



Interim Guidance on Reporting and Documenting Emissions from Exempt Fuels under the Cap-and-Invest Program:

Watercraft, Agricultural, Aviation, and Exported Fuels

Issued by the Climate Commitment Act Implementation
Group, Climate Pollution Reduction Program
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Introduction

In 2021, Washington State adopted the Climate Commitment Act (CCA) which, among other things, created an economy-wide Cap-and-Invest Program (Program). The Program establishes a cap on approximately 75% of the State's greenhouse gas (GHG) emissions, and gradually reduces that cap over time to help meet the State's GHG reduction requirements set forth in RCW 70A.45.020. Facilities and entities that emit 25,000 metric tons or more of GHG each year are "covered entities" under the Program. This includes entities that sell fossil fuels that, if combusted within Washington, would emit 25,000 metric tons or more. These covered entities must report their emissions to Ecology, obtain compliance instruments (allowances or offset credits) equivalent to their emissions, and remit those instruments to Ecology to meet their compliance obligations. Ecology will conduct four allowance auctions each year, at which allowances can be purchased. The proceeds of the allowance auctions will be invested in initiatives to decarbonize transportation and other sectors of the economy, promote clean energy, implement climate resilience strategies, and advance equity and environmental justice.

In preparation for the beginning of the Program on January 1, 2023, Ecology engaged in multiple rulemakings during 2021 and 2022. On February 9, 2022, after an extensive stakeholder engagement process, Ecology updated Chapter 173-441 WAC, "Reporting of Emissions of Greenhouse Gases." The updated reporting rule went into effect on March 12, 2022. Although many covered entities had been reporting their emissions to Ecology for years (under the prior version of the rule), the updated rule made changes necessary to implement the CCA, including specific provisions concerning the reporting of emissions by fuel suppliers. Ecology also adopted Chapter 173-446 WAC, the "Climate Commitment Act Program" on September 29, 2022, and this rule went into effect on October 30, 2022. Chapter 173-446 WAC contains extensive provisions concerning how the Program will function. The two rules work together to establish requirements for covered entities on how to report and verify their emissions, and to define what emissions are covered under the Program or may be exempt.

This interim guidance is being issued to assist covered entities that are fuel suppliers to better understand how to report and document emissions that are exempt under the Program. These exempt emissions include emissions from watercraft or maritime fuels combusted outside of Washington, emissions from fuels used in agricultural operations, aviation fuels, and fuels that are exported with a documented final point of delivery outside of Washington. This interim guidance is largely based on the provisions of the CCA (Chapter 70A.65 RCW) as well as Chapters 173-441 WAC and 173-446 WAC, and it reflects Ecology's interpretation of these statutory and rule provisions as of the date of issuance. As Program implementation continues, additional facts and/or changed circumstances may warrant revisions to this interim guidance.

Ecology is committed to providing technical assistance and support to entities to help them understand and meet their reporting and compliance obligations under the CCA. Ecology is glad to work with covered entities to ensure that they can accurately report their emissions and successfully participate in the Program. Contact information for the Climate Commitment Act Implementation Group, which is responsible for implementing the Program, is provided above and at the end of this document.

During the Summer of 2023, Ecology hosted a work group with the goal of developing collaborative solutions to the problem of fuel suppliers and distributors imposing surcharges on fuels that are exempt under the cap-and-invest program, especially fuels used for watercraft, by farmers for agricultural operations, and to transport agricultural products on public highways through 2027. This Interim Guidance document is updated to reflect feedback received by work group members to include a map showing Washington jurisdictional waters.

Covered Entities that are Fuel Suppliers: Reporting Obligations and Third-Party Verification

A “supplier of fossil fuel other than natural gas” is a covered entity under the Program if “from that fuel 25,000 metric tons or more of carbon dioxide equivalent emissions would result from the full combustion or oxidation” within Washington State. RCW 70A.65.080(1)(d); WAC 173-446-030(1)(d).

Fuel suppliers that are covered entities under the Program are required to report their emissions completely and accurately to Ecology, using the Fuel Supplier Reporting Tool. This includes ensuring that all emissions are accurately reported, and that out of those total emissions, covered emissions and non-covered (exempt) emissions are clearly differentiated and accounted for. Covered entities are also required to maintain a written monitoring plan that sets forth the processes and methods used to collect data, perform calculations, and to track exempted fuels. WAC 173-441-050(6)(e). Entities that are new to the reporting program must have a monitoring plan in place prior to reporting their 2022 emissions by March 31, 2023.

Beginning in 2024, covered entities must have their emissions reports verified and certified by independent third-party verifiers for data reported for emission year 2023. RCW 70A.15.2200(5)(g)(ii); WAC 173-441-085. As a result, a covered entity will need to set up processes and provide the same, or substantially similar, documentation to its third-party verifier as the documentation detailed below. Ecology will review the contracts and verification plans agreed to by covered entities and third-party verifiers. These verification plans must include the methods that will be used to verify reports and a sampling plan that outlines the data checks that will be used to ensure the reliability of the report. The plan must also include methods for verifying exempted fuels. The third-party verification process occurs after the covered entity has filed its emissions report with Ecology, and records must be retained by the covered entity for a period of 10 years. WAC 173-441-050(6).

Reporting and Documenting Emissions from Watercraft Fuels

Emissions from “watercraft fuels supplied in Washington that are combusted outside of Washington” are exempt from the Cap-and-Invest Program. RCW 70A.65.080(7)(b). WAC 173-446-040(2)(b)(ii) clarifies that this exemption extends to watercraft fuels that are supplied in Washington but are “not combusted inside Washington or in waters under the jurisdiction of Washington.” Pursuant to RCW 43.143.005(4) “Washington has primary jurisdiction over the management of coastal and ocean natural resources within three miles of its coastline,” and Ecology is therefore interpreting the jurisdictional limit of Washington’s waters as 3 nautical miles from the shore. This means that:

- Emissions from watercraft fuels supplied in Washington and combusted within 3 nautical miles of the shore are covered emissions; but emissions from watercraft fuels supplied in Washington and combusted outside that distance are exempt. Based on feedback received during the Summer 2023 exempt fuels work group, Ecology updated this guidance document to include a map, located in Attachment 1, showing Washington jurisdictional waters that account for 3 nautical miles from the shoreline.
- A fuel supplier has no compliance obligation under the Cap-and-Invest Program for the emissions from watercraft fuels combusted outside the 3 nautical mile limit.
- Covered entities that are supplying watercraft fuels will therefore have to, when submitting emissions reports to Ecology, ensure that the emissions from both covered watercraft fuels and exempt watercraft fuels are reported accurately, covered and exempt fuels are differentiated, and that there is documentation supporting this data.

Ecology has determined that two types of fuel, residual fuel oil No. 5 (navy special) and residual fuel oil No. 6 (bunker C) will be assumed to be combusted outside of Washington’s waters. WAC 173-446-040(2)(b)(ii)(A). Therefore, as to these fuels, all emissions are assumed to be exempt, no additional documentation is required, and the covered entity will not have a compliance obligation as to those fuels. However, it is important to remember that fuel suppliers are still required to report all emissions from those fuels utilizing Ecology’s Fuel Supplier Reporting Tool.

As to all other types of marine fuels, for the fuel to be exempt, the covered entity will have to demonstrate to Ecology’s satisfaction that the fuel was combusted outside the jurisdictional waters of the state. WAC 173-446-040(2)(b)(ii)(B). A fuel supplier / covered entity can demonstrate fuels were combusted outside the waters of Washington by documenting the following:

1. **Customer accounts and product codes:** If a covered entity has, or sets up, a system of separate customer accounts / IDs and product codes, those IDs and codes can be used to differentiate between exempt and covered fuel.
2. **Bills of lading (BOL) or other delivery documentation:** BOL that demonstrate a fuel was delivered to a specific location or customer that is indicative of maritime activities outside the jurisdictional waters of the state, for example delivery to provide fuel to

deep-sea fishing boats that are scheduled to leave port to sail to Alaska or another location outside of Washington's waters.

- This documentation can supplement the unique customer account IDs to help differentiate between fuels combusted inside and outside Washington's jurisdictional waters.
3. **Tax records:** The sale of "diesel fuel for use in the operation of watercraft in commercial deep sea fishing operations or commercial passenger fishing boat operations ... outside the territorial waters of this state" is exempt from sales tax. RCW 82.08.0298.
- **Department of Revenue (DoR) form 27 0032 is used for this purpose.** Ecology will accept this form, or another appropriate DoR form that provides the same information, to provide documentation of sales of exempt maritime fuels.
 - In addition to any DoR forms provided to document exemptions, Ecology will also need documentation as to the specific volumes of exempt fuel that is sold or delivered.
 - It may be helpful if fuel distributors share tax forms / paperwork with the fuel supplier / covered entity. This is a matter between the fuel supplier and the fuel distributor. However, it is important to remember that the emissions reporting and compliance obligations rest with the fuel supplier as a covered entity and it is therefore the responsibility of the covered entity to assemble and retain all necessary documentation.

Ecology is open to discussing with covered entities other potential sources of information and documentation that might be used to track watercraft fuels or to demonstrate eligibility for this exemption.

To track and retain this data and documentation, all covered entities, including fuel suppliers, must establish a data management system (which must be described in the covered entity's GHG monitoring plan pursuant to WAC 173-441-050(6)(e)) that tracks fuel deliveries to customers. In addition, this information will be part of the third-party verification review process.

Reporting and Documenting Emissions from Vehicle Fuel or Special Fuel Used for Agricultural Purposes

Emissions from “[m]otor vehicle fuel or special fuel that is used exclusively for agricultural purposes by a farm fuel user” are exempt from the Cap-and-Invest Program. RCW 70A.65.080(7)(e)(i). How a covered entity may establish this exemption is set forth in WAC 173-446 and WAC 173-441:

1. WAC 173-446-040(2)(b)(iii) states that “[m]otor vehicle fuel or special fuel used exclusively for agricultural purposes by a farm fuel user” are exempt “as described in WAC 173-441-122(5)(d)(xi)(C).”
2. WAC 173-441-122(5)(d)(xi)(C) states that to establish this exemption, “[t]he supplier must demonstrate to ecology's satisfaction” that the buyer of the fuel provided the seller with an exemption certificate as described in RCW 82.08.865.
 - RCW 82.08.865(1) provides a sales tax exemption for “diesel fuel, biodiesel fuel ... to a farm fuel user for agricultural purposes.” The exemption “is available only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by” DoR.
 - DoR form 27 0036 is utilized as the “exemption certificate”.
3. **As explained in more detail below, DoR form 27 0036, or another appropriate DoR form, will be accepted by Ecology as documentation that a fuel was used for agricultural purposes.**

A fuel supplier / covered entity can demonstrate fuels were “used exclusively for agricultural purposes” by documenting the following:

1. **Customer accounts and product codes:** If a covered entity has, or sets up, a system of separate customer accounts / IDs and product codes, those IDs and codes can be used to differentiate between exempt and covered fuel.
2. **Bills of lading (BOL) or other delivery documentation:** BOL that demonstrate a fuel was delivered to a specific location where “agricultural purposes” are engaged in, and to a specific customer who meets the definition of a “farm fuel user” in RCW 82.08.865.
3. **Tax records:** Ecology will accept DoR form 27 0036, or another appropriate DoR form that provides the same information, as documentation that a fuel was used for agricultural purposes. As noted above, there must also be documentation concerning fuel volumes.
 - Just as with tax records relating to watercraft fuels, it may be helpful if fuel distributors share tax forms / paperwork with the fuel supplier / covered entity. However, this is a matter between the fuel supplier and the fuel distributor and the emissions reporting and compliance obligations rest with the fuel supplier / covered entity.

To track and retain this data and documentation, covered entities must establish a data management system that tracks fuel deliveries to customers. Just as with watercraft fuels, Ecology is open to discussing with covered entities other potential sources of information and documentation that might be of use in demonstrating eligibility for this exemption.

In addition, pursuant to the CCA, Ecology is required to “determine a method” for exempting fuels used to transport “agricultural products on public highways” for five years “in order to provide the agricultural sector with a feasible transition period.” RCW 70A.65.080(7)(e)(ii). The reporting rule states that “[f]uel used for the purpose of transporting agricultural products on public highways may be included [in the exemption] if it is flagged separately and meets the requirements in RCW [82.08.865](#).” WAC 173-441-122(5)(d)(xi)(C); WAC 173-446-040(2)(b)(iii)-(iv). Ecology is developing a form that fuel suppliers can use to report and certify that fuel was used to transport agricultural products on public highways. Ecology is also committed to working with fuel suppliers, distributors, and stakeholders from the agriculture industry to understand how covered entities can best meet their obligation to track and report fuels that are exempt under this provision.

Reporting and Documenting Emissions from Aviation Fuels

Emissions from “the combustion of aviation fuels” are exempt from the Program. RCW 70A.65.080(7)(a). WAC 173-446-040(2)(b)(i) states that kerosene-type jet fuel and aviation gasoline are exempt if it is “demonstrated to [E]cology’s satisfaction” that they were “used for aviation purposes.”

A fuel supplier / covered entity can demonstrate that fuels were “used for aviation purposes” by documenting the following:

1. **Customer accounts and product codes:** If a covered entity has, or sets up, a system of separate customer accounts / IDs and product codes, those IDs and codes can be used to differentiate between exempt and covered fuel.
2. **Bills of lading (BOL) or other delivery documentation:** BOL that demonstrate a fuel was delivered to a specific location or specific customer that is indicative of aviation.
3. **Tax records:** Aircraft fuels that are exempt from the excise tax are listed in RCW 82.42.030.
 - **DoR form 27 0032 is used for this purpose.** Ecology will accept this form, or another appropriate DoR form that provides the same information, as documentation that a fuel is exempt under the Cap-and-Invest Program. However, it is important to remember that Ecology will also need documentation as to the specific volumes of aviation fuel that were sold or delivered.
 - As noted above, although it may be helpful if fuel distributors share tax forms / paperwork with the fuel supplier / covered entity, this is a matter between the fuel

supplier and the fuel distributor and the emissions reporting and compliance obligations rest with the fuel supplier / covered entity.

Ecology is open to discussing with covered entities other potential sources of information and documentation that might be used to demonstrate eligibility for this exemption. To track and retain this data and documentation, covered entities must establish a data management system that tracks fuel deliveries to customers.

Reporting and Documenting Emissions from Exported Fuels

Emissions from fossil fuels, other than natural gas, that are “produced or imported with a documented final point of delivery outside of Washington and combusted outside of Washington” are exempt from the Cap-and-Invest Program. RCW 70A.65.080(1)(d); WAC 173-446-040(3)(c)(ii)(C).

A fuel supplier / covered entity can demonstrate fuels were exported or delivered to a final point of delivery outside of Washington by documenting the following:

1. **Customer accounts and product codes:** If a covered entity has, or sets up, a system of separate customer accounts / IDs and product codes, those IDs and codes can be used to identify fuel that is exported out of the state.
2. **Bills of lading (BOL) or other delivery documentation:** BOL that demonstrate a fuel was exported or delivered to a final point of delivery outside of Washington.
3. **Tax records:** Per RCW 82.23A.030(6), “petroleum products that are exported for use or sale outside this state as fuel” are exempt from the petroleum products tax. Ecology will accept the appropriate DoR form(s) used pursuant to RCW 82.23A.030(6) as documentation that a fuel had a final point of delivery outside of Washington. As noted above, Ecology will also need documentation as to the specific volumes of fuel.

A fuel supplier / covered entity need not provide documentation concerning where the fuel was, or will be, combusted. For purposes of this interim guidance, Ecology will assume that fuels exported to a final point of delivery outside of Washington are combusted out-of-state.

Just as with other exempt fuels, to track and retain this data and documentation, covered entities must establish a data management system. Ecology is open to discussing with covered entities other potential sources of information and documentation that might be of use in demonstrating eligibility for this exemption.

2022 Emissions Report Due March 31, 2023

Fuel suppliers that are covered entities are required to report their emissions for 2022 by March 31, 2023. WAC 173-441-050(2)(a). However, there is no Cap-and-Invest compliance obligation attached to 2022 emissions and the third-party verification requirement does not go into effect until 2024 (for the reporting of 2023 emissions). In addition, WAC 173-441-090(3)(a) explicitly states that Ecology will not impose any monetary penalties for errors or deficiencies in an emissions report submitted in 2023 and will only consider imposing a monetary penalty for a failure to file a complete report by the reporting deadline.

The 2022 emissions report, which is due on March 31, 2023, is intended to help covered entities understand the reporting process and address any issues that may arise. Ecology is committed to working with the covered entities to address any deficiencies or problems in their emissions reports with the goal that entities will therefore be familiar with the process in advance of the March 31, 2024, reporting deadline for 2023 emissions. Ecology has developed a reporting tool for fuel suppliers and on September 7, 2022, provided training to fuel suppliers concerning how to report emissions. Those training materials (including the power point presentation and video) can be provided to any entity that wishes to review them.

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Attachment 1: Washington Jurisdictional Waters Map

This map depicts a 3 nautical mile buffer from Washington's shoreline. These waters highlighted in the map here, in addition to the inland lakes and rivers, as well as waterbodies at the state border, comprise the waters under the jurisdiction of Washington.

