



Cap-and-Invest Program Compliance and Enforcement Guidelines

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Introduction

In May 2021, the Climate Commitment Act (CCA) was signed into law by Governor Inslee. The CCA mandates that Ecology implement an economy-wide Cap-and-Invest Program to reduce greenhouse gas (GHG) emissions and address climate change. As part of the Program, entities are required to report their emissions to Ecology and those emissions must be verified for accuracy. These entities will need to obtain compliance instruments (allowances and offset credits) equivalent to their covered emissions. Ecology will conduct allowance auctions four-times-each-year and entities that need allowances to meet their compliance obligations can purchase allowances at auction or obtain allowances on the secondary market. In addition, certain types of entities will be provided allowances at no cost. At the conclusion of each compliance period, entities must submit sufficient compliance instruments to Ecology to meet their compliance obligation. The proceeds from the allowance auctions will be invested in projects and initiatives to decarbonize the economy, promote clean energy, implement climate resilience strategies, and advance equity and environmental justice.

As an auction-based market program that will raise substantial sums of money – only the second such program in the United States – Washington’s Cap-and-Invest Program raises complex compliance and enforcement issues. Ecology’s Climate Commitment Act Implementation Group (CCA IG) is leading the design and implementation of this Program, including compliance and enforcement. Ecology produces an agency-wide *Compliance Assurance Manual (CAM)* that sets forth the principles and policies applicable to all of Ecology’s compliance and enforcement efforts. However, the CAM was most recently updated in July 2021, before the CCA IG had been established or the compliance and enforcement requirements of the Program had been fully developed. In addition, the Air Quality Program has developed *Program Specific Guidelines*, but these were drafted before the CCA was passed. As a result, neither the CAM nor Air Quality’s *Program Specific Guidelines* specifically address the Cap-and-Invest Program.

This document, *Cap-and-Invest Program Compliance and Enforcement Guidelines*, is intended to supplement the principles and procedures set forth in the CAM, and to explain with greater specificity how the CCA IG will ensure compliance with the relevant laws and rules concerning: 1) GHG emissions reporting and verification; and 2) the proper functioning of the allowance auctions and market.

The *Cap-and-Invest Program Compliance and Enforcement Guidelines (Guidelines)* will be a living document that will change over time. Because the Cap-and-Invest Program is new, the Guidelines cannot anticipate or provide guidance concerning every possible scenario or issue that may arise. As the Program develops, the Guidelines can be modified and expanded as appropriate. As noted above, the most recent versions of the CAM and of Air Quality’s enforcement guidelines were adopted before these Guidelines were developed; if there is a conflict the Cap-and-Invest Guidelines will govern. Finally, the CCA IG will, to the best of its ability, handle any situations that arise, and that are not specifically addressed in the Guidelines in a manner consistent with the CAM, Air Quality’s enforcement guidelines as appropriate, and with what is described concerning the scenarios and issues that are discussed below.

Chapter 1: The Importance Of Compliance And Ecology's Legal Authority

The success of Washington's Cap-and-Invest Program will depend on many factors, but one of the most important will be fostering a "compliance culture" that ensures that: 1) covered and opt-in entities accurately, completely, and timely report their emissions; and 2) market participants comply with the laws and rules governing market behavior.

Emissions reporting: Without accurate and timely emissions data, it will be difficult if not impossible to correctly determine entities' compliance obligations and allocate free allowances appropriately.² An entity's emissions will determine whether or not the entity is subject to the Program, the scope of the entity's compliance obligation, and the number of free allowances it may receive. As a result, accurate, complete, and timely emissions reporting is the foundation of a successful Cap-and-Invest Program.

Ecology's compliance and enforcement authority relating to emissions reporting is based on the Washington Clean Air Act. Under the Clean Air Act, Ecology has the authority to take enforcement action against any violator of the state's air quality laws and corresponding regulations. The authority includes pursuing criminal penalties under RCW 70A.15.3150 or civil penalties under RCW 70A.15.3160. Both can result in penalties of up to \$10,000 per day, per violation. Each day of regulatory or permit noncompliance may be considered a separate and distinct violation. Other enforcement tools authorized by the Clean Air Act include notices of violation, orders, and injunctions. Criminal sanctions can include fines, imprisonment, or both.

Market rules and behavior: In order to ensure a transparent and properly functioning market, Ecology must guard against bidder collusion and market manipulation. A failure to ensure that these market rules are followed may feed anti-competitive behavior and may undermine trust in, and therefore participation in, the market.

As to auction and market rules and functioning, the Climate Commitment Act (Chapter 70A.65 RCW) provides broad enforcement authority to Ecology. There are two different penalty amounts set forth in the CCA. First, Ecology "may issue a penalty of up to \$50,000 per day per violation" if a person violates the rule provisions concerning bidder collusion and market manipulation, provides false or misleading facts, or violates any of the rules concerning how the auctions are conducted. RCW 70A.65.100(8); RCW 70A.65.200(4).³ Second, a person who violates any of the other requirements of the CCA, or an order issued by Ecology pursuant to the CCA, "incurs a penalty of up to \$10,000 per day per violation for each day that the person does not comply." RCW 70A.65.200(5). This enforcement authority is distinct from the Clean Air Act, and, as a result, the procedural requirements of the Clean Air Act do not apply.

² Throughout the Guidelines, "entity" or "entities" is used interchangeably with "person" or "persons."

³ For violations of RCW 70A.65.100(8) (a) - (e), Ecology can both take administrative action and impose a fine.

Appeals: Enforcement actions, including orders, fines, and penalties, are appealable to the Pollution Control Hearings Board. RCW 70A.65.200(6). Some administrative actions, including those discussed in Chapter 3, may also be appealable to the Board.

Technical assistance, paperwork violations, and small businesses: Two other statutes are relevant to compliance and enforcement actions under the Cap-and-Invest Program. The first is the Regulatory Reform Act, Chapter 43.05 RCW, pursuant to which Ecology is required to provide technical assistance in some situations prior to issuing civil penalties. Technical assistance can include providing information on relevant laws, rules, and compliance steps, and information on how to avoid compliance issues. See, CAM, Chapter 4, p. 26-27.⁴ The CCA IG is committed to complying with the Regulatory Reform Act and providing technical assistance and information to covered entities to help ensure they understand the requirements of the Cap-and-Invest Program.

The second relevant statute is RCW 34.05.110, which applies to “small businesses,” defined as businesses with fewer than 250 employees or an annual gross revenue of less than seven million dollars. RCW 34.05.110(9)(a). Ecology may not issue a penalty to such a small business without first giving the small business at least 7 days to correct the violation. RCW 34.05.110(1). And, many reporting violations are defined as “paperwork” violations and Ecology is required to waive any fine or administrative sanction for a first-time paperwork violation. RCW 34.05.110(2); (9)(b).

However, there are limitations on the applicability of RCW 34.05.110 that may be relevant as Ecology considers potential fines under the Program.

1. As noted above, a “small business” is defined as an entity with fewer than 250 employees or annual gross revenue of less than \$7 million. Ecology has interpreted the 250-employee threshold as applying to the highest level of company organization.
 - For example, if a company that is a covered entity under Washington’s Cap-and-Invest Program has employees in multiple states (or countries) the total number of employees in all states (or countries) would be considered for purposes of determining if the company exceeds the 250-employee threshold, and not merely employees located in Washington State.
 - Ecology will also need to examine the gross revenue of relevant entities, but it may well be that many covered entities will not qualify as a small business under RCW 34.05.110.

⁴ In some cases, Ecology may only issue a penalty after first issuing a notice of correction. RCW 43.05.060. However, this requirement applies to penalties that arise from a “site inspection or visit,” so it would not seem to apply to reporting violations, most of which will not arise from a site visit.

2. If the violation is knowing and willful, the small business previously violated a similar requirement, or the violation concerns the administration of a revenue program, Ecology may not need to give the business 7 days to correct the violation or be required to waive a fine for a first-time violation. RCW 34.05.110(4)(b), (c), (e – f).
3. If an entity that qualifies as a small business commits the same or a substantially similar paperwork violation again, Ecology can issue a penalty without the 7-day period and can also issue a penalty for the first violation. RCW 34.05.110(5)(b).
4. A potential exception to the application of RCW 34.05.110 exists if the Director finds that certain violations or kinds of violations would pose a “significant threat” to health or the environment, or “cause[] serious harm to the public interest.” RCW 34.05.110 (4)(a).

In sum, in determining whether to pursue a potential fine or administrative sanction against an entity, the CCA IG will need to determine if the entity fits the definition of a small business or not. Next, if the entity is a small business, Ecology will need to determine if any of the exceptions to the restrictions on Ecology’s ability to impose penalties apply. Only after making these determinations, especially concerning a first-time fine or administrative penalty, should CCA IG proceed with the process of determining an appropriate penalty as described in the following chapter.

Chapter 2: Emissions Reporting And Verification

I. Calendar years 2022-2023: Outreach, Education, and Phased Implementation

Compliance starts with extensive education and outreach. Our objective will be to educate covered and opt-in entities and general market participants (GMPs), as well as to provide technical assistance on an on-going basis (RCW 43.05), thereby avoiding or minimizing potential violations or the need for enforcement. This will include repeated contacts, which started during 2022 and will continue throughout 2023, including webinars, trainings, and direct contacts with individual reporting entities.

In addition to this repeated outreach and education, we will gradually phase in enforcement. Ecology has discretion to “reduce the amount” of a penalty during the first compliance period. RCW 70A.65.200(7). In addition, WAC 173-441 states that Ecology “will not issue monetary penalties ... except for failure to comply with the requirement to submit a complete report by the reporting deadline” for emissions year 2022. WAC 173-441-090(3)(a). Applying such a phased approach will allow us to continue outreach and education as entities become familiar with their responsibilities under the Cap-and-Invest Program.

II. Calendar year 2024: Broad-Based Compliance and Enforcement Begins

Ecology will only begin broad-based enforcement for GHG reporting violations in calendar year 2024, regarding the reporting of emissions from the 2023 calendar year. Accurate, complete,

and timely GHG emissions reporting forms the foundation for the Cap-and-Invest Program and there are four main scenarios relevant to reporting or verifying GHG emissions:

- A. A failure to file a complete required report by an applicable deadline. This includes a failure to file a GHG emissions report with all required supporting documentation and forms, and a failure to file a third-party verification report.
- B. A failure to collect or retain required data and records.
- C. A failure to respond to a Request for Additional Information (RAI).
- D. A failure to correct incomplete or erroneous information contained in a report.

Each of these scenarios, and the steps concerning compliance and enforcement are detailed below.

A. Failure to file a GHG emissions report, with supporting documentation and forms, by the reporting deadline: Pursuant to RCW 70A.15.2200 and WAC 173-441-050 facilities, natural gas suppliers, and other fuel suppliers are required to report their GHG emissions by March 31 and electric power entities are required to submit a final report by June 1. The format for these reports, the specific information and data they must contain, and supporting information and forms are set forth in WAC 173-441-050, 44-060, and 44-070.⁵ In addition to this reporting requirement, reporters with total GHG emissions (including biogenic) greater than 25,000 metric tons of CO₂e must have their emissions verified by an independent third-party and file a verification report by August 10. WAC 173-44-085.

If an entity / person fails to file these required reports, or another required report or form, by an applicable deadline:

1. The GHG Reporting and Verification Unit will draft the Recommendation for Enforcement Action (REA) and submit to the CCA IG Manager within 10 business days of a person failing to file a report by a deadline.
2. The CCA IG Manager will deny or approve the REA (with any modifications) within 5 business days (for a total of 15 business days after the deadline).
 - The Director, Deputy Director, Air Quality Program Management, and Regional Office Management (as appropriate) should be informed but need not approve. If appropriate, the relevant local air agency should also be notified.

⁵ In addition, a reporter must have previously submitted a Certificate of Representation under certain circumstances. If a reporter failed to do so, that would become evident on March 31st.

3. The recipient of the enforcement action will be served with the Notice of Violation (NOV) and copies of any relevant documents within 5 business day (for a total of 20 business days after the reporting deadline).
 - If appropriate, any relevant third-party verifier will be notified.
4. Pursuant to RCW 70A.15.3010, Ecology must wait at least 30 calendar days after the NOV has been served to begin any enforcement action and must provide an opportunity for the person to meet with Ecology staff.
5. Once the 30 days period has expired, Ecology may file a Notice of Penalty (NOP).
 - Although the filing of an emissions report after the deadline may “stop the clock” and prevent additional fines from accruing, it will not necessarily cure the failure to have filed the report on time. As a result, proceeding with enforcement, including the imposition of fines, may be appropriate for the period of time that an emissions report was late, even if the report is subsequently filed.
 - Whether to impose a penalty may depend on various factors including how quickly the entity cured the violation, any reasons for the violation, and whether the entity had prior violations.
 - Pursuant to the Clean Air Act, fines could be up to \$10,000 per day per violation. Each calendar day constitutes a separate violation. WAC 173-441-090(1).
 - As to the calculation of any potential fine, see the worksheet.
 - Before seeking any fine, Ecology must determine if RCW 34.05.110, concerning small businesses and paperwork violations, may apply. See, Chapter 1.
 - The Director or Deputy Director must approve all penalties or fines. Air Quality Program Management and Regional Office Management (as appropriate) should be informed but need not approve.

B. Failure to collect or retain required data and records: Pursuant to WAC 173-441-050(6) facilities and entities are required to retain relevant records for at least ten years, including any revisions to reports. If an entity / person fails to comply with this requirement:

1. The GHG Reporting and Verification Unit will draft the Recommendation for Enforcement Action (REA) and submit to the CCA IG Manager within 10 business days of the discovery of the failure to retain required data or information.
2. The remaining steps (# 2 – 5) are the same as scenario A.

C. Failure to respond to a Request for Additional Information (RAI): If Ecology staff have questions for an entity / person after analyzing their GHG emission report, staff will send that

person a RAI. At the same time, staff will also notify the entity's third-party verifier, if applicable. Entities are given 15 business days to respond to a RAI pursuant to WAC 173-441-050(6). If, after 15 days, the person has completely failed to respond:

1. The GHG Reporting and Verification Unit will draft the Recommendation for Enforcement Action (REA) and submit to the CCA IG Manager within 10 business days of the expiration of the 15-day period.
2. The remaining steps (# 2 – 5) are the same as scenario A.

D. Failure to correct incomplete or erroneous information contained in a report: Pursuant to WAC 173-441-050(7) if Ecology determines that a report contains substantive errors, it issues an Error Report. Upon receiving an Error Report, a person must submit a revised report within 45 calendar days or provide information to demonstrate that the error was not substantive. If, after the 45-day period, a revised report has not been submitted that corrects the error, or the person has failed to establish to Ecology's satisfaction that the error was not substantive:

1. The GHG Reporting and Verification Unit will draft the Recommendation for Enforcement Action (REA) and submit to the CCA IG Manager within 15 business days.
2. The CCA IG Manager will approve the REA (with any modifications) within 5 business days (a total of 20 business days after the deadline).
 - The Director, Deputy Director, Air Quality Program Management, and Regional Office Management (as appropriate) should be informed but need not approve.
3. The remaining steps (# 3 – 5) are the same as scenario A.

III. Conclusion

The specific steps as to the four most common scenarios concerning GHG emissions reporting are summarized above. As discussed in the introduction, because the Cap-and-Invest Program is new, these Guidelines cannot anticipate or provide guidance concerning every possible scenario or issue that may arise. CCA IG will, to the best of its ability, handle any situations that are new, or are not directly addressed in this document, in a manner similar to what is described for the scenarios and issues that are described below.

Finally, it is important to remember that pursuant to WAC 173-441-086, Ecology can assign an emissions level for reasons such as an entity's / person's failure to submit a complete emissions report, failure to meet the third-party verification requirements, or if Ecology discovers a substantive error. There may be instances in which Ecology may need to assign an emissions level, especially if necessary to determine a person's compliance obligation. Although assigning an emissions level is not a compliance action, sanction, or penalty, it is a tool that will be important for ensuring the accuracy of the emissions data that underlies the Cap-and-Invest Program.

Chapter 3: Auctions And Market Rules And Conduct

I. Outreach, Education, and Phased Implementation

Just as with emissions reporting, compliance as to market rules and conduct starts with extensive education and outreach. The CCA IG's objective will be to educate all covered and opt-in entities and GMPs beginning in early 2023, and to also provide technical assistance, thereby hopefully minimizing the need for enforcement. In addition, if enforcement is necessary, Ecology has discretion to reduce the amount of any monetary penalty during the first compliance period, RCW 70A.65.200(7), and Ecology should make use of this discretion when appropriate.

II. Compliance and Enforcement

Ecology has different options to respond to violations, including:

- A. Take program administrative actions.
- B. Pursue compliance actions, including the imposition of fines.
- C. Impose penalties for an entity's failure to meet its compliance obligation.
- D. Refer a matter to the Attorney General's Office for a potential violation of RCW 19.86, concerning unfair business practices.

A. Administrative actions: Ecology has the authority to take administrative actions under certain situations. For example, Ecology can decline to authorize accounts when an entity has not provided complete and accurate information concerning its internal corporate structure, failed to disclose corporate associations, or designated at least two account representatives. See, WAC 173-446-100(1); RCW 70A.65.100(8). Ecology can revoke or deny an entity's registration (thereby barring the entity from participating in an auction or auctions) if the entity provides false or misleading information, withholds material information, coordinates its bidding strategy with another person, or discloses confidential information such as its bidding strategy. RCW 70A.65.100(8). Ecology can also refuse to finalize a transfer of compliance instruments under certain circumstances (WAC 173-446-410(2)) and remove allowances from an account if the number of allowances exceeds applicable holding limits. WAC 173-446-150(2)(g).

It is important to keep in mind that these administrative actions are not sanctions and not intended to be punishment for misconduct. Instead, these are administrative steps that Ecology must or may take if a person fails to comply with the requirements of the program, for example by providing inaccurate or incomplete information. In many situations, the status quo is maintained until the program requirements have been met. For example, an account cannot be authorized or created until all required information has been provided. Although, Ecology will work with a person to obtain the required information on an on-going basis, if the information is not provided an account cannot be authorized or created.

The process for approval of administrative actions is intended to be streamlined and less formal:

1. The Auctions and Market Unit will propose the appropriate administrative action to the CCA IG Manager within 2 business days.
 - The Group Manager will approve, deny, or approve with modifications as appropriate within 2 business days.
 - The Director or Deputy Director must approve administrative actions.
2. Before taking these administrative actions, Ecology need not follow the requirements of Chapter 43.05 RCW (technical assistance), since those provisions apply only to penalties.
 - However, the requirements in RCW 34.05.110 for violations by small businesses apply to administrative actions as well as penalties and may need to be followed. See, Chapter 1.
3. The recipient of the action will be immediately notified.
4. As appropriate, the covered entity / person will be provided with an opportunity to confer with Ecology and discuss any administrative action.
5. Ecology's goal will be to resolve any issues, and work with the entity / person to obtain the required information as quickly as reasonable and in a collaborative manner.⁶

Where appropriate, Ecology may wish to escalate administrative actions for repeated conduct. For example, for a violation that triggers exclusion from auction registration, Ecology could determine that for a first violation, the person would be excluded from the next auction, for a second violation, the person would be excluded from the next two auctions, and so on. The same steps as set forth above would be followed as to proposing, and gaining approval for, any such escalating administrative actions.

B. Compliance actions for violations of market rules: As discussed in Chapter 1, the CCA provides Ecology with broad enforcement authority and the ability to impose substantial fines. Ecology “may issue a penalty of up to \$50,000 per day per violation” if an entity violates the rule provisions concerning bidder collusion and market manipulation, provides false or misleading facts, or violates any of the rules concerning how the auctions are conducted. RCW 70A.65.100(8); RCW 70A.65.200(4). An entity that violates any of the other requirements of the

⁶ It may be appropriate to post information concerning at least some administrative actions on Ecology's website. However, because we hope that most issues will be resolved quickly, we also recognize that this may not always be appropriate.

CCA, or an order issued by Ecology pursuant to the CCA, may incur “a penalty of up to \$10,000 per day per violation for each day that the person does not comply.” RCW 70A.65.200(5).

Because this enforcement authority is separate and distinct from the Clean Air Act, the procedural requirements of the Clean Air Act do not apply. Despite this, in many cases Ecology will follow an approach similar to the one utilized for emissions reporting violations under the Clean Air Act. For example, Ecology will issue a Notice of Violation (NOV) for each violation, including those that may be relatively minor.⁷ If correction is possible, the notice will include a date by which the violator must correct the violation. The purpose of issuing a notice in each case is to demonstrate that Ecology is documenting every violation, to track data and trends, and to create the consistency and expectations that will be essential to fostering a culture of compliance.

When a potential violation of auction or market rules occurs that is relatively minor and does not warrant a penalty or fine:

1. The staff of the Auctions and Market Unit will draft a Recommendation for Enforcement Action (REA) and submit the REA to the CCA IG Manager within 10 business days.
2. The CCA IG Manager will approve, deny, or approve the REA with modifications within 5 business days (for a total of 15 business days after discovery of the possible violation).
 - The Director, Deputy Director, Air Quality Program Management, and Regional Office Management (as appropriate) should be informed but need not approve.
3. The recipient of the enforcement action will be served with the NOV and copies of any relevant documents within 5 business days.

As to more serious violations, Ecology can impose a penalty. In such circumstances, Ecology would issue a NOV and simultaneously a Notice of Penalty (NOP) (either as one combined document or in two separate documents that are served at the same time). A violation would seem to be major, and therefore justify Ecology imposing an immediate penalty, if the violation impacts the market as a whole, and/or was intentional. Potential examples of such misconduct may include knowingly violating purchase and holding limits, disclosing false or confidential information to influence the market, attempting to unduly influence the market in other ways, or engaging in misconduct for financial gain. A pattern of rule violations would also seem to justify Ecology imposing a penalty without providing an opportunity to correct.

⁷ Examples of such relatively minor violations may include a failure to provide required initial disclosures in a timely fashion, incorrect information provided for a trade/transfer, or a violation of auction rules in a situation where the violation has only a minimal impact on the auction.

When a potential violation of auction or market rules is identified that warrants a penalty:

1. The staff of the Auctions and Market Unit will draft a Recommendation for Enforcement Action (REA) that includes a recommended penalty amount and submit the REA to the CCA IG Manager within 10 business days.
2. The CCA IG Manager will approve, deny, or approve the REA with modifications within 5 business days (for a total of 15 business days after discovery of the possible violation).
 - The Director or Deputy Director must approve.
 - Air Quality Program Management and Regional Office Management (as appropriate) should be informed but need not approve.
3. If a penalty is approved, the staff of the Auctions and Market Unit will prepare the NOV and NOP (either as one combined document or in two separate documents that are served at the same time).
 - The NOV and/or NOP will set forth any corrective action and, if appropriate, a date or time period by which that corrective action should have been completed as well as the penalty that is levied against the violator.
 - As to the calculation of any potential penalty, see the worksheet.
4. The recipient of the enforcement action will be served with the Notice of Violation (NOV), Notice of Penalty (NOP), and copies of any relevant documents within 5 business days of approval by the Director or Deputy Director.

C. An entity's failure to meet its compliance obligation: Covered and opt-in entities participating in Washington's Cap-and-Invest Program must meet two compliance requirements. First, every year they must submit compliance instruments (allowances or offset credits) equivalent to 30% of their prior year's emissions. Second, by the end of each compliance period they must submit, or have submitted, compliance instruments equivalent to 100% of their total emissions during the period. See, RCW 70A.65.310.

If a covered or opt-in entity fails to meet its compliance obligation, a "penalty of four allowances for every one compliance instrument that is missing must be submitted ... within six months." RCW 70A.65.200(2); WAC 173-446-610(1). If a covered or opt-in entity fails to submit the required penalty allowances within six months, Ecology "must issue an order or issue a penalty of up to \$10,000 per day per violation, or both." The order may include a plan and schedule "for coming into compliance." RCW 70A.65.200(3); WAC 173-446-610(3). As noted above, Ecology has discretion to reduce the number of penalty allowances and/or the amount of any monetary penalty, during the first compliance period. RCW 70A.65.200(7); WAC 173-446-610(8). In addition, Ecology may reduce the monetary penalty in any compliance period. RCW 70A.65.200(3) (penalties of "up to" \$10,000 per day per violation or both).

The following procedure will be followed:

1. The Auctions and Market Unit will propose the appropriate action to the CCA IG Manager within 10 business days after a compliance deadline.
2. The Group Manager will approve, deny, or approve with modifications as appropriate within 5 business days.
 - The Director or Deputy Director must approve.
 - Air Quality Program Management and Regional Office Management (as appropriate) should be informed but need not approve.
3. The recipient of the action will be served with the notice and copies of any relevant documents within 5 business days.
4. As appropriate, the covered entity / person will be provided with an opportunity to confer with Ecology and discuss any action taken by Ecology.⁸

D. Referral to Attorney General's Office: Separate from, or in addition to, imposing administrative actions and/or penalties, Ecology can refer a matter to the Attorney General's Office for a potential violation of RCW 19.86 (unfair business practices). Once referred the matter would be handled by the A.G.'s office.

III. Conclusion

This Chapter summarizes the steps that Ecology will follow, and the considerations Ecology will weigh, in responding to violations of the rules pertaining to auctions and markets.

As noted above, because the Cap-and-Invest Program is new, these Guidelines cannot anticipate or provide guidance concerning every possible scenario or issue that may arise. CCA IG will, to the best of its ability, handle any situations that are not directly addressed in this document in a manner similar to what is described for the scenarios and issues that are described in this document.

⁸ If a covered or opt-in entity has under reported its GHG emissions, the entity is required to provide sufficient compliance instruments to cover the additional emissions, or submit four penalty allowances for every instrument that it failed to submit. In such situations, a similar procedure will be followed as set forth above. If, on the other hand, an entity has over reported its emissions, Ecology will reduce the entity's compliance obligation accordingly. WAC 173-446-610(10)-(11).

Chapter 4: Penalties And Communications Planning

I. Penalties

Ecology issues penalties to punish violations of statute or rule, correct a problem, prevent recurrence of a violation, and ensure future compliance. When calculating a potential penalty staff should consider appropriate factors as set forth in the worksheet. Any notice of penalty should clearly identify the conduct or action that caused the violation, the regulatory requirement(s) violated, and the final total penalty amount.

II. Communications planning

All fines and settlements for more than \$10,000 require a news release and we record all fines greater than \$1,000 in a quarterly penalty summary (as outlined in Administrative Policy 20-03: Publicizing Penalties and Settlements).

A strong communications plan developed before issuing enforcement actions can help prepare Ecology staff to answer tough questions, ensure that messaging is consistent, identify important stakeholders, and prevent extra work. The CCA IG communications staff will develop press releases and communications plans, in collaboration with other communications staff and following all relevant guidance, including Chapter 10 and Appendix C of the CAM.

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