



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

**Agricultural Products, Mixed Loads,
and Return Trips**

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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 conducts 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 resilient 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 document supplements the Interim Guidance on Reporting and Documenting Emissions from Exempt Fuels under the Cap-and-Invest Program: Transporting Agricultural Products on Public Highways, which Ecology issued on February 3, 2023 [Publication No. 23-02-011]. This guidance document, just like Ecology Publications 23-02-008 and 23-02-011, is based on the provisions of the CCA (Chapter 70A.65 RCW), Chapters 173-441 WAC and 173-446 WAC. It reflects Ecology’s interpretation based on the 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.

Defining “Agricultural Products”

Emissions from fuels used for “transporting agricultural products on public highways” are exempt from the Cap-and-Invest Program for emission years 2023 through 2027. RCW 70A.65.080(7)(e)(ii). As noted above, guidance as to how a covered entity may establish eligibility for this exemption is set forth in the second interim guidance document, issued on February 3, 2023.

This interim guidance document is intended to supplement the February 3, 2023 guidance by providing additional information concerning how Ecology will define “agricultural products,” for purposes of the Cap-and-Invest Program. This term – agricultural products – is not defined directly in the CCA, or in WAC 173-441 or WAC 173-446. However, RCW 70A.65.080(7)(e)(i), WAC 173-446-040(2)(b)(iv), and WAC 173-441-122(5)(d)(xi)(C) all refer to a provision of the state tax code, RCW 82.08.865.¹ This statute defines the related term “agricultural purposes” to include “the performance of activities directly related to the growing, raising, or producing of agricultural products.” RCW 82.08.865(2) also incorporates by reference a series of other definitions from RCW 82.04.213, including the definition of “agricultural product” set forth at RCW 82.04.213(1).

For purposes of interpreting the CCA’s exemption for emissions from fuels used to transport agricultural products on public highways, Ecology will use the definition of “agricultural product” found in RCW 82.04.213(1):

“Agricultural product” means any product of plant cultivation or animal husbandry including, but not limited to: A product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW 15.85.020; plantation Christmas trees; short-rotation hardwoods as defined in RCW 84.33.035; turf; or any animal including but not limited to an animal that is a private sector cultured aquatic product as defined in RCW 15.85.020, or a bird, or insect, or the substances obtained from such an animal including honey bee products. “Agricultural product” does not include cannabis, useable cannabis, or cannabis-infused products, or animals defined as pet animals under RCW 16.70.020.

¹ WAC 173-446-040(2)(b)(iv) provides that emissions from fuels used to transport agricultural products on public highways are not part of a supplier’s covered emissions “if it meets the requirements in RCW 82.08.865 as described in WAC 173-441-122(5)(d)(xi)(C).” In turn, WAC 173-441-122(5)(d)(xi)(C) provides that emissions from such fuels “may be included” in the exemption “if it is flagged separately and meets the requirements in RCW 82.08.865.”

Based on this definition in RCW 82.04.213, Ecology interprets the CCA as exempting emissions from fuels used to transport items that are primary, non-processed products of plant cultivation and animal husbandry. In contrast, emissions from fuels used to transport processed or manufactured products are not exempt because such items are excluded from the state tax code's definition of agricultural products.²

For guidance in determining whether an item that is derived from one or more agricultural products is a "manufactured substance or article" and thus excluded from the CCA exemption, Ecology will rely on related provisions in the state's tax laws. For example, RCW 82.04.120(2)(d) specifies that the "packing of agricultural products, including sorting, washing, rinsing, grading, waxing, treating with fungicide, packaging, chilling, or placing in controlled atmospheric storage" does not fall within the definition of manufacturing. Accordingly, primary products of plant cultivation and animal husbandry that have been merely sorted, washed, waxed, packaged, and/or chilled are still considered agricultural products.

On the other hand, the Department of Revenue's Excise Tax Rules specify that "canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables" constitutes "manufacturing" that makes the processed produce subject to a separate tax exemption for manufactured products. WAC 458-20-210(8)(b)(i).

Based on stakeholder feedback, Ecology is providing additional clarity on whether certain food processing activities that are not listed in the state tax code would fall within the definition of manufacturing. Food processing activities that involve cutting, slicing, chopping, and/or peeling are interpreted by Ecology as using a mechanical process that alters the primary agricultural product. Therefore, food products that are cut, sliced, chopped, or peeled will be treated the same as processed produce that is subject to the manufactured products tax exemption. Accordingly, such food products are considered manufactured products rather than agricultural products.

² See RCW 82.04.330(1) (providing a tax exemption for farmers for "the sale of any agricultural product at wholesale" and expressly excluding from the exemption "any person selling such products at retail" or "any person selling manufactured substances or articles"); RCW 82.04.213(3)(c) (defining "Honey bee products"—which are expressly included in the definition of "agricultural product"—to include "substances obtained from honey bees," but to exclude "manufactured substances or articles"); WAC 458-20-210(8)(b) (explaining that "farmers who manufacture products using agricultural products that they have grown, raised, or produced are subject to manufacturing B&O tax on the value of products manufactured"). The line drawn by the state's tax laws between manufactured products and primary, un-processed agricultural products also appears in the Commission Merchants Act, which defines an "agricultural product" as "any *unprocessed* horticultural, vermicultural and its by-products, viticultural, berry, poultry, poultry product, grain, bee, or other agricultural products." RCW 20.01.010(2) (emphasis added).

Stakeholders also requested a differentiation between drying and dehydrating agricultural products. While both methods remove moisture, the two methods differ as follows:

- Drying is a passive process that typically consists of removing moisture through uncontrolled, natural means such as sun or air drying. Drying removes less moisture and is less energy intensive.
- Dehydrating is an active process that occurs in a controlled environment using advanced equipment. This method removes more moisture and is more energy intensive.

Due to these key differences in drying and dehydration, Ecology does not interpret drying to be a “manufacturing” activity. Therefore, unlike dehydrated products that are identified in WAC 458-20-210(8)(b)(i) as being manufactured, a food product that is passively dried would be considered a non-processed agricultural product.

Another clarification point lies in the differentiation between chilling and freezing. Chilling includes processes that reduce the temperature of the product but keeps the temperature above the product’s freezing point. Freezing includes processes that reduce the temperature of the product below the product's freezing point. Consistent with RCW 82.04.120(2)(d) and WAC 458-20-210(8)(b)(i), Ecology is interpreting a frozen product to be manufactured while a chilled agricultural product is eligible for the CCA’s transportation exemption.

The definition of “agricultural product” in RCW 82.04.213(1) expressly incorporates “aquaculture,” which is defined in RCW 15.85.020(1) as “the process of growing, farming, or cultivating private sector cultured aquatic products in marine or fresh waters and includes management by an aquatic farmer.” RCW 15.85.020(3) defines “private sector cultured aquatic products” and provides examples of products that meet the definition. For an aquaculture product to be eligible for the CCA’s agricultural product transportation exemption, the product must meet the tax code’s definition of a “private sector cultured aquatic product” raised by an “aquatic farmer.”

The Excise Tax Rules also explain that “dairy products” are manufactured products with their own specific tax exemption. WAC 458-20-210(8)(b)(ii). This rule specifies that manufactured dairy products include “milk, buttermilk, cream, yogurt, cheese, and ice cream” as well as “by-products from the manufacturing of dairy products such as whey and casein.” WAC 458-20-210(8)(b)(ii). Although most dairy products are considered manufactured products rather than agricultural products under WAC 458-20-210(8)(b)(ii), including milk products that have been manufactured, milk that is produced directly from cows at the dairy and that has not yet been processed at a dairy manufacturing facility is considered an agricultural product under WAC 458-20-210(9)(p)(v) (referencing milk cows as animals raised by a dairy or used by the dairy farmer “for the purpose of producing agricultural products for sale.”). Thus, the emissions from fuel used to transport milk from a dairy farm to a dairy manufacturing facility qualifies for the CCA exemption, while emissions from fuels used to transport cartons of milk, butter, and cheese from a dairy manufacturing facility to wholesale or retail markets do not.

As a result, Ecology interprets the CCA exemption for emissions from fuels used to transport agricultural products on public highways as not applying to the transportation of manufactured products derived from agricultural products, including processed produce and manufactured dairy products.

The definition of “agricultural product” found in RCW 82.04.213(1) also includes “plantation Christmas trees” as well as “short-rotation hardwoods.” “Short-rotation hardwoods” are further defined in RCW 84.33.035 as “hardwood trees, such as but not limited to hybrid cottonwoods, cultivated by agricultural methods in growing cycles shorter than fifteen years.” The timber and forestland statute, RCW 84.33, identifies the cultivation of Christmas trees and short rotation hardwoods as a distinct subset of tree production which rather than being produced in a forest and timber setting are grown using “agricultural methods.” RCW 84.33.035(1) defines “agricultural methods” as “the cultivation of trees that are grown on land prepared by intensive cultivation and tilling, such as irrigating, plowing, or turning over the soil, and on which all unwanted plant growth is controlled continuously for the exclusive purpose of raising trees such as Christmas trees and short-rotation hardwoods.” Thus, Christmas trees that are “cultivated by agricultural methods” and hardwood trees that are “cultivated by agricultural methods in growing cycles shorter than fifteen years” meet the definition of “agricultural products” for purposes of this CCA exemption. However, other than the subset of Christmas trees and short-rotation hardwoods produced using “agricultural methods” as described above, timber is not considered an agricultural product and so fuels used to transport timber are not eligible for the exemption. Covered entities are invited to reach out to Ecology with questions about specific product types that require clarification.

Emissions from “Mixed Loads”

Haulers commonly transport loads that contain both agricultural and non-agricultural products, referred to as “mixed loads.” When reporting emissions associated with fuels used to transport mixed loads, fuel suppliers must provide supporting documentation regarding the portion of fuels claimed as exempt.

Stakeholders provided methods to document exempt fuel volumes for mixed loads in a series of meetings hosted by Ecology. These proposed methods for documentation, build upon existing accounting and tracking mechanisms that many haulers and transporters already have in place. Acceptable mixed load documentation includes:

- Mixed load fuel volumes allocated proportionally to the percentages of the load that are used for exempt purposes and non-exempt purposes, respectively.
- Mixed load fuel volumes allocated proportionally to the mass or volume of transported products that are eligible for the exemption.

Stakeholders representing hauling and trucking associations have shared that bills of lading (BOL) will often identify the mass and/or volumes of products being hauled, as well as the volumes of fuel required to move the products. These BOLs, in addition to other forms of documentation referenced in previously issued Interim Guidance, can be used to support the end user’s documentation for the exempt fuel use.

Emissions From Fuels Combusted in Backhaul or Return Trips

Emissions from fuels combusted for the purpose of transporting agricultural products (as defined above) on public highways are exempt under the Cap-and-Invest Program. Questions have been raised as to whether this exemption includes emissions associated with the return trip once the agricultural product(s) have been delivered to their destination. Ecology's interim guidance on this issue is as follows:

- If on the return trip the truck or vehicle is completely empty and must return for reloading of additional agricultural products, emissions from the fuel combusted during that return trip are exempt. For example, if a milk tanker truck delivers a load of milk to a destination, and then returns empty, the emissions from the fuel combusted during that return trip would not be covered emissions under the Cap-and-Invest Program.
- If on the return trip the truck or vehicle carries only agricultural products as defined above, the emissions would be exempt.
- If on the return trip the truck or vehicle carries any non-agricultural products, the emissions would not be exempt. For example, if a truck delivers agricultural products to a delivery point, but then transports non-agricultural products either back to its starting point, or to another location, emissions from the fuel combusted during that leg of the trip would not be exempt.

Transport on Public Waterways

Ecology's previously issued Interim Guidance interprets "public highways" to include public waterways. RCW 79.120.010. As a result, emissions from fuel used to transport agricultural products on a public waterway, like the Columbia River, fall within this exemption. However, given the complexity of tracking fuel volumes along the portion of the Columbia River that forms the border between Washington and Oregon, reporters that would like to claim this exemption should contact Ecology to develop procedures for this alternative approach to emissions reporting.