

WAC 173-446-220 Distribution of allowances to emissions-intensive and trade-exposed facilities. (1) **Allocation baselines for EITE facilities.** Ecology will use the following data sources, methods, and criteria to review and approve allocation baselines submitted by EITE facilities.

(a) Owners or operators of any EITE facility who wish to be allocated no cost allowances must submit their proposed allocation baseline with the following supporting information that facilitates ecology's review to ecology electronically in a format specified by ecology. The information must include all emissions years beginning with 2015 and ending with the most recent emissions year. Owners or operators requesting no cost allowances for emissions year 2023 must submit the information by September 15, 2022. Owners or operators requesting no cost allowances beginning with emissions years after 2023 must submit the information concurrent with their petition as established in WAC 173-446A-040(1) or March 31st of the emissions year for which they request no cost allowances, whichever is earlier.

(i) The reported GHG emissions under chapter 173-441 WAC, including fuel use as specified in WAC 173-441-050 (3)(m), and covered emissions under WAC 173-446-040 for the facility which serves as the facility's amount of carbon dioxide equivalent emissions.

(ii) The facility specific measure of production, which is all applicable total annual facility product data, units of production, specific product, and supporting data described in WAC 173-441-050 (3)(n). If multiple product data metrics are listed for the facility in Table 050-1 in chapter 173-441 WAC, the same product data metric must be used for all calculations, including annual GHG reports. A facility reporting a primary North American industry classification system (NAICS) code of 324110 must use the sum of barrels of crude oil and intermediate products received from off site that are processed at the facility as the product data metric.

(iii) The EITE facility's primary NAICS code as reported under WAC 173-441-050 (3)(i), or other information demonstrating the facility is classified as emissions-intensive and trade-exposed under chapter 173-446A WAC.

(iv) The EITE facility's proposed allocation baseline, including:

(A) A carbon intensity baseline calculated by dividing the 2015 through 2019 average of covered emissions from (a)(i) of this subsection by the 2015 through 2019 average of total annual product data from (a)(ii) of this subsection.

(B) Optionally, if requesting alternate years for the carbon intensity baseline average, the owner or operator may also include a separate calculation that uses averages for the requested years and the method from (a)(iv)(A) of this subsection.

Any owner or operator of an EITE facility requesting the use of alternate years for their carbon intensity baseline average must submit information supporting that there were abnormal periods of operation that materially impacted the facility during one or more years in the normal baseline period of 2015 through 2019. The owner or operator must also submit information supporting the claim that the proposed alternate years are reflective of normal operation. A minimum of three full years and a maximum of five full years must be used in the baseline average. At least three years used in the baseline average must be consecutive. If an owner or operator requests to include an emissions year prior to 2015 in the facility's allocation baseline, the submission must include all information for that year. An emissions year prior to 2012 is not eligible for use as an alternate year.

(C) Any owner or operator of an EITE facility may also submit a mass-based baseline. An owner or operator requesting a mass-based baseline must submit information supporting the claim that the owner or operator is not able to feasibly determine a carbon intensity baseline based on unique circumstances of the facility. The mass-based baseline is calculated as the 2015 through 2019 average covered emissions from (a)(i) of this subsection. If requesting alternate years for the facility's baseline average, the owner or operator may also include a separate calculation that uses averages for the requested years.

(b) Ecology must use the following criteria to review and approve an allocation baseline by November 15, 2022, for any EITE facility submitting complete information under (a) of this subsection by September 15, 2022. Ecology must complete this process within 90 calendar days of a complete submission to any EITE facility that submitted complete information under (a) of this subsection after September 15, 2022. The allocation baseline will be reviewed by ecology using the following method and approved based on the criteria described in this subsection.

(i) Ecology may combine information from multiple sources and use professional judgment to adjust data sets and conform to this chapter when reviewing carbon intensity or mass-based baselines. Ecology may use the following data sources when reviewing a baseline depending on data availability, quality, applicability, and the agency's best professional judgment.

(A) Information submitted under (a) of this subsection;

(B) Information reported under chapter 173-441 WAC;

(C) An assigned emissions level under WAC 173-441-086; or

(D) Other sources of information deemed significant by ecology.

Ecology will rely on data provided in (b)(i)(A) through (C) of this subsection whenever possible.

(ii) Ecology's review of the submission must include calculating a mass-based baseline for each EITE facility by averaging the 2015 through 2019 covered emissions determined using data from the data sources listed in (b)(i) of this subsection. If approving alternate years for the mass-based baseline average under (b)(iv) of this subsection, ecology must also include a separate calculation that uses averages for the approved years.

(iii) Ecology's review of the submission must include calculating a carbon intensity baseline for each EITE facility by dividing the 2015 through 2019 average of covered emissions using the data sources listing in (b)(i) of this subsection by the 2015 through 2019 average total annual product data determined using the data sources listing in (b)(i) of this subsection unless ecology determines it is not feasible to determine product data for the facility based on the facility's unique circumstances. If approving alternate years for the carbon intensity baseline average under (b)(iv) of this subsection, ecology must also include a separate calculation that uses averages for the approved years. It is feasible to determine product data for any facility:

(A) That reports product data as specified in WAC 173-441-050 (3)(n); or

(B) For which ecology is capable of determining product data as specified in WAC 173-441-050 (3)(n) using any of the data sources specified in (b)(i) of this subsection.

(iv) Ecology may allow the use of alternate years for an EITE facility's carbon intensity or mass-based baseline average if ecology

determines there were abnormal periods of operation that materially impacted the facility during one or more years in the normal baseline period of 2015 through 2019. A minimum of three full years and a maximum of five full years must be used in the baseline average. At least three years used in the baseline average must be consecutive. An emissions year prior to 2012 is not eligible for use as an alternate year.

(v) Ecology must use the following criteria when approving allocation baselines. The EITE facility's allocation baseline is equal to its carbon intensity baseline as calculated under (b)(iii) of this subsection unless ecology is unable to perform the review calculation in that subsection. If ecology is unable to determine a carbon intensity baseline, then the allocation baseline is the mass-based baseline calculated in (b)(ii) of this subsection. If ecology approves alternate years for the allocation baseline average under (b)(iv) of this subsection, the allocation baseline must be based on the separate calculation described in (b)(ii) or (iii) of this subsection, as applicable, that accounts for alternate years if ecology approves alternate years.

(A) Ecology must use the following methods, in order of precedence starting with (I), to review and approve an allocation baseline for any EITE facility joining the program after emissions year 2023 under WAC 173-446-060. Ecology must use 2015 through 2019 emissions years whenever possible based on the data sources listed in (b)(i) of this subsection and may not use an emissions year prior to 2012. Ecology may exclude emissions years that contain abnormal periods of operation, for example, the first year the facility begins operations. Ecology must consider the products and criteria pollutants produced by the facility, as well as the local environmental and health impacts associated with the facility when setting the allocation baseline. For a facility built on tribal lands or determined by ecology to impact tribal lands and resources, ecology must consult with the affected tribal nations.

(I) Use the carbon intensity baseline whenever GHG emissions and product data are available for three or more full years under normal operation.

(II) If at least three full years of GHG emissions data under normal operation are available but three full years of product data are not available, use the mass-based baseline for the available years until three years of GHG emissions and product data are available. Switch to the carbon intensity baseline as described in (b)(v)(A)(I) of this subsection based on the three or more available data years once the data are available. This switch should not occur until the next compliance period.

(III) If less than three full years of GHG emissions data under normal operation are available, ecology must estimate a mass-based baseline for the EITE facility until ecology is able to calculate a carbon intensity baseline for the facility as described in (b)(v)(A)(I) of this subsection. This switch cannot occur until the next compliance period. Ecology may base the mass-based baseline on ecology's GHG emissions estimates for the facility, GHG emissions from a best-in-class facility in the same sector, or actual GHG emissions from the facility, but the mass-based baseline must not exceed the maximum measured actual GHG emissions from the operating facility if those measurements exist.

(B) Except as described in (b)(v)(A) of this subsection, the owner or operator of an EITE facility using a mass-based baseline, must

submit a request to ecology if wanting to later convert to a carbon intensity baseline.

(C) Ecology may not convert the EITE facility to a carbon intensity baseline during the first three compliance periods except as described in (b)(v)(A) of this subsection or when the EITE facility reports a primary NAICS code beginning with 3364 under chapter 173-441 WAC. A facility reporting a primary NAICS code beginning with 3364 under chapter 173-441 WAC that uses a mass-based baseline may not convert to a carbon intensity baseline until the next compliance period after the facility applies for such conversion.

(D) Prior to the beginning of a new compliance period, ecology may make an upward or downward adjustment in the allocation baseline for an EITE facility effective starting in the next compliance period. Any adjustment must be based on significant changes to emissions or product data from:

(I) Revised reports under WAC 173-441-050(7) for any emissions year used in determination of the allocation baseline;

(II) A new assigned emissions level under WAC 173-441-086 for any emissions year used in determination of the allocation baseline; or

(III) A change in reporting method as described in WAC 173-441-050(4) relative to the method used for reports from emissions years used in determination of the allocation baseline.

(2) **Total no cost allowances allocated to EITE facilities.** No cost allowances allocated to an EITE facility for a given emissions year are determined using the methods in this subsection.

(a) EITE facilities are awarded no cost allowances according to the following reduction schedule: Allowances to cover 100 percent of the facility's allocation baseline for each year during the first compliance period, allowances to cover 97 percent of the facility's allocation baseline for each year during the second compliance period, and allowances to cover 94 percent of the facility's allocation baseline for each year during the third compliance period.

(b) For a facility using a carbon intensity allocation baseline, the distribution of no cost allowances for a given emissions year is determined using Eq. 220-1. The product data metric used to determine no cost allowances must be the same metric used in the carbon intensity baseline determined as described in subsection (1)(a)(ii) of this section. Initial no cost allowances in Eq. 220-1 are vintage year $t+1$ in emissions year 2023 and are vintage year t in subsequent years. True-up allowances in Eq. 220-1 are vintage year $t+2$.

$$\text{NoCostAllowances}_t \text{ (MT CO}_2\text{e)} = \text{InitialNoCostAllowances}_t + \text{TrueUp}_t \quad \text{Eq. 220-1}$$

Where:

$\text{NoCostAllowances}_t$ = number of allowances allocated for emissions year t

$\text{InitialNoCostAllowances}_t$ = number of allowances initially allocated for emissions year t . This number is calculated using data from emissions year $t-2$, according to Eq. 220-2.

TrueUp_t = number of allowances allocated to account for actual production from emissions year t , determined according to Eq. 220-3.

t = emissions year for which the allocation occurs.

$$\text{InitialNoCostAllowances}_t \text{ (MT CO}_2\text{e)} = \frac{\text{CarbonIntensityAllocationBaseline} \times \text{Production}_{t-2}}{\text{ReductionSchedule}_t} \quad \text{Eq. 220-2}$$

Where:

$\text{CarbonIntensityAllocationBaseline}$ = carbon intensity baseline determined pursuant to subsection (1)(b) of this section

Production_{t-2} = total annual facility product data for the emissions year two years prior to year t from subsection (1)(a)(ii) of this section

$\text{ReductionSchedule}_t$ = reduction percentage corresponding to the compliance period for emissions year t , as provided in (a) of this subsection.

t = emissions year for which the allocation occurs.

$$\text{TrueUp}_t (\text{MT CO}_2\text{e}) = (\text{CarbonIntensityAllocationBaseline} \times \text{Production}_t \times \text{ReductionSchedule}_t) - \text{InitialNoCostAllowances}_t \quad \text{Eq. 220-3}$$

Where:

- CarbonIntensityAllocationBaseline = carbon intensity baseline determined pursuant to subsection (1)(b) of this section.
- Production_t = total annual facility product data for the emissions year *t* from (a)(ii) of this subsection.
- ReductionSchedule_t = reduction percentage corresponding to the compliance period for emissions year *t*, as provided in (a) of this subsection.
- InitialNoCostAllowances_t = determined according to Eq. 220-2
- t = Emissions year for which the allocation occurs.

(i) The calculation in Eq. 220-3 will be done after receipt and verification of an EITE facility's production for year *t* through the process in WAC 173-441-085. If the result of the calculation in Eq. 220-3 is greater than zero, the resulting number of allowances will be allocated to the applicable EITE facility.

(ii) If the result of the calculation in Eq. 220-3 is negative, the resulting number of allowances will be subtracted from the number of allowances allocated to the facility for the next emission year.

(iii) If the result of the calculation in Eq. 220-3 is zero, no further action will be taken.

(c) For a facility using a mass-based allocation baseline, the distribution of no cost allowances for a given emissions year is determined using Eq. 220-4.

$$\text{NoCostAllowances}_t (\text{MT CO}_2\text{e}) = \text{Mass-based allocation baseline} \times \text{ReductionSchedule}_t \quad \text{Eq. 220-4}$$

Where:

- Mass-based allocation baseline = determined pursuant to subsection (1)(b) of this section.
- ReductionSchedule_t = reduction percentage corresponding to the compliance period for the given emissions year, as provided in (a) of this subsection.
- t = Emissions year for which the allocation occurs.

(d) Adjustments to the number of no cost allowances calculated for an EITE facility according to Eq. 220-1 and Eq. 220-4 may be made by ecology according to the following:

(i) Ecology will adjust no cost allowance allocation and credits to an EITE facility to avoid duplication with any no cost allowances transferred pursuant to WAC 173-446-230 and 173-446-240, if applicable.

(ii) Prior to the beginning of either the second, third, or subsequent compliance periods, ecology may make an upward adjustment in the next compliance period's reduction schedule for an EITE facility based on the owner's or operator's demonstration to ecology that additional reductions in carbon intensity or mass emissions are not technically or economically feasible. Ecology may not adjust the reduction schedule to levels above the first compliance period reduction level. Owners or operators of any EITE facility that wish to have an upward adjustment of their reduction schedule must submit the following information to ecology electronically in a format specified by ecology. The information must be submitted by March 31st of the year prior to the start of the compliance period in which the facility wishes to have an upward adjustment under this subsection. Ecology will make a determination on adjustments based on information contained in the facility's submission and information listed in subsection (1)(b)(i) of this section. Ecology may base the upward adjustment applicable to an EITE facility in the next compliance period on the facility's best available technology analysis. The submission must include information demonstrating to ecology that at least one of the following conditions is met:

(A) There is a significant change in the emissions use or emissions attributable to the manufacture of an individual good or goods by the EITE facility based on a finding by the department that an ad-

justment is necessary to accommodate for changes in the manufacturing process that have a material impact on emissions.

(B) There are significant changes to the EITE facility's external competitive environment that result in a significant increase in leakage risk.

(C) There are abnormal operating periods when the EITE facility's carbon intensity has been materially affected so that these abnormal operating periods are either excluded or otherwise considered in the establishment of the compliance period carbon intensity benchmarks.

(iii) Ecology may allocate additional no cost allowances to a facility with a primary North American industry classification system code beginning with 3364 reported under chapter 173-441 WAC that is using a mass-based allocation baseline in order to accommodate an increase in production that increases its emissions above the baseline on a basis equivalent in principle to those awarded to entities utilizing a carbon intensity allocation baseline. Owners or operators of an EITE facility who wish to be allocated additional no cost allowances under this subsection must submit the following information to ecology electronically in a format specified by ecology. The information must be submitted by March 31st of the year following the emissions year for which the facility wishes to be allocated additional allowances under this subsection. Ecology will make a determination on adjustments based on information contained in the facility's submission and information submitted in subsection (1)(b)(i) of this section.

(A) Data from the facility showing an increase in production that increases its emissions above baseline.

(B) Projected production data if the facility wishes to be allocated ongoing additional no cost allowances.

(iv) Ecology will withhold or withdraw the relevant share of no cost allowances allocated to a facility that ceases production in the state and becomes a closed facility. Any allowances withheld or withdrawn under this subsection must be transferred to the emissions containment reserve.

(v) A facility that curtails all production and becomes a curtailed facility may retain no cost allowances allocated to the facility, but the allowances cannot be traded, sold, or transferred and the facility is still subject to the emission reduction requirements specified in this section. An owner or operator of a curtailed facility may transfer the allowances to a new operator of the facility that will be operated under the same North American industry classification system code(s). If the curtailed facility becomes a closed facility, then all unused allowances will be transferred to the emissions containment reserve. A curtailed facility is not eligible to receive free allowances during a period of curtailment. Any allowances withheld or withdrawn under this subsection must be transferred to the emissions containment reserve.

(e) An EITE facility must provide timely and accurate verified reports under WAC 173-441-050 and this chapter in order to timely receive no cost allowances. In case of noncompliance, no cost allowances will be withheld until the facility is in compliance, at which time the appropriate number of no cost allowances will be issued to the EITE facility.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-220, filed 9/29/22, effective 10/30/22.]