



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

Transporting Agricultural Products on Public Highways

Issued by the Climate Commitment Act Implementation
Group, Air Quality 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, or are responsible for the emission of, 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 obligation. 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 concerning how covered entities must report and verify their emissions, and to define what emissions are covered under the Program or may be exempt.

This interim guidance is the second document 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. The first interim guidance document - Interim Guidance on Reporting and Documenting Emissions from Exempt Fuels under the Cap-and-Invest Program: Watercraft, Agricultural, Aviation, and Exported Fuels - was issued on January 25, 2023 [Publication No. 23-02-008]. That document addressed 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 document provides interim guidance on how Ecology will interpret and apply the exemption for emissions from fuels used to transport “agricultural products on public highways” for a period of five years. RCW 70A.65.080(7)(e)(ii). This document, just like 23-02-008, is largely based on the provisions of the CCA (Chapter 70A.65 RCW) as well as Chapters

173-441 WAC and 173-446 WAC. 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 their reporting and compliance obligations under the CCA. Ecology has adopted a phased enforcement approach that initially emphasizes education and outreach. As described in greater detail in the last section of this guidance, during 2023 Ecology will not seek monetary penalties against a covered entity for reporting mistakes or errors and will only consider seeking penalties for an entity’s failure to file a required emissions report. Ecology has made clear in stakeholder meetings that it is not seeking to penalize good-faith reporting mistakes. Instead, Ecology’s hope is that the emissions reports that are due March 31, 2023 (covering 2022 emissions) will serve, in essence, as practice and that covered entities will work with Ecology to correct any mistakes or errors, enabling them to successfully meet all reporting requirements in 2024. Contact information for the Climate Commitment Act Implementation Group, which is responsible for implementing the Program, is provided on the second and final pages of this document.

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 the Transportation of Agricultural Products on Public Highways

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). As noted above, guidance as to how a covered entity may establish this exemption is set forth in the first interim guidance document, issued on January 25, 2023.

Ecology is also required to “determine a method” for exempting the emissions from 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); see, WAC 173-441-122(5)(d)(xi)(C); WAC 173-446-040(2)(b)(iv).

Ecology is interpreting the five-year expanded exemption for the transportation of “agricultural products” (as defined in RCW 82.04.213(1) and WAC 458-20-210(3)) on public highways to include emissions from all types of trucks or vehicles used to transport those agricultural products. This includes a truck or vehicle owned or operated by a “farm fuel user” (which is defined as a farmer or “a person who provides horticultural services for farmers, such as soil preparation services, crop cultivation services, and crop harvesting services” RCW 82.08.865) and a truck or vehicle operated by a third party. In other words, the truck or vehicle being used to transport agricultural products on public highways does not need to be owned or operated by a farm fuel user.

Ecology is interpreting “public highways” to include public waterways. See, RCW 79.120.010. As a result, emissions from fuel used to transport agricultural products on a public waterway fall within this exemption. This includes emissions from fuel combusted by tugboats transporting barges containing grain or other agricultural products on the Columbia River.

The exemptions for emissions from fuel used for agricultural purposes and for fuel used to transport agricultural products on public highways apply to “motor vehicle fuel” and “special fuel”. RCW 70A.65.080(7)(e)(i)-(ii); WAC 173-441-122(5)(d)(xi)(C). “Motor vehicle fuel” is defined as “gasoline and any other inflammable gas or liquid, by whatsoever name the gasoline, gas, or liquid may be known or sold the chief use of which is as a fuel for the propulsion of motor vehicles or vessels,” and “special fuel” is defined as “diesel fuel, propane, natural gas, kerosene, biodiesel, and any other combustible liquid or gas by whatever name the liquid or gas may be known or sold for the generation of power to propel a motor vehicle on the highways.” RCW 82.38.020(22), (29). Emissions from these types of fuels are therefore exempt if used by i) a farm fuel user for agricultural purposes; or ii) for transporting agricultural products on public highways, including waterways.

Ecology will accept the following documentation to establish that fuels were used to transport agricultural products on public highways:

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 the transportation of agricultural products.
 - This documentation can supplement the unique customer account IDs to help differentiate between fuels used to transport agricultural products from other goods.
3. **Other records and forms:**
 - Stakeholders have indicated that it would be helpful for Ecology to develop a certificate that farm fuel users or third-party haulers may present to suppliers to demonstrate the fuel will be used for transportation of agricultural products. Ecology is in the process of developing that form and anticipates being able to issue it by Feb. 15, 2023. Ecology recognizes that this form or certification will not address every situation or necessarily be helpful to all stakeholders or covered entities. However, we believe it will assist some stakeholders and covered entities in documenting this exemption.

Ecology is open to discussing with covered entities and stakeholders other potential sources of information and documentation that might be used to demonstrate eligibility for this exemption. The categories described above are not intended to be exhaustive. Ecology recognizes that these methods may apply to some situations, types of transactions, and end users, but may not apply to all. As a result, Ecology is willing to work with covered entities and discuss how those entities can document potential exemptions under other situations, types of transactions, and involving a range of end users.

It may be helpful if fuel distributors share exemption documentation 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 covered entity and it is therefore the responsibility of the covered fuel supplier to assemble and retain all necessary documentation.

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 documents methods to track fuel sale transactions. In addition, this information will be part of the third-party verification review process.

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 for new reporting requirements, including those that apply to fuel suppliers under WAC 173-441-122, Ecology will not assess monetary penalties for errors or deficiencies in an emissions report submitted in 2023, and will only consider assessing a monetary penalty for 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 new reporting requirements, and to address any issues that may arise. As noted above, Ecology is committed to working with covered entities to address any deficiencies or problems in their emissions reports, with the goal that entities will 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 training slides and recording) can be provided to any entity that wishes to review them.

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