benefits to local communities, tribes, and land

owners of all sizes.
- Clarify the process for reducing offset limits in response to cumulative air pollution burden in overburdened communities, including how data will be gathered and shared.
- It is critical that offset rules are guided by feedback from Tribal Nations, designed to facilitate participation of tribal nations, and support tribal sovereignty.

I look forward to Ecology's ongoing work to strengthen and finalize this rule as part of our state's work to meet our climate goals in an equitable and just way.

Ecology Response:

The Climate Commitment Act requires that a minimum of 35% of total investments provide direct and meaningful benefits to vulnerable populations within boundaries of overburdened communities. Ecology cannot determine how funds generated by the program will be spent, as these funds will be subject to the appropriations process in the legislature before they can be spent. The state Legislature will make appropriation decisions for CCA funds as part of biennial budget adoptions.

Sections .060 through .210, of RCW 70A.65, create a cap on greenhouse gas emissions from covered entities, compliance obligations for covered entities, and a program authorizing covered entities to purchase compliance instruments and trade them with other participants in the program. This rule, WAC 173-446 implements the provisions of RCW 70A.65.060 through .210, as required by RCW 70A.65.220. However, this rule does not implement the requirements in RCW 70A.65 sections .020, .030, .040, .230, or .280. Therefore, many of the environmental justice provisions in the Act, and the comments invoking the requirements of those sections, are outside the scope of this rulemaking. Ecology has, however, initiated a process separate from this rulemaking to engage with overburdened communities and vulnerable populations to address environmental justice issues under RCW 70A.65 that fall outside the scope of this rulemaking. To find out more about that process, or to participate in that process, go to https://ecology.wa.gov/Air-Climate/Climate-Commitment-Act/Overburdened-communities.

Ecology is required to provide a comprehensive review of the entire program every four years. RCW 70A.65.060(5) That review must include an analysis of how the program is impacting overburdened communities. Contributing to that review are the biennial reviews required in RCW 70A.65.020(2) of criteria emissions affecting overburdened communities. Most covered entities in the program that emit pollution have air permits and other environmental permits authorizing them to operate. Those permits require the permittees to provide information on emissions and discharges of pollutants to Ecology on a regular basis. Emissions of GHGs must be reported annually. Ecology will be engaging with overburdened communities and vulnerable populations as required under RCW 70A.65.020 and 030. These sources should provide Ecology with the information needed to conduct the required reviews.

Beginning in the second compliance period, Ecology must consider a facility's location relative to overburdened communities when responding to a petition from a facility to be an EITE. RCW 70A.65.110(2). Ecology has included this requirement in the EITE rule, WAC 173-446A.040(2)(c).

RCW 70A.65.110(3)(f) authorizes Ecology to make an upward adjustment in the next compliance period's benchmark for the EITE facility based on the facility's demonstration that additional reductions in carbon intensity or mass emissions are not technically or economically feasible. The Act does not authorize Ecology to deny the upward adjustment for any reason other than a failure to make the required demonstration.

Ecology has been working closely with the Environmental Justice Council to receive recommendations on the draft indicators to identify overburdened communities highly impacted by air pollution.

Ecology and the Environmental Justice Council are in the process of determining how they will engage in the development, implementation, and evaluation of the full program. They have not yet finalized what that engagement will entail. Moreover, Ecology believes the engagement process needs more flexibility than would be possible if Ecology were to put explicit provisions in the rule. Instead, Ecology has added to the rule provisions recognizing the role of the Environmental Justice Council and stating that Ecology will be engaging with the Council on the Program. WAC 173-446-010.

Ecology shares the view that offset protocols and projects must reflect real, and verifiable avoided or sequestered carbon emissions. Ecology has selected CARB's protocols as a starting point for the offset program, and we are committed to continually reviewing new protocols and revisions to existing protocols in the program, with input and advisement for scientific experts, Tribes, and stakeholders. Ecology chose to adopt four of CARB's existing protocols because they are rigorously reviewed and tested and have been in use for several years. Additionally, alignment between CARB and Ecology's programs is important to allow for the possibility of programmatic linkage in the future, as stated in RCW 70A.65.210. Ecology will be able to provide more information on how the program will assess and evaluate offset limit reductions for certain entities in the coming months. Ecology determined not to add more specific language on how this provision will be implemented to allow for adequate consultation with the Environmental Justice council, in accordance with RCW 70A.65.170. Please refer to the "Offsets" topic of this Concise Explanatory Statement for more information. Ecology is committed to continually evaluating the efficacy and utility of all adopted offset projects, and will make revisions and updates to these protocols as needed, to ensure the integrity of these offsets.

Establishing a formal framework for tribal consultation is beyond the scope of this rulemaking, but Ecology remains committed to meaningful consultation and engagement with tribes throughout program implementation.

Form Letter #2 Commenters

Abler , Michael
Ahlstrand , heidi
Alexander , Charles
Allen , Billie
Allen , Kathleen
Allen , Kathleen
Allen , Noel
Allen , Teresa
ande , H
Anderson , Cathy
Anderson , Dorothy
Anderson , Judith
Anderson , Sharon
Anderson-Ketchmark , Corrine
Andrews , Jean
Angell , JL
Antonio , Beverly
Arndt , Dolores
Arnold , Daniel
Arntson , David
Aston , Bill
at , Julia
Atkins , Gail
Attemann , Rein
Auer , Patricia
Autry , Anne
award , Elizabeth
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Baine , Dave
Baker , Norman
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Barats , Elizabeth
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Bartlett , Faye
Basile , Diane
Basta , Vicki
Bates , James
Batway , Jewell
Bauman , Sarah
Bee , Brandon
Bein , Jeanie
BELL , STEPHANIE
Benedict , Derek
Benjamin , Dale
Bensinger , Irene
Berger , Karen
Berman , Steve
Besig , Jay
Beukers , Robin
Bhakti , Sara
Biale , Cheryl
Bishop , Marty
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Bishop , Scott
Bittner , Evelyn
BLACKBIRD , MARLES
Blalack , Kristin
Blandford , Mark
Bobe , Pablo
Bonner , Tracey
Bonsignore , Antoinette
Bordelon , Tika
Borgeson , Dean
Borland , John
Bouche , Alaya
Bourlotos , George
Bowdish , Caroline
Bowman , Jason
Brabham , Lorraine
Bradley , Kathy
Brandes , Michael
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Brant , Daniel
Brent , Patti
Brill , Gary
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Brunton , James
Brzezinski , Matt
Burg , Max
Burke , Sally
Burns , Charlie
Burrows , John
Butler , Peggy

Byrne , Jim
Caffrey , Kelly
Caicco , Jody
Calcagno , Rita
Campbell , Sarah
Canright , Mark
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Castillo , Mariana
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Cole , Tracy
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Compestine , Amy
Conn , Patrick
Conrad , Norm
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Cote , Cynthia
Covert-Bowlds , Chris
Covich , Sandy
Cowan , Keith
Cox , Lanie
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Craciun , George
Craighead , Tom
Crawford , Jason
Cronin , Jim
Cruz , Celia
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Curran , Constance
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Dawson , James
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Dotzauer , Uwe
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Elmer , Kay
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Eulberg , Lois
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Fairbanks , Traci
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Favorite , Charles
Fay , Alex
Fear , Sean
Feit , James
Feliciano , Vincent
Fels , Peter
Ferm , Mary
Ferrari , Paul
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Hagen-Lukens , Deborah
Haley , Jim
Hall , Dorothy
Han , Richard
Hand , David
Hansen , Steve
Hanson , Art
Harper , Barbara
Harris , Zoe

Haslag , Robert
Hatfield , Phyllis
Hauber , Barclay
Haupt , Carolyn
Hawkins , Chris
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Helget , Nancy
Heller , Margie
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Howe , Jared
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Hulick , Stephen
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McBee , Dean
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Nelson , Katherine
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Pauley , Jean
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Pellerin , Tyra
Peskind , Art
Peters , Nancy
PHILIP , CECIL
Pierson , Neilia
Pilger , Carrie
Pinc , Michael
Platter-Rieger , Mary
Pomeroy , Charles
Porter , Susan
Price , Carol
R. , Andrew
Rabenstein , Lynn
Rader , Patti
Ramirez , Hank
Randall , David
Raspa , Doris
Reading , Toniann
Reagel , Peter
Redish , Maryellen
Reeber , Tess
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Rehn , Debra
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Richard , Louis
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Richmond , Lisa
Riesch , Chris
Ringland , Lezlie
Ring-Revotskie , Peter
Riordan , Janet
Risser , Susan
Rivera , Javier
Rivers , Jerry
Roberts , Elizabeth
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Rodgers , Julie
Rogers , Daniel
Roller , Henry
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S , John
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Samaras , John
Sandel , Norman
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Saunders , Michael
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Scheunemann , Anita
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schutt , Mike
Schwartz , Phebe
Schwinberg , Jean
Scott , Amy
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Seager , Michael
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Senour , Dan
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Sévilla , Caroline
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Shields , Jamie
Shirey , Erin
Shirlock , John
Shomer , Forest
Shouse , Susan
Shurgot , Michael
Siegel , Sheila
Silvey , Kevin
Skal , Steven
Skouge , Gloria
Smith , Allen
Smith , Carol
Smith , Edward
Smith , Kim
Smith , Kristen
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Sneiderwine , William
Snow , Donna
Snyder , Dan
Soby , Patrick
Sollenberger , Sharon
Southard , Mary
Sparer , Carol
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Speed , Andrea
Speer , Cheryl
Spengler , Melissa
Speranza , Ilya
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STARBUCK , JUDITH
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Staunton , John
Stawinoga , Greg
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Stefano , Lori
Steiner , A.L.
Stern , Richard
Stewart , Gillian
Stewart , Jackie
Stickney , Karen
Stiehl , Joanna
Stiglich , Lynn
Stojak , MJ
Stolfi , Jackie
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Strang , Arnold
Strassner , Dorothy
Strauss , David
Stroud , Katrina
Sullivan , Brenda
Sutphin , Christi
Swanson , Craig
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Teed , Cornelia
Teraberry , Kimberly
Ternes , Randal
Terranova , Joann
Terrell , Russell
Thiel , Susan
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Thompson , John
Thomsen , Don
Thomspon , TJ
Thorsen , Erika
Tickman , Elizabeth
Tiefer , Hillary

Todd , Mary
Tonkin , David
Toussaint , Laura
Toussaint , Nicole
Trasoff , Stephanie
Turnoy , David
Ungar , Arthur
Urias , Victoria
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Uyenishi , Steve
Valentine , Jennifer
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Van , Emily
Van , Heather
Van , Natalie
Villeneuve , Michele
VINING , JENNIFER
Vogt , Susan
Vorhees , Miranda
Vortman , Roger
Vossler , Susan
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Wallace , Patrice
Walsh , Kevin
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Washington , Chris
Wasserman , Linda
Watchie , Joanne
Watson , Elizabeth
Watson , Harold
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Weant-Leavitt , Margaret
Weir , Kristi
Weisz , Russell
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Wilson , Merlin
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Wingard , Donald
Winnicki , Kristine
Winter , Sarah
Woestwin , Carl
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Woolpert , Steven
Wootan , Cathy
Worley , Don
Wu , Blake
York , Julia
Young , Loewyn
Zarrell , Vicki
Zeller , Robert
Zerbe , Richard
Zerr , Laura
Ziegler , Russ
Ziegler , Russell
Zimdars , Eric
Zontek , Kenneth
Zuckerman , Michael
Zwicker , Marie

Form Letter #3

Commenters: The following form letter was received via email from 80 commenters. The content of each email was the same except for the submitter's contact information. Any substantial comments made in addition to the form letter are addressed in the respective topic sections.

Dear Mr. Grice, Washington made history by passing the country's strongest law capping carbon pollution, the Climate Commitment Act (CCA). As a resident of the state, I am eager to see the benefits including deep reductions in climate pollution, improved air quality, investments in clean transportation and clean energy, community benefits with investments in overburdened communities, and much more. In order for the CCA to be truly transformational for Washington and act as a model for other states, it is critical that the proposed rule do the following.

CCA rules must maintain the integrity of the cap. The ultimate goal of this law is to achieve our greenhouse gas limits and improve air quality, especially in overburdened communities. Ensuring that emissions do not exceed the cap is critical. When designing program details, maintaining the cap should be one of the primary goals.

CCA investments must prioritize significant improvements in air quality of overburdened communities, especially Black, Indigenous and communities of color. For too long, these communities have borne the brunt of air pollution and climate impacts. The CCA requires that a minimum of 35% of overall investments directly benefit these communities. These investments must be thoughtfully designed with community input to ensure benefits are meaningful.

CCA's implementation process must collaborate with the Environmental Justice (EJ) Council and with overburdened communities. The rule should provide more clarity on how the Council and communities will be engaged in the development and implementation of the full program. Ecology should work with the EJ Council to determine the best processes for collaboration.

Thank you for considering my comments.

Ecology Response: Ecology agrees that it is critically important to maintain the integrity of the cap on GHG emissions. The legislature, in designing the Climate Commitment Act (CCA) also made it clear that maintaining the integrity of the cap is a central goal of the program. The CCA is clear that the cap in the cap and invest program must be based on emissions from the covered sectors of the economy. RCW 70A.65.070(1). The CCA requires the reductions in the cap must be designed so that covered entities as a whole meet their proportional share of the GHG emission limits in RCW 70A.45.020 for 2030, 2040, and 2050. See, e.g., RCW 70A.65.070. The CCA provides tools for adjusting the program if it looks like those limits will not be met. See, e.g., RCW 70A.65.100(11). Ecology has designed WAC 173-446 to meet these statutory requirements. For example, Ecology has taken steps to avoid the need to sell price ceiling units, which increase the cap. RCW 70A.65.160. According to the Vivid Economics analysis, the auction parameters Ecology has set, including front loading the Allowance Price Containment Reserve, will help minimize the need for selling price ceiling units.

The Climate Commitment Act requires that a minimum of 35% of total investments provide direct and meaningful benefits to vulnerable populations within boundaries of overburdened communities. Ecology does not have pro-active oversight over other agencies' processes to meet the requirement of 35% funds invested in overburdened communities, but we will be including these targets as a data point in the annual

required reporting from all agencies spending CCA auction proceeds. Funds from Climate Commitment Act auction proceeds will be appropriated by the Legislature. The Environmental Justice Council is legislatively directed to provide recommendations on the distribution of Climate Commitment Act auction proceeds.

Ecology has added to the rule provisions recognizing the role of the Environmental Justice Council and stating that Ecology will be engaging with the Council on the Program. WAC 173-446-010.

Form Letter #3 Commenters

Aebly , Monica
Anderson , Coleen
Anonymous Submission
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Anonymous Submission
ATTWOOD , DENISE
Baltin , Brian
bear , christy
Benedict , Derek
Blumenthal , Robert
Bonifaci , Bruce
Bowersox-Johnson, Brandon
Caffrey , Donald
Campbell , Liz
Canny , M.
Capen , Allison
chamberlain , marylee
Compton , Clayton
Compton , Kathleen
Conn , Patrick
Davis , Andra
DAVIS , ERIKA
Davis , Virginia
Deal , Brandie
Dunn , Andrew
Ehler , Noah
Emanuels , Brian
Epstein , Nance
Evans , Chad
Fay , Alex
Freeman , Padraic (Paddy)
Gabbay , Deirdre
Gekas , Lee Ann
Gilbert de Vargas , Sally Jo (Interfaith Community Sanctuary)
Grosser , Matthew
Gyncild , Brie
Hall , Becca
Harvin , Kara
Hedstrom , Don
Hedstrom , Janice
Hodack , Deborah
Horton , Miranda
Johnson , Emily
Johnson , Mary Lou
Keller , Sam
Lacasse , Marieke
Learned , Andrea
Levine , Arthur
Link New , Virgene
Lockard , Brooks
Lovell , Ronald
Mackey , Melvin
Manetti , Christina
Marino , Robert
Marre , Frank
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Martinson , Julie
Meraki , Vanessa
Michaels , Brenda
MONTACUTE , SUMMER
Morrigan , McKenna
Nelson , James
Page , Christina
Peltier , Jamie
Penchoen , Gregory
Ritson , Francesca

Sasse , Jaime
Snell , Ronald
Species , Scott
Sullivan , Bryan
Sundquist , Stephen
Thompson , Charlee
Treadway , Carolyn
Van Alyne , Emily
Vo , Jennifer
Washienko , Kathleen
Winans , David
Wineman , Marian
Wolfe , Ann
Worley , Don
Ylvisaker , Ariana
Yogev , Yonit

Form Letter #4

Commenters: The following form letter was received via email from 95 commenters. The content of each email was the same except for the submitter's contact information. Any substantial comments made in addition to the form letter are addressed in the respective topic sections.

Dear Mr. Grice, Thank you for the opportunity to comment on WAC-173-446, Climate Commitment Act (CCA) Program Rule. I appreciate the hard work the Department of Ecology has been doing to implement the CCA.

However, I have concerns related to the following areas of the draft program rule.

Environmental Justice Council

The timeline for implementing the CCA does not allow the Governor's newly formed Equity and Justice Council (EJC) adequate time to understand the CCA program, or its social and environmental context. The draft program rules should define how Ecology will engage with and support the EJC in the development, implementation, and evaluation of the full program.

Ecology needs to define when and how they will provide the EJC details about the CCA program, including: Air-quality monitoring program data, especially data related to emissions-intensive, trade-exposed (EITE)-adjacent, overburdened communities; How pollution allowances will be administered to ensure overall declining greenhouse gas (GHG) emissions under the cap, the appropriate amount of revenue generation from auction activity, and the overall health and integrity of the cap and invest program; Criteria for the selection of offset protocols, including risks and benefits, and how the definition of adverse impacts relates to the rule definition of "environmental harm"; What decisions will be needed to facilitate linkage with other pollution reduction programs, as well as the predicted or possible downstream consequences of those decisions.

Honoring Tribal Sovereignty

The program rule must explicitly incorporate Ecology's existing obligation to proactively engage and consult with federally recognized tribes. In particular, it is critical that offset protocols are guided by feedback from Tribal Nations, designed to facilitate participation of tribal nations, and support tribal sovereignty.

Pollution Allowances Ecology's responsibility to provide oversight and review of the allocation of allowances for Emission Intensive Trade-Exposed polluters should be strengthened and clarified to provide guidance and establish reporting requirements for consumer-owned utilities on the use of the value of no-cost allowances. Ecology should engage with the Utilities and Transportation Commission on its regulation of investor-owned utilities' use of the value of no cost allowances.

Offsets

Offsets are inherently flawed, allowing polluters to continue polluting. It is important that the program rule establishes a process to evaluate the impact of offsets and the effectiveness of the offsets program over time.

The rule should include language allowing for adaptation and adoption of new protocols moving forward, post-rulemaking, including: Updating existing offset protocols based on lessons learned in California, such as evolving California's urban forestry offset protocol (which has never been feasible to use). Adopting new offset protocols to harness other natural climate solutions in Washington state, e.g., blue carbon and agriculture.

Ecology's proposed adoption of California's forestry protocol is premature. CARB - US Forestry should not be adopted as-is.

The CARB - US Forestry protocol doesn't adequately account for leakage (logging occurring elsewhere because of avoided logging prompted by a protocol offset).

A 2019 study found that 82% of the credits issued under CARB - US Forestry likely do not represent true emissions reductions due to the protocol's use of lenient leakage accounting methods.

The CARB - US Forestry protocol also lacks genuine additionality, that is, credits are being issued for forests that were not actually going to be harvested, or that the carbon sequestration benefits of specific offsets were overestimated. A 2021 study showed that ecological and statistical flaws in California's offsets program create incentives to generate credits that do not reflect real climate benefits.

Washington State should not adopt the CARB - US Forestry protocol until these shortcomings are addressed.

Industrial forestry

Logging is the number one source of emissions in OR, and estimated to be third in WA. Emissions have been underestimated by up to 55% in Oregon and 25% in Washington, and as of 2019, these emissions were not reported in state GHG reporting guidelines.

Yet CARB - US Forestry favors industrial logging practices. Such practices produce significant carbon emissions, from soil compaction as well as machinery operations. It takes decades for clear cut forests to return to a natural state that adequately supports diverse habitats. And so called plantation "working forests" do not provide anything close to natural habitat or biodiversity. To be most effective, any forestry offset protocol used by Washington State should reward the avoidance of industrial forest practices, incentivize longer harvest rotations, and prioritize the protection of old growth and mature forests. Washington should also avoid decoupling carbon storage from overall forest health. In New Zealand, high carbon prices have incentivized dense plantations of

non-native, short-lived trees such as radiata pine that offer poor habitat and can displace native forests.

Wood products

CARB - US Forestry credits the storage of carbon in wood products, even though they store far less carbon than forests. However some estimates have only 15% of a log's carbon ending up in a wood product; the rest becomes carbon emissions. Crediting carbon storage in wood products encourages increased harvests and shorter rotations, both of which are counterproductive to Washington's climate goals.

As 200 forest and climate scientists told Congress in June 2020: "We find no scientific evidence to support increased logging to store more carbon in wood products, such as dimensional lumber or cross-laminated timber (CLT) for tall buildings, as a natural climate solution."

Aggregation

2.88 million acres of forestland in Washington State were owned by small forest landowners in 2019. Any forestry offset protocol implemented under the Climate Commitment Act should provide mechanisms to enable landowners who would otherwise face barriers to participation in carbon offsets to aggregate their offset offerings particularly Tribal Nations and small forest landowners in order to maximize benefits to local communities, tribes, and land owners of all sizes.

California's buffer pools

Forest offset protocols call for "buffer pools" to attempt to account for the fact that some of the carbon presumed stored in the forest will end up being released by wildfire. Recent analysis has indicated that the quantity of trees that California has set aside may be inadequate compared to the risks the state faces from increased mega fires. California's "buffer pool" must be evaluated before Washington State links with California's cap and trade program.

Thank you for considering my concerns,

Ecology Response: Ecology has added to the rule provisions recognizing the role of the Environmental Justice Council and stating that Ecology will be engaging with the Council on the Program. WAC 173-446-010.

Establishing a formal framework for tribal consultation is beyond the scope of this rulemaking, but Ecology remains committed to meaningful consultation and engagement with tribes throughout program implementation. Nothing in the adopted rule prevents a tribal government from requesting formal government-to-government consultation with Ecology.

Ecology shares the view that offset protocols must require, and projects must achieve, real and verifiable emissions reductions or removals. Ecology has adopted four of CARB's protocols as a starting point for our offset program, and we are committed to continually reviewing and evaluating new protocols and revisions to existing protocols,

with input and advisement from scientific experts, Tribes, and stakeholders. Ecology chose to adopt four of CARB's existing protocols because they are rigorously reviewed and tested and have been in use for several years, and have the highest likelihood of being used by project developers in Washington State. Additionally, alignment between CARB and Ecology's programs is important to allow for the possibility of programmatic linkage in the future, as directed in RCW 70A.65.210.

All offset projects must result in emissions reductions or removals that are additional to what is required by law, or what would have otherwise occurred in a conservative business-as-usual scenario. Every project developed through the adopted protocols is also required to undergo third-party verification. CARB's offset protocols and implementation have been upheld in court, and are based on extensive review, revision, and consideration from experts.

Ecology has made two changes to the rule, in response to comments and concerns regarding the effectiveness of these protocols. First, a concern was raised about the absence of a definition of "Permanent" in the rule. In response to this request for clarification, Ecology added the following definition of "Permanent" to WAC 173-446-020:

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

Additionally, it was noted that the U.S. Forest Projects protocol that Ecology proposed for adoption allows for Avoided Conversion projects that were commenced more than a decade ago by recording a conservation easement between 2006-2010. Ecology agrees this provision of CARB's protocol appears to be inconsistent with the additionality requirements of the Climate Commitment Act. Accordingly, we made changes in the adopted rule pertaining to the adoption of this protocol so that the sentence regarding old conservation easements is not adopted. The adopted protocol now specifies that previously recorded conservation easements may only be considered within the scope of the offset project if they were recorded no more than one year prior to the project commencement date. See changes in WAC 173-446-505: (3)(b)(i)(P), (3)(b)(ii)(J), and (3)(b)(iii)(N).

Commenters expressed concerns about the adequacy of the buffer pool to protect against increasing wildfire and disease related tree deaths. In CARB's program to date, only a small portion of credits in their forest buffer account have been withdrawn and retired. Ecology may adopt a revised approach to insuring offset credit integrity, should a new approach be warranted in the future. An important difference between this rule and CARB's program is that in Washington's cap-and-invest program, offset credit use is subtracted from the total program cap on emissions. This ensures that whether or not

entities use offset credits to satisfy a portion of their compliance obligation, the cap-and-invest program will remain on-track to reach the state's emissions reduction goals.

Commenters raised a concern regarding the potential for leakage for the Improved Forest Management projects under the U.S. Forest Projects protocol. Leakage refers to emissions reduced or avoided in one area shifting to be emitted elsewhere. This is an important consideration for U.S. Forest projects. The U.S. Forest Projects protocol accounts for leakage in two ways. First, the protocol accounts for "activity shifting leakage" (leakage that occurs from the shifting of harvest activities from within the project boundaries to outside the project boundaries), by presuming a 20% leakage rate if actual harvests in the project area are less than baseline harvests. Second, the protocol includes "market shifting" leakage (leakage due to emissions moving outside the project area due to wood products being supplied by another source) in calculating an avoided conversion discount factor. This reflects an assumption that for every ton of reduced harvesting attributable to a forestry offset project, the market will compensate with an increase in harvesting of 0.2 tons on other lands. Ecology may consider updates or revisions to this approach to assessing leakage in the future, if additional research becomes available or alternative approaches and protocols are adopted.

Commenters raised concerns about the baselines and additionality requirements established in the U.S. Forest Projects protocol for Improved Forest Management projects. We appreciate these comments, and agree that a valid baseline for forest projects developed through this protocol and any future protocols is essential to the integrity of offset credits used in the program. We refer the commenter to CARB's response to the cited study regarding baseline calculations through the U.S. Forest Projects protocol, which explains that the baseline for forest offset projects must meet additionality requirements, include all legal constraints, be financially feasible, and it must meet a performance standard evaluation. Part of the performance standard evaluation is comparison against common practice. Legal requirements such as forest regulations or requirements in a conservation easement must be incorporated in the baseline. Common practice is used as a backstop to help address additionality. The protocol's approach to additionality incorporates project-specific (legal and financial constraints) and standardized (common practice) requirements.

Ecology is committed to continually evaluating the efficacy and utility of all adopted offset projects, and will make revisions and updates to these protocols as needed, to ensure the integrity of offset credits used for compliance.

Please refer to the "Offsets" topic of this Concise Explanatory Statement for additional information. Ecology is committed to the adopting, revising, and updating of offset protocols in the future. Ecology will begin considering new protocols and revisions to existing protocols in 2023, with feedback from subject matter experts, Tribes, and stakeholders. New and revised protocols will be developed and evaluated based on the strength of underlying scientific research, applicability and utility to project developers in the Washington state, and impacts to Washington's environment, economy, and

communities. As new and revised protocols will be adopted through rule, public comment on these protocols will be solicited and incorporated throughout the rulemaking process.

Ecology will be able to provide a more specific timeline and approach to consider new and revised protocols after the rule has been adopted.

Form Letter #4 Commenters

Anonymous Submission
Anonymous Submission
Anonymous Submission
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Anonymous Submission
Anonymous Submission
Anonymous Submission
Anderson , Glen
Antman , Iris
Askey , Samuel
Askey , Sarah
Askey , Jonathan
Baldwin-Bonney , Camille
Banaszynski , Tracy
Baum , Nate
Benedict , Derek
Berry , Jonathan
Bowersox-Johnson , Brandon
Briggs , Robert
Campbell , Liz
Cate , Rebecca
Davis , Virginia
Denton , Gregory
DEXHEIMER , DEREK
Dhoot , Ankur
Donnelly , Amy
Dorsey , Ann
Drury , Kim
Eberly , Claudia
Emigh , Rebecca Jean
Euler , Ursula
Fay , Alex
Fraker , Laurie
Gaasland-Tatro , Lara
Gale , Maradel
Gallagher , Kevin
Gasperini , Elle
Geisse , Michelle
Geisse , Nicholas
Gibbons , Laura
Hamilton , Aimee
Hastings , Pamela
Haun , Cause
Hawthorne , Carrie
Howe , Jared
Hyerle , Lynne
Jatul , Cynthia
Kittredge , Kit
Kreher , Leslie
Kucewicz , Leo
Lee , Junie
Lennon , Peter
Lewis , Stephanie
Linton , Charlotte
Marrs , AdaMarie
Marti , Miranda
McKee , Patrick
Minton , Mary
Nelson , Elizabeth
Ng , Pamela
O'Ferrall , Andrea
Oda , John
Paltin , Sharon
Parsley , Adina
Poirier , Jeanne
Purdy , Mary

Ripp , Jeanne
Ritter , Phil
Rumiantseva , Elena
Sarmiento , Nina
Schleicher , John
Scott , Susanne
Shaheen , Laura
Shimeall , Nancy
Silver , Jill
Simmons , Emily
Smith , Julia
sofian , rachael
Stellar , Scott
Stroud , Lucinda
Turner , Emily
ullman , carl
Valentine , Jennifer
Van Voast , Jordan
Watson , Jeffrey
Weber , Ahnna
weinstein , elyette
Welch , E
Went , Jonathan
Wiley , Jesse
Yih , Frances
Zizza , Daniel

VI. Consultations

Environmental justice council

The following letter was received from the Environmental Justice Council on July 29, 2022:

Dear Mr. Grice,

We are writing you from the state Environmental Justice Council (EJC) to assert our legislated role under the HEAL Act to advise state agencies on incorporating environmental justice into agency activities to reduce health disparities by:

• providing recommendations on implementing environmental justice requirements such as environmental justice assessments, community engagement plans, and strategic plans;

• developing guidance on identifying overburdened communities and the use of the environmental health disparities map;

• tracking progress toward promoting health equity and ensuring environmental justice throughout Washington;

• providing recommendation on the development and implementation of climate programs, including programs funded from carbon revenues;

• serving as a forum for environmental justice concerns and priorities; and

• providing recommendations to the Governor and Legislature on actions that advance environmental justice.

It is also critical to note that the Legislature's stated intent was to create a well-designed and equitable greenhouse gas reduction program through the Climate Commitment Act

(CCA). The legislation requires that the Department of Ecology (Ecology) "must," across nearly all major aspects of the program design, ensure program implementation does not exacerbate existing health disparities, including in such areas as: allowance allocation,1 offsets,2 linkage,3 and funding.4 By doing this, the CCA requires Ecology to consider, evaluate or avoid impacts to overburdened communities in all aspects of the program design, review, and implementation. The EJC has a critical role in achieving this end and neither the role of the EJC, nor how impacts to overburdened communities will be analyzed and addressed, are sufficiently detailed in the current proposed rules.

With Ecology's August 1, 2022 deadline for the EJC to provide comments and our delayed convening, we want to assert and affirm the CCA legislative requirement for us, as EJC, to provide recommendations on the "development and implementation" of all programs related to CCA in areas such as allowance budgets and allocations, linkage agreements, offsets, designation and treatment of Emissions-Intensive, Trade-Exposed (EITE) Industries, and distribution of allowance revenue. As such, we request the following: 1 RCW70A.65.110(2) and 70A.65.110(8) 2 RCW 70A.65.170(2)(a) and RCW 70A.65.010(31) 3 RCW 70A.65.210(3)(b), RCW 70A.65.210(3)(c), and RCW 70A.65.060(3) 4 RCW 70A.65.230, RCW 70A.65.260, RCW 70A.65.280

1. Ecology must actively involve the EJC as it reviews comments and finalizes the rules with a focus on the required elements for the benefit of overburdened communities. Further, we request staff from the Governor's Office and the Department of Ecology meet with our EJC members as soon as possible to develop a work plan and schedule that would integrate both the EJC CCA Committee and the full Council into the rule finalization process that must be completed by October 1st (as required by RCW 70A.65.070, RCW 70A.65.120, and RCW 70A.65.130).

2. For chapter 176-446 WAC rulemaking, where Ecology has discretionary decision-making, add specific language to the proposed rules stating Ecology will provide the Council with relevant data, analyses and (when appropriate), initial recommendations at least 60 business days in advance of the time in which Ecology needs to finalize a decision regarding implementation of a CCA-related program. 5 It is only with this time and resources provided to the EJC can we realistically fulfill our duties.

3. Give priority consideration to Tribes including improving a Consultation Framework. A robust Consultation framework should apply to these decisions with respect to each sovereign's government-to-government process.

4. Give priority consideration and highest weight to rules comments provided by members of overburdened communities that elevate lived experience.

5. Prioritize comments that provide solutions to environmental justice or equity concerns within the rules.

The two-week extension on the public comment period and the additional two weeks that the Council was given to provide comments gave the EJC the opportunity to provide this letter with preliminary comments on the rulemaking. We look forward to discussing how

we can best meet our respective requirements under HEAL and the CCA as we proceed to conduct critical environmental justice assessments to ensure CCA does not exacerbate, but rather reduces and works to eliminate, existing environmental and health disparities.

Sincerely,

Environmental Justice Council

CC: Governor Jay Inslee, Director of Ecology Laura Watson, Jamila Thomas, Nick Streuli, Becky Kelley, Anna Lising, Debbie Driver, Ruth Musgrave, Millie Piazza, Heather Bartlett, Kathy Taylor, Luke Martland, Robert Dengel, Claire Boyte-White, Caroline Mellor, Theo Cielos, Rowena Pineda, Sierra Rotakhina

5 These areas include but are not limited to: WAC 173-446-050 (Covered & Opt-In Entity Registration), WAC 173-446-150 (Accounts for Registered Entities), WAC 173-446-200 (Total Program Baseline), WAC 173-446-210 (Total Program Allowance Budgets), WAC 173-446-220 (Distribution of Allowances to Emissions-Intensive & Trade-Exposed Entities), WAC 173-446-250 (Removing & Retiring Allowances), WAC 173-446-260 (Allowance Distribution Dates), WAC 173-446-335 (Auction Floor Price and Ceiling Price), ensuring utilities proper use of allowance revenue (WAC 173-446-230, 240).

Ecology Response:

Ecology would like to acknowledge and thank the Council for their July 26, 2022 letter about the Council's role and responsibilities as defined in the Climate Commitment Act (CCA) and HEAL Act, as well as your July 29, 2022 written comments to our current CCA rulemaking.

The Council's role in incorporating environmental justice into state agency activities is one Ecology is committed to fully support through implementation. Indeed, the success of the climate policies Ecology is charged with implementing is directly tied to you and the communities you serve. As you note in your letters, the tight timelines for the initial adoption of rules under the CCA has made it difficult to accomplish the full and meaningful engagement supported by the CCA. Ecology is grateful that the Council rapidly organized to invest time and focus as a Council and as a CCA committee to share input and comments with us. Ecology is committed to working with the Council moving forward to implement a process that will allow for meaningful engagement across a range of funding, implementation, evaluation, and future rulemaking decisions.

Comment	Response
The Legislature's stated intent was to create a well-designed and equitable greenhouse gas reduction program through the Climate Commitment Act (CCA). The legislation	Ecology included language in its adopted rule in WAC 173-446-010 (Purpose) indicating that Ecology will engage with the Environmental Justice Council and

Comment	Response
requires that the Department of Ecology (Ecology) "must," across nearly all major aspects of the program design, ensure program implementation does not exacerbate existing health disparities, including in such areas as: allowance allocation, offsets, linkage, and funding.	"acknowledges and recognizes there are communities that have historically borne the disproportionate impacts of environmental burdens and that now bear the disproportionate negative impacts of climate change, and the legislature specifically empowered the environmental justice council to provide recommendations to Ecology on the cap and invest program." The Council and Ecology have specific roles related to the cap and invest program that are authorized by the CCA. The current CCA rulemaking is limited to establishing and implementing provisions for the emissions trading program. As required by RCW 70A.65.100(2)(a), Ecology will be providing notice to the Council at least 60 days before each auction and a summary report of the auction within 60 days following each auction. Beginning in 2024, Ecology will communicate auction results on an annual basis. Under RCW 70A.65.170(3)(d), the Council has a statutory role regarding use of offset credits by a covered or opt-in entity. If we, in consultation with the Council, determine that an entity has or is likely to contribute to the cumulative air pollution burden of the community, or violates its permit, the percentage of compliance obligation that can be met using offsets may be reduced. Regarding anticipated expenditure of funds that become available through the cap and invest program, the state Office of Financial Management is developing a process to coordinate funding proposals to inform the

Comment	Response
	development of the Governor's budget. The state Legislature will make appropriation decisions for CCA funds as part of the 2023-2025 biennial budget adoption. As required by the CCA, Ecology, along with other state agencies receiving CCA funds, will report on the use of these funds in annual reports to the appropriate committees of the legislature. Staff from OFM and the Governor's Office have begun to engage directly with the Council on funding prioritization and decisions. The Council and the state have other responsibilities under the CCA that will be refined as segments of the cap and invest program come online.
The CCA requires Ecology to consider, evaluate or avoid impacts to overburdened communities in all aspects of the program design, review, and implementation.	The CCA contains an important provision to improve air quality in overburdened communities highly impacted by air pollution. Ecology very much appreciates the Council's recent and ongoing input into criteria that may be used to identify these communities and will continue to seek your recommendations as this work progresses over the coming months.
Neither the role of the EJC, nor how impacts to overburdened communities will be analyzed and addressed, are sufficiently detailed in the current proposed rules.	The CCA contains an important provision to improve air quality in overburdened communities highly impacted by air pollution. Ecology very much appreciates the Council's recent and ongoing input into criteria that may be used to identify these communities and will continue to seek your recommendations as this work progresses over the coming months. Ecology met with representatives of the Environmental Justice Council's Climate Commitment Act subcommittee on August 19th. At that meeting, Ecology and members

Comment	Response
	of the Council discussed the option of jointly developing a Memorandum of Understanding with the Council to govern process expectations moving forward, including expectations around notice to the Council before Ecology makes implementation decisions.
Ecology must actively involve the EJC as it reviews comments and finalizes the rules with a focus on the required elements for the benefit of overburdened communities. Further, we request staff from the Governor's Office and the Department of Ecology meet with our EJC members as soon as possible to develop a work plan and schedule that would integrate both the EJC CCA Committee and the full Council into the rule finalization process that must be completed by October 1st (as required by RCW 70A.65.070, RCW 70A.65.120, and RCW 70A.65.130).	Ecology met with representatives of the Environmental Justice Council's Climate Commitment Act subcommittee on August 19th. At that meeting, Ecology and members of the Council discussed the option of jointly developing a Memorandum of Understanding with the Council to govern process expectations moving forward, including expectations around notice to the Council before Ecology makes implementation decisions.
Where Ecology has discretionary decision-making, add specific language to the proposed rules stating Ecology will provide the Council with relevant data, analyses and (when appropriate), initial recommendations at least 60 business days in advance of the time in which Ecology needs to finalize a decision regarding implementation of a CCA-related program. These areas include but are not limited to: WAC 173-446-050 (Covered & Opt-In Entity Registration), WAC 173-446-150 (Accounts for Registered Entities), WAC 173-446-200 (Total Program Baseline), WAC 173-446-210 (Total Program Allowance Budgets), WAC 173-446-220 (Distribution of Allowances to Emissions-Intensive & Trade-Exposed Entities), WAC 173-446-250 (Removing & Retiring Allowances), WAC 173-446-260 (Allowance Distribution Dates), WAC	Ecology added language to WAC 173-446-010 stating that Ecology will engage with the Environmental Justice Council and "acknowledges and recognizes there are communities that have historically borne the disproportionate impacts of environmental burdens and that now bear the disproportionate negative impacts of climate change, and the legislature specifically empowered the environmental justice council to provide recommendations to Ecology on the cap and invest program." Ecology did not include revisions to the adopted rule that would add a required 60 business day advance notification to the Council before Ecology finalizes decisions associated with implementation of CCA-related programs.

Comment	Response
173-446-335 (Auction Floor Price and Ceiling Price), ensuring utilities proper use of allowance revenue (WAC 173-446-230, 240).	
Give priority consideration to Tribes including improving a Consultation Framework. A robust Consultation framework should apply to these decisions with respect to each sovereign's government-to-government process.	Ecology is committed to partnership and meaningful engagement with Tribal governments. Ecology welcomes government-to-government consultation at any time and are currently developing a Tribal consultation framework for the agency, as required under RCW 70A.02.100, in coordination with the interagency Tribal consultation framework workgroup. Ecology will also be actively engaged in the new consultation process for CCA-funded projects and programs, created by HB 1753 in the 2022 session.
Give priority consideration and highest weight to rules comments provided by members of overburdened communities that elevate lived experience. Prioritize comments that provide solutions to environmental justice or equity concerns within the rules.	Ecology included language in its adopted rule in WAC 173-446-010 (Purpose) indicating that Ecology will engage with the Environmental Justice Council and "acknowledges and recognizes there are communities that have historically borne the disproportionate impacts of environmental burdens and that now bear the disproportionate negative impacts of climate change, and the legislature specifically empowered the environmental justice council to provide recommendations to Ecology on the cap and invest program." Principles of environmental justice are incorporated throughout our agency-wide 2021-23 and draft 2023-25 strategic plans. Shortly after the landmark HEAL Act was passed, Ecology established an Office of Equity and Environmental Justice to ensure that we coordinate effectively with the Council and that we fully implement the requirements of HEAL.

Comment	Response
	Thus far, Ecology has adopted a draft community engagement plan to meet obligations under RCW 70A.02.050. Ecology looks forward to recommendation from the Council to further strengthen and finalize the plan for implementation later this year. Ecology also anticipates the upcoming collaboration to develop environmental justice assessments for significant agency actions initiated after July 1, 2023, as required by RCW 70A.02.060, including recommendations regarding which actions require an assessment. In addition, as directed in RCW 70A.65.030 of the CCA, Ecology will be reporting annually to the Council on our progress toward meeting environmental justice and environmental health goals.