

WAC 173-446-040 Covered emissions. (1) Reported emissions. Covered emissions are GHG emissions reported under chapter 173-441 WAC except as modified in subsections (2) through (4) of this section. Covered emissions:

(a) Are calculated on a calendar year basis using chapter 173-441 WAC;

(b) Include emissions of all GHGs identified in WAC 173-441-040;

(c) Are expressed in units of CO₂e as calculated using chapter 173-441 WAC; and

(d) Must be based on any assigned emissions level under WAC 173-441-086.

(2) Exemptions.

(a) Covered emissions do not include the following emissions reported under chapter 173-441 WAC:

(i) Carbon dioxide emissions from the combustion of biomass, renewable fuels of biogenic origin, or biofuels from any facility, supplier, or first jurisdictional deliverer. Emissions of other GHGs related to the combustion of biomass or biofuels are not exempt.

(ii) GHG emissions from the following facilities:

(A) A coal-fired electric generation facility exempted from additional GHG limitations, requirements, or performance standards under RCW 80.80.110; or

(B) Facilities with North American industry classification system code 92811 (national security).

(C) Municipal solid waste landfills that are subject to, and in compliance with, chapter 70A.540 RCW.

(iii) Sequestered carbon dioxide when it can be demonstrated to ecology's satisfaction that it qualifies as permanent sequestration, as defined in WAC 173-407-110, either through long-term geologic sequestration or by conversion into long-lived mineral form.

(b) The following supplier emissions are not covered emissions if the supplier can demonstrate to ecology's satisfaction as specified under WAC 173-441-122 (5) (d) (xi) that the emissions originate from:

(i) The combustion of the following fuels, if demonstrated to ecology's satisfaction that they are used for aviation purposes:

(A) Kerosene-type jet fuel; and

(B) Aviation gasoline.

(ii) Watercraft fuels supplied in Washington that are not combusted inside Washington or in waters under the jurisdiction of Washington:

(A) The following fuels may be assumed to be watercraft fuels combusted outside of waters under the jurisdiction of Washington:

(I) Residual fuel oil No. 5 (navy special); and

(II) Residual fuel oil No. 6 (a.k.a. bunker C).

(B) For all other fuels, including distillate No. 2 and distillate fuel oil No. 4, to qualify for this exemption, suppliers must demonstrate to ecology's satisfaction both that the fuels are used in watercraft and that they are combusted outside of waters under the jurisdiction of Washington.

(iii) Motor vehicle fuel or special fuel used exclusively for agricultural purposes by a farm fuel user as described in WAC 173-441-122 (5) (d) (xi) (C).

(iv) Fuels used for transporting agricultural products on public highways if it meets the requirements in RCW 82.08.865 as described in WAC 173-441-122 (5) (d) (xi) (C). This exemption is in effect for emis-

sions years 2023 through 2027 and is not available for emissions after 2027.

(v) Products listed in Table MM-1 of 40 C.F.R. Part 98 Subpart MM as adopted in chapter 173-441 WAC when the supplier can demonstrate to ecology's satisfaction that the product is not combusted or oxidized. All products listed in Table MM-1, except asphalt and road oil, are by default assumed to be combusted or oxidized unless demonstrated otherwise.

(3) Allotment of covered emissions to avoid double counting or including emissions that occur outside the program. The facility, supplier, or first jurisdictional deliverer that reports GHG emissions under chapter 173-441 WAC holds the compliance obligation for the covered emissions it reports unless otherwise provided in this subsection. This subsection provides details on allotment for covered emissions that are potentially attributable to multiple parties and provides direction for allotment when such emissions may be reported by multiple facilities, suppliers, or first jurisdictional deliverers of electricity. This subsection only describes the process for determining which covered or opt-in entity is responsible for a given metric ton of covered emissions after the application of exemptions described in subsection (2) of this section, and does not expand the definition of covered emissions.

(a) Allotment of covered emissions for facilities.

(i) The following GHG emissions are covered emissions for facilities:

(A) Emissions from the on-site combustion of natural gas, natural gas liquids, liquefied petroleum gas, compressed natural gas, or liquefied natural gas;

(B) Emissions from the on-site combustion of residual fuel oil No. 5 (navy special), and residual fuel oil No. 6 (a.k.a. bunker C);

(C) Emissions from the on-site combustion of a fuel product where the fuel product was generated or modified on-site and not purchased in its combusted form from a supplier. These fuel products may include, but are not limited to: Refinery gas, still gas, fuel gas, landfill gas, and biogas;

(D) Carbon dioxide collected and supplied off-site that the facility owner or operator cannot demonstrate to ecology's satisfaction is part of the covered emissions of another covered or opt-in entity under this chapter.

(E) Emissions from an electric generating facility in Washington serving as a first jurisdictional deliverer derived from any of the means in (a)(i)(A) through (D) of this subsection except as exempted in subsection (2) of this section; and

(F) All other reported emissions under WAC 173-441-120 are covered emissions for the facility unless otherwise specified in subsection (2) of this section or (a)(ii) of this subsection.

(ii) The following GHG emissions are not covered emissions for facilities:

(A) Emissions from the on-site combustion of any fuel product as described in WAC 173-441-122(5) except those described in (a)(i)(A), (B) or (C) of this subsection;

(B) Carbon dioxide collected and supplied off-site that the facility owner or operator can demonstrate to ecology's satisfaction is part of the covered emissions of another covered or opt-in entity under this chapter.

(b) Allotment of covered emissions for suppliers of natural gas.

(i) The following GHG emissions are covered emissions for suppliers of natural gas:

(A) Emissions from the on-site combustion of natural gas, natural gas liquids, liquefied petroleum gas, compressed natural gas, or liquefied natural gas supplied to any facility or supplier of natural gas that is not a covered or opt-in entity under this chapter.

(B) All other reported emissions under WAC 173-441-122(4) are covered emissions for the supplier unless otherwise specified in subsection (2) of this section or (b)(ii) of this subsection.

(ii) The following GHG emissions are not covered emissions for suppliers of natural gas:

(A) Emissions from the on-site combustion of natural gas, natural gas liquids, liquefied petroleum gas, compressed natural gas, or liquefied natural gas supplied to any facility, supplier of natural gas, or other party that is a covered or opt-in entity under this chapter.

(B) Emissions that would result from the combustion of fuel products that are produced or imported with a documented final point of delivery outside of Washington and combusted outside of Washington.

(c) Allotment of covered emissions for suppliers of fossil fuels other than natural gas.

(i) The following GHG emissions are covered emissions for suppliers of fossil fuels other than natural gas:

(A) Emissions from the combustion of any fuel product, except those described in (a)(i)(B) or (C) of this subsection; or

(B) All other reported emissions under WAC 173-441-122(5) are covered emissions for the supplier of fossil fuel other than natural gas unless otherwise specified in subsection (2) of this section or (c)(ii) of this subsection.

(ii) The following GHG emissions are not covered emissions for suppliers of fossil fuels other than natural gas:

(A) Emissions from the combustion of fuel products described in (a)(i)(B) or (C) of this subsection;

(B) Emissions from products listed in Table MM-1 of 40 C.F.R. Part 98 Subpart MM as adopted in chapter 173-441 WAC when the supplier is also a refiner and can demonstrate to ecology's satisfaction that the product is used as a noncrude feedstock at a refinery in Washington under their operational control. These noncovered emissions must meet the standards described in Subpart MM, and are calculated using provisions described in Sec. 98.393(b) and subtracted as described in Sec. 98.393(d), which is limited to modifications due to noncrude feedstocks. Emissions occurring at the refinery due to processing the noncrude feedstock are part of the facility's covered emissions. Processed or unprocessed products associated with the previously excluded noncrude feedstocks leaving the refinery are no longer excluded and part of the supplier's covered emissions. Emissions covered under this provision are not also eligible for adjustments due to the product previously being delivered by a position holder or refiner out of an upstream WA terminal or refinery rack prior to delivery out of a second terminal rack.

(C) Emissions that would result from the combustion of fuel products that are produced or imported with a documented final point of delivery outside of Washington and combusted outside of Washington; or

(D) Emissions that are part of the covered emissions of another covered or opt-in entity under this chapter.

(d) Allotment of covered emissions for suppliers of carbon dioxide.

(i) The following GHG emissions are covered emissions for suppliers of carbon dioxide:

(A) Carbon dioxide emissions that the supplier cannot demonstrate to ecology's satisfaction are part of the covered emissions of another covered or opt-in entity under this chapter; or

(B) All other reported emissions under WAC 173-441-122(3) are covered emissions for the supplier of carbon dioxide unless otherwise specified in subsection (2) of this section or (d)(ii) of this subsection.

(ii) The following GHG emissions are not covered emissions for suppliers of carbon dioxide: Carbon dioxide emissions when the supplier can demonstrate to ecology's satisfaction that they are part of the covered emissions of another covered or opt-in entity under this chapter are not covered emissions for the supplier of carbon dioxide.

(e) Allotment of covered emissions for first jurisdictional deliverers of imported electricity.

(i) GHG emissions associated with imported electricity are covered emissions for the first jurisdictional deliverer serving as the electricity importer for that electricity.

(ii) If the electricity importer is a federal power marketing administration over which the state of Washington does not have jurisdiction, and the federal power marketing administration has not voluntarily elected to comply with the program, then the party deemed to be the electricity importer is the next purchasing-selling entity in the physical path on the NERC e-tag, or if there is no additional purchasing-selling entity over which the state of Washington has jurisdiction, then a utility that purchases electricity for use in the state of Washington from that federal power marketing administration or the generation balancing authority. Such a utility or generation balancing authority is a covered entity under this program and has the compliance obligation for the GHG emissions associated with that electricity.

(iii) If the electricity importer is a federal power marketing administration over which the state of Washington does not have jurisdiction, and the federal power marketing administration has voluntarily elected to comply with the program, then any utility that purchases electricity for use in the state of Washington from that federal power marketing administration may provide by agreement for the assumption of the compliance obligation by the federal power marketing administration. The department of ecology must be notified of such an agreement at least 12 months prior to the compliance period for which the agreement is applicable or, for the first compliance period, 12 months prior to the first calendar year to which the agreement is applicable. Upon effect of the agreement, the covered emissions for the utility are the responsibility of the federal power marketing administration as long as the agreement is in effect. If no agreement is in place for a utility that purchases electricity from that federal power marketing administration, then the requirements of subsection (e)(ii) of this section apply to the GHG emissions associated with that electricity.

(iv) For the first compliance period the electricity importer for electricity derived from the energy imbalance market is the energy imbalance market purchasing entity located or operating in Washington that receives the delivery of electricity transacted through the energy imbalance market. For electricity transferred through the energy imbalance market that is generated by a first jurisdictional deliverer with a compliance obligation under this chapter, there is no compli-

ance obligation for that same electricity if it is delivered to an energy imbalance market purchasing entity in Washington.

(4) Adjustments to covered emissions. Ecology may adjust the covered emissions for any emissions year for a facility, supplier, or first jurisdictional deliverer based on new reported information, a new assigned emissions level under WAC 173-441-086, or to compensate for a change in methodology as described in WAC 173-441-050(4).

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-040, filed 9/29/22, effective 10/30/22.]