

WAC 173-446A-040 Process to determine emissions-intensive and trade-exposed classification. An owner or operator of a manufacturing facility that is not classified as emissions-intensive and trade-exposed according to WAC 173-446A-030 may petition the department to be classified as emissions-intensive and trade-exposed by following the process described in this section. An owner or operator may submit a petition and the department may issue a determination before emissions year 2027, and use that determination for allowance allocations for the second compliance period, but no determination under this section is effective for the owner or operator of that facility until emissions year 2027. The following requirements apply to the submission, review, and approval or denial of a petition:

(1) **Petition submittal.** An owner or operator must submit a petition, electronically in a format specified by the department, that meets the following conditions before the department may review the petition and issue a determination.

(a) An owner or operator must submit a complete petition no later than 180 calendar days prior to January 1st of the first emissions year the owner or operator wishes the facility to be classified as emissions-intensive and trade-exposed.

(b) The petition must include sufficient information, as described in (c) of this subsection, for the department to determine whether the petitioner meets the criteria for classification as emissions-intensive and trade-exposed. The department will notify the owner or operator within 30 calendar days of receipt of a petition of any additional information the department requires to review the petition. A facility is not classified as emissions-intensive and trade-exposed until the petition is approved by the department.

(c) The petition must include, at a minimum, the following information:

(i) The name, address, email address, telephone number, and facsimile transmission number (if any) of the person submitting the petition;

(ii) Identifying information as specified in WAC 173-441-050 (3)(a), (c), (i), and (j) of the facility that the owner or operator is petitioning to be classified as emissions-intensive and trade-exposed;

(iii) Annual total production data for each primary product manufactured by the facility. The annual total quantity of each primary product manufactured at the facility as well as the quantity exported outside of Washington state for the five years immediately preceding the petition submission date must be submitted. If the facility has been operational for fewer than five years, submit annual total production data for each product since the facility has been operational;

(iv) The facility's annual on-site GHG emissions data. Annual on-site GHG emissions data for the five years immediately preceding the petition submission date as reported per WAC 173-441-120 must be submitted. If the facility has been operational for fewer than five years, submit annual on-site GHG emissions data as reported per WAC 173-441-120 since the facility has been operational;

(v) The location of the facility relative to overburdened communities. Using the Washington state department of health's environmental health disparities map, submit the total environmental health disparities ranking for the census tract in which the facility is located. Indication if the census tract in which the facility is located is covered or partially covered by tribal lands must also be submitted;

(vi) Any other supporting data or information as requested by the department; and

(vii) The signature of the person completing the petition and the date the petition was signed.

(2) **Department review of the petition.** A manufacturing facility must receive department approval before it is classified as emissions-intensive and trade-exposed. The department will issue a determination within 90 calendar days after receiving a complete petition.

(a) To be classified as emissions-intensive and trade-exposed, the facility must:

(i) Be a manufacturing facility located and operating in Washington state;

(ii) Be covered under chapter 316, Laws of 2021 (the Climate Commitment Act) or projected to be covered under chapter 316, Laws of 2021 (the Climate Commitment Act);

(iii) Not be classified as emissions-intensive and trade-exposed under WAC 173-446A-030; and

(iv) Meet the criteria for emissions' intensity and trade exposure pursuant to subsection (2)(b) of this section.

(b) The department must apply the following criteria when evaluating a petition:

(i) Emissions' intensity of the facility.

Use Equation 040-1 to determine the emissions' intensity of the facility. If the annual average emissions' intensity is greater than 25,000 MT CO₂e/year, the facility is deemed emissions-intensive.

$$EI = \frac{\sum_{i=1}^n AE}{n}$$

Eq. 040-1

Where:

EI = Average emissions intensity (MT CO₂e/year)

AE = Average emissions (MT CO₂e/year) from on-site GHG emissions data submitted pursuant to subsection (1)(b)(iv) of this section.

n = number of years of data per subsection (1)(b)(iv) of this section.

(ii) Trade exposure of the facility.

Use Equation 040-2 to determine the trade share of the facility. If the trade share is greater than or equal to 15%, the facility is deemed trade-exposed.

$$TS = \frac{Import + Export}{Shipment + Import}$$

Eq. 040-2

Where:

TS = Trade share (%)

- Import = Average value of total physical arrivals of merchandise from foreign countries, whether such merchandise enters the U.S. customs territory immediately or is entered into bonded warehouses or free trade zones under Customs and Border Protection (Customs) custody, for the facility's six-digit NAICS code submitted pursuant to subsection (1)(c)(ii) of this section, taken from the U.S. International Trade Commission DataWeb, for the five years immediately preceding the date of petition submittal, as available (U.S. Dollars)
- Export = Average value of goods physically moved out of the U.S. to foreign countries that are grown, produced, or manufactured in the U.S. and commodities of foreign origin that have been changed in the U.S., for the facility's six-digit NAICS code submitted pursuant to subsection (1)(c)(ii) of this section, taken from the U.S. International Trade Commission DataWeb, for the five years immediately preceding the date of petition submittal, as available (U.S. Dollars)
- Shipment = Average value of products at the national level sold by manufacturing establishments based on net selling values, free on board plant, after discounts and allowances are excluded, for the facility's six-digit level NAICS code submitted pursuant to subsection (1)(c)(ii) of this section, taken from the Annual Manufacturing Survey compiled by the U.S. Census Bureau for the five years immediately preceding the date of submission of the petition, as available (U.S. Dollars)

(c) The department must consider a facility's location relative to overburdened communities and recommendations, if any, from the Environmental Justice Council when evaluating a petition. The department will notify the Environmental Justice Council when a petition is received. The department may deny a petition based on this consideration upon a determination that air quality in overburdened communities would be unacceptably impacted.

(3) **Appeal of determination.** An approval or denial issued by the department in response to a written petition filed under this subsection is a determination appealable to the pollution control hearings board per RCW 43.21B.110 (1) (h).

[Statutory Authority: 2021 c 316. WSR 22-13-002 (Order 21-05), § 173-446A-040, filed 6/1/22, effective 7/2/22.]