WSR 22-20-001
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed September 21, 2022, 12:44 p.m., effective October 22, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is adopting amendments to WAC 388-424-0015 Immigrant eligibility restrictions for the state family assistance, ABD cash, and PWA programs. These amendments are necessary to implement HB 1748 (chapter 208, Laws of 2022) and expand aged, blind, or disabled program and housing and essential needs referral eligibility to victims of human trafficking (as defined in RCW 74.04.005).

Emergency amendments to implement this change took effect July 1, 2022, under WSR 22-14-047.

Citation of Rules Affected by this Order: Amending WAC 388-424-0015.

Statutory Authority for Adoption: RCW 41.05.021, 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.04.805, 74.04.820, 74.08.090, 74.08A.100, 74.08A.120, 74.09.035, 74.09.530, and 74.62.030.

Other Authority: HB 1748 (chapter 208, Laws of 2022).

Adopted under notice filed as WSR 22-16-078 on July 29, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: September 21, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4935.2

AMENDATORY SECTION (Amending WSR 22-02-014, filed 12/27/21, effective 2/1/22)

WAC 388-424-0015 Immigrant eligibility restrictions for the ((~~state family assistance~~)) SFA, ABD cash, and PWA programs. (1) To receive state family assistance (SFA) benefits, you must be:

(a) A "qualified alien" as defined in WAC 388-424-0001 who is ineligible for temporary assistance to needy families (TANF) due to the five-year bar as described in WAC 388-424-0006((~~(3)~~));

(b) A "nonqualified alien" who meets the Washington state residency requirements ((~~as listed~~)) in WAC 388-468-0005, including a noncitizen American Indian who does not meet the criteria in WAC 388-424-0001; or

(c) A "survivor of certain crimes" as defined in WAC 388-424-0001((~~(4)~~)).

(2) To receive aged, blind, or disabled (ABD) cash or pregnant women assistance (PWA) benefits, you must be:

(a) A "U.S. citizen" as defined in WAC 388-424-0001;

(b) A "U.S. national" as defined in WAC 388-424-0001;

(c) An American Indian born outside the U.S.;

(d) A "qualified alien" ((~~or similarly defined lawful immigrant such as victim of trafficking~~)) as defined in WAC 388-424-0001; or

(e) A "nonqualified alien" as defined ((~~described~~)) in WAC 388-424-0001 who((~~:~~)), U.S. Immigration and Customs Enforcement is not taking steps to enforce their departure; or

((~~(i) Has verified their intent to stay in the United States indefinitely; and~~

~~(ii) The United States Immigration and Customs Enforcement is not taking steps to enforce their departure.~~))

(f) A "survivor of certain crimes" as defined in WAC 388-424-0001.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.820, 74.08.090, 74.08A.120, 74.09.035. WSR 22-02-014, § 388-424-0015, filed 12/27/21, effective 2/1/22. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.62.030, 41.05.021, 74.09.035, 74.09.530, and 2011 1st sp.s. c 15, 2013 2nd sp.s. c 10, and the 2013 biennial budget. WSR 15-02-006, § 388-424-0015, filed 12/26/14, effective 1/26/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.08.043, 74.08.335, and 2011 1st sp.s. c 36. WSR 12-10-042, § 388-424-0015, filed 4/27/12, effective 6/1/12. Statutory Authority: RCW 74.04.050, 74.04.057, and 74.08.090. WSR 11-16-056, § 388-424-0015, filed 7/29/11, effective 8/29/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 04-15-004, § 388-424-0015, filed 7/7/04, effective 8/7/04. Statutory Authority: RCW 74.04.050, 74.08.090. WSR 00-08-060, § 388-424-0015, filed 3/31/00, effective 4/1/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-424-0015, filed 7/31/98, effective 9/1/98. Formerly WAC 388-518-1805.]

WSR 22-20-013
PERMANENT RULES
COLUMBIA BASIN COLLEGE
[Filed September 22, 2022, 12:11 p.m., effective October 23, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The student code of conduct under WAC 132S-100-235 needs amending as a result of a recent change in Washington state law. Sam's Law expanded the legal definition of hazing under RCW 28B.10.900 and with the start of the 2022-23 academic year, colleges and universities must incorporate hazing education into new student orientation programs, have a hazing prevention committee, and publicly report findings of hazing. The student code of conduct must prohibit hazing as defined by Sam's Law, and maintain and report violations of the code of conduct, antihazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault.

Citation of Rules Affected by this Order: Amending WAC 132S-100-235.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 22-13-119 on June 17, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 28, 2022.

Amber Martinez, Director
Human Resources and Special Projects

OTS-3894.1

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-235 Hazing. (1) Any ((~~method of~~)) act, described in Washington statute, RCW 28B.10.900 committed as part of a person's recruitment, initiation ((~~into~~)), pledging, admission into or affiliation with a student ((~~club or~~)) organization, athletic team, or living group, or any pastime or amusement engaged in with respect to ((~~a group or~~)) such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious ((~~mental~~)) psychological or emotional harm, to any student or other person attending the college ((~~as described in Washington statute, RCW 28B.10.900~~)), including causing, directing, coercing, or

forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. Hazing does not include customary athletic events or other similar contests or competitions.

(2) A person who witnesses hazing or has reasonable cause to believe hazing has occurred or will occur and makes a report in good faith may not be sanctioned or punished for violation of hazing unless the person is directly engaged in the planning, directing, or act of hazing reported.

[Statutory Authority: RCW 28B.50.140. WSR 20-03-046, § 132S-100-235, filed 1/9/20, effective 2/9/20; WSR 16-12-039, § 132S-100-235, filed 5/25/16, effective 6/25/16.]

WSR 22-20-016
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed September 22, 2022, 3:29 p.m., effective October 23, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending WAC 388-310-0800 WorkFirst—Support services, to expand use of WorkFirst support services to include housing and utilities assistance and help families with needs related to housing stability. Underspent WorkFirst support services state fiscal year (SFY) 2022 funding was shifted to SFY 2023 to increase the level of support for these purposes. Emergency amendments to implement this change took effect July 1, 2022, under WSR 22-14-058.

Citation of Rules Affected by this Order: Amending WAC 388-310-0800.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and 74.08A.250.

Adopted under notice filed as WSR 22-15-099 on July 19, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: September 22, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4934.1

AMENDATORY SECTION (Amending WSR 22-01-143, filed 12/15/21, effective 1/15/22)

WAC 388-310-0800 WorkFirst—Support services. (1) **Who can get support services?**

People who can get support services include:

(a) WorkFirst participants who receive a TANF cash grant;

(b) Sanctioned WorkFirst participants during the required participation before the sanction is lifted or applicants who were terminated while in noncompliance sanction who are doing activities required to reopen cash assistance (WAC 388-310-1600);

(c) TANF/SFA applicants as needed to meet the WorkFirst orientation requirements under WAC 388-400-0005(2) or 388-400-0010(3);

(d) Unmarried or pregnant minors who are income eligible to receive TANF and are:

(i) Living in a department approved living arrangement (WAC 388-486-0005) and are meeting the school requirements (WAC 388-486-0010); or

(ii) Are actively working with a social worker and need support services to remove the barriers that are preventing them from living in a department approved living arrangement ((~~and/~~)) or meeting the school requirements.

(e) American Indians who receive a TANF cash grant and have identified specific needs due to location or employment.

(f) Former WorkFirst participants who are working at least 15 hours per week or more, for up to three months after leaving TANF if they need employment-related transportation support services to meet a temporary need or emergency.

(2) **Why do I receive support services?**

Although not an entitlement, you may receive support services for the following reasons:

(a) To help you participate in work and WorkFirst activities that lead to independence.

(b) To help you to participate in job search, accept a job, keep working, advance in your job, ((~~and/~~)) or increase your wages.

(c) You can also get help in paying your child care expenses through the working connections child care assistance program. (Chapter 110-15 WAC describes the rules for this child care assistance program.)

(3) **What type of support services may I receive and what limits apply?**

There is a limit of ((~~five thousand dollars~~)) $5,000 per person per program year (July 1st to June 30th) for WorkFirst support services you may receive.

The chart below shows the types of support services that are available for the different activities (as indicated by an "x") and the restrictions that apply.

Definitions:

• Work-related activities include looking for work or participating in workplace activities, such as community jobs or a work experience position.

•• Safety-related activities include meeting significant or emergency family safety needs, such as dealing with family violence.

••• Some support services are available if you need them for other required activities in your IRP.

Type of Support Service	Restrictions	• Work	•• Safety	••• Other
Reasonable accommodation for employment		x		
Clothing/uniforms		x		
Diapers		x	x	x
Haircut		x		
Lunch	Same rate as established by OFM for state employees	x		
Personal hygiene		x	x	x
Professional, trade, association, union, and bonds		x		x

Type of Support Service	Restrictions	• Work	•• Safety	••• Other
Relocation related to employment or safety (can include rent, housing, and deposits)		x	x	
Short-term lodging and meals in connection with job interviews/tests	Same rate as established by OFM for state employees	x		
Tools/equipment		x	x	x
Car repair needed to restore car to operable condition		x	x	x
License/fees		x	x	x
Mileage reimbursement	Same rate as established by OFM for state employees	x	x	x
Transportation allotment, including fuel support		x	x	x
Counseling		x	x	x
Educational expenses		x	x	x
Medical exams (not covered by medicaid)		x	x	x
Public transportation		x	x	x
Testing-diagnostic		x	x	x
Housing and utilities	Funding allocated for 07/01/2022 - 06/30/2023 only	x	x	x

(4) **What are the other requirements to receive support services?**

Other restrictions on receiving support services are determined by the department or its agents. They will consider whether:

(a) It is within available funds; and

(b) It does not assist, promote, or deter religious activity; and

(c) There is no other way to meet the cost.

(5) **What happens to my support services if I do not participate as required?**

The department will give you ((~~ten~~)) 10 days notice, following the rules in WAC 388-310-1600, then discontinue your support services until you participate as required.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and 74.08A.250. WSR 22-01-143, § 388-310-0800, filed 12/15/21, effective 1/15/22. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 15-18-024, § 388-310-0800, filed 8/25/15, effective 9/25/15. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.62.030, 74.09.035, 74.08.090, 74.09.530, 41.05.021, 2011 1st sp.s. c 15, and 2013 2nd sp.s. c 10. WSR 14-10-046, § 388-310-0800, filed 4/30/14, effective 6/1/14. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.250. WSR 13-02-048, § 388-310-0800, filed 12/24/12, effective 2/1/13. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090. WSR 10-22-061, § 388-310-0800, filed 10/29/10, effective 12/1/10; WSR 09-06-053, § 388-310-0800, filed 2/26/09, effective 4/1/09. Statutory Authority: RCW 74.04.050 and 74.04.055. WSR 08-18-045, § 388-310-0800, filed 8/29/08, effective 10/1/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.260, chapter 74.08A RCW. WSR 06-10-035, § 388-310-0800, filed 4/27/06, effective 6/1/06. Statutory Authority: RCW 74.08.090, 74.04.050, 74.08A.340. WSR 05-02-014, § 388-310-0800, filed 12/27/04, effective 1/27/05. Statutory Authority: RCW 74.08.090, 74.04.050, 74.08A.340, and 2003 c 10 § 207. WSR 03-21-154, § 388-310-0800, filed 10/22/03, effective 10/27/03. Statutory Authority: RCW 74.08.090, 74.04.050,

78.08A.340, and [WSR] 99-14-043. WSR 02-11-130, § 388-310-0800, filed 5/21/02, effective 7/1/02; WSR 01-17-053, § 388-310-0800, filed 8/13/01, effective 9/1/01. Statutory Authority: RCW 74.08.090, 74.04.050, and 78.08A.340. WSR 00-13-106, § 388-310-0800, filed 6/21/00, effective 7/1/00. Statutory Authority: RCW 74.08.090 and 74.04.050. WSR 99-14-043, § 388-310-0800, filed 6/30/99, effective 7/31/99; WSR 97-20-129, § 388-310-0800, filed 10/1/97, effective 11/1/97.]

WSR 22-20-017
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed September 22, 2022, 3:34 p.m., effective October 23, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending WAC 388-310-0300 WorkFirst—Infant care exemptions for mandatory participants, and 388-310-1450 Pregnancy to employment, to improve access to home visiting and parental support for WorkFirst participants and their young children.

Citation of Rules Affected by this Order: Amending WAC 388-310-0300 and 388-310-1450.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.270.

Adopted under notice filed as WSR 22-16-118 on August 3, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: September 22, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4939.1

AMENDATORY SECTION (Amending WSR 18-03-059, filed 1/10/18, effective 2/10/18)

WAC 388-310-0300 WorkFirst—Infant care exemptions for mandatory participants. (1) **When may I be exempted from participating in WorkFirst activities if I am a mandatory participant?**

Either you or the other parent, living in the household, may claim an infant exemption from participating in WorkFirst activities provided you:

(a) Have a child under two years of age;

(b) Choose to not fully participate in the WorkFirst program (see WAC 388-310-0400); and

(c) Have not used up your lifetime ((~~twenty-four~~)) 24 month infant exemption.

(2) **If I choose my infant exemption, may I still be required to participate in the WorkFirst program?**

You are required to participate up to ((~~twenty~~)) 20 hours per week in ((~~parenting education, parenting skills training,~~)) mental health treatment, chemical dependency treatment, or ((~~any~~)) a combination of these, if:

(a) The comprehensive evaluation or assessment indicates a need; and

(b) Services are available in your community.

(3) **May I volunteer to participate in WorkFirst while I have a child under two years of age?**

You may choose to fully participate in WorkFirst (see WAC 388-310-0400) while you have a child under two years of age. If you decide later to stop participating and you still qualify for an exemption, you will return to exempt status with no financial penalty provided you meet the conditions of subsections (1) and (2) of this section.

(4) **Does an infant exemption from participation affect my ((~~sixty~~)) 60 month time limit for receiving temporary assistance for needy families (TANF) or state family assistance (SFA) benefits?**

Even if you are exempt from participation, each month you receive a TANF/SFA grant counts toward your ((~~sixty~~)) 60 month limit (see WAC 388-484-0005).

[Statutory Authority: RCW 74.08A.270, 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapter 74.12 RCW. WSR 18-03-059, § 388-310-0300, filed 1/10/18, effective 2/10/18. Statutory Authority: RCW 74.08A.270, 74.04.050, 74.08.090, and 74.04.055. WSR 15-09-037, § 388-310-0300, filed 4/9/15, effective 5/10/15. Statutory Authority: RCW 74.04.050, 74.08.090, 74.04.055 and 2007 c 289. WSR 08-02-055, § 388-310-0300, filed 12/28/07, effective 2/1/08. Statutory Authority: RCW 74.08.090, 74.04.050. WSR 02-14-087, § 388-310-0300, filed 6/28/02, effective 7/29/02; WSR 00-06-062, § 388-310-0300, filed 3/1/00, effective 3/1/00; WSR 99-10-027, § 388-310-0300, filed 4/28/99, effective 5/29/99; WSR 97-20-129, § 388-310-0300, filed 10/1/97, effective 11/1/97.]

AMENDATORY SECTION (Amending WSR 18-03-059, filed 1/10/18, effective 2/10/18)

WAC 388-310-1450 Pregnancy to employment. (1) **How do I know if I am eligible to participate in pregnancy to employment?**

If you are on temporary assistance for needy families (TANF) or state family assistance (SFA) and are pregnant or have a child under the age of two years, you are a participant in the pregnancy to employment pathway.

(2) **What services are provided to the pregnancy to employment pathway?**

(a) The pregnancy to employment pathway provides you with services, when available in your community, to ((~~help you learn how to work,~~)) look ((~~for work, or~~)) and prepare for work while ((~~still meeting~~)) supporting your child's needs. You and your WorkFirst worker will decide which variety of services you need((~~, such as:~~)). Service may include one or more of the items listed in (i) through (vi) of this section:

(i) ((~~Parenting education or parenting skills training~~)) Home visiting or other parent supports;

(ii) Safe and appropriate child care;
(iii) Mental health treatment;
(iv) Chemical dependency treatment;
(v) Domestic violence services; or
(vi) Employment services.

(b) The WorkFirst worker will contact you every three months to offer you services if you are not required to participate and choose to claim the infant exemption.

(c) You will be offered a voluntary referral to either home visiting or other parent supports at various times in the pregnancy to employment pathway.

(3) **What am I required to do while I am in the pregnancy to employment pathway?**

You must participate in an assessment with a DSHS social service specialist and based on the results you will:

(a) Work with your WorkFirst worker to decide which required activities best meet your needs (these activities will depend on where you are in the pregnancy or the age of your child and will be added to your individual responsibility plan (IRP)); and

(b) Be required to participate in ((~~the activities~~)) those activities, as identified in your IRP.

(4) **What am I required to do while I am pregnant?**

Based upon the results of your assessment, your participation:

(a) During your first and second trimester of pregnancy will be full-time work, looking for work, or preparing for work unless you have a good reason to participate fewer hours as described under WAC 388-310-1600.

(b) During your third trimester of pregnancy will be up to ((~~twenty~~)) 20 hours per week in either ((~~parenting education, parenting skills training,~~)) mental health treatment((~~,~~)) or chemical dependency treatment((~~, or any combination of these~~)), if:

(i) The comprehensive evaluation or assessment indicates a need; and

(ii) Services are available in your community.

(5) **What am I required to do after my child is born?**

After the birth of your child, you may choose to take the infant exemption under WAC 388-310-0300 or volunteer to participate in WorkFirst activities to the fullest of your abilities under WAC 388-310-0400.

(6) **What if I have used my ((~~twenty-four~~)) 24 month lifetime infant exemption?**

If you have another child after using all ((~~twenty-four~~)) 24 months of the infant exemption, you will be:

(a) Eligible for a ((~~twelve-~~)) 12 week postpartum deferral period to personally take care of an infant less than ((~~twelve~~)) 12 weeks of age but will be required to participate up to ((~~twenty~~)) 20 hours per week in ((~~parenting education, parenting skills training,~~)) mental health ((~~treatment,~~)) or chemical dependency treatment, or ((~~any~~)) a combination of these, if the comprehensive evaluation or assessment indicates a need and services are available in your community.

(b) Required to participate full time, unless otherwise exempt or you have good reason to participate fewer hours, once your child turns ((~~twelve~~)) 12 weeks old in one or more of the following activities:

(i) Work;
(ii) Looking for work;
(iii) Preparing for work by participating in a combination of activities based upon the results of your assessment.

(7) **Will I be sanctioned if I refuse to participate?**

(a) You are required to participate in the WorkFirst program under WAC 388-310-0200 subject to sanction under WAC 388-310-1600 unless you have good reason and you:

(i) Are in your third trimester of pregnancy;

(ii) Have not used up your ((~~twenty-four~~)) 24 month lifetime infant exemption and have a child under the age of two years old; or

(iii) Have used up your ((~~twenty-four~~)) 24 month lifetime infant exemption and have a child under ((~~twelve~~)) 12 weeks.

(b) You may be sanctioned if you stop participating in required ((~~parenting education, parenting skills training,~~)) mental health or chemical dependency treatment when you are:

((~~i~~)) (i) In your third trimester of pregnancy((~~,~~));

((~~e~~)) (ii) Claiming the infant exemption((~~,~~)); or

((~~u~~)) (iii) Using a ((~~twelve-~~)) 12 week postpartum deferral period.

[Statutory Authority: RCW 74.08A.270, 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapter 74.12 RCW. WSR 18-03-059, § 388-310-1450, filed 1/10/18, effective 2/10/18. Statutory Authority: RCW 74.08A.270, 74.04.050, 74.08.090, and 74.04.055. WSR 15-09-037, § 388-310-1450, filed 4/9/15, effective 5/10/15. Statutory Authority: RCW 74.04.050, 74.08.090, 74.04.055 and 2007 c 289. WSR 08-02-055, § 388-310-1450, filed 12/28/07, effective 2/1/08. Statutory Authority: RCW 74.08.090, 74.04.050. WSR 02-14-087, § 388-310-1450, filed 6/28/02, effective 7/29/02; WSR 00-06-062, § 388-310-1450, filed 3/1/00, effective 3/1/00.]

WSR 22-20-022
PERMANENT RULES
DEPARTMENT OF
ENTERPRISE SERVICES

[Filed September 22, 2022, 4:41 p.m., effective October 23, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of this update to the rules is to align the existing rules with statutory changes allowing the state board of pilotage commissioners, a Washington state agency, to participate in a local government joint self-insurance program covering liability risks. Other rule changes were made to provide a financially safe and transparent operating environment to the self-insurance pool members.

Citation of Rules Affected by this Order: Amending WAC 200-100-020, 200-100-02009, 200-100-050, and 200-100-220.

Statutory Authority for Adoption: RCW 48.62.061.

Adopted under notice filed as WSR 22-16-109 on August 3, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 22, 2022.

Jack Zeigler
Policy and Rules Manager

OTS-4001.1

AMENDATORY SECTION (Amending WSR 15-22-011, filed 10/22/15, effective 11/22/15)

WAC 200-100-020 Definitions. (1) "Actuary" means any person who is a fellow of the Casualty Actuarial Society and a member of the American Academy of Actuaries.

(2) "Assessment" means the moneys paid by the members to a joint self-insurance program, excluding member claim deductibles and fees for supplementary services.

(3) "Broker of record" means the insurance producer licensed in the state of Washington who, through a contractual agreement with the joint self-insurance program, procures insurance on behalf of the joint self-insurance program.

(4) "Case reserves" means the total of all claims and claims adjustment expenses for covered events which have occurred and have been reported to the joint and individual self-insurance programs as of the date of the financial statement. Case reserves include an estimate for

each reported claim based on the undiscounted jury verdict value of said claim.

(5) "Claim adjustment expense" means expenses, other than claim payments, incurred in the course of investigating and settling claims.

(6) "Claim" means a demand for payment for damages or policy benefit because of the occurrence of an event that includes, but is not limited to, the destruction or damage of property or reputation, bodily injury or death and alleged civil rights violations.

(7) "Claims auditor" means a person who has the following qualifications:

(a) A minimum of five years in claims management and investigative experience;

(b) A minimum of three years of experience in auditing the same manner of claims filed against the program being audited;

(c) Proof of professional liability insurance; and

(d) Provides a statement that the auditor is independent from the program being audited, its vendors, insurers, brokers, and third-party administrators.

(8) "Competitive process" means a formal sealed, electronic, or web-based bid procedure used for all nonclaims related purchases for goods and services over ((~~fifty thousand dollars~~)) $50,000. For purchases between ((~~five thousand dollars and fifty thousand dollars~~)) $5,000 and $50,000, competitive process means quotations obtained from at least three vendors by telephone or written quotations, or both, and supported by evidence of competition. Purchases up to ((~~five thousand dollars~~)) $5,000 are exempt from competitive bids providing procurement is based on obtaining maximum quality at minimum cost.

(9) "Competitive solicitation" means a documented formal process requiring sealed bids, providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

(10) "Consultant" means an independent individual or firm contracting with a joint self-insurance program to perform actuarial, claims auditing or third-party administration services, represent the program as broker of record, or render an opinion or recommendation according to the consultant's methods, all without being subject to the control of the program, except as to satisfaction of the contracted deliverables.

(11) "Governing body" means the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.

(12) "Incurred but not reported, or IBNR" means claims and claim adjustment expenses for covered events which have occurred but have not yet been reported to the self-insurance program as of the date of the financial statement. IBNR claims include (a) known loss events that are expected to be presented later as claims, (b) unknown loss events that are expected to become claims, and (c) future development on claims already reported.

(13) "Individual self-insurance program" means a formal program established and maintained by a local government entity to provide advance funding to self-insure for property and liability risks on its

own behalf as opposed to risk assumption, which means a decision to absorb the entity's financial exposure to a risk of loss without the creation of a formal program of advance funding of anticipated losses.

(14) "Interlocal agreement" means an agreement established under the Interlocal Cooperation Act defined in chapter 39.34 RCW.

(15) "Joint self-insurance program" means any two or more local government entities which have entered into a cooperative risk sharing agreement subject to regulation under chapter 48.62 RCW.

(16) "Jury verdict value" means the claim value established on an individual case basis by the entity's analysis of the jury verdict results within a jurisdiction in addition to other factors including, but not limited to, severity of injury or damage, length of recovery, credibility of parties and witnesses, ability of attorney, sympathy factors, degree of negligence of the parties and contribution or recovery from other sources.

(17) "Member" means:

(a) A local government entity that:

((~~(a)~~)) (i) Is a signatory to a joint insurance program's interlocal agreement;

((~~(b)~~)) (ii) Agrees to future assessments or reassessments as part of the program's joint self-insurance program; and

((~~(c)~~)) (iii) Is a past or present participant in the excess or self-insured retention portion of the pool's insurance program subject to regulation under chapter 48.62 RCW; and

(b) The board of pilotage commissioners that:

(i) Is a signatory to a joint insurance program's interlocal agreement;

(ii) Agrees to future assessments or reassessments as part of the program's joint self-insurance program; and

(iii) Is a past or present participant in the excess or self-insured retention portion of the pool's insurance program subject to regulation under chapter 48.62 RCW; and

(iv) Participates in the liability coverage offered by the program, but may not participate in property or other coverages as authorized in RCW 48.62.011(2).

(18) "Primary assets" means cash, short-term investments, and long-term investments ((~~(less any nonclaims liabilities)~~)). Primary assets may not include member receivables billed in advance of the coming year. The amount of the primary assets must be reduced by all nonclaims liabilities. At fiscal year ending 2025 and from thereon, both primary assets and secondary assets will also include all pension-related assets and liabilities.

(19) "Reassessment" means additional moneys paid by the members to a joint self-insurance program for previous years in which annual member assessments were not sufficient to cover costs.

(20) "Risk sharing" means a decision by the members of a joint self-insurance program to jointly absorb certain or specified financial exposures to risks of loss through the creation of a formal program of advance funding of actuarially determined anticipated losses; and/or joint purchase of insurance or reinsurance as a member of a joint self-insurance program formed under chapter 48.62 RCW.

(21) "Secondary assets" means insurance and member receivables, real estate or other assets ((~~(less any nonclaims liabilities)~~)) the value of which can be independently verified by the state risk manager. Secondary assets may not include member receivables billed in advance of the coming year. At fiscal year ending 2025 and from thereon,

both primary assets and secondary assets will also include all pension-related assets and liabilities.

(22) "Self-insurance program" means any individual or joint self-insurance program required by chapter 48.62 RCW to comply with this chapter.

(23) "Services" means administrative, electronic, management, loss prevention, training or other support services which do not include the participation in or purchase of the pools excess or self-insured insurance programs.

(24) "Stop-loss insurance" means a promise by an insurance company that it will cover losses of the entity it insures over and above an agreed-upon aggregated amount.

(25) "Third-party administrator" means an independent association, agency, entity or enterprise which, through a contractual agreement, provides one or more of the following ongoing services: Pool management or administration services, claims administration services, risk management services, or services for the design, implementation, or termination of an individual or joint self-insurance program.

(26) "Unallocated loss adjustment expense (ULAE)" means costs that cannot be associated with specific claims but are related to the claims adjustment process, such as administrative and internal expenses related to settlement of claims at the termination of the program.

(27) "Unpaid claims" means the obligations for future payment resulting from claims due to past events. This liability includes loss and adjustments expenses, incurred but not reported claims (IBNR), case reserves, and unallocated loss adjustment expenses (ULAE).

[Statutory Authority: 2015 c 109. WSR 15-22-011, § 200-100-020, filed 10/22/15, effective 11/22/15. Statutory Authority: 2011 c 43. WSR 11-23-093, recodified as § 200-100-020, filed 11/17/11, effective 11/17/11. Statutory Authority: RCW 48.62.061. WSR 10-01-072, § 82-60-020, filed 12/14/09, effective 1/14/10; WSR 05-04-072, amended and recodified as § 82-60-020, filed 2/1/05, effective 3/4/05. Statutory Authority: Chapter 48.62 RCW. WSR 93-16-079, § 236-22-020, filed 8/3/93, effective 9/3/93.]

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-100-02009 Standards for operation—Communication with members—Annual membership report. The joint self-insurance program shall make available to each member a copy of the program's annual membership report. The annual membership report shall include, at a minimum, financial information which includes the ((~~comparative~~)) balance sheet and statement of revenues, expenses and net assets. The reports shall be delivered to each member by electronic or regular mail. Programs may meet the delivery requirement by publishing and maintaining the membership report on the official website of the program for a minimum of three years from the date of publication.

[Statutory Authority: 2011 c 43. WSR 11-23-093, recodified as § 200-100-02009, filed 11/17/11, effective 11/17/11. Statutory Authority: RCW 48.62.061. WSR 10-01-072, § 82-60-02009, filed 12/14/09, effective 1/14/10.]

AMENDATORY SECTION (Amending WSR 15-22-011, filed 10/22/15, effective 11/22/15)

WAC 200-100-050 Standards for claims management—Claims administration. (1) All joint self-insurance programs shall adopt a written claims administration program which includes, as a minimum, the following procedures:

(a) Claims filing procedures and forms.

(b) Standards requiring case reserves for each claim be established in the amount of the jury verdict value.

(c) Standards requiring case reserves be reviewed every ((~~ninety~~)) 90 days or when reasonably practicable and such review is documented in the claims diary.

(d) Standards requiring appropriate adjuster work loads.

(e) Standards requiring claims payment procedures include sufficient internal controls to ensure adequate review and approval by claims management staff.

(f) Standards requiring file documentation be complete and up-to-date.

(g) Standards requiring timely and appropriate claim resolution practices.

(h) Standards requiring opportunities for recoveries be reviewed and documented for each claim.

(i) Standards requiring compliance with Internal Revenue Service (IRS) rules for 1099MISC regulations.

(j) Standards requiring claims files be audited on the following categories: Staffing, caseloads, supervision, diary, coverage, reserves, promptness of contacts, field investigations, file documentation, settlements, litigation management and subrogation.

(2) All joint self-insurance programs may perform claims administration services on their own behalf or may contract for claims administration services with a qualified third-party administrator, provided all of the specific requirements under subsection (1) of this section are included in the contract.

(3) All joint self-insurance programs shall have a written member coverage appeal procedure that contains, as a minimum, procedures for a member filing an appeal with the joint self-insurance program, including the time limit for filing, a time limit for response, and a provision for an additional level of review.

(4) All joint self-insurance programs shall maintain a financial system that identifies claim and claim adjustment expenses.

(5) All joint self-insurance programs shall provide for the purchase of goods and services to replace or repair property in a manner which will, in the judgment of the governing body of the joint self-insurance program, avoid further damage, injury, or loss of use to a member or third-party claimant.

(6) All joint self-insurance programs shall maintain claim expense reports for all claims made against the joint self-insurance program and its members.

(7) All joint self-insurance programs shall obtain an independent audit of claim reserving, adjusting and payment procedures every three years at a minimum. The audit shall be conducted by an independent qualified claims auditor not affiliated with the program, its insurers, its broker of record, or its third-party administrator. Such review shall be in writing and identify strengths, areas of improvement, findings, conclusions and recommendations. Such review shall be provi-

ded to the governing body and retained for a period not less than six years. The scope of the claims audit shall include claims administration procedures listed in subsection (1) of this section. The number, date, and scope of claims audited will be determined by the auditor based upon level of error and risk assessed by the auditor.

(8) The state risk manager may require more frequent claims audits for programs that, in the state risk manager's opinion, are not operationally or financially sound. Failure to obtain the requested independent claims audit when required may result in the procurement of such audit by the state risk manager on behalf of the program. Costs of these services shall be the responsibility of the joint self-insurance program.

[Statutory Authority: 2015 c 109. WSR 15-22-011, § 200-100-050, filed 10/22/15, effective 11/22/15. Statutory Authority: 2011 c 43. WSR 11-23-093, recodified as § 200-100-050, filed 11/17/11, effective 11/17/11. Statutory Authority: RCW 48.62.061. WSR 10-01-072, § 82-60-050, filed 12/14/09, effective 1/14/10; WSR 05-04-072, amended and recodified as § 82-60-050, filed 2/1/05, effective 3/4/05. Statutory Authority: Chapter 48.62 RCW. WSR 93-16-079, § 236-22-050, filed 8/3/93, effective 9/3/93.]

AMENDATORY SECTION (Amending WSR 15-22-011, filed 10/22/15, effective 11/22/15)

WAC 200-100-220 Standards for contracts—Standards for operation—Purchases of goods and services not related to claims. Joint self-insurance programs comprised of one common entity type must comply with bidding and purchasing requirements as prescribed by law or regulation for that entity type. Joint self-insurance programs comprised of multiple entity types ((~~shall use a competitive process for the purchase of goods and services not described in WAC 200-100-215~~)) must comply with bidding and purchasing requirements as prescribed by law or regulation for multiple entity types joined by interlocal agreements. Vendor selection shall be based on fees or costs, ability, capacity, experience, reputation, and responsiveness to time limitations. These regulations do not apply to the purchase of goods and services described in WAC 200-100-050(5).

[Statutory Authority: 2015 c 109. WSR 15-22-011, § 200-100-220, filed 10/22/15, effective 11/22/15. Statutory Authority: 2011 c 43. WSR 11-23-093, recodified as § 200-100-220, filed 11/17/11, effective 11/17/11. Statutory Authority: RCW 48.62.061. WSR 10-01-072, § 82-60-220, filed 12/14/09, effective 1/14/10.]

WSR 22-20-025
PERMANENT RULES
DEPARTMENT OF COMMERCE
[Filed September 23, 2022, 11:54 a.m., effective October 24, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends the permanent effective date of WAC 194-24-180 from January 1, 2021, for heat pump water heaters and January 1, 2022, for all other types of electric storage water heaters to January 1, 2023, for all electric storage water heaters.

Citation of Rules Affected by this Order: Amending WAC 194-24-180.

Statutory Authority for Adoption: RCW 19.260.070, 19.260.040, 19.260.080.

Adopted under notice filed as WSR 22-12-023 [22-14-023] on June 24, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 23, 2022.

Amanda Hathaway
Rules Coordinator

OTS-3638.3

AMENDATORY SECTION (Amending WSR 20-03-013, filed 1/6/20, effective 2/6/20)

WAC 194-24-180 Electric storage water heaters. (1) **Scope.** This rule applies to new electric storage water heaters manufactured on or after January 1, ((~~2021~~)) 2023. ((~~The effective date of the rule is suspended until January 1, 2022, for electric storage water heaters other than heat pump type water heaters.~~))

(2) **Standard.** Electric storage water heaters must have a modular demand response communications port compliant with:

(a) The March 2018 version of the ANSI/CTA-2045-A communication interface standard, or a standard determined by the department to be equivalent; and

(b) The March 2018 version of the ANSI/CTA-2045-A application layer requirements.

The interface standard and application layer requirements required in this subsection are the versions established in March 2018.

(3) Upon written request by a manufacturer, the department will determine whether an alternative communications port and communication interface standard are equivalent for the purposes of subsection (2) of this section.

(a) Any requested alternative must use a standard that is open and widely available and must provide the demand response functions provided using the standards identified in subsection (2) of this section.

(b) A request for designation of a standard must provide technical documentation demonstrating that the standard satisfies the requirements in (a) of this subsection and must describe any industry or stakeholder process used in developing the standard. The department will provide reasonable opportunity for input by utilities, manufacturers, technical experts and other interested stakeholders prior to determining whether the proposed standard is equivalent. The department will make available on a publicly accessible website any standard that it determines to be equivalent.

(4) **Testing.** There is no test method required for this product.

(5) **Listing.** There is no listing requirement for this product.

(6) **Marking.** Every unit of every electric storage water heater must have a label or marking indicating compliance with the standard in this section. The format and content of the label or marking must be approved in advance by the department.

[Statutory Authority: RCW 19.260.070. WSR 20-03-013, § 194-24-180, filed 1/6/20, effective 2/6/20.]

WSR 22-20-044
PERMANENT RULES
EMPLOYMENT SECURITY DEPARTMENT
[Filed September 28, 2022, 11:22 a.m., effective October 29, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The employment security department (department) is adopting new and amended rules to implement SHB 1732 (chapter 1, Laws of 2022), ESHB 1733 (chapter 2, Laws of 2022), and the third phase of the department's initial program implementation. The rules provide guidance to employees and employers regarding voluntary exemptions from the long-term services and supports trust program, referred to as the WA Cares fund program. The rules outline application and qualification requirements for voluntary exemptions and include four new types of exemptions added by ESHB 1733. The rules also implement provisions of ESHB 1733, which require three of the new voluntary exemptions to be discontinued by the individual within a specific time period when conditions qualifying them for the exemption are no longer met. The rules outline notification requirements and penalties for failing to provide required notifications to discontinue an exemption. The rules also delay the date self-employed individuals may elect coverage, make a reference correction to how the department will determine wages earned and hours worked for self-employed individuals, and address employer audit procedures that align with employer audit procedures for the paid family and medical leave program.

Citation of Rules Affected by this Order: New WAC 192-905-006 Eligibility requirements for an employee to receive a conditional exemption from the long-term services and supports trust program, 192-905-007 Notification requirements and penalties for discontinuing conditional exemptions, 192-930-005 Audit procedures, and 192-930-010 What happens if an employer fails to provide requested information to the department for an audit?; and amending WAC 192-905-005 Eligibility requirements for an employee to receive a permanent exemption from the long-term services and supports trust program, 192-905-010 How and when can an employee apply for an exemption from the long-term services and supports trust program?, 192-910-015 What are the employer's responsibilities for premium deductions?, 192-915-005 Election of coverage for self-employed persons, and 192-915-015 How will the department determine the wages earned and hours worked for self-employed persons electing coverage?

Statutory Authority for Adoption: RCW 50B.04.020, 50B.04.055, 50B.04.080, 50B.04.085, 50B.04.090.

Other Authority: SHB 1732, chapter 1, Laws of 2022, and ESHB [1733], chapter 2, Laws of 2022.

Adopted under notice filed as WSR 22-16-111 on August 3, 2022.

A final cost-benefit analysis is available by contacting Janette Benham, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-790-6583, TTY relay 711 (contact Teresa Eckstein at 360-507-9890 for accommodations), email rules@esd.wa.gov, website https://paidleave.wa.gov/rulemaking/.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 4, Amended 5, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 5, Repealed 0.

Date Adopted: September 28, 2022.

April Amundson
Policy and Rules Manager
Leave and Care Division

OTS-3995.1

AMENDATORY SECTION (Amending WSR 21-11-013, filed 5/7/21, effective 6/7/21)

WAC 192-905-005 Eligibility requirements for an employee to receive ((~~an~~)) a permanent exemption from the long-term services and supports trust program. (1) An employee who has long-term care insurance as outlined in RCW 50B.04.085 and attests to this, may apply through December 31, 2022, for ((~~an~~)) a permanent exemption from the premium assessment under RCW 50B.04.080. "Long-term care insurance" has the meaning provided in RCW 48.83.020.

((~~(2)~~)) (a) Only an employee who is eighteen years of age or older on the date of application may apply for an exemption.

((~~(3)~~)) (b) The employee must provide identification that verifies their age at the time of application.

((~~(4)~~)) (c) The department may verify an employee's long-term care insurance coverage and may request additional information from the employee.

(2) Beginning January 1, 2023, an employee who is a veteran of the United States military and has a service-connected disability rating by the United States department of veterans affairs of 70 percent or greater may apply for a permanent exemption from the premium assessment under RCW 50B.04.080.

(a) The employee must provide information sufficient for the department to verify their identity.

(b) The employee must provide documentation of their service-connected disability rating at the time of application.

(c) The department may verify an employee's service-connected disability rating and may request additional information from the employee.

[Statutory Authority: RCW 50B.04.020 and 50B.04.085. WSR 21-11-013, § 192-905-005, filed 5/7/21, effective 6/7/21.]

NEW SECTION

WAC 192-905-006 Eligibility requirements for an employee to receive a conditional exemption from the long-term services and supports trust program. (1) An employee may apply for a conditional exemption from the premium assessment under RCW 50B.04.080 if:

(a) The employee is a spouse or registered domestic partner of an active duty service member in the United States armed forces whether or not deployed or stationed within or outside of Washington;

(b) The employee holds a nonimmigrant visa for temporary workers, as recognized by federal law; or

(c) The employee maintains a permanent primary residence outside of Washington.

(2) The employee must provide information sufficient for the department to verify their identity.

(3) The employee must provide documentation sufficient to verify or substantiate the exemption under RCW 50B.04.055 at the time of application.

(4) The department may request additional information from the employee at any time.

(5) The employee must notify their employer(s) and the department within 90 days of no longer meeting exemption criteria. Requirements for notification and penalties for failing to provide notification to discontinue the exemption are outlined in WAC 192-905-007.

[]

NEW SECTION

WAC 192-905-007 Notification requirements and penalties for discontinuing conditional exemptions. (1) The employee must notify their employer(s) and the department within 90 days of no longer qualifying for an exemption outlined in WAC 192-905-006.

(2) A discontinued exemption will take effect the quarter immediately following notification and premiums will be assessed.

(3) Employees who fail to provide notifications as described in this section and have premiums assessed will owe any unpaid premiums to the department. Unpaid premiums will be assessed interest of one percent, compounded monthly, until payment is made in full.

[]

AMENDATORY SECTION (Amending WSR 21-11-013, filed 5/7/21, effective 6/7/21)

WAC 192-905-010 How and when can an employee apply for an exemption from the long-term services and supports trust program? (1) Applications for exemption from the long-term services and supports trust program for individuals who have long-term care insurance purchased before November 1, 2021, will be accepted by the department only from October 1, 2021, through December 31, 2022, per RCW 50B.04.085.

(2) Applications for exemption from the long-term services and supports trust program for veterans who are 70 percent disabled and individuals who apply under WAC 192-905-006 will be accepted beginning January 1, 2023, and will be ongoing.

(3) If approved by the department, an employee's exemption will be effective the quarter immediately following approval.

((~~(3)~~)) (4) Applications for exemption will be available ((~~on the department's website~~)) online or in another format approved by the department.

[Statutory Authority: RCW 50B.04.020 and 50B.04.085. WSR 21-11-013, § 192-905-010, filed 5/7/21, effective 6/7/21.]

OTS-3996.1

AMENDATORY SECTION (Amending WSR 21-17-140, filed 8/18/21, effective 9/18/21)

WAC 192-910-015 What are the employer's responsibilities for premium deductions? (1) Employers must deduct premiums for each pay period in which the employee receives wages.

(2) When an employer is found by the department to be noncompliant with collecting premiums from an employee, the employer must file an amended report and pay the past due premiums.

(3) Subsection (1) of this section does not apply if:

(a) An employer was unable to deduct the premium for a pay period due to a lack of sufficient employee wages for that pay period; or

(b) The employee has an approved exemption ((~~under RCW 50B.04.085~~)) and has provided the required proof of the exemption to the employer.

(4) Once an employer is notified that an employee no longer qualifies for an exemption, the employer must abide by all premium assessment requirements under chapter 50B.04 RCW for that employee.

[Statutory Authority: RCW 50B.04.020, 50B.04.080, 50B.04.090 and 50B.04.120. WSR 21-17-140, § 192-910-015, filed 8/18/21, effective 9/18/21.]

OTS-3997.1

AMENDATORY SECTION (Amending WSR 21-17-140, filed 8/18/21, effective 9/18/21)

WAC 192-915-005 Election of coverage for self-employed persons. (1) Self-employed persons as defined in RCW 50B.04.090 may elect coverage under Title 50B RCW.

(2) Coverage may only be elected beginning ((~~January 1, 2022~~)) July 1, 2023, and before ((~~January 1, 2025~~)) July 1, 2026, or within three years of becoming self-employed for the first time.

(3) Notice of election of coverage must be submitted to the department online or in another format approved by the department.

(4) Elective coverage begins on the first day of the quarter immediately following the notice of election.

(5) A self-employed person who elects coverage must continue to pay premiums until such time that the individual retires from the workforce or is no longer self-employed.

(6) The self-employed person must file a notice with the department if the individual retires from the workforce or is no longer self-employed.

[Statutory Authority: RCW 50B.04.020, 50B.04.080, 50B.04.090 and 50B.04.120. WSR 21-17-140, § 192-915-005, filed 8/18/21, effective 9/18/21.]

AMENDATORY SECTION (Amending WSR 21-17-140, filed 8/18/21, effective 9/18/21)

WAC 192-915-015 How will the department determine the wages earned and hours worked for self-employed persons electing coverage? The department will determine the wages earned and hours worked for self-employed individuals as described in WAC 192-510-030 (1), (2), and (4).

[Statutory Authority: RCW 50B.04.020, 50B.04.080, 50B.04.090 and 50B.04.120. WSR 21-17-140, § 192-915-015, filed 8/18/21, effective 9/18/21.]

OTS-3998.1

Chapter 192-930 WAC
AUDITS

NEW SECTION

WAC 192-930-005 Audit procedures. (1) The department may inspect and audit employer files and records as needed to ensure compliance with Title 50B RCW. Audits may take place at the discretion of the department.

(2) Employers must provide all requested information to the department within 10 business days or a time frame agreed to by the department.

(3) If the department discovers violations for the time frame being audited, the department may expand the audit to include prior and subsequent quarters, up to the most recently completed calendar quarter.

[]

NEW SECTION

WAC 192-930-010 What happens if an employer fails to provide requested information to the department for an audit? Employers must provide all requested documentation as it pertains to the long-term services and supports trust program under Title 50B RCW. If an employer fails or refuses to provide necessary payroll or other wage information during an audit, the department may determine payroll and wage information for the purposes of premium assessment based on information otherwise available to the department. This may include information from the same employer, similar employers, labor market information, information provided to other state or local agencies, or the best information otherwise available to the department.

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WSR 22-20-046
PERMANENT RULES
HEALTH CARE AUTHORITY
[Filed September 28, 2022, 12:06 p.m., effective October 29, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The agency is amending WAC 182-526-0030 to update the board of appeals' website address. The agency is amending WAC 182-526-0580 to specify the acceptable filing methods for a written review request of an initial order.

Citation of Rules Affected by this Order: Amending WAC 182-526-0030 and 182-526-0580.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 22-17-116 on August 22, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: September 28, 2022.

Wendy Barcus
Rules Coordinator

OTS-3970.1

AMENDATORY SECTION (Amending WSR 21-18-063, filed 8/26/21, effective 9/26/21)

WAC 182-526-0030 Contacting the board of appeals. The information included in this section is current at the time of rule adoption, but may change. Current information and additional contact information are available on the health care authority's internet site, in person at the board of appeals (BOA) office, or by a telephone call to the BOA's main public number.

Board of Appeals	
Location	626 8th Avenue S.E. Olympia, Washington
Mailing address	P.O. Box 42700 Olympia, WA 98504-2700
Toll free telephone	1-844-728-5212
Fax	360-507-9018
Electronic service	HCABoardofAppeals@hca.wa.gov

Board of Appeals	
Internet website	((~~www.hca.wa.gov/appeals~~)) https://www.hca.wa.gov/about-hca/board-appeals

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-18-063, § 182-526-0030, filed 8/26/21, effective 9/26/21; WSR 15-04-102, § 182-526-0030, filed 2/3/15, effective 3/6/15. Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0030, filed 12/19/12, effective 2/1/13.]

AMENDATORY SECTION (Amending WSR 17-05-066, filed 2/13/17, effective 3/16/17)

WAC 182-526-0580 Deadline for requesting review of an initial order by a review judge. (1) The board of appeals (BOA) must receive the written review request of an initial order on or before 5:00 p.m. on the ((~~twenty-first~~)) 21st calendar day after the initial order was served, unless an extension of the deadline is granted by the review judge.

(2) A party may file the written review request by physical mail, by facsimile transmission (fax)((~~. A copy of the review request should also be mailed to BOA~~)), electronically by email, or in-person delivery. For the BOA contact information, see WAC 182-526-0030.

((~~(2)~~)) (3) A review judge may extend the deadline to request review if a party:

(a) Asks for more time before the deadline expires; and

(b) Gives a good reason for more time.

((~~(3)~~)) (4) A review judge may accept a review request after the ((~~twenty-one~~)) 21 calendar day deadline only if:

(a) BOA receives the review request on or before the ((~~thirtieth~~)) 30th calendar day after the deadline; and

(b) A party shows good cause for missing the deadline.

((~~(4)~~)) (5) The time periods provided by this section for requesting review of an initial order, including any extensions, does not count against a deadline, if any, for a review judge to enter the final order.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-05-066, § 182-526-0580, filed 2/13/17, effective 3/16/17. Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0580, filed 12/19/12, effective 2/1/13.]

WSR 22-20-049
PERMANENT RULES
HEALTH CARE AUTHORITY
[Filed September 28, 2022, 2:31 p.m., effective January 1, 2023]

Effective Date of Rule: January 1, 2023.

Purpose: The agency amended this rule to update subsection (3) to include language regarding the out-of-state alumni population as mandated by the SUPPORT Act, section 1002. The SUPPORT Act, P.L. 115-271, makes changes to the new coverage group created under the Affordable Care Act that extends medicaid coverage to former foster youth (alumni). This change expands the coverage group so former foster youth who have aged out of foster care in any state at the age of 18 can have medicaid coverage in any other state through the age of 26. Other housekeeping changes include the change of agencies from the children's administration to what is now the department of children, youth, and families (DCYF). Group home is now referred to as a community facility and managed by DCYF's juvenile rehabilitation. Subsection (2)(d)(v) was removed as the voluntary placement waiver program is no longer operating.

Citation of Rules Affected by this Order: Amending WAC 182-505-0211.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: P.L. 115-271, Section 1002.

Adopted under notice filed as WSR 22-17-154 on August 23, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: September 28, 2022.

Wendy Barcus
Rules Coordinator

OTS-4012.1

AMENDATORY SECTION (Amending WSR 17-12-017, filed 5/30/17, effective 6/30/17)

WAC 182-505-0211 Washington apple health—Foster care. (1) A ((~~person~~)) client under the age of ((~~nineteen~~)) 18 is eligible for Washington apple health foster care coverage when they:

(a) Are in foster care, as determined by the department of children, youth, and families (DCYF), under the legal responsibility of

the state, or a federally recognized tribe located within the state; and

(b) Meet Washington residency requirements as described in WAC 182-503-0520 or 182-503-0525.

(2) A ((~~person~~)) client age ((~~twenty~~)) 20 or younger is eligible for coverage when the ((~~person~~)) client meets:

(a) Washington residency requirements as described in WAC 182-503-0520 or 182-503-0525;

(b) Citizenship or immigration status requirements as described in WAC 182-503-0535;

(c) Social Security number requirements as described in WAC 182-503-0515; and

(d) One of the following requirements:

(i) Is in foster care, or is eligible for continued foster care services as determined by ((~~the children's administration~~)) DCYF, under the legal responsibility of the state, or a federally recognized tribe located within the state; or

(ii) Receives subsidized adoption services through ((~~the children's administration~~)) DCYF; or

(iii) Is enrolled in the unaccompanied refugee minor (URM) program as authorized by the office of refugee and immigrant assistance (ORIA); or

(iv) Is living in a ((~~group home~~)) community facility (as defined in WAC 110-700-0005) operated or contracted by ((~~the juvenile rehabilitation administration; or~~

~~(v) Is placed in a foster home or group home through the voluntary placement waiver program managed by the division of developmental disabilities~~)) DCYF's juvenile rehabilitation.

(3) A ((~~person~~)) client age ((~~nineteen~~)) 18 or older but under age ((~~twenty-six~~)) 26 is eligible for Washington apple health coverage when the ((~~person~~)) client:

(a) Was ((~~both~~)) in foster care under the legal responsibility of ((~~the~~)) any state or a federally recognized tribe located within ((~~the~~)) any state ((~~and enrolled in medicaid~~)):

(i) On the ((~~person's eighteenth~~)) client's 18th birthday; or

(ii) At such higher age ((~~at which~~)) as to when the state or tribe extends foster care ((~~assistance ended~~)) coverage; and

(b) Meets residency, Social Security number, and citizenship requirements as described in subsection (2) of this section.

(4) A ((~~person~~)) client described in subsections (1) through (3) of this section is not eligible for full-scope coverage if the ((~~person~~)) client is confined to a public institution as defined in WAC 182-500-0050, except:

(a) If the ((~~person~~)) client is under age ((~~twenty-one~~)) 21;

(b) Resides in an institution for mental disease (IMD); and

(c) Meets the institutional status requirements in WAC ((~~182-505-0240~~)) 182-513-1320, 182-514-0250, or 182-514-0260.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-12-017, § 182-505-0211, filed 5/30/17, effective 6/30/17. Statutory Authority: RCW 41.05.021, Patient Protection and Affordable Care Act (P.L. 111-148), 42 C.F.R. §§ 431, 435, 457, and 45 C.F.R. § 155. WSR 14-01-021, § 182-505-0211, filed 12/9/13, effective 1/9/14.]

WSR 22-20-052
PERMANENT RULES
HEALTH CARE AUTHORITY
[Filed September 28, 2022, 3:53 p.m., effective October 29, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The health care authority (HCA) amended WAC 182-503-0005(3) to include language regarding a telephonic signature option when applying for apple health coverage.

Citation of Rules Affected by this Order: Amending WAC 182-503-0005.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 22-17-089 on August 18, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: September 28, 2022.

Wendy Barcus
Rules Coordinator

OTS-3744.1

AMENDATORY SECTION (Amending WSR 18-11-071, filed 5/15/18, effective 6/15/18)

WAC 182-503-0005 Washington apple health—How to apply. (1) You may apply for Washington apple health at any time.

(2) For apple health programs for children, pregnant people, parents and caretaker relatives, and adults age ((~~sixty-four~~)) 64 and under without medicare (including people who have a disability or are blind), you may apply:

(a) Online via the Washington Healthplanfinder at www.wahealthplanfinder.org;

(b) By calling the Washington Healthplanfinder customer support center and completing an application by telephone;

(c) By completing the application for health care coverage (HCA 18-001P), and mailing or faxing to Washington Healthplanfinder; or

(d) At a department of social and health services (DSHS) community services office (CSO).

(3) If you seek apple health coverage and are age ((~~sixty-five~~)) 65 or older, have a disability, are blind, need assistance with medicare costs, or seek coverage of long-term services and supports, you may apply:

(a) Online via Washington Connection at www.WashingtonConnection.org;

(b) By completing the application for aged, blind, disabled/long-term care coverage (HCA 18-005) and mailing or faxing it to DSHS;

(c) By calling the DSHS customer service contact center and completing an application by telephone;

(d) In person at a local DSHS CSO or home and community services (HCS) office; or

((~~(d)~~)) (e) As specified in subsection (2) of this section, if you are a child, pregnant, a parent or caretaker relative, or an adult age ((~~sixty-four~~)) 64 and under without medicare.

(4) You may receive help filing an application.

(a) For households containing people described in subsection (2) of this section:

(i) Call the Washington Healthplanfinder customer support center number listed on the application for health care coverage form (HCA 18-001P); or

(ii) Contact a navigator, health care authority volunteer assistor, or broker.

(b) For people described in subsection (3) of this section who are not applying with a household containing people described in subsection (2) of this section:

(i) Call or visit a local DSHS CSO or HCS office; or

(ii) Call the DSHS community services customer service contact center number listed on the medicaid application form.

(5) To apply for tailored supports for older adults (TSOA), see WAC 182-513-1625.

(6) You must apply directly with the service provider for the following programs:

(a) The breast and cervical cancer treatment program under WAC 182-505-0120;

(b) The TAKE CHARGE program under chapter 182-532 WAC; and

(c) The kidney disease program under chapter 182-540 WAC.

(7) For the confidential pregnant minor program under WAC 182-505-0117 and for minors living independently, you must complete a separate application directly with us (the medicaid agency).

More information on how to give us an application may be found at the agency's website: www.hca.wa.gov/free-or-low-cost-health-care (search for "teen").

(8) As the primary applicant or head of household, you may start an application for apple health by providing your:

(a) Full name;

(b) Date of birth;

(c) Physical address, and mailing addresses (if different); and

(d) Signature.

(9) To complete an application for apple health, you must also give us all of the other information requested on the application.

(10) You may have an authorized representative apply on your behalf as described in WAC 182-503-0130.

(11) We help you with your application or renewal for apple health in a manner that is accessible to you. We provide equal access (EA) services as described in WAC 182-503-0120 if you:

(a) Ask for EA services, you apply for or receive long-term services and supports, or we determine that you would benefit from EA services; or

(b) Have limited-English proficiency as described in WAC 182-503-0110.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-11-071, § 182-503-0005, filed 5/15/18, effective 6/15/18; WSR 17-15-061, § 182-503-0005, filed 7/13/17, effective 8/13/17. Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-503-0005, filed 7/29/14, effective 8/29/14.]

WSR 22-20-056
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 21-06—Filed September 29, 2022, 8:43 a.m., effective October 30, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The rule making adopts new chapter 173-446 WAC, Climate Commitment Act program rule. The purpose of this new chapter is to establish and implement the programmatic framework in the Climate Commitment Act (CCA) (Greenhouse gas (GHG) emissions—Cap-and-invest program, E2SSB 5126, chapter 316, Laws of 2021, codified as chapter 70A.65 RCW).

This rule making will establish the foundational regulations necessary to implement RCW 70A.65.060 through 70A.65.210, and 70A.65.310, of the CCA program to cap GHG emissions and implement an allowance trading market. Components of the rule include, but are not limited to:

- Program coverage, registration, and account requirements.
- Methods and procedures for allocating allowances.
- Allowance budgets for the first compliance period (2023 - 2026) and distribution of allowances.
- Auction registration requirements.
- Auction floor and ceiling prices and Tier I and II prices for allowance price containment reserve auctions.
- Emissions containment reserve.
- Procedures and protocols for offset projects.
- Enforcement provisions.
- Transfer and sale of allowances and recognition of compliance instruments.
- Other elements to support the operation and functioning of the cap and invest program.

Citation of Rules Affected by this Order: New chapter 173-446 WAC.

Statutory Authority for Adoption: RCW 70A.65.220 Adoption of rules.

Adopted under notice filed as WSR 22-13-026 on June 3, 2022.

Changes Other than Editing from Proposed to Adopted Version: A number of minor changes to the rule were made in response to public comment and ongoing consultation with other agencies, and for purposes of clarification and ease of implementation. For a complete list of changes made and the rationale for such changes, please see the concise explanatory statement.

A final cost-benefit analysis is available by contacting Joshua Grice, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-280-6566, Washington relay service or TTY 711 or 877-833-6341, email ecyreclimaterules@ecy.wa.gov, website https://apps.ecology.wa.gov/publications/SummaryPages/2202047.html.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 78, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 29, 2022.

Laura J. Watson
Director

OTS-3614.7

Chapter 173-446 WAC
CLIMATE COMMITMENT ACT PROGRAM RULE

GENERAL REQUIREMENTS

NEW SECTION

WAC 173-446-010 Purpose. (1) The purpose of this chapter is to implement the provisions of the GHG emissions cap and invest program created by RCW 70A.65.060 through 70A.65.210. The provisions of the cap and invest program implemented by this chapter establish a declining cap on GHG emissions from covered entities consistent with the limits established in RCW 70A.45.020, and a program to track, verify, and enforce compliance with the cap through the use of compliance instruments.

(2) Ecology will engage with the environmental justice council. Ecology acknowledges and recognizes there are communities that have historically borne the disproportionate impacts of environmental burdens and that now bear the disproportionate negative impacts of climate change, and the legislature specifically empowered the environmental justice council to provide recommendations to ecology on the cap and invest program.

[]

NEW SECTION

WAC 173-446-020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires oth-

erwise. For those terms not listed in this section, the definitions found in chapters 173-441 and 173-446A WAC apply in this chapter.

"Additional" means, in the context of the offset provisions of this rule, greenhouse gas emission reductions or removals that exceed any greenhouse gas reduction or removals otherwise required by law, regulation or legally binding mandate, and that exceed any greenhouse gas reductions or removals that would otherwise occur in a business-as-usual scenario.

"Adverse offset verification statement" means an offset verification statement rendered by a verification body attesting that the verification body cannot say with reasonable assurance that the submitted offset project data report is free of an offset material misstatement, or that it cannot attest that the offset project data report conforms to the requirements of this chapter or applicable compliance offset protocol.

"Affiliated registered entities" means registered entities in a direct or indirect corporate association.

"Aggregation" means, in the context of offsets, a grouping of offset projects carried out according to the same compliance offset protocol and under the responsibility of the same offset project developer or operator.

"Allowance" means an authorization to emit up to one metric ton of carbon dioxide equivalent.

"Allowance price containment reserve" means an account maintained by ecology with allowances available for sale through separate reserve auctions at predefined prices to assist in containing compliance costs for covered and opt-in entities in the event of unanticipated high costs for compliance instruments.

"Annual allowance budget" means the total number of GHG allowances allocated for auction and distribution for one calendar year by ecology.

"Asset controlling supplier" or "ACS" has the same meaning as in chapter 173-441 WAC.

"Auction" means the process of selling GHG allowances by offering them up for bid, taking bids, and then distributing the allowances to winning bidders.

"Auction floor price" means a price for allowances below which bids at auction are not eligible to be accepted.

"Auction purchase limit" means the limit on the number of allowances one registered entity or a group of affiliated registered entities may purchase from the share of allowances sold at an auction.

"Auction settlement price" means the price announced by ecology at the conclusion of each auction that all successful bidders pay for each allowance.

"Authorized project designee" means an entity authorized by an offset project operator to act on behalf of the offset project operator. The authorized project designee must be a primary account representative or alternate account representative on the offset project operator's holding account.

"Balancing authority" means the responsible party that integrates resource plans ahead of time, maintains load-interchange generation balance within a balancing authority area, and supports interconnection frequency in real time.

"Balancing authority area" means the collection of generation, transmission, and load within the metered boundaries of a balancing authority. A balancing authority maintains load-resource balance within this area.

"Banking" means the holding of compliance instruments from one compliance period for the purpose of sale or use for compliance in a future compliance period.

"Best available technology" or "BAT" means a technology or technologies that will achieve the greatest reduction in GHG emissions, taking into account the fuels, processes, and equipment used by facilities to produce goods of comparable type, quantity, and quality. Best available technology must be technically feasible, commercially available, economically viable, not create excessive environmental impacts, and be compliant with all applicable laws while not changing the characteristics of the good being manufactured.

"Biomass" means nonfossilized and biodegradable organic material originating from plants, animals, and microorganisms, including products, by-products, residues, and waste from agriculture, forestry, and related industries as well as the nonfossilized and biodegradable organic fractions of municipal wastewater and industrial waste, including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material.

"Biomass-derived fuels," "biomass fuels," or "biofuels" means fuels derived from biomass that have at least 40 percent lower GHG emissions based on a full life-cycle analysis when compared to petroleum fuels for which biofuels are capable as serving as a substitute.

"Bundled transaction" means the retail sale of two or more products, except real property or services to real property, where:

(a) The products are otherwise distinct and identifiable; and

(b) The products are sold for one nonitemized price.

A bundled transaction does not include the sale of any products in which the sale price varies or is negotiable, based on the selection by the purchaser of the products included in the transaction.

"Business-as-usual scenario" means, in the context of offsets, the set of conditions reasonably expected to occur within the offset project boundary in the absence of the financial incentives provided by offset credits, taking into account all current laws and regulations, as well as current economic and technological trends.

"Cap and invest consultant or advisor" means an individual or party that meets the criteria in WAC 173-446-056.

"Carbon dioxide equivalents" or "CO_2e" has the same meaning as in chapter 173-441 WAC.

"Carbon dioxide removal" or "greenhouse gas removal" means deliberate human activities removing carbon dioxide from the atmosphere and durably storing it in geological, terrestrial, or ocean reservoirs, or in products. "Carbon dioxide removal" includes existing and potential anthropogenic enhancement of biological or geochemical sinks and including, but not limited to, carbon mineralization and direct air capture and storage.

"Closed electricity importer" means an electricity importer that has elected to permanently stop providing or importing electric power into Washington.

"Closed facility" means a facility at which the current owner or operator has elected to permanently stop production and will no longer be an emissions source.

"Closed supplier" means a supplier that has elected to permanently stop supplying any of the materials that trigger coverage as a supplier under chapter 70A.65 RCW and this chapter.

"Compliance instrument" means an allowance or offset credit issued by ecology or by an external GHG emissions trading program to

which Washington has linked its cap and invest program. One compliance instrument is equal to one metric ton of carbon dioxide equivalent.

"Compliance obligation" means the requirement to submit to ecology the number of compliance instruments equivalent to a covered or opt-in entity's covered emissions during the compliance period.

"Compliance offset protocol" means an offset protocol adopted by ecology.

"Compliance period" means the four-year period for which the compliance obligation is calculated for covered entities.

"Conservative" means, in the context of offsets, utilizing project baseline assumptions, emission factors, and methodologies that are more likely than not to understate net GHG reductions or GHG removal enhancements for an offset project to address uncertainties affecting the calculation or measurement of GHG reductions or GHG removal enhancements.

"Cost burden" means the impact on rates or charges to customers of electric utilities in Washington for the incremental cost of electricity service to serve load due to the compliance cost for GHG emissions caused by the program. Cost burden includes administrative costs from the utility's participation in the program.

"Covered emissions" means the emissions described in WAC 173-446-040 for which a covered entity has a compliance obligation under this chapter.

"Covered entity" means a person that is designated by ecology as subject to this chapter as specified in WAC 173-446-030 or 173-446-060. Each facility, supplier, or first jurisdictional deliverer serving as an electricity importer is a separate covered entity.

"Crediting baseline" refers to the reduction of absolute GHG emissions below the business-as-usual scenario after the imposition of greenhouse gas emission reduction requirements or incentives.

"Crediting period" means the predetermined period of time for which an offset project will remain eligible to be issued ecology offset credits or registry offset credits for verified GHG emission reductions or GHG removal enhancements.

"Curtailed electric power entity" means an electric power entity at which the owner or operator has temporarily suspended operations but for which the owner or operator maintains any necessary permits and retains the option to resume business if conditions become amenable.

"Curtailed facility" means a facility at which the owner or operator has temporarily suspended production but for which the owner or operator maintains operating permits and retains the option to resume production if conditions become amenable.

"Curtailed supplier" means a supplier at which the owner or operator has temporarily suspended operations but for which the owner or operator maintains any necessary permits and retains the option to resume business if conditions become amenable.

"Direct corporate association" means a group of parties that meet the requirements in WAC 173-446-105 to be a direct corporate association.

"Direct environmental benefits in the state" means, in the context of offsets, environmental benefits accomplished through the reduction or avoidance of emissions of any air pollutant in the state or the reduction or avoidance of the release of any pollutant that could have an adverse impact on land or waters of the state.

"Direct GHG emission reduction" means a reduction of GHG emissions from applicable GHG emission sources, GHG sinks, or GHG reser-

voirs that are under control of an offset project operator or authorized project designee.

"Direct GHG removal enhancement" means a GHG removal enhancement from applicable GHG emission sources, GHG sinks, or GHG reservoirs under control of the offset project operator or authorized project designee.

"Ecology" means the Washington state department of ecology or its agents, including the auction administrator and the financial services administrator retained by ecology pursuant to RCW 70A.65.100(3).

"Electric power entity" has the same meaning as in chapter 173-441 WAC.

"Electricity importer" has the same meaning as in chapter 173-441 WAC.

"Emissions containment reserve allowance" means a conditional allowance that is withheld from sale at an auction by ecology or its agent to secure additional emissions reductions in the event prices fall below the emissions containment reserve trigger price, or any other allowance placed into the emissions containment reserve.

"Emissions containment reserve trigger price" means the price below which allowances will be withheld from sale at an auction by ecology, as determined by ecology by rule unless ecology has suspended the emissions containment reserve trigger price.

"Emissions threshold" means the GHG emission level at or above which a person has a compliance obligation under this chapter.

"Emissions year" means the calendar year in which GHG emissions occur.

"Environmental benefits" means activities that:

(a) Prevent or reduce existing environmental harms or associated risks that contribute significantly to cumulative environmental health impacts;

(b) Prevent or mitigate impacts to overburdened communities or vulnerable populations from, or support community response to, the impacts of environmental harm; or

(c) Meet a community need formally identified to a covered agency by an overburdened community or vulnerable population that is consistent with the intent of chapter 70A.02 RCW.

"Environmental harm" means the individual or cumulative environmental health impacts and risks to communities caused by historic, current, or projected:

(a) Exposure to pollution, conventional or toxic pollutants, environmental hazards, or other contamination in the air, water, and land;

(b) Adverse environmental effects, including exposure to contamination, hazardous substances, or pollution that increase the risk of adverse environmental health outcomes or create vulnerabilities to the impacts of climate change;

(c) Loss or impairment of ecosystem functions or traditional food resources or loss of access to gather cultural resources or harvest traditional foods; or

(d) Health and economic impacts from climate change.

"Environmental impacts" means environmental benefits or environmental harms, or the combination of environmental benefits and harms, resulting or expected to result from a proposed action.

"Environmental justice council" means the council established in RCW 70A.02.110.

"External GHG emissions trading program" or "external GHG ETS" means a government program, other than Washington's program created in

this chapter, that restricts GHG emissions from sources outside of Washington and that allows emissions trading.

"Facility" has the same meaning as in chapter 173-441 WAC.

"Federal power marketing administration" means any of the four federal power marketing administrations that operate electric systems and sell the electrical output of federally owned and operated hydroelectric dams in the United States.

"First jurisdictional deliverer" means the owner or operator of an electric generating facility in Washington state or an electricity importer.

"Forest buffer account" means a holding account for ecology offset credits issued to forest offset projects. It is used as a general insurance mechanism against unintentional reversals, for all forest offset projects listed under a compliance offset protocol.

"Forest owner" means the owner of any interest in the real property on which a forest offset project is located, excluding government agency or other third-party beneficiaries of conservation easements. Generally, a forest owner is the owner in fee of the real property on which a forest offset project is located. In some cases, one party may be the owner in fee while another party may have an interest in the trees or the timber on the property, in which case all parties with interest in the real property are collectively considered the forest owners; however, a single forest owner must be identified as the offset project operator.

"General market participant" means a registered entity that is not identified as a covered entity or an opt-in entity that is registered in the program registry and intends to purchase, hold, sell, or voluntarily retire compliance instruments.

"Greenhouse gas" or "GHG" has the same meaning as in chapter 173-441 WAC.

"Greenhouse gas emission reduction" or "GHG emission reduction" or "greenhouse gas reduction" or "GHG reduction" means a calculated decrease in GHG emissions relative to a project baseline over a specified period of time.

"Greenhouse gas emissions source" or "GHG emissions source" means, in the context of offsets, any type of emitting activity that releases greenhouse gases into the atmosphere.

"Greenhouse gas removal enhancement" or "GHG removal enhancement" means a calculated increase in GHG removals relative to a project baseline.

"Greenhouse gas reservoir" or "GHG reservoir" means a physical unit or component of the biosphere, geosphere, or hydrosphere with the capability to store, accumulate, or release a GHG removed from the atmosphere by a GHG sink or a GHG captured from a GHG emission source.

"Greenhouse gas sink" or "GHG sink" means a physical unit or process that removes a GHG from the atmosphere.

"Holding limit" means the maximum number of allowances that may be held for use or trade by a registered entity at any one time.

"Imported electricity" has the same meaning as in chapter 173-441 WAC.

"Indirect corporate association" means a group of parties that meet the requirements in WAC 173-446-105 to be an indirect corporate association.

"Initial crediting period" means the crediting period that begins with the first day of the first reporting period which receives a positive offset or qualified positive offset verification statement and has that offset verification statement approved by ecology.

"Intentional reversal" means any reversal, except as provided below, which is caused by a forest owner's negligence, gross negligence, or willful intent, including harvesting, development, and harm to the area within the offset project boundary, or caused by approved growth models overestimating carbon stocks. A reversal caused by an intentional back burn set by, or at the request of, a local, state, or federal fire protection agency for the purpose of protecting forestlands from an advancing wildfire that began on another property through no negligence, gross negligence, or willful misconduct of the forest owner is not considered an intentional reversal but, rather, an unintentional reversal. Receiving adverse offset verification statements on two consecutive offset verifications after the end of the final crediting period will be considered an intentional reversal.

"Lead offset verifier" means a party that has met all the requirements in WAC 173-441-085(7) and who may act as the lead verifier of an offset verification team providing offset verification services or as a lead verifier providing an independent review of offset verification services rendered.

"Lead offset verifier independent reviewer" or "independent offset reviewer" means a lead offset verifier within a verification body who has not participated in conducting offset verification services for an offset project developer or authorized project designee for the current offset project data report and who provides an independent review of offset verification services rendered for an offset project developer or authorized project designee as required in WAC 173-446-530. The independent reviewer is not required to also meet the requirements for a sector specific or offset project specific verifier.

"Leakage" means a reduction in emissions of GHGs within the state that is offset by a directly attributable increase in GHG emissions outside the state and outside the geography of another jurisdiction with a linkage agreement with Washington.

"Limits" means the GHG emissions reductions required by RCW 70A.45.020.

"Linkage" means a bilateral or multilateral decision under a linkage agreement between GHG market programs to accept compliance instruments issued by a participating jurisdiction to meet the obligations of regulated entities in a partner jurisdiction and to otherwise coordinate activities to facilitate operation of a joint market.

"Linkage agreement" means a nonbinding agreement that connects two or more GHG market programs and articulates a mutual understanding of how the participating jurisdictions will work together to facilitate a connected GHG market.

"Linked jurisdiction" means a jurisdiction with which Washington has entered into a linkage agreement.

"Market position" means the combination of the current and/or expected holdings of compliance instruments by a registered entity and the current and/or expected covered emissions of that registered entity.

"Market sensitive information" means information related to registered entities, or their participation in the cap and invest program that is not otherwise publicly available, and for which ecology determines that the public interest in disclosure is outweighed by the public interest served by maintaining the confidentiality of such information, on the basis that its disclosure would be reasonably expected to have an effect on the price or value of allowances or offset credits and/or enable a registered entity to engage in market manipulation

such as bidder collusion, market cornering, or extortion of other market participant. "Market sensitive information" does not include data reported under chapter 173-441 WAC, except to the extent that the disclosure of such data for a particular emission year at any time prior to November 15th of the following calendar year would enable a registered entity to engage in market manipulation. "Market sensitive information" also does not include anonymized information about the contents of registered entities' holding accounts that is publicly displayed pursuant to RCW 70A.65.090 (7)(b), except to the extent that the disclosure of such information that is less than 45 days old would enable a registered entity to engage in market manipulation.

"Multijurisdictional consumer-owned utility" has the same meaning as in chapter 173-441 WAC.

"Multijurisdictional electric company" has the same meaning as in chapter 173-441 WAC.

"NERC e-tag" or "e-tag" has the same meaning as in chapter 173-441 WAC.

"Offset credit" means a tradable compliance instrument that represents an emissions reduction or emissions removal of one metric ton of carbon dioxide equivalent.

"Offset material misstatement" means a discrepancy, omission, misreporting, or aggregation of the three, identified in the course of offset verification services that leads an offset verification team to conclude that an offset project data report contains errors resulting in an overstatement of the reported total GHG emission reductions or GHG removal enhancements by greater than five percent. Discrepancies, omissions, or misreporting, or an aggregation of the three, that result in an understatement of total reported GHG emission reductions or GHG removal enhancements in the offset project data report is not an offset material misstatement.

"Offset project" means a project that reduces or removes GHG that are not covered emissions under this chapter.

"Offset project boundary" is defined by and includes all GHG emission sources, GHG sinks, and GHG reservoirs that are affected by an offset project and under control of the offset project operator or authorized project designee. GHG emissions sources, GHG sinks or GHG reservoirs not under control of the offset project operator or authorized project designee are not included in the offset project boundary.

"Offset project data report" means the report prepared by an offset project operator or authorized project designee each reporting period that provides the information, documentation, and attestations required by this chapter or a compliance offset protocol. An unattested report is not a valid offset project data report, and therefore cannot be used to satisfy any deadlines regarding submittal of an offset project data report.

"Offset project listing" or "listing" means the information, documentation, and attestations required by this chapter or a compliance offset protocol that an offset project operator or authorized project designee has submitted to ecology or an offset project registry, and that has been reviewed for completeness by ecology and/or the offset project registry and publicly listed by ecology or the offset project registry for an initial or renewed crediting period. An offset project listing must include the attestations required by this chapter in order to be considered complete by ecology or the offset project registry.

"Offset project operator" means the party(ies) with legal authority to implement the offset project. Only a primary account represen-

tative or alternate account representative may sign listing documents, an offset project data report, a request for issuance, or attestations on behalf of the offset project operator.

"Offset project registry" means a party that meets the requirements of this chapter and is approved by ecology that lists offset projects, collects offset project data reports, facilitates verification of offset project data reports, and issues registry offset credits for offset projects being implemented using a compliance offset protocol.

"Offset protocols" means a set of procedures and standards to quantify GHG reductions or GHG removals achieved by an offset project.

"Offset verification" means a systematic, independent, and documented process for evaluation of an offset project operator's or authorized project designee's offset project data report against ecology compliance offset protocols and this chapter for calculating and reporting project baseline emissions, project emissions, GHG reductions, and GHG removal enhancements.

"Offset verification body" means a firm accredited or recognized by ecology, which is able to render an offset verification statement and provide offset verification services for offset project operators or authorized project designees subject to providing an offset project data report under this chapter.

"Offset verification services" means services provided during offset verification, including reviewing an offset project operator's or authorized project designee's offset project data report, verifying its accuracy according to the standards specified in WAC 173-446-535 and the applicable compliance offset protocol, assessing the offset project operator's or authorized project designee's compliance with this chapter and applicable compliance offset protocol, and submitting an offset verification statement to ecology or an offset project registry.

"Offset verification statement" means the final statement rendered by a verification body attesting whether an offset project operator's or authorized project designee's offset project data report is free of an offset material misstatement, and whether the offset project data report conforms to the requirements of this chapter and applicable compliance offset protocol, and containing the attestations required pursuant to this chapter.

"Offset verification team" means all parties working for a verification body, including all subcontractors, to provide offset verification services for an offset project operator or authorized project designee.

"Opt-in entity" means a party responsible for greenhouse gas emissions that is not a covered entity but voluntarily participates in the program as authorized under RCW 70A.65.090(3).

"Overburdened community" means a geographic area where vulnerable populations face combined, multiple environmental harms and health impacts or risks due to exposure to environmental pollutants or contaminants through multiple pathways, which may result in significant disparate adverse health outcomes or effects.

"Overburdened community" includes, but is not limited to:

(a) Highly impacted communities as defined in RCW 19.405.020;

(b) Communities located in census tracts that are fully or partially on "Indian country" as defined in 18 U.S.C. Sec. 1151; and

(c) Populations, including Native Americans or immigrant populations, who may be exposed to environmental contaminants and pollutants outside of the geographic area in which they reside based on the popu-

lations' use of traditional or cultural foods and practices, such as the use of resources, access to which is protected under treaty rights in ceded areas, when those exposures in conjunction with other exposures may result in disproportionately greater risks, including risks of certain cancers or other adverse health effects and outcomes.

(d) Overburdened communities identified by ecology shall include the same communities as those identified by ecology through its process for identifying overburdened communities under RCW 70A.02.010.

"Party" means an individual, person, firm, association, organization, partnership, business trust, corporation, limited liability company, company, or government agency.

"Permanent" means, in the context of offsets, either that GHG reductions and GHG removal enhancements are not reversible, or when GHG reductions and GHG removal enhancements may be reversible, that mechanisms are in place to replace any reversed GHG emission reductions and GHG removal enhancements to ensure that all credited reductions endure for at least the length of time specified in the associated offset protocol.

"Person" includes: An owner or operator of a facility; a supplier; or an electric power entity.

"Point of delivery" has the same meaning as in chapter 173-441 WAC.

"Positive offset verification statement" means an offset verification statement rendered by a verification body attesting that the verification body can say with reasonable assurance that the submitted offset project data report is free of an offset material misstatement and that the offset project data report conforms to the requirements of this chapter and applicable compliance offset protocol.

"Price ceiling unit" means a unit issued at a fixed price by ecology for the purpose of limiting price increases and funding further investments in GHG reductions.

"Program" means the GHG emissions cap and invest program created by chapter 70A.65 RCW and implemented pursuant to this chapter.

"Program registry" means the data system in which covered entities, opt-in entities, and general market participants are registered and in which compliance instruments are recorded and tracked.

"Project baseline" means, in the context of a specific offset project, a conservative estimate of business-as-usual GHG emission reductions or GHG removal enhancements for the offset project's GHG emission sources, GHG sinks, or GHG reservoirs within the offset project boundary.

"Qualified positive offset verification statement" means an offset verification statement rendered by a verification body attesting that the verification body can say with reasonable assurance that the submitted offset project data report is free of an offset material misstatement, but the offset project data report may include one or more nonconformance(s) with this chapter and applicable compliance offset protocol which do not result in an offset material misstatement. Nonconformance, in this context, does not include disregarding the explicit requirements of this chapter or applicable compliance offset protocol and substituting alternative requirements not approved by ecology.

"Registered entity" means a covered entity, opt-in entity, or general market participant that has completed the process for registration in the program registry.

"Registration applicant" means a covered entity, opt-in entity, or general market participant that is applying to register in the program registry.

"Registry offset credit" means a credit issued by an offset project registry for a GHG reduction or GHG removal enhancement of one metric ton of CO_2e.

"Reporter" has the same meaning as in chapter 173-441 WAC.

"Reporting period" means, in the context of offsets, the period of time for which an offset project operator or authorized project designee quantifies and reports GHG reductions or GHG removal enhancements covered in an offset project data report. An offset project's reporting period is established in the project listing documentation, but may be modified pursuant to WAC 173-446-525(11).

"Retail electric load" has the same meaning as specified in RCW 19.405.020.

"Retire" means to permanently remove a compliance instrument such that the compliance instrument may never be sold, traded, used for compliance, or otherwise used again.

"Retirement account" means the account to which ecology transfers compliance instruments that have been surrendered for compliance.

"Sector" means an area of the economy in which a grouping of sources of greenhouse gas emissions share the same or related activity, product, or service.

"Sequestration" means the removal of carbon dioxide from the atmosphere and storage of carbon in GHG sinks or GHG reservoirs through physical or biological processes.

"Specified source of electricity" or "specified source" has the same meaning as in chapter 173-441 WAC.

"Supplier" has the same meaning as in chapter 173-441 WAC.

"Tier 1 price" means the lower of the two prices set by ecology for allowances auctioned from the allowance price containment reserve.

"Tier 2 price" means the higher of the two prices set by ecology for allowances auctioned from the allowance price containment reserve.

"Total program baseline" means the total of covered greenhouse gas emissions from covered entities as established in WAC 173-446-200.

"Tribal lands" has the same meaning as defined in RCW 70A.02.010.

"Unintentional reversal" means any reversal, including wildfires or disease, that is not the result of the forest owner's negligence, gross negligence, or willful intent.

"Unspecified source of electricity" or "unspecified source" has the same meaning as in chapter 173-441 WAC.

"Vintage year" means the annual allowance allocation budget year to which an individual Washington GHG allowance is assigned.

"Voluntary renewable reserve account" or "voluntary renewable electricity reserve account" means a holding account maintained by ecology from which allowances may be retired for voluntary renewable electricity generation, which is directly delivered to the state and has not and will not be sold or used to meet any other mandatory requirements in the state or any other jurisdiction, on behalf of voluntary renewable energy purchasers or end users.

[]

NEW SECTION

WAC 173-446-030 Applicability. All facilities, suppliers, and first jurisdictional deliverers with covered emissions that meet the applicability requirements of this section are covered entities subject to this rule.

(1) Beginning with the first compliance period (emissions years 2023 through 2026) and for all subsequent compliance periods covered entities are:

(a) An owner or operator of a facility, other than a waste to energy facility used by a city or county solid waste management program, whose covered emissions for any calendar year from 2015 through 2022 equal or exceed 25,000 metric tons of carbon dioxide equivalent per year;

(b) A first jurisdictional deliverer, other than a waste to energy facility used by a city or county solid waste management program, that generates electricity in Washington and whose covered emissions associated with this generation for any calendar year equal or exceed 25,000 metric tons of carbon dioxide equivalent per year;

(c) A first jurisdictional deliverer that imports electricity into Washington, and whose cumulative annual total of covered emissions associated with this imported electricity for any calendar year, whether from specified or unspecified sources, equal or exceed 25,000 metric tons of carbon dioxide equivalent per year;

(d) Except as noted in WAC 173-446-040, any supplier of fossil fuel other than natural gas when, for any calendar year from 2015 through 2022, 25,000 metric tons or more of covered emissions of carbon dioxide equivalent per year would result from the full combustion or oxidation of that fuel in Washington;

(e) Except as noted in WAC 173-446-040, any of the following:

(i) A party who supplies natural gas in amounts that would result in exceeding 25,000 metric tons of carbon dioxide equivalent covered emissions for any calendar year from 2015 through 2022 if fully combusted or oxidized.

(ii) A party who is not a natural gas company and has a tariff with a natural gas company to deliver natural gas to an end-use customer in the state in amounts that would result in exceeding 25,000 metric tons of carbon dioxide equivalent covered emissions for any calendar year from 2015 through 2022 if fully combusted or oxidized.

(iii) A party who is an end-use customer in the state who directly purchases natural gas from a party that is not a natural gas company and has the natural gas delivered through an interstate pipeline to a distribution system owned by the purchaser in amounts that would result in exceeding 25,000 metric tons of carbon dioxide equivalent covered emissions for any calendar year from 2015 through 2022 if fully combusted or oxidized.

(2) Beginning with the second compliance period (emissions years 2027 through 2030) and for all subsequent compliance periods, covered entities also include any owner or operator of a waste to energy facility used by a county or city solid waste management program whose covered emissions in any year from 2023 through 2025 equal or exceed 25,000 metric tons of carbon dioxide equivalent.

(3) Beginning with the third compliance period (emissions years 2031 through 2034) and for all subsequent compliance periods, covered entities also include a railroad company, as defined in RCW 81.04.010, whose covered emissions equal or exceed 25,000 metric tons of carbon dioxide equivalent per year for the years 2027 through 2029.

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NEW SECTION

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 CO_2e 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 emissions 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 ener-

gy 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 compliance 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).

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NEW SECTION

WAC 173-446-050 Covered and opt-in entity registration. (1) Any reporter under chapter 173-441 WAC reporting at least 25,000 metric tons of CO_2e covered emissions per calendar year for 2015 or any year thereafter other than a waste to energy facility or a railroad that meets the applicability conditions in WAC 173-446-030 or 173-446-060 will receive written notice from ecology that it must register as a covered entity in Washington's cap and invest program. That notice will be sent to the designated representative and alternate designated representative as established under WAC 173-441-060 of each covered entity. To register, each covered entity must follow the registration process provided in subsection (5) of this section.

(2) The owner or operator of any reporter under chapter 173-441 WAC that is not a covered entity may request to be registered in Washington's cap and invest program as an opt-in entity. To register, the opt-in entity must follow the registration process provided in subsection (5) of this section. Upon registration, opt-in entities incur compliance obligations for the GHGs they emit and are subject to the same program requirements as covered entities.

(3) Any party who is not a reporter but is responsible for GHG emissions in Washington may voluntarily participate in the cap and invest program as an opt-in entity. To participate, these opt-in entities must:

(a) Report their GHG emissions to ecology under the voluntary reporting requirements in WAC 173-441-030(5);

(b) Request to be registered in the cap and invest program as an opt-in entity;

(c) Follow the registration process provided in subsection (5) of this section;

(d) Incur compliance obligations for the GHGs they emit and are subject to the same program requirements as covered entities;

(e) Except as provided in (f) of this subsection, consent to regulation by ecology and the jurisdiction of the courts and administrative tribunals of the state of Washington with respect to any judicial or administrative enforcement action commenced by ecology to ensure compliance with the requirements of chapter 70A.65 RCW, RCW 70A.15.2200, chapter 173-441 WAC, and this chapter; and

(f) For federally recognized tribes who elect to participate as opt-in entities pursuant to RCW 70A.65.090(5), enter into a written agreement, negotiated on an individual basis between ecology and the

tribal government, that establishes a dispute resolution process and/or other compliance mechanisms in order to ensure the enforceability of all program requirements applicable to the tribe in its role as an opt-in entity.

(4) Any party receiving notice that it must register as a covered entity that believes it received the notice in error and should not be a covered entity in the program may, within 30 calendar days of receiving ecology's notice, provide a signed written request to ecology asking ecology to remove it from registration and explaining why. The final determination remains with ecology.

(5) To register, each covered or opt-in entity must comply with the requirements in WAC 173-446-105 through 173-446-130, and provide the following information to ecology electronically in a format specified by ecology:

(a) Name, contact information, and physical address of the party;

(b) Tracking system identification number, if applicable;

(c) Names and addresses and contact information of the party's directors and officers with authority to make legally binding decisions on behalf of the party, and partners with over 10 percent of control over the partnership, including any individual or entity doing business as the limited partner or general partner;

(d) Names and contact information for individuals or parties controlling over 10 percent of the voting rights attached to all the outstanding voting securities of the party;

(e) Business number, if one has been assigned by a Washington state agency;

(f) A government issued taxpayer identification number or employer identification number, or for parties located in the United States, a U.S. federal tax employer identification number, if assigned;

(g) Place and date of incorporation, if applicable;

(h) Names and contact information for all employees of the party with knowledge of the party's market position (an employee who has knowledge of both the party's current and/or expected holdings of compliance instruments and the party's current and/or expected covered emissions).

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NEW SECTION

WAC 173-446-053 Electric utilities registration. (1) All electric utilities in Washington that are not required to report GHG emissions under chapter 173-441 WAC or that report fewer than 25,000 MT CO_2e covered emissions per year must register to receive no cost allowances.

(2) To register, electric utilities must comply with the requirements of WAC 173-446-105 through 173-446-130 and provide the following information to ecology electronically in a format specified by ecology:

(a) Name, physical and mailing addresses, contact information, utility type, date and place of incorporation, and ID number assigned by the incorporating agency;

(b) Names, addresses, and contact information of each of the utility's directors and officers with authority to make legally bind-

ing decisions on behalf of the utility, and any partners with more than 10 percent of control over the partnership, including any individual or party doing business as a limited partner or general partner;

(c) Names and contact information of all individuals or parties controlling more than 10 percent of the voting rights attached to all the outstanding voting securities of the utility;

(d) A business identification number, if one has been assigned to the utility by a Washington state agency;

(e) A government issued taxpayer or employer identification number, or a U.S. federal tax employer identification number, if one has been assigned to the utility;

(f) Disclosure of all other parties with whom the utility has a direct corporate association or indirect corporate association that must be reported pursuant to WAC 173-446-120 and a brief description of the association(s);

(g) Names and contact information for all employees of the utility with knowledge of the utility's market position (current and/or expected holdings of compliance instruments and current and/or expected covered emissions);

(h) Information required pursuant to WAC 173-446-056 for individuals serving as cap and invest consultants and advisors for registered entities participating in the cap and invest program.

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NEW SECTION

WAC 173-446-055 General market participants registration. (1) A party not identified as a covered entity or opt-in entity that intends to hold Washington compliance instruments may apply to ecology for approval to participate as a general market participant.

(a) The following parties may be general market participants:

(i) An individual, or a party that does not meet the requirements to be a covered entity or an opt-in entity, that intends to purchase, hold, sell, or voluntarily retire compliance instruments;

(ii) An offset project operator that is registered with ecology pursuant to WAC 173-446-520(1). Parties qualifying as general market participants under this subparagraph may hold offset credits without needing to fulfill the requirements of WAC 173-446-120. Parties qualifying as general market participants under this subparagraph may also hold allowances, but only after fulfilling the requirements of WAC 173-446-120.

(b) An individual registering as a general market participant must have primary residence in the United States.

(c) Registration and consulting activities. An individual who provides cap and invest consulting services as described in WAC 173-446-056 and who registers as a general market participant in the tracking system must disclose to ecology all parties for which the individual is providing consulting services.

(i) The disclosure must be made when the individual registers as a general market participant, or within 30 calendar days of initiating the consulting activity if the individual is already registered.

(ii) If the individual is associated with a party providing cap and invest consulting services so that in the course of the individu-

al's duties the individual gains access to the market position of another registered entity, then the individual must provide a notarized letter from the associated party providing the cap and invest consulting services, stating that it is aware of the individual's plans to apply as a general market participant in the cap and invest program and attesting that it has conflict of interest policies and procedures in place that prevent the individual from using information gained from the relationship with the party for personal gain in the cap and invest program. Failure to provide a letter with such assurances by the applicable deadline described above in (c)(i) of this subsection will result in suspension, modification, or revocation of the individual's tracking system account.

(d) An individual who is already registered in the tracking system and intends to provide cap and invest program advisory services to other registered entities must disclose to ecology the proposed relationship with the other registered entities and comply with the requirements of (c)(ii) of this subsection prior to providing the advisory services. Failure to provide the letter required by (c)(ii) of this subsection by the deadline will result in suspension, modification, or revocation of the individual's tracking system account.

(e) A party registering as a general market participant must be located in the United States, as documented in the registration information provided pursuant to subsection (3) of this section.

(f) Parties not eligible to be general market participants include individuals identified by registered entities pursuant to:

(i) WAC 173-446-120 (1)(c), (d), or (h);

(ii) WAC 173-446-130; WAC 173-446-140; or

(iii) WAC 173-446-056, unless disclosed pursuant to (c) of this subsection; and

(iv) An individual who is an employee of a party subject to the requirements of this chapter or chapter 173-441 WAC.

(2) Restrictions on other parties. The following parties do not qualify to hold compliance instruments and cannot be registered entities:

(a) An offset verifier accredited pursuant to WAC 173-446-535;

(b) An offset verification body accredited pursuant to WAC 173-446-535;

(c) Offset project registries; and

(d) An emissions reporting verifier accredited pursuant to chapter 173-441 WAC.

(3) General market participant registration.

(a) Any party wishing to register as a general market participant must comply with the requirements of WAC 173-446-105 through 173-446-130 and provide the following information to ecology in a format specified by ecology:

(i) Name, physical and mailing addresses, contact information, party type, date and place of business incorporation, and government ID numbers associated with the business;

(ii) Names, addresses, and contact information of the general market participant's directors and officers with authority to make legally binding decisions on behalf of the general market participant, and partners with more than 10 percent of control over the partnership, including any individual or party doing business as the limited partner or general partner;

(iii) Names and contact information for persons controlling more than 10 percent of the voting rights attached to all the outstanding voting securities of the party;

(iv) A business number, if one has been assigned to the party by a Washington state agency;

(v) A government issued taxpayer or employer identification number, or a U.S. federal tax employer identification number, if assigned;

(vi) Disclosure of all other parties with whom the party has a direct corporate association or indirect corporate association that must be reported pursuant to WAC 173-446-120 and a brief description of the association. Parties qualifying as general market participants under subsection (1)(a)(ii) of this section must complete this disclosure before they may hold allowances;

(vii) Names and contact information for all employees, directors and officers of the party that will have access to or knowledge of the party's market position (current and/or expected holdings of compliance instruments and current and/or expected covered emissions);

(viii) Information required pursuant to WAC 173-446-056 for individuals serving as cap and invest consultants and advisors for registered entities participating in the cap and invest program.

(b) Except as provided in (c) of this subsection, any party registering as a general market participant must consent to regulation by ecology and the jurisdiction of the courts and administrative tribunals of the state of Washington with respect to any judicial or administrative enforcement action commenced by ecology to ensure compliance with the requirements of chapter 70A.65 RCW and this chapter.

(c) For federally recognized tribes who elect to participate as general market participants pursuant to RCW 70A.65.090(5), the tribe must enter into a written agreement, negotiated on an individual basis between ecology and the tribal government, that establishes a dispute resolution process and/or other compliance mechanisms in order to ensure the enforceability of all program requirements applicable to the tribe in its role as a general market participant.

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NEW SECTION

WAC 173-446-056 Cap and invest consultants and advisors. (1) A "cap and invest consultant or advisor" is an individual or party that is providing any of the following services in relation to the cap and invest program or the GHG reporting program to a registered entity for which the individual or party is not an owner or employee regardless of if the consultant or advisor is acting in the capacity of an offset or emissions verifier:

(a) Designing, developing, implementing, reviewing, or maintaining an inventory or offset project information or data management system for air emissions or development of a forest management plan, or timber harvest plan, unless the review is part of providing GHG offset verification services; or, where applicable, designing, developing, implementing, reviewing, or maintaining electricity or fuel transactions, unless the review is part of providing GHG verification services;

(b) Developing GHG emission factors or other GHG-related engineering analyses, including developing or reviewing a GHG analysis to comply with the State Environmental Policy Act (SEPA) that includes offset project specific information;

(c) Designing energy efficiency, renewable power, or other projects that explicitly identify GHG reductions and GHG removal enhancements as a benefit;

(d) Designing, developing, implementing, internally auditing, consulting, or maintaining an offset project resulting in GHG emission reductions and GHG removal enhancements;

(e) Owning, buying, selling, trading, or retiring shares, stocks, or ecology offset credits, or registry offset credits from an offset project;

(f) Dealing in or being a promoter of Washington offset credits on behalf of an offset project operator, authorized project designee, if applicable, and their technical consultant(s), or where the credits are owned by or the offset project was developed by the reporting party;

(g) Preparing or producing GHG-related manuals, handbooks, or procedures specifically for a reporting party or an offset project operator, authorized project designee, if applicable, and their technical consultant(s);

(h) Providing appraisal services of carbon or GHG liabilities or assets;

(i) Brokering in, advising on, or assisting in any way in carbon or GHG-related markets;

(j) Being directly responsible for developing any health, environment or safety policies for the offset project operator, authorized project designee, if applicable, and their technical consultant(s); or directly managing any health, environment or safety functions for a reporting party;

(k) Bookkeeping or other services related to the accounting records or financial statements;

(l) Providing any service related to information systems, including International Organization for Standardization 14001 Certification for Environmental Management (ISO 14001 Certification) and energy management systems, including those conforming to ISO 50001, unless those systems will not be part of an emissions verification process and will not be reviewed as part of the offset verification process;

(m) Appraisal and valuation services, both tangible and intangible;

(n) Fairness opinions and contribution-in-kind reports in which the verification body has provided its opinion on the adequacy of consideration in a transaction, unless the resulting services will not be part of the emissions verification process and the information reviewed in formulating the offset verification statement will not be reviewed as part of the offset verification process;

(o) Any actuarially oriented advisory service involving the determination of accounts recorded in financial statements and related accounts;

(p) Any internal audit service that has been outsourced by the reporting party or by the offset project operator, authorized project designee, if applicable, and their technical consultant(s) that relates to the offset project operator's, authorized project designee's, if applicable, and their technical consultant(s)' internal accounting controls, financial systems, or financial statements, unless the systems and data reviewed during those services, as well as the result of those services will not be part of the offset verification process;

(q) Acting as a broker-dealer (registered or unregistered), promoter or underwriter on behalf of a reporting party or an offset

project operator, authorized project designee, if applicable, and their technical consultant(s);

(r) Any legal services provided by outside counsel hired by a registered entity and providing legal services related to any of the other services described in this section. Also, any attorney providing nonlegal services, such as brokering, auditing, financial advice, bid strategy, or other services listed in this section; and

(s) Expert services to an emissions reporter or to the offset project operator, authorized project designee, if applicable, and their technical consultant(s) or a legal representative for the purpose of advocating the offset project operator's, authorized project designee's, if applicable, and their technical consultant(s)' interests in litigation or in a regulatory or administrative proceeding or investigation, unless providing factual testimony.

(2) Any registered entity employing cap and invest consultants or advisors must disclose to ecology the following information for each cap and invest consultant or advisor:

(a) Information to identify the cap and invest consultant or advisor, including:

(i) Name;

(ii) Contact information;

(iii) Physical work address of the cap and invest consultant or advisor;

(iv) Employer, if applicable; and

(v) Type of service provided.

(b) The party must disclose the information in (a) of this subsection to ecology:

(i) With the disclosures required under WAC 173-446-120;

(ii) Within 30 calendar days of entering into a contract with a cap and invest consultant or advisor; and

(iii) Within 30 calendar days of a change to the information disclosed on consultants and advisors.

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NEW SECTION

WAC 173-446-060 New or modified covered entities. (1) Any party that becomes a covered entity under the criteria set forth in any subsequent subsection of this section is required to transfer its first allowances to its compliance account by November 1st of the year following the year in which its covered emissions first equaled or exceeded 25,000 metric tons CO_2e per year.

(2) Unless otherwise provided under WAC 173-446-030, any facility, supplier, or first jurisdictional deliverer beginning operation or modified after January 1, 2023, becomes a covered entity in the calendar year in which its emissions reach the thresholds listed in WAC 173-446-030, or upon formal notice from ecology that the facility, supplier, or first jurisdictional deliverer is expected to exceed those thresholds, whichever happens first.

(3) Any waste to energy facility that is used by a county or city solid waste management program and is newly constructed or modified after January 1, 2027, becomes a covered entity in the calendar year in which its emissions reach the thresholds listed in WAC 173-446-030,

or upon formal notice from ecology that the facility is expected to exceed those thresholds, whichever happens first.

(4) Any railroad company, as that term is defined in RCW 81.04.010, that is newly constructed after January 1, 2031, becomes a covered entity in the calendar year in which its emissions reach 25,000 metric tons of CO_2e per year, or upon formal notice from ecology that the company is expected to exceed those thresholds, whichever happens first.

(5) Any facility, supplier, or first jurisdictional deliverer of the types described in WAC 173-446-030(1) that were in operation between 2015 and 2019 but was not required to report emissions for 2015 through 2019, or whose covered emissions in those years were below 25,000 metric tons of CO_2e per year, becomes a covered entity in the calendar year following the year in which its covered emissions first equaled or exceeded 25,000 metric tons of CO_2e per year as reported under chapter 173-441 WAC, or upon formal notice from ecology that the facility, supplier, or first jurisdictional deliverer's covered emissions are expected to exceed 25,000 metric tons of CO_2e per year for the first year the entity is required to report emissions, whichever happens first.

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NEW SECTION

WAC 173-446-070 Exiting the program. (1) When a covered entity reports covered emissions that are below 25,000 metric tons of CO_2e in any given calendar year during a compliance period, the covered entity continues to have a compliance obligation for all of its covered emissions through the end of that compliance period.

(2) A covered entity may exit the program based on the following:

(a) Except as provided in (b) of this subsection, when a covered entity reports covered emissions below 25,000 metric tons of CO_2e for every year during an entire compliance period, or has permanently ceased all processes at the facility requiring reporting under chapter 173-441 WAC, the facility, supplier, or first jurisdictional deliverer is no longer a covered entity as of the beginning of the subsequent compliance period. Even though no longer a covered entity, the facility, supplier, or first jurisdictional deliverer must meet its compliance obligation for covered emissions occurring during any compliance period when it was a covered entity.

(b) A covered entity identified in (a) of this subsection will remain a covered entity if ecology provides notice at least 12 months before the end of the compliance period that the facility, supplier, or first jurisdictional deliverer's covered emissions are below the 25,000 metric ton threshold but still within 10 percent of the 25,000 metric ton threshold, and the covered entity must remain a covered entity to ensure equity among all covered entities.

(c) Whenever a facility, supplier, or first jurisdictional deliverer ceases to be a covered entity, ecology will notify the appropriate policy and fiscal committees of the legislature of the name of the facility, supplier, or first jurisdictional deliverer and the reason it is no longer a covered entity.

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NEW SECTION

WAC 173-446-080 Allowances. (1) Ecology shall create GHG allowances as required to cover the annual allowance budgets determined in WAC 173-446-210.

(2) Ecology shall assign each GHG allowance a unique serial number that identifies the annual allowance budget from which the allowance originates.

(3) Each allowance is of the vintage year of the annual allowance budget from which it comes.

(4) Older vintage allowances must be retired before newer vintage allowances.

(5) Allowances do not expire and may be banked.

(6) Except as provided in this chapter, a covered or opt-in entity may not use an allowance from a future allowance vintage year to meet a current or past compliance obligation.

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PROGRAM ACCOUNT REQUIREMENTS

NEW SECTION

WAC 173-446-100 Program accounts required. (1) Within 40 calendar days after receiving a notice to register from ecology, each registration applicant must make corporate association disclosures and designate account representatives as described in WAC 173-446-105 through 173-446-140. After ecology has received the required complete documents, ecology will authorize the required accounts for each registration applicant whose documentation meets the requirements of this chapter.

(2) A registered entity or registration applicant that is a member of a direct corporate association may apply for a consolidated entity account to include other associated registered entities or registration applicants from within the direct corporate association. To do so, the applicant must identify each associated registered entity or registration applicant that will be assigned to its account, and each associated registered entity or registration applicant must provide an attestation signed by its officer or director confirming that it seeks to be added to the consolidated entity account. The applicant must be able to demonstrate that it has the controlling ownership or authority to act on behalf of all members of the consolidated entity account. The applicant cannot be subsidiary to or controlled by another associated entity within the consolidated entity account.

(3) A registration applicant that is a member of a direct corporate association and seeks to apply for its own separate registered entity account, rather than apply for a consolidated entity account, must provide an allocation of the holding and purchase limits among the separate accounts established for any of its direct corporate associates per the requirements of WAC 173-446-120 (1)(i). All members of a direct corporate association must independently confirm the allocation of holding and purchase limits.

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NEW SECTION

WAC 173-446-105 Disclosure of corporate associations—Indicia of corporate association. (1) A corporate association exists when one party has an ownership interest in or control over a second party. The following criteria determine ownership or control:

(a) Percent of ownership of any class of listed shares, the right to acquire such shares, or any option to purchase such shares of the other party;

(b) Percent of common owners, directors, or officers of the other party;

(c) Percent of the voting power of the other party;

(d) In the case of a partnership other than a limited partnership, percent of the interests of the partnership;

(e) In the case of a limited partnership, the percent of control over the general partner or the percent of the voting rights to select the general partner; and

(f) In the case of a limited liability corporation, percent of ownership in the other party regardless of how the interest is held.

(2) A party has a direct corporate association with another party, regardless of whether the second party is registered in the cap and invest program or in an external GHG ETS to which Washington is linked, if either one of these parties has any criterion in subsection (1) of this section that is greater than 50 percent.

(3) A direct corporate association also exists when two parties are connected through a line of more than one direct corporate association.

(a) A party (#1) has a direct corporate association with another party (#2) if the two parties share a common parent and that parent has direct corporate association with each party (#1 and #2) when applying the indicia of control contained in subsections (1) and (2) of this section.

(b) A party that has a direct corporate association with a second party also has a direct corporate association with any party with whom the second party has a direct corporate association.

(4) A party has an indirect corporate association with another party if:

(a) The two parties do not have a direct corporate association; and

(b) The controlling party's percentage of ownership, or any indicia of control identified in subsection (1) of this section, of the controlled party is more than 20 percent but less than or equal to 50 percent. If the two parties are connected through a chain of more than

one corporate association, the indicia of control identified in subsection (1) of this section is calculated by multiplying the percentages at each link in the chain of corporate associations starting with the last party that is in a direct corporate association. An indirect corporate association exists between the two parties if the total percentage of control is more than 20 percent but less than or equal to 50 percent when multiplying the percentage of control at each link in the chain of corporate associations.

(5) An electric utility that is the operator of an electricity generating facility in Washington has a direct corporate association with the operator of another electricity generating facility in Washington if the same party operates both generating facilities.

(6) An electric utility that is the operator of an electricity generating facility in Washington has a direct corporate association with an electricity importer if the same party operates the generating facility in Washington and is the party importing electricity.

(7) An individual who has access to the market positions (current and/or expected holdings of compliance instruments and current and/or expected covered emissions) of two or more parties registered in the tracking system or registered in an external GHG ETS to which Washington has linked is considered an individual who has shared roles. For the purposes of this requirement, account representatives are defined as having access to the market positions of the registered entities they serve.

(a) If any individual with shared roles is an employee of a registered entity for which the individual has a shared role, all registered entities for which the individual has the shared role will have a direct corporate association.

(b) If any individual is a cap and invest consultant or advisor for the registered entities for which the individual has a shared role, but is not disclosed pursuant to WAC 173-446-056, and the individual can use market position information obtained through the shared role without restriction, all registered entities for which the individual has shared roles will have a direct corporate association. It is the responsibility of the registered entity employing an individual as a cap and invest consultant or advisor to determine if the individual has access to the registered entity's market position.

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NEW SECTION

WAC 173-446-110 Disclosure of corporate associations—Types of disclosures required. (1) Registered entities and registration applicants must disclose all direct and indirect corporate associations with other entities registered in the cap and invest program or in another external GHG ETS to which Washington has linked.

(2) Disclosure of parent companies. Registered entities and registration applicants must disclose all direct corporate associations with other parties not registered in the cap and invest program or in another external GHG ETS to which Washington has linked, if those parties have the degree of ownership interest in or control over the registered entity or registration applicant to meet the requirements of having a direct corporate association.

(3) A registered entity or registration applicant that has a direct or indirect corporate association with another entity registered in the program must disclose the identity of all parties involved in the line of direct or indirect corporate associations between the registered entity and the registration applicant or between the two registered entities, even if such parties are not registered entities.

(4) Registered entities and registration applicants that have direct corporate associations with unregistered parties in the United States or Canada that are otherwise not required to be disclosed must disclose those associations within 30 calendar days of a request by ecology. The disclosing party may elect to disclose only those directly associated parties located in the United States or Canada that participate in a market related to the cap and invest program.

(a) Parties participating in a market related to the cap and invest program include only those parties that purchase or sell GHG compliance instruments, natural gas, oil, or electricity; or parties that conduct exchange trades involving derivatives or swaps based on GHG compliance instruments, natural gas, oil, or electricity.

(b) The disclosure of parties in related markets may be accomplished through the submission of the most recent information submitted to another government agency in the United States using one or more of the following official governmental forms or documentation as needed to meet the disclosure requirements: (i) Exhibit 21 of the Form 10-K submitted to the Securities and Exchange Commission by the registrant or an affiliate of the registrant; (ii) the application for market-based rate authority, or update to such application, submitted by the registrant or an affiliate of the registrant to the Federal Energy Regulatory Commission pursuant to 18 C.F.R. Part 35 and Order 697; (iii) the application for registration with the National Futures Association, or update to such application, submitted by the registrant or an affiliate of the registrant as required by the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act, 7 U.S.C. 1; (iv) Form 40 or Form 40S filed by the registrant or an affiliate of the registrant in accordance with the Commodity Futures Trading Commission's reporting rules (17 C.F.R. section 18.04); and/or (v) Part 1A of a Form ADV filed with the Securities and Exchange Commission by a registered investment advisor responsible for managing the registrant.

(5) Registered entities and registration applicants that have direct corporate associations with other parties outside the United States and Canada that participate in a market related to the cap and invest program that are not otherwise required to be disclosed must disclose those associations within 30 calendar days of a request for disclosure by ecology.

(a) Parties participating in a market related to the cap and invest program include only those parties that purchase or sell GHG compliance instruments, natural gas, electricity, or oil; or parties that conduct exchange trades involving derivatives or swaps based on GHG compliance instruments, natural gas, oil, or electricity.

(b) Registered entities and registration applicants may disclose these associations using the documentation options listed in subsection (4)(b) of this section.

(6) The following registered entities or registration applicants are exempt from the disclosure requirements of this chapter:

(a) If a registered entity or registration applicant can demonstrate to ecology's satisfaction that the registered entity or registration applicant is subject to affiliate compliance rules promulgated

by state or federal agencies, the registered entity or registration applicant shall not be required to take any action or make any disclosures that would violate those rules.

(b) An offset project operator registering as a general market participant solely to hold offset credits is not required to disclose any direct or indirect corporate associations.

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NEW SECTION

WAC 173-446-120 Disclosure of corporate association—Information to be submitted. (1) All registered entities and registration applicants must provide the following information for each disclosable corporate association:

(a) Name, contact information, and physical address of the party;

(b) Tracking system identification number, if applicable;

(c) Names and addresses and contact information of the party's directors and officers with authority to make legally binding decisions on behalf of the party, and partners with over 10 percent of control over the partnership, including any individual or entity doing business as the limited partner or general partner;

(d) Names and contact information for individuals or parties controlling over 10 percent of the voting rights attached to all the outstanding voting securities of the party;

(e) Business number, if one has been assigned by a Washington state agency;

(f) A government issued taxpayer identification number or employer identification number, or for parties located in the United States, a U.S. federal tax employer identification number, if assigned;

(g) Place and date of incorporation, if applicable;

(h) Names and contact information for all employees of the party with knowledge of the party's market position (an employee who has knowledge of both the party's current and/or expected holdings of compliance instruments and the party's current and/or expected covered emissions);

(i) For direct corporate associations with registered entities only, the percentage share of the holding limit and purchase limit assigned to each party opting out of account consolidation pursuant to this section; the sum of the shares must equal 100 percent; and

(j) Any further information requested by ecology concerning the corporate association.

(2) Registered entities and registration applicants that have any disclosable corporate associations must identify whether each corporate association is direct or indirect.

(a) Registered entities and registration applicants identifying an indirect corporate association must provide a brief description of the association, including information sufficient to explain the registered entity's evaluation of the indicia of control in WAC 173-446-105(1) that was used to determine the type of corporate association disclosed for each associated party.

(b) Registered entities and registration applicants identifying a direct corporate association must identify the nature of the associ-

ated party as a parent, a subsidiary, or a party with a common parent, but need not include an evaluation of the indicia of control.

(3) All corporate association disclosures required by this section must be provided to ecology electronically in a format specified by ecology.

(4) The registered entity or registration applicant must disclose the information required by the following deadlines:

(a) Within 40 calendar days after receiving a notification to register from ecology under WAC 173-446-050;

(b) Within 10 business days after receiving a request for further information from ecology;

(c) Within 30 calendar days after the creation of a new direct or indirect corporate association or of a change in the type of an existing corporate association involving registered entities pursuant to WAC 173-446-110 (1) or (6)(b); or registered and unregistered parties pursuant to WAC 173-446-110 (2) and (3);

(d) Within one year after a modification if the changes in information involve only unregistered parties disclosed pursuant to WAC 173-446-110 (4) and (5).

(e) No later than 10 calendar days prior to the auction application deadline established in WAC 173-446-315 when disclosing a change related to another party registered in the cap and invest program or to parties registered in an external GHG ETS to which Washington has linked, if the disclosing entity intends to participate in the auction; and

(f) Within one year for all other changes.

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NEW SECTION

WAC 173-446-130 Designation and certification of account representatives. (1) Within 40 calendar days after receiving a notice to register from ecology, every registration applicant must designate at least two and at most five individuals to act as its account representatives to perform any operations within the cap and invest program on its behalf. Each registration applicant must identify one primary account representative, who is the resource person to be contacted for any information concerning the registration applicant. For the purposes of the account representative designations, the registration applicant must provide ecology with the following information and documents electronically in a format specified by ecology:

(a) The name and contact information of the registration applicant;

(b) The following information for each designated account representative:

(i) Name and contact information of the individual to include all information including the individual's home address and email address;

(ii) Copies of at least two identity documents, including at least one with a photograph, issued by a government or one of its departments or agencies, bearing the individual's name and date of birth; and at least one document that is customarily accepted by the state of Washington as evidence of the primary residence of the individual; along with an attestation from a notary completed less than three months prior to the application, stating that the notary has es-

tablished the identity of the individual and verifying the authenticity of the copies of the identity documents;

(iii) The name and contact information of the individual's employer;

(iv) Confirmation from a financial institution located in the United States that the individual has a deposit account with the institution; and

(v) Any conviction for a criminal offense declared in any jurisdiction during the five years prior to designation as an account representative, or while designated as an account representative, constituting a felony under U.S. federal law or Washington law, or the equivalent thereof. The disclosure must include the type of violation, jurisdiction, and year.

(c) A declaration signed by a director or by any other officer, or a resolution of the board of directors of the registration applicant attesting that all of the account representatives have been duly designated to act on behalf of the registration applicant for the purposes of this program; and

(d) The following declaration signed by each of the account representatives: "I certify under penalty of perjury under the laws of the state of Washington that I was selected as the primary account representative or an alternate account representative, as applicable, by an agreement that is binding on all parties who have an ownership interest with respect to compliance instruments held in the account. I certify that I have all the necessary authority to carry out the duties and responsibilities contained in chapters 70A.65 RCW and 173-446 WAC on behalf of such parties and that each such party shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by ecology or a court or the pollution control hearings board regarding the account."

(2) Each registered entity must have at least two account representatives at all times, including a primary account representative.

(3) All representations, acts, errors, or omissions made by any account representative in the performance of their duties are deemed to be made by the registered entity.

(4) Each submission concerning the registered entity's account shall be submitted, signed, and attested to by the primary account representative or any alternate account representative for the party that owns the compliance instruments held in the account.

(a) Except as provided in (b) of this subsection, each such submission shall include the following attestation statement made and signed by the primary account representative or the alternate account representative making the submission: "I certify under penalty of perjury under the laws of the state of Washington that I am authorized to make this submission on behalf of the party that owns the compliance instruments held in the account. I certify under penalty of perjury under the laws of the state of Washington that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify under penalty of perjury under the laws of the state of Washington that the statements and information submitted to Ecology are true, accurate, and complete. I consent to the jurisdiction of Washington state, its courts, and the pollution control hearings board for purposes of enforcement of the laws, rules, and regulations pertaining to chapters 173-446 WAC and 70A.65 RCW. I am aware that there are significant penalties for submitting false statements and informa-

tion or omitting required statements and information, including the possibility of fine or imprisonment."

(b) For federally recognized tribes who elect to participate as opt-in entities or general market participants pursuant to RCW 70A.65.090(5), each such submission shall include the following attestation statement made and signed by the primary account representative or the alternate account representative making the submission: "I certify under penalty of perjury under the laws of the state of Washington that I am authorized to make this submission on behalf of the tribal government that owns the compliance instruments held in the account. I certify under penalty of perjury under the laws of the state of Washington that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify under penalty of perjury under the laws of the state of Washington that the statements and information submitted to Ecology are true, accurate, and complete. The tribal government on whose behalf I am authorized to make this submission has entered into a written agreement, negotiated on an individual basis between ecology and the tribal government, that establishes a dispute resolution process and/or other compliance mechanisms in order to ensure the enforceability of all program requirements applicable to the tribe in its role as an opt-in entity or a general market participant, as applicable. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(5) The duties of the account representative terminates when the account representative resigns, when a request for revocation is received from the registered entity or, when a registered entity has only two designated account representatives, only after a new representative has been designated. The duties of an account representative also terminates when all the accounts of the registered entity by whom the account representative was designated are closed.

(6) If the registered entity is an individual, any act that must be performed by an account representative in this program must be performed by the registered entity.

(7) At the written request of a registered entity, ecology may, before a request for revocation of the designation of an account representative is sent to ecology by the registered entity, where the urgency of the situation warrants it, withdraw access to the electronic system from one of its account representatives.

(8) A primary account representative or at least one alternate account representative must be a resident of Washington unless the covered entity or opt-in entity has an agent who resides in Washington or the covered or opt-in entity has previously filed a foreign registration statement pursuant to RCW 23.95.510.

(9) A registration applicant or a registered entity may not designate a party as an account representative under subsection (1) of this section or authorize a party as an account viewing agent under WAC 173-446-140, if that party was convicted, in the five calendar years prior to the notice of designation or authorization, of a criminal offense involving fraud, dishonesty, deceit, or misrepresentation, or any other criminal offense connected with the activities for which designation or authorization is requested.

(10) A registered entity must revoke designation as an account representative or account viewing agent if while acting as an account

representative or an account viewing agent a party is convicted of a criminal offense involving fraud, dishonesty, deceit, or misrepresentation, or any other criminal offense connected with the activities undertaken as account representative or account viewing agent.

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NEW SECTION

WAC 173-446-140 Designation of account viewing agents. (1) A primary account representative or alternate account representative designated by a registered entity under WAC 173-446-130 may authorize up to five individuals per account to act as account viewing agents who may view all information contained in the tracking system involving the registered entity's accounts, information, and transfer records (account viewing authority). The individuals delegated shall not have authority to take any other action with respect to an account in the tracking system.

(2) To delegate account viewing authority, the primary account representative or alternate account representative, as appropriate, must submit to ecology electronically in a format specified by ecology a notice of delegation that includes the following:

(a) The name, address, email address, and telephone number of each primary account representative or alternate account representative;

(b) The name, address, email address, and telephone number of each individual delegated to be an account viewing agent;

(c) Copies of at least two identity documents, including at least one with a photograph, issued by a government or one of its departments or agencies, bearing the individual's name and date of birth; and at least one document that is customarily accepted by the state of Washington as evidence of the primary residence of the individual; along with an attestation from a notary completed less than three months prior to the application, stating that the notary has established the identity of the individual and verifying the authenticity of the copies of the identity documents;

(d) The name and contact information of the individual's employer;

(e) Confirmation from a financial institution located in the United States that the individual has a deposit account with the institution;

(f) Any conviction for a criminal offense declared in any jurisdiction during the five years prior to designation as an account representative, or while designated as an account representative, constituting a felony under U.S. federal law or Washington law, or the equivalent thereof. The disclosure must include the type of violation, jurisdiction, and year; and

(g) An attestation verifying the selection of the account viewing agent, signed by the officer of the registered entity who is responsible for the conduct of the account viewing agent, and who is one of the officers disclosed pursuant to WAC 173-446-120 (1)(c).

(3) A notice of delegation for an account viewing agent shall be effective with regard to the accounts identified in such notice, upon receipt of the notice by ecology and until receipt by ecology of a superseding notice of delegation by the primary account representative

or alternate account representative as appropriate. The superseding notice of delegation may replace any previously identified account viewing agent, add a new account viewing agent, or eliminate entirely any delegation of authority.

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NEW SECTION

WAC 173-446-150 Accounts for registered entities. (1) Creation of accounts.

(a) After ecology receives the required disclosures of corporate association and complete documents for the certification and designation of the primary and alternate account representatives, ecology will set up two accounts for each covered entity and two accounts for each opt-in entity:

(i) A compliance account through which compliance instruments are transferred to ecology for retirement. Compliance instruments in compliance accounts may not be sold, transferred, traded, or otherwise provided to another account or party.

(ii) A holding account for compliance instruments that may be bought, sold, transferred to another registered entity, or traded.

(b) For each electric utility and each natural gas utility registering in the program, ecology will also set up a limited use holding account. Electric utilities and natural gas utilities must transfer their no cost allowances to the limited use holding account in order to consign them to auction for the benefit of ratepayers as described in WAC 173-446-300 (2)(b).

(c) After ecology receives the required disclosures of corporate association and complete documents for the certification and designation of the primary and alternate account representatives, ecology will set up a holding account for each general market participant.

(2) Holding limits.

(a) Except as provided in (c) and (d) of this subsection, the maximum total number of allowances of the current or prior vintage that a registered entity may hold in its holding account, its compliance account, or combination of both, is determined by the following:

$$HL_i = 0.1 \times 25{,}000{,}000 + 0.025 \times (C_i - 25{,}000{,}000)$$

Where:
HL_i = holding limit for year i
C_i = annual allowance budget for year i
i = current year

(b) Except as provided in (c) and (d) of this subsection, the maximum number of allowances of each vintage subsequent to the current year that a registered entity may hold in its holding account, its compliance account, or a combination of both, is determined by the following:

$$HL_j = 0.1 \times 25{,}000{,}000 + 0.025 \times (C_j - 25{,}000{,}000)$$

Where:
HL_j = holding limit for year j
C_j = annual allowance budget for year j
j = year subsequent to the current year

(c) The holding limits set in (a) and (b) of this subsection do not apply to the allowances held in the compliance account of a covered entity or opt-in entity that are needed to cover estimated GHG emissions for the current year or emissions for preceding years.

(d) The holding limits set in (a) and (b) of this subsection do not apply to allowances held in a limited use holding account that are to be consigned to auction.

(e) In addition to the holding limits described above, a general market participant may not in aggregate hold more than 10 percent of the total number of allowances of any vintage year.

(f) A registered entity that reaches or exceeds one-half of its holding limit must, within 10 business days of a request from ecology, explain its strategy and the reason for holding the allowances.

(g) When its holding limit is exceeded, a registered entity must, within five business days after the limit is exceeded, divest itself of the excess emission allowances, transfer into its compliance account the number of allowances needed to cover its emissions for the current year or preceding years, or, in the case of consolidated entities, amend the distribution of the overall holding limit to become compliant. If a registered entity fails to comply with this requirement, ecology will withdraw the excess allowances and make them available for auction.

(3) Ecology will post anonymized information about the contents of each holding account including, but not limited to, the number of allowances in the account, on ecology's cap and invest public website. Ecology will also maintain on its website a public roster of all covered entities, opt-in entities, and general market participants.

(4) When the ownership of a registered entity changes, the following information must be submitted to ecology within 30 calendar days of finalization of the ownership change:

(a) A description of the merger or acquisition and the effective date of the change of ownership, including whether the merger or acquisition is the purchase of a registered entity or entities from another party or the purchase of a party that owns a registered entity or entities;

(b) Both the legal and operating names and the tracking system IDs of the parties owning the registered entity or entities prior to the change in ownership;

(c) The legal name, operating name, and the tracking system ID of the purchasing party, if any;

(d) Written direction regarding whether the purchased registered entity or entities will be added to a consolidated entity account or whether the purchased registered entity or entities will be associated with a party that will opt out of account consolidation;

(e) Documentation with signatures (original or electronic) by a director or officer from the seller of the registered entity or entities, the registered entity or entities, and from the purchasing party, notifying ecology of the change of ownership;

(f) Any changes to disclosures or new disclosures required under WAC 173-446-110, 173-446-120, and 173-446-130;

(g) Direction regarding the disposition of compliance instruments that must be transferred by ecology to the purchasing party. Compliance instruments can be transferred. Any administrative transfers required may be requested as a one-time occurrence scheduled to occur within five business days after the facility or facilities are transferred in the tracking system to the purchasing party;

(h) It is the responsibility of the parties participating in the change of ownership to transfer any compliance instruments from tracking system holding accounts that they control prior to closure. Prior to closure, ecology may transfer compliance instruments from a registered entity's compliance account to its holding account upon request by the registered entity. If a party no longer owns or operates any active registered entity in its tracking system account due to a change in ownership, then that party may exit the program and close its tracking system accounts within five business days after the registered entity or entities are transferred in the tracking system to the purchasing party.

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ALLOWANCE BUDGETS AND DISTRIBUTION OF ALLOWANCES

NEW SECTION

WAC 173-446-200 Total program baseline. (1) **Total program baseline and subtotal baselines.** Ecology must use the following methods for establishing a total program baseline for this chapter.

(a) Subtotal baselines are calculated individually for each reporter or sector on an annual basis as described in subsection (2) of this section. The total program baseline is the sum of the subtotal baselines. The total program baseline is given in Table 200-1. Ecology may only adjust the total program baseline through rule making as described in subsections (3) and (4) of this section.

(b) Ecology may combine information from multiple sources and use professional judgment to adjust data sets and conform to this chapter when calculating subtotal baselines. Ecology may use the following data sources when calculating subtotal baselines depending on data availability, quality, applicability, and the agency's best professional judgment.

(i) Data reported to ecology under chapter 173-441 WAC;

(ii) Data provided or described in subsections (2) through (4) of this section;

(iii) Data voluntarily provided by covered parties; or

(iv) Data or estimates obtained or made by ecology.

(2) **Subtotal baselines for sectors entering the program in the first compliance period.** Ecology must use the following methods for establishing subtotal baselines for facilities, suppliers, or first jurisdictional deliverers described under WAC 173-446-030(1) that would meet applicability requirements based on covered emissions from 2015 through 2019. Subtotal baselines are the annual average of covered emissions for each reporter or sector on a mass basis as established in WAC 173-446-040 from emissions years 2015 through 2019. All emissions years are included in the average, including years with periods of closure or curtailment, and years when covered emissions from a covered entity were under the thresholds in WAC 173-446-030(1) as

long as at least one emissions year from 2015 through 2019 would have exceeded the applicability requirements described under WAC 173-446-030(1) for the given facility, supplier, or first jurisdictional deliverer. Ecology may elect not to apply all methods in WAC 173-446-040(3) when calculating subtotal baselines since the total program baseline is the sum of the subtotal baselines. For example, when calculating subtotal baselines, ecology may attribute fuel product combustion described in WAC 173-446-040 (3)(a)(ii)(A) to facilities instead of reallocating those emissions to fuel suppliers. Ecology must apply WAC 173-446-040(3) to make sure that each metric ton of emissions is included in the total program baseline and avoid double counting. Ecology must fully apply WAC 173-446-040(3) any time emissions calculations are specific to a given covered party, such as calculating compliance obligations or allocation baselines.

(a) Facilities that are not EITEs. Ecology must calculate subtotal baselines for facilities that are not EITEs, including electric generating facilities reporting under WAC 173-441-120, based on the facility's covered emissions as established in WAC 173-446-040.

(b) EITE facilities. Ecology must calculate subtotal baselines for EITE facilities based on the facility's covered emissions as established in WAC 173-446-040.

(c) Suppliers of natural gas. Ecology must calculate subtotal baselines for suppliers of natural gas based on the supplier's covered emissions as established in WAC 173-446-040. Ecology must use the supplementary reports defined in WAC 173-446-240 for calculations whenever available and adjust covered emissions to account for large customers as described in WAC 173-446-040 (3)(b)(ii).

(d) Suppliers of fossil fuel other than natural gas. Ecology must calculate subtotal baselines for suppliers of fossil fuel other than natural gas based on the supplier's covered emissions as established in WAC 173-446-040. Ecology must use the existing department of licensing based transportation fuel supplier reports previously submitted to ecology for calculations. Ecology may adjust covered emissions from the transportation fuel supplier reports to subtract GHG emissions estimated to be associated with aviation and add emissions associated with fuel products combusted at facilities as described in WAC 173-446-040 (3)(c).

(e) Carbon dioxide suppliers. Ecology must calculate subtotal baselines for carbon dioxide suppliers based on the supplier's covered emissions as established in WAC 173-446-040.

(f) Electric power entities. Ecology must calculate subtotal baselines for electricity importers based on their covered emissions as established in WAC 173-446-040. Ecology will use fuel mix disclosure reports generated by the department of commerce in accordance with RCW 19.29A.060 to identify and catalog all contracted and unclaimed power and methods from WAC 173-444-040 to estimate GHG emissions. Subtotal baselines for electric generating facilities reporting under WAC 173-441-120 will be calculated as specified under (a) of this subsection and are not part of the electric power entity subtotal baseline.

(3) **Subtotal baselines for sectors entering the program in the second compliance period.** Subtotal baselines for facilities in sectors described under WAC 173-446-030(2) must be calculated based on the facilities' covered emissions as established in WAC 173-446-040 averaged from emissions years 2023 through 2025. Ecology must adjust the total program baseline in Table 200-1 of this section by adding the subtotal

baseline for facilities under WAC 173-446-030(2) in a future rule making by October 1, 2026.

(4) **Subtotal baselines for sectors entering the program after the second compliance period.** Subtotal baselines for facilities in sectors described under WAC 173-446-030(3) must be calculated based on the facilities' covered emissions as established in WAC 173-446-040 averaged from emissions years 2027 through 2029. Ecology must adjust the total program baseline in Table 200-1 of this section by adding the subtotal baseline for facilities under WAC 173-446-030(3) in a future rule making by October 1, 2028.

(5) **Subtotal baseline adjustments for new or modified covered reporters.** Ecology will not adjust the total program baseline in Table 200-1 of this section for any new covered reporter joining the program under WAC 173-446-060.

Table 200-1: Total Program Baseline Values

Emissions Years	Total Program Baseline (annual MT CO_2e)
2023-2026	68,052,220
2027-2030	Set by rule by October 1, 2026, according to subsection (3) of this section
2031 and subsequent years	Set by rule by October 1, 2028, according to subsection (4) of this section

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NEW SECTION

WAC 173-446-210 Total program allowance budgets. (1) **Calculating the total program allowance budget.** Ecology must use the following methods for setting the total program allowance budget for each year. The total program allowance budget for each year must be in units of MT CO_2e on a mass basis.

(a) Emissions years 2023 through 2026.

(i) The total program allowance budget for emissions year 2023 is equal to 93 percent of the total program baseline described in WAC 173-446-200 Table 200-1 for 2023 through 2026.

(ii) The total program allowance budget for each year from 2024 through 2026 decreases annually relative to the previous year by an additional seven percent of the total program baseline in WAC 173-446-200 Table 200-1 for 2023 through 2026.

(b) Emissions years 2027 through 2030.

(i) The total program allowance budget for emissions year 2027 is equal to the 2026 total program allowance budget plus the adjustment to the total program baseline described in WAC 173-446-200(3) reduced by an additional seven percent of the total program baseline in WAC 173-446-200 Table 200-1 for 2027 through 2030.

(ii) The total program allowance budget for each year from 2028 through 2030 decreases annually relative to the previous year by an additional seven percent of the total program baseline in WAC 173-446-200 Table 200-1 for 2027 through 2030.

(c) Emissions years 2031 through 2042.

(i) The total program allowance budget for emissions year 2031 is equal to the 2030 total program allowance budget plus the adjustment to the total program baseline described in WAC 173-446-200(4) reduced by an additional one and eight tenths percent of the total program baseline in WAC 173-446-200 Table 200-1 for 2031 and subsequent years.

(ii) The total program allowance budget for each year from 2032 through 2042 decreases annually relative to the previous year by an additional one and eight tenths percent of the total program baseline in WAC 173-446-200 Table 200-1 for 2031 and subsequent years.

(d) Emissions years 2043 through 2049. The total program allowance budget for each year from 2043 through 2049 decreases annually relative to the previous year by an additional two and six tenths percent of the total program baseline in WAC 173-446-200 Table 200-1 for 2031 and subsequent years.

(2) **Total program allowance budget.** Table 210-1 displays the total program allowance budget for each year calculated using the method established in subsection (1) of this section.

Table 210-1: Total program allowance budget for each year of the first compliance period using the methods established in subsection (1) of this section.

Emissions Year	Total Covered Emissions (MT CO_2e)
2023	63, 288, 565
2024	58, 524, 909
2025	53, 761, 254
2026	48, 997, 598

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NEW SECTION

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 applica-

ble, 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.

$$NoCostAllowances_t\ (MT\ CO_2e) = InitialNoCostAllowances_t + TrueUp_t \qquad \text{Eq. 220-1}$$

Where:

$NoCostAllowances_t$ = number of allowances allocated for emissions year *t*

$InitialNoCostAllowances_t$ = 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.

$$InitialNoCostAllowances_t\ (MT\ CO_2e) = CarbonIntensityAllocationBaseline \times Production_{t-2} \times ReductionSchedule_t \qquad \text{Eq. 220-2}$$

Where:

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

ReductionSchedule = 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.

$$TrueUp_t\ (MT\ CO_2e) = (CarbonIntensityAllocationBaseline \times Production_t \times ReductionSchedule_t) - InitialNoCostAllowances_t \qquad \text{Eq. 220-3}$$

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.

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

Where:

Mass-based allocation baseline = determined pursuant to subsection (1)(b) of this section.

$\text{ReductionSchedule}_t$ = 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 adjustment 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.

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NEW SECTION

WAC 173-446-230 Distribution of allowances to electric utilities. (1) **Total no cost allowances allocated to electric utilities.** Allowances will be allocated to qualifying electric utilities for the purposes of mitigating the cost burden of the program based on the cost burden effect of the program. Only electric utilities subject to chapter 19.405 RCW, the Washington Clean Energy Transformation Act, qualify for no cost allowances.

(2) The cost burden effect recognizes that compliance with the program requires the submission of compliance instruments and in the absence of possessing the required compliance instruments procurement of those instruments has an associated cost that would be translated into consumer electricity prices without the mitigation of that cost burden as provided by this program. Those potential costs, along with the administrative costs of the program, comprise the cost burden of the program. Provision of some or all of the allowances necessary to

address this deficit, through the means established in this section, is the method by which this cost burden is mitigated. Under this framework, ecology will use the following methods to determine the cost burden effect and the allocation of allowances to each qualifying electric utility.

(a) Ecology will use utility-specific demand forecasts that provide estimates of retail electric load. Demand forecasts should represent the best estimate of the most likely electricity demand scenario during the compliance period.

(b) Ecology will use utility-specific resource supply forecasts to determine the resource fuel types that are forecasted to be used to provide the retail electric load predicted by the demand forecast for the utility. Resource supply forecasts should represent the best estimate of the most likely electricity resource mix scenario during the compliance period including, but not limited to, using an assumption of average hydroelectric conditions.

(c) These forecasts will be derived from the following sources, which will be relied upon in the rank order listed below as necessary to most accurately determine the supply and demand forecasts that best predict the manner in which each electric utility will comply with the Clean Energy Transformation Act, chapter 19.405 RCW:

(i) A forecast of supply or a forecast of demand, along with any supporting information, which has been approved by the utilities and transportation commission in the case of an investor-owned utility or approved by the governing board of a consumer-owned utility in the case of a consumer-owned utility. Any such forecast must also be consistent with the clean energy implementation plan that is submitted pursuant to the Clean Energy Transformation Act, chapter 19.405 RCW.

(ii) The forecasts of supply and forecasts of demand that are part of the clean energy implementation plan, or supporting materials for that plan, for a utility that is submitted pursuant to chapter 19.405 RCW, the Washington Clean Energy Transformation Act.

(iii) An integrated resource plan, or supporting materials for that plan, that complies with chapter 19.280 RCW and is consistent with or serves as the basis for the clean energy implementation plan submitted pursuant to chapter 19.405 RCW, the Washington Clean Energy Transformation Act.

(iv) Another source that provides a utility's supply or demand forecast that is, based on ecology's analysis, consistent with an existing forecast approved by the appropriate governing board or the utilities and transportation commission.

(v) For multijurisdictional electric companies, a multistate resource allocation methodology that has been approved by the utilities and transportation commission may be used in the relevant forecasts.

(d) Ecology will use the following emission factors to determine the emissions associated with the projected electricity resource supply mix. These factors are to be applied to the amount of electrical load in megawatt-hours (MWh) that comprises the proportion of the forecasted demand served by that resource type.

(i) For the proportion of load that is projected to be served by natural gas resources, the factor will be 0.4354 MT CO_2e/MWh.

(ii) For the proportion of load that is projected to be served by coal resources, the factor will be 1.0614 MT CO_2e/MWh, unless the source of the load is coal transition power, as defined in RCW 80.80.010, in which case the factor is zero.

(iii) For the proportion of load identified as being served by a nonemitting or a renewable resource in the clean energy implementation plan, use an emission factor of zero.

(iv) For any load from which the fuel or resource type serving that load is unknown or unknowable, and for unspecified market purchases, use the unspecified emission factor using the procedures identified in WAC 173-444-040.

(v) For load from a source or supplying entity that has established an asset controlling supplier emission factor pursuant to chapter 173-441 WAC, use the most recent emission factor established by that procedure.

(e) The cost burden effect from the emissions for each utility is calculated according to Eq. 230-1. In cases where no retail electric load is attributable to the resource category for that term of the equation, the relevant term should be treated as zero. The resulting total of emissions represents the cost burden effect for the utility.

$$\text{Cost Burden Effect} = (\text{Load}_{NG} \times \text{EF}_{NG}) + (\text{Load}_{Coal} \times \text{EF}_{Coal}) + (\text{Load}_{NE,RE} \times 0) + (\text{Load}_{Remaining} \times \text{EF}_{Unspecified}) + (\text{Load}_{ACS} \times \text{EF}_{ACS})$$

Eq. 230-1

Where:

Load_{xxx} = Amount of retail electric load served by natural gas (NG), coal, and nonemitting and renewable resources (NE, RE), sources which has a designated asset controlling supplier (ACS) emission factor, and remaining load for which generation source is unknown or unspecified.

EF = Emission factor for natural gas (NG), coal, asset controlling suppliers (ACS), and unspecified electricity.

(f) One allowance will be initially allocated for each metric ton of emissions associated with the cost burden effect for each qualifying electric utility for each emissions year as projected through this process. The final total of allocated allowances will be subject to further adjustments as detailed in this subsection.

(g) The initial allocation of allowances will be adjusted as necessary to account for any differential between the applicable reported greenhouse gas emissions for the prior years for which reporting data are available and verified in accordance with chapter 173-441 WAC and the number of allowances that were allocated for the prior year through this process.

(h) An additional number of allowances will be allocated to account for the administrative costs of the program. Administrative costs of the program are limited solely to those costs associated with establishing and maintaining compliance accounts, tracking compliance, managing compliance instruments, and meeting the reporting and verification requirements of this chapter. Program costs, such as those related to energy efficiency or renewable energy programs, are not qualifying administrative costs, including any administrative requirements of those programs. The number of allowances allocated for this purpose will be determined by ecology based on documented and verified administrative costs derived from audited financial statements from utilities. The mean allowance auction price from the time period for which administrative costs are documented will be used to translate administrative costs into the appropriate number of allowances. To ensure consistency, ecology will consult with the utilities and transportation commission in its calculations for the administrative costs for investor-owned utilities.

(i) The number of allowances to be allocated to qualifying utilities will be published on the ecology website no later than October 1st in the calendar year prior to each compliance period. Public no-

tice of the availability of this information will also be made available concurrently with publishing of this information on the website.

(j) The schedule of allowances will be updated by October 1st of each calendar year as necessary to accommodate the requirements of the adjustment processes described in this subsection. In addition, if a revised forecast of supply or demand is approved in a form and manner consistent with the requirements of this section by July 30th of the same calendar year, then ecology may adjust the schedule of allowances to reflect the revised information provided by an updated forecast.

(3) Total allowances allocated for the purposes of recognizing voluntary renewable electricity purchases. Ecology will allocate allowances to a voluntary renewable electricity reserve account pursuant to RCW 70A.65.090 (9) and (11). The number of allowances allocated to the voluntary renewable electricity reserve account for the first compliance period will be 0.33 percent of the total annual allowance budget for each year as provided in Table 210-1.

(4) If a facility is identified by ecology as EITE under chapter 173-446A WAC, and if allowances have not been otherwise allocated for the electricity-related emissions for that facility under other provisions of this chapter, then ecology will allocate allowances at no cost to the electric utility or power marketing administration that is providing electricity to the EITE facility in an amount equal to the forecasted emissions for electricity consumption for the facility for the compliance period.

(5) A consumer-owned utility that is party to a contract that meets the following conditions will be issued allowances under this section for emissions associated with imported electricity, in order to prevent impairment of the value of the contract to either party.

(a) The contract does not address compliance costs imposed upon the consumer-owned utility by the program created in this chapter;

(b) The contract was in effect as of July 25, 2021, and expires no later than the end of the first compliance period; and

(c) The consumer-owned utility notifies ecology of the existence of the qualifying contract no later than December 16, 2022, in a format as specified by ecology.

(6) Allowances allocated at no cost to electric utilities may be consigned to auction for the benefit of ratepayers, transferred at no cost to an electric generating facility as described in WAC 173-446-425, deposited for compliance, or a combination of these uses. While no cost allowances may be held for future use, they may not be traded or transferred other than as authorized to WAC 173-446-425. The utilities and transportation commission retains oversight and jurisdiction over the use of revenues collected from an investor-owned utility through the consignment and auction of no cost allowances for the benefit of ratepayers.

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NEW SECTION

WAC 173-446-240 Distribution of allowances to natural gas utilities. (1) **Allocation baselines for natural gas utilities.** Ecology will use the following data sources and methods to facilitate the allocation of no cost allowances to natural gas utilities.

(a) Ecology will assign an allocation baseline to each natural gas utility using the methods for subtotal baselines established in WAC 173-446-200 (2)(c) for emissions years 2015 through 2019. Allowance allocation is based on the allocation baseline for the natural gas utility.

(b) A natural gas utility that is a covered entity under WAC 173-446-030(1) must submit a complete GHG report as specified in WAC 173-441-122(4) for each emissions year 2015 through 2021 by March 31, 2022, in order to qualify for no cost allowances. A natural gas utility that becomes a covered entity under WAC 173-446-030(1) or 173-446-060 after 2023 must submit a complete GHG report as specified in WAC 173-441-122(4) for each emissions year 2015 through the current reporting year by the reporting deadline in WAC 173-441-050 for the year it becomes a covered entity in order to qualify for no cost allowances.

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

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

(ii) A new assigned emissions level under WAC 173-441-086 for emissions years 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 natural gas utilities.** The following method establishes the total no cost allowances allocated to a given natural gas utility for a given emissions year.

(a) Emissions years 2023 through 2030.

(i) The total number of no cost allowances distributed to a natural gas utility for emissions year 2023 is equal to 93 percent of the utility's allocation baseline.

(ii) The total number of no cost allowances for 2024 through 2030 distributed to a natural gas utility decreases annually relative to the previous year by an additional seven percent of the utility's allocation baseline.

(b) Emissions years 2031 through 2042.

(i) The total number of no cost allowances distributed to a natural gas utility for emissions year 2031 is equal to their 2030 allowance budget reduced by an additional one and eight tenths percent of their allocation baseline.

(ii) The total number of no cost allowances distributed to a natural gas utility for 2032 through 2042 decreases annually relative to the previous year by an additional one and eight tenths percent of the utility's allocation baseline.

(c) Emissions years 2043 through 2049.

(i) The total number of no cost allowances distributed to a natural gas utility for emissions year 2043 is equal to their 2042 allowance budget reduced by an additional two and six tenths percent of their allocation baseline.

(ii) The total number of no cost allowances distributed to a natural gas utility for 2044 through 2049 decreases annually relative to the previous year by an additional two and six tenths percent of the utility's allocation baseline.

(d) A natural gas utility must continue to be in compliance with chapter 173-441 WAC and this chapter to continue receiving no cost allowances. No cost allowances are not provided during periods of closure or curtailment.

(3) No cost allowances allocated to natural gas utilities may be consigned to auction for the benefit of ratepayers, deposited for compliance, or a combination of both. No cost allowances allocated to natural gas utilities may not be traded, transferred, or sold. The utilities and transportation commission retains jurisdiction over the use of the revenues collected by investor-owned utilities from allowances consigned for the benefit of ratepayers.

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NEW SECTION

WAC 173-446-250 Removing and retiring allowances. (1) **Adjustments for the use of offsets as compliance instruments.** Ecology will use the following process to remove and retire allowances to account for the use of offset credits used for compliance in accordance with RCW 70A.65.170(5). This process will be completed by December 15th of each year.

(a) The calculation to determine the number of offset credits to be removed is as follows:

$$\text{Offset credits used} = \text{Offsets} - \text{Invalidations} \qquad \text{Eq. 250-2.}$$

Where:
Offsets = number of offset credits used as compliance instruments for compliance obligations from the prior year.
Invalidations = number of offset credits invalidated by ecology (if any).

(b) If the number of offset credits calculated by Eq. 250-2 is greater than zero, a number of allowances equal to that number of offset credits will be removed from the next year's annual allowance budget and retired.

(2) **Adjustments to ensure consistency with proportional GHG emission limits.** To ensure consistency with the requirements of RCW 70A.65.060 and 70A.65.070, ecology may remove and retire allowances from the next year's allowance budget if the analysis of the state's progress toward the greenhouse gas limits required in RCW 70A.45.020 indicates insufficient progress toward those limits for the proportion of covered emissions in the program relative to total statewide greenhouse gas emissions.

(a) This determination will be made within two months after the submittal of the progress report required by RCW 70A.45.020(2) to the legislature, or the program progress report required by RCW 70A.65.060(5).

(i) For each determination, ecology will provide notice to the public of ecology's analysis of the state's progress toward the greenhouse gas limits and ecology's preliminary determination on whether or not to remove and retire allowances and how many allowances to remove if any.

(ii) Ecology will allow 30 calendar days for public comment on the preliminary determination before making a final determination.

(b) If this determination finds that Washington is meeting or exceeding the expected proportionate progress toward the limits based on

the covered emissions in the program, then no further action will be taken.

(3) **Adjustments for voluntary renewable electricity.** Ecology will remove and retire allowances from the voluntary renewable electricity reserve account in recognition of the generation of renewable electricity that is directly delivered to Washington and used for the purposes of voluntary renewable electricity programs by using the following methods.

(a) Electricity generation eligible to be considered voluntary renewable electricity generation for the purposes of this section must:

(i) Be directly delivered to a point of delivery in Washington.

(ii) Meet the definition of renewable resource in RCW 19.405.020.

(iii) Meet at least one of the following criteria:

(A) Be registered in the Western renewable energy generation system (WREGIS); or

(B) Be capable of creating renewable energy credits in the WREGIS system though aggregation or other means; or

(C) Have through some other means received approval from ecology.

(iv) Have associated contract or settlement documentation demonstrating the sale to and purchase of the renewable energy credits associated with the generation of the electricity to the voluntary renewable electricity end-user or entity purchasing on behalf of the end-user.

(b) Renewable energy credits for eligible voluntary renewable generation must:

(i) Represent generation that occurred during the year for which allowance retirement is requested;

(ii) Be retired for the purposes of voluntary renewable energy before the submittal of the request to retire allowances; and

(iii) Not be sold or used to meet any other mandatory requirements in Washington or any other jurisdiction, including renewable portfolio standards or clean electricity standards in Washington (RCW 19.285.040 and chapter 19.405 RCW, respectively), or similar laws or regulations in any other jurisdiction.

(c) A request for the retirement of allowances may be initiated, using a method and form approved by ecology, by any of the following:

(i) The owner or operator of the eligible voluntary renewable generation;

(ii) The owner or purchaser of the renewable energy credit associated with the eligible generation; or

(iii) The end-user that claims the voluntary renewable electricity generated by eligible generation.

(d) A request for the retirement of allowances in recognition of voluntary renewable electricity generation must also be accompanied by the following attestations:

(i) A signed attestation to ecology stating: "I certify under penalty of perjury under the laws of the state of Washington that I have not authorized use of, or sold, any renewable electricity credits or any claims to the emissions, or lack of emissions, for electricity for which I am seeking Ecology allowance retirement, in any other voluntary or mandatory program." and

(ii) Except as provided in (d)(iii) of this subsection, a signed attestation to ecology stating: "I understand I am voluntarily participating in the Washington state Greenhouse Gas Cap and Invest Program under chapter 70A.65 RCW and this chapter, and by doing so, I am now subject to all regulatory requirements and enforcement mechanisms of

this voluntary renewable electricity program and subject myself to the jurisdiction of Washington state as the exclusive venue to resolve any and all disputes."

(iii) For federally recognized tribes who elect to participate as opt-in entities or general market participants pursuant to RCW 70A.65.090(5), a signed attestation to ecology stating: "I understand I am voluntarily participating in the Washington state Greenhouse Gas Cap and Invest Program under chapter 70A.65 RCW and this chapter. The tribal government on whose behalf I am authorized to make this submission has entered into a written agreement, negotiated on an individual basis between ecology and the tribal government, that establishes a dispute resolution process and/or other compliance mechanisms in order to ensure the enforceability of all program requirements applicable to the tribe in its role as an opt-in entity or a general market participant, as applicable."

(e) Allowances will be retired annually from the voluntary renewable electricity reserve account for the preceding year's eligible generation in order of increasing vintage year until the account has been exhausted. For the year in which available allowances are exhausted, allowance retirement will be prorated among all eligible generation.

(f) The number of allowances retired from the voluntary renewable electricity reserve account for eligible generation in a given year is calculated as follows:

$$VRE_{retired} = MWh_{VRE} \times EF_{unspecified}$$

Where:

"$VRE_{retired}$" is the number of allowances to be retired from the voluntary renewable electricity reserve account for the eligible generation rounded down to the nearest whole ton;

"MWh_{VRE}" is the amount of voluntary renewable electricity, in MWh, that is generated in the previous year by the eligible generation; and

"$EF_{unspecified}$" is the default CO_2e emissions factor for unspecified power, based on the methods provided in WAC 173-444-040(4) using the data required in WAC 173-441-124 (3)(b).

(g) Any allowances from an allowance budget year that have been allocated to the voluntary electricity reserve account and not retired that year will be held in the reserve account to be available for retirement in subsequent budget years.

(h) If the surplus in the voluntary electricity reserve account grows for three or more consecutive years, and if forecasts of voluntary renewable electricity purchases project a decrease or lesser increase of voluntary renewable electricity purchases than the corresponding increase in the account, then ecology may remove surplus of allowances from the reserve account, and retire them.

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NEW SECTION

WAC 173-446-260 Allowance distribution dates. (1) Ecology will distribute vintage 2023 no cost allowances to mass-based EITE facilities, natural gas utilities, and electric utilities that have authorized accounts by the following dates:

(a) For mass-based EITE facilities: By September 1, 2023.

(b) For natural gas utilities:

(i) By July 1, 2023, a total of 35 percent of vintage 2023 no cost allowances will be allocated, based on ecology's best estimate of the final total as of this date.

(ii) By September 1, 2023, the remaining vintage 2023 no cost allowances will be allocated, taking into account the quantity of no cost allowances already allocated.

(c) For investor-owned electric utilities, within 60 days of the utilities and transportation commission approval of the forecasts of supply and demand to be used for the purposes of WAC 173-446-230, or by July 1, 2023, if the utilities and transportation commission takes no action.

(d) For consumer-owned electric utilities, within 60 days of the governing board of the consumer-owned utility approval of the forecasts of supply and demand to be used for the purposes of WAC 173-446-230, or no later than July 1, 2023, if the governing board takes no action.

(2) By September 1, 2023, ecology will make a preliminary distribution of vintage 2023 no cost allowances to intensity-based EITE facilities that have authorized accounts in the electronic compliance instrument tracking system. Distributions to intensity-based EITE facilities shall be based on 2021 production data reported to ecology and verified in 2022.

(3) By October 24th of 2023, and by October 24th of each year thereafter, ecology will distribute no cost allowances to mass-based EITE facilities, natural gas utilities, and electric utilities. The allowances distributed will be of the vintage of the year following the year in which they are distributed.

(4) By October 24th of 2023, and by October 24th of each year thereafter, ecology will make an initial distribution of no cost allowances to intensity-based EITE facilities. These distributions shall be based on production data from one year prior to the distribution year. The allowances distributed will be of the vintage of the year following the year in which they are distributed.

(5) By October 24th of 2024, and by October 24th of each year thereafter, ecology will conduct the final reconciliation of no cost allowances for intensity-based EITE facilities for the prior year based on production data from the prior year as reported to ecology and verified during the distribution year.

(a) If the initial allocation of allowances for a given year is lower than the actual number of allowances required as shown by the verified production data, ecology shall distribute additional allowances to the EITE facility to make up the difference. These allowances will come from the next year's vintage of allowances. Ecology shall accept these future vintage allowances for meeting compliance obligations for emissions from the year prior to the distribution year.

(b) If the initial allocation of allowances for a given year is higher than the actual number of allowances required as shown by the verified production data, ecology shall make up the difference by reducing the number of allowances allocated to the facility in the initial distribution of allowances for the next year. If the difference cannot be made up through reductions in the next year's initial distribution, the remaining reductions in allowances shall be carried forward to subsequent years until the deficit is resolved.

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ALLOWANCE AUCTIONS

NEW SECTION

WAC 173-446-300 Auctions of current and prior year allowances. (1) Each year starting in 2023, ecology shall submit allowances for the purpose of auctions to be held on four separate occasions, each consisting of a single round of bidding.

(2) Only the following allowances shall be auctioned:

(a) Allowances reserved by ecology for the purpose of auctions;

(b) Allowances consigned to auction by electric utilities and natural gas utilities as follows:

(i) Electric utilities may choose at any time to consign up to 100 percent of their allowances to auction. During the first compliance period, electric utilities may choose whether or not to consign no cost allowances to auction, and if so, how many allowances to consign. All proceeds from the auction of allowances consigned by electric utilities will be used for the benefit of ratepayers, which, for investor-owned utilities, will be determined by the utilities and transportation commission, and with the first priority the mitigation of any rate impacts to low-income customers.

(ii) Natural gas utilities may choose at any time to consign up to 100 percent of their allowances to auction. Natural gas utilities must consign to auction:

(A) In 2023, at least 65 percent of the no cost allowances allocated to them for 2023;

(B) In 2024, at least 70 percent of the no cost allowances allocated to them for 2024;

(C) In 2025, at least 75 percent of the no cost allowances allocated to them for 2025;

(D) In 2026, at least 80 percent of the no cost allowances allocated to them for 2026;

(E) In 2027, at least 85 percent of the no cost allowances allocated to them for 2027;

(F) In 2028, at least 90 percent of the no cost allowances allocated to them for 2028;

(G) In 2029, at least 95 percent of the no cost allowances allocated to them for 2029;

(H) In 2030, and every year thereafter, 100 percent of the no cost allowances allocated to them for 2030 and subsequent years.

(iii) All proceeds from the auction of allowances consigned by natural gas utilities shall be used for the benefit of customers, as determined by the utilities and transportation commission for investor-owned natural gas utilities, including at a minimum eliminating any additional cost burden to low-income customers from the implementation of the Climate Commitment Act.

(A) Revenues from allowances consigned by natural gas utilities and sold at auction must be returned by providing nonvolumetric credits on ratepayer utility bills, prioritizing low-income customers, or used to minimize cost impacts on low-income, residential, and small business customers through actions that include, but are not limited

to, weatherization, decarbonization, conservation and efficiency services, and bill assistance. Investor-owned utility compliance with this subsection will be determined by the utilities and transportation commission. Nothing in this subsection amends the utilities and transportation commission's jurisdiction over investor-owned utilities.

(B) The customer benefits provided from allowances consigned to auction by natural gas utilities under this section must be in addition to existing requirements in statute, rule, or other legal requirements, as determined for investor-owned utilities by the utilities and transportation commission. Nothing in this subsection amends the utilities and transportation commission's jurisdiction over investor-owned utilities.

(C) Except for low-income customers, any customer bill credits under this subsection are reserved exclusively for customers at locations connected to a natural gas utility's system on July 25, 2021. Bill credits may not be provided to customers of the gas utility at a location connected to the system after July 25, 2021. Investor-owned utility compliance with this section will be determined by the utilities and transportation commission. Nothing in this subsection amends the utilities and transportation commission's jurisdiction over investor-owned utilities.

(3) At each auction, ecology shall submit the percentage of current and prior vintage allowances ecology considers appropriate after considering the allowances in the marketplace due to the marketing of no cost allowances issued to EITE facilities, electric utilities, and natural gas utilities.

(a) Ecology shall offer only such number of allowances at each auction as will enhance the likelihood of achieving the GHG emission reductions required in RCW 70A.45.020.

(b) By January 15th of 2024 and each succeeding year, ecology shall publish on its website the dates of the quarterly auctions for that year and the number of allowances of that year's vintage allowances that ecology will submit for each of those auctions.

(4) At each auction, consigned allowances shall be sold first. If at the end of an auction, any consigned allowances remain unsold, they shall be retained to be submitted for sale in the subsequent auction.

(5) If, at the end of an auction, any of the allowances submitted to auction by ecology have not yet been sold, ecology shall hold them to be auctioned in subsequent auctions but only after the settlement price for allowances has been above the auction floor price for two consecutive auctions. If the allowances are not sold within 24 months, ecology shall place them in the emissions containment reserve.

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NEW SECTION

WAC 173-446-310 Public notice. (1) At least 60 calendar days before an auction, ecology shall provide notice of the auction to the Environmental Justice Council and to the public, setting out the following information:

(a) The day on which, and time period during which, bidding in the auction may take place;

(b) The location or internet address at which the auction will be held;

(c) A summary of the requirements of this rule relating to the auction or sale, including the auction floor price and the emissions containment reserve trigger price;

(d) A summary of the auction process;

(e) For each allowance being offered for sale at the auction, the vintage year, if any, of the allowance; and

(f) The number of allowances of each vintage year being offered for sale at the auction.

(2) Ecology may, at any time after providing a notice under subsection (1) of this section, change the information included in the notice by providing notice of the change using the same methods used to provide the original 60-day notice of the auction.

(3) Ecology may delay the day on which bidding in the auction may take place by up to 10 business days by providing notice using the same methods used to provide the original 60-day notice of the auction.

(4) If ecology changes the day on which the bidding in the auction may take place by more than 10 business days, ecology must provide a new 60-day notice.

(5) Subject to subsections (6) and (7) of this section, if the day on which bidding in the auction may take place is changed by 10 business days or less, all requirements under this chapter for which there is a time limit determined in relation to the day on which bidding takes place, shall be determined in relation to the new day as specified in the notice of change.

(6) Subsection (5) of this section does not apply with respect to a requirement if, before the day on which ecology provides a notice of a change, the time limit in respect to the requirement expired.

(7) Despite subsection (5) of this section, if a registered entity has given a bid guarantee in accordance with WAC 173-446-325 for the purpose of bidding in an auction and the day of the auction is subsequently changed, the registered entity is not required to provide a new bid guarantee.

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NEW SECTION

WAC 173-446-315 Registration for an auction. (1) A registered entity must apply to ecology before bidding in each auction. To apply to bid in an auction each registered entity must:

(a) No later than 40 calendar days before the day of the auction, update any information required to be updated under WAC 173-446-050(5), 173-446-053, 173-446-055, or 173-446-105 through 173-446-140.

(b) By the auction application deadline, which is no later than 30 calendar days before the day of the auction, submit the following information to ecology:

(i) The name, contact information, and holding account number of the registered entity.

(ii) The names and identification numbers of all designated account representatives of the registered entity.

(iii) The name and contact information of any consultant that provides advice related to the auction participant's bidding strategy and, if applicable, the name of the consultant's employer.

(iv) The form of bid guarantee to be given.

(c) No later than 12 calendar days before the day of the auction, submit a bid guarantee meeting the requirements of WAC 173-446-325.

(2) If the registered entity has retained a cap and invest consultant or advisor regarding auction bidding strategy, the registered entity must:

(a) Ensure against the consultant or advisor transferring the registered entity's information to other auction participants or coordinating the bidding strategy among participants.

(b) Inform the consultant or advisor of the prohibition on sharing information with other auction participants and ensure the consultant or advisor has read and acknowledged the prohibition under penalty of perjury.

(3) No later than 15 calendar days before the day of an auction, a cap and invest consultant or advisor advising on bidding strategy must provide to ecology the following information:

(a) Names of the registered entities participating in the cap and invest program that are being advised;

(b) Description of the advisory services being performed; and

(c) Assurance under penalty of perjury that the advisor is not transferring to or otherwise sharing information with other auction participants.

(4) Subject to subsection (5) of this section, upon receiving an application from a registered entity that meets the requirements set out in subsection (1) of this section, ecology shall permit the registered entity to bid in the auction.

(5) Ecology shall refuse permission to bid in an auction if any of the following circumstances apply:

(a) The registered entity has given false or misleading information in the application.

(b) The registered entity has failed to disclose information required under subsection (1) of this section.

(c) The registered entity has disclosed auction-related information in violation of WAC 173-446-317.

(d) The registered entity's cap and invest accounts are subject to conditions under this rule or imposed by ecology that prohibit participation in auctions or otherwise prevent allowances or credits from being transferred to the registered entity's cap and invest accounts.

(e) A bid guarantee that has been submitted in the form of a wire transfer has not been deposited into an escrow account established by the financial services administrator or the institution indicated by the financial services administrator.

(6) Any registered entity requesting permission to participate in an auction or participating in an auction must provide ecology on request within five business days of the request any additional information concerning its participation in the auction.

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NEW SECTION

WAC 173-446-317 Auctions—Prohibited actions. (1) Collusion among bidders and/or market manipulation are prohibited.

(2) To prevent bidder collusion and minimize the potential for market manipulation, a registered entity registered to participate in an auction may not release or disclose any bidding information including, but not limited to:

(a) Intent to participate or refrain from participating in an auction;

(b) Auction approval status;

(c) Intent to bid;

(d) Bidding strategy;

(e) Bid price or bid quantity; or

(f) Information on the bid guarantee provided to the financial administrator.

(3) No party shall coordinate the bidding strategy of more than one auction participant.

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NEW SECTION

WAC 173-446-320 Suspension and revocation of registration. (1) Ecology may cancel or restrict a previously approved auction participation application or reject a new application if ecology determines that a registered entity has:

(a) Provided false or misleading information;

(b) Withheld material information that could influence an ecology decision;

(c) Violated any part of the auction rules;

(d) Violated registration requirements;

(e) Violated any of the rules regarding the conduct of the auction;

(f) Coordinated bidding strategy of more than one auction participant in violation of WAC 173-446-317(2); or

(g) Disclosed auction-related information in violation of WAC 173-446-317(1).

(2) The restrictions on disclosures in WAC 173-446-317 do not apply to a disclosure between registered entities who are members of the same direct corporate association.

(3) A registered entity is exempt from the prohibition on coordinating bidding strategies in WAC 173-446-317(2) if the coordination is with other registered entities with whom the registered entity is in a direct corporate association.

(4) If the percentage of holding limits and/or purchase limits allotted to a registered entity that is a member of a direct corporate association changes during the period beginning 39 calendar days before the auction and ending on the day of the auction, the registered entity is prohibited from bidding in the auction.

(5) Any cancellation or restriction approved by ecology under subsection (1) of this section may be permanent or for a specified number of auctions. The cancellation or restriction is not the exclusive remedy, and is in addition to the remedies that may be available under chapter 19.86 RCW or other state or federal laws.

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NEW SECTION

WAC 173-446-325 Bid guarantee. (1) Each registered entity must provide a bid guarantee for the purpose of bidding in an auction. The bid guarantee must cover bids for future vintage allowances as well as bids for current and past vintage allowances. The bid guarantee must meet the following criteria:

(a) Be in U.S. dollars;

(b) Be valid for at least 26 calendar days following the day of the auction or sale;

(c) Be one or a combination of the following and must be given in a form and manner approved by ecology:

(i) Cash in the form of a wire transfer;

(ii) An irrevocable letter of credit; or

(iii) A bond.

(d) All bid guarantees must be in a form that may be accepted by the financial services administrator consistent with U.S. banking laws and bank practices;

(i) If the bid guarantee is a wire transfer, it must be deposited in an escrow account of the financial services administrator or of the institution indicated by the financial services administrator.

(ii) If the bid guarantee is an irrevocable letter of credit, it must:

(A) Be made payable to the financial services administrator; and

(B) Be payable within three business days of a payment request.

(e) The bid guarantee must be for an amount that is greater than or equal to the registered entity's proposed maximum bid value, as determined under subsection (2) of this section.

(2) The registered entity's proposed maximum bid value for an auction is determined as follows:

(a) For each bid price proposed by the registered entity, multiply the bid price by the number of allowances that the registered entity proposes to purchase at that bid price or at a higher bid price.

(b) The highest value calculated under (a) of this subsection is the proposed maximum bid value.

(3) When parallel auctions for future allowances are held at the same time as auctions of current and past vintage allowances, the maximum bid value will be calculated first for the current and past vintage allowances. Any amount of the bid guarantee remaining after resolving the auction of current and past vintage allowances will be calculated for any bids for future vintage allowances.

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NEW SECTION

WAC 173-446-330 Purchase limits. A registered entity shall comply with the following rules for purchasing allowances available at an auction:

(1) A covered entity or opt-in entity that is not a member of a direct corporate association shall not purchase more than 10 percent of the allowances available.

(2) A general market participant that is not a member of a direct corporate association shall not purchase more than four percent of the allowances available.

(3) For purposes of auction purchase limits, all members of a direct corporate association are considered to be a single party subject to the purchase limits in subsections (1) and (2) of this section. A covered entity or opt-in entity that is a member of a direct corporate association shall ensure that the purchase limit set out in subsection (1) of this section is allocated among the members of the direct corporate association.

(4) If the direct corporate association mentioned in subsection (3) of this section includes a general market participant, the allocation under subsection (3) of this section must be carried out in such a manner as to ensure the rule set out in subsection (5) of this section is also complied with.

(5) A general market participant that is a member of a direct corporate association shall ensure that the purchase limits set out in subsection (2) of this section are allocated among all members of the direct corporate association who are general market participants.

(6) No registered entity that is a member of a direct corporate association shall purchase more than the share of the purchase limit allocated to the registered entity under this section.

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NEW SECTION

WAC 173-446-335 Auction floor price and ceiling price. (1) The auction floor price for 2023 shall be $19.70 increased by five percent plus the rate of inflation as measured by the most recently available 12 months of the consumer price index for all urban consumers as of the first business day in December 2022.

(2) The auction floor price for a year after 2023 shall be the auction floor price for the prior calendar year increased annually by five percent plus the rate of inflation as measured by the most recently available 12 months of the consumer price index for all urban consumers as of the first business day in December of the prior year.

(3) Beginning in 2022, on the first business day in December of each year, ecology shall announce the floor price for the next year.

(4) The ceiling price for 2023 shall be $72.29 increased by five percent plus the rate of inflation as measured by the most recently available 12 months of the consumer price index for all urban consumers as of the first business day in December of 2022.

(5) The ceiling price for a year after 2023 shall be the ceiling price for the prior calendar year increased annually by five percent plus the rate of inflation as measured by the most recently available 12 months of the consumer price index for all urban consumers as of the first business day in December of the prior year.

(6) Beginning in 2022, on the first business day in December of each year, ecology shall announce the ceiling price for the next year.

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NEW SECTION

WAC 173-446-340 Emissions containment reserve trigger price. The emissions containment reserve trigger price is suspended as of October 1, 2022, until reinstated by rule.

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NEW SECTION

WAC 173-446-345 Administration of auction—Lots. Ecology shall divide allowances that are to be auctioned into lots in accordance with the following rules:

(1) Each lot, other than the final lot for each vintage, shall consist of 1,000 allowances.

(2) The final lot may consist of fewer than 1,000 allowances if fewer than 1,000 allowances remain once all other allowances have been divided into lots of 1,000.

(3) Each lot of future vintage allowances must consist of only one vintage of allowances.

(4) Each lot other than lots of future vintage allowances may include both current and past vintage allowances.

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NEW SECTION

WAC 173-446-350 Bids. (1) A registered entity must include the following in a bid submitted in an auction:

(a) The bid price, in dollars and whole cents;

(b) The number of lots that the participant wishes to purchase.

(2) Each bid must be sealed and submitted in the form approved by ecology.

(3) A participant may submit more than one bid in an auction.

(4) After the period of time for bidding has concluded, ecology shall reject bids or portions of bids of a registered entity if acceptance of all of the registered entity's bids would result in contravention of the registered entity's holding limit or purchase limit.

(5) Ecology shall reject bids or portions of bids as noted in subsection (4) of this section, starting with the registered entity's lowest bid price and continuing in increasing order by bid price, until the total of the registered entity's bids remaining would, if accepted, not result in contravention of a holding limit or purchase limit.

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NEW SECTION

WAC 173-446-353 Determination of actual maximum bid value. (1) Before accepting any bids, ecology shall determine whether each registered entity's actual maximum bid value, as determined under subsection (2) of this section, is greater than the registered entity's bid guarantee.

(2) The registered entity's actual maximum bid value is determined as follows:

(a) For each bid price included in the registered entity's bids, multiply the bid price by the number of allowances that the registered entity proposed to purchase at that bid price or at a higher bid price.

(b) The highest value calculated under (a) of this subsection is the actual maximum bid value.

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NEW SECTION

WAC 173-446-355 Maximum bid value in excess of bid guarantee. (1) If the actual maximum bid value of a registered entity's bids exceeds the value of the registered entity's bid guarantee, ecology shall remove from the registered entity's bids enough lots such that the remaining bids would not result in the actual maximum bid value exceeding the value of the bid guarantee.

(2) If ecology has removed lots under subsection (1) of this section, each removed lot of allowances shall be considered as a new bid at each valid bid price in descending order, between:

(a) The bid price at which the actual maximum bid value was greater than the registered entity's bid guarantee; and

(b) The lowest bid price.

(3) For the purposes of subsection (2) of this section, a bid price is a valid bid price if that registered entity's actual maximum bid value at that bid price would not exceed the value of that participant's bid guarantee or the registered entity's holding limit or purchase limit.

(4) The registered entity is deemed to bid on the removed lots at the first valid bid price between the prices mentioned in subsection (2)(a) and (b) of this section that would result in the registered entity's actual maximum bid value being less than or equal to the value of the registered entity's bid guarantee.

(5) If no valid bid price between the prices mentioned in subsection (2)(a) and (b) of this section would result in a bid with an actual maximum bid value being less than or equal to the value of the registered entity's bid guarantee, ecology shall reject the removed lot.

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NEW SECTION

WAC 173-446-357 Acceptance of bids. (1) No bid price that is below the auction floor price shall be accepted.

(2) Ecology shall accept bids that have not been rejected, starting with the highest bid price and continuing in decreasing order by bid price until no more acceptable bids remain or no more of the allowances described in the notice of the auction are available.

(3) If the demand for allowances results in an auction settlement price that is lower than the emissions containment reserve trigger price, and ecology has not suspended the emissions containment reserve trigger price under WAC 173-446-340, ecology shall withhold up to 10 percent of the allowances submitted by ecology for auction as needed until either the emissions containment reserve trigger price becomes the auction settlement price or the number of allowances ecology may withhold is exhausted. Allowances withheld from the auction under this subsection shall be placed in the emissions containment reserve.

(4) Subsection (5) of this section applies if more than one bid has been submitted at the lowest accepted bid price for allowances in a quarterly auction of current, past, or future allowances, or at a Tier 1 price or the Tier 2 price for auctions from the allowance price containment reserve.

(5) If the total number of allowances bid upon at a bid price mentioned in subsection (4) of this section is greater than the number of allowances available at that bid price, ecology shall divide the remaining allowances available at that bid price between the registered entities who submitted the bids at that bid price, in accordance with the following steps:

(a) Divide the number of allowances bid upon by each registered entity at that bid price by the total number of allowances that were bid upon at that bid price. This is the registered entity's share of the allowances.

(b) Multiply each participant's share determined under (a) of this subsection by the number of allowances remaining, rounding down to the nearest whole number. This is the number of allowances to be distributed to the registered entity.

(c) If any allowances remain after carrying out the steps under (a) and (b) of this subsection, distribute the remaining allowances as follows:

(i) Assign a random number to each registered entity who submitted a bid at the applicable lowest bid price.

(ii) Distribute one allowance at a time to the registered entities in ascending order by the random number assigned, until no more of the allowances available at that bid price remain.

(6) Ecology shall distribute each allowance for which a bid has been accepted. The price to be paid by all bidders for each allowance is the lowest accepted bid price, which is also known as the auction settlement price.

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NEW SECTION

WAC 173-446-360 Payment for purchases. (1) A registered entity who has been notified by ecology that one or more bids by the regis-

tered entity have been successful in an auction shall pay, in the form and manner approved by ecology, the amount set out in the notice to the financial services administrator no later than seven calendar days after receiving the notice.

(2) If the registered entity provided more than one form of bid guarantee, the bid guarantee instruments must be applied to a registered entity's unpaid balance in the order the instruments are listed in WAC 173-446-325 (1)(c).

(3) Ecology shall transfer the allowances paid for under subsections (1) and (2) of this section to the registered entity's holding account.

(4) The financial services administrator shall return any unused portions of a bid guarantee.

(5) Despite subsection (3) of this section, ecology may transfer allowances purchased at an auction to a participant's compliance account if:

(a) The allowances are current or past year vintage allowances; and

(b) Holding limits would not apply to the allowances once they are transferred to the compliance account.

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NEW SECTION

WAC 173-446-362 Summary of auction. (1) No later than 45 days following the conclusion of the auction, ecology shall make available to the public a written summary of each auction, setting out the following information:

(a) The auction settlement price;

(b) The registered entities to whom ecology gave permission to participate in the auction;

(c) Details regarding the number of allowances sold, the number of each vintage year of allowances sold, and a description of how the allowances were distributed among the registered entities who submitted bids, without identifying which registered entities purchased the allowances.

(2) No later than 60 days following the conclusion of each auction, ecology shall transmit to the environmental justice council a summary results report and a post-auction public proceeds report.

(3) Beginning in 2024, ecology shall communicate the results of the previous calendar year's auctions to the environmental justice council on an annual basis.

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NEW SECTION

WAC 173-446-365 Auction of future year allowances. (1) Two times per year, ecology shall hold parallel auctions of future vintage allowances.

(2) Auctions of future vintage allowances shall follow the procedure set out in WAC 173-446-310 through 173-446-362.

(3) For each auction of future vintage allowances, ecology will submit for auction allowances from the year three years in the future according to the following schedule:

(a) For each auction of future vintage allowances in 2023, ecology will submit for auction five percent of the allowances in the annual allowance budget for 2026.

(b) For each auction of future vintage allowances in 2024, ecology will submit for auction five percent of the allowances in the annual allowance budget for 2027 as determined without taking into account the increase in the allowance budget caused by the addition of waste-to-energy facilities as covered entities in the second compliance period.

(c) For each auction of future vintage allowances in 2025, ecology will submit for auction five percent of the allowances in the annual allowance budget for 2028 as determined without taking into account the increase in the allowance budget caused by the addition of waste-to-energy facilities as covered entities in the second compliance period.

(d) For each auction of future vintage allowances in 2026, ecology will submit for auction five percent of the allowances in the annual allowance budget for 2029 as determined without taking into account the increase in the allowance budget caused by the addition of waste-to-energy facilities as covered entities in the second compliance period.

(e) For each auction of future vintage allowances in 2027 and each year thereafter, ecology will submit for auction five percent of the allowances in the annual allowance budget for the year three years in the future.

(4) Auctions for future vintage allowances shall occur at the same time, with bidding during the same bidding window, and using the same procedures as auctions for current vintage and past vintage allowances. Bidders shall provide one bid guarantee to cover both the auction for current and past vintage allowances and the auction for future vintage allowances. However, bidders must provide separate bids for future vintage allowances. Bidders may not include in one bid future allowances mixed with current and past vintage allowances. If future vintage allowances remain unsold at the end of the calendar year for which they were designated for sale at auction, they shall be returned to the pool of allowances of their vintage and not be offered for sale until that year.

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NEW SECTION

WAC 173-446-370 Allowance price containment reserve account.

(1) Ecology shall maintain an allowance price containment reserve account.

(a) Allowances in the allowance price containment reserve have no vintage and are therefore eligible to be submitted for compliance at any time.

(b) On January 1, 2023, ecology shall place into the allowance price containment reserve account:

(i) Five percent of the allowances in the annual allowance budgets for each year of the first compliance period; and

(ii) Five percent of the allowances in the annual allowance budgets for each year of the second compliance period, as determined without taking into account the increase in the allowance budgets caused by the addition of waste-to-energy facilities as covered entities in the second compliance period.

(2) Ecology shall hold separate auctions for allowances from the allowance price containment reserve:

(a) When the settlement price in the preceding auction of current and prior vintage allowances reaches the Tier 1 price for allowances in the allowance price containment reserve;

(b) When new covered and opt-in entities enter the program and allowances from the emissions containment reserve account are exhausted; and

(c) Once each year before the compliance deadline.

(3) Only covered entities and opt-in entities may participate in allowance price containment reserve auctions. General market participants may not participate in allowance price containment reserve auctions.

(4) Allowance price containment reserve auctions shall follow the procedures described in WAC 173-446-310 through 173-446-362, except:

(a) The purchase limits in WAC 173-446-330 do not apply to allowance price containment reserve auctions.

(b) In place of an auction floor price, there are two tiers of allowance prices at which bidders may bid:

(i) Tier 1 price for 2023 shall be $46.05 increased by five percent plus the rate of inflation as measured by the most recently available 12 months of the consumer price index for all urban consumers as of the first business day in December of 2022.

(ii) Tier 2 price for 2023 shall be $59.17 increased by five percent plus the rate of inflation as measured by the most recently available 12 months of the consumer price index for all urban consumers as of the first business day in December of 2022.

(iii) The allowance price containment reserve tier prices for a year after 2023 shall be the allowance price containment tier prices for the prior calendar year increased annually by five percent plus the rate of inflation as measured by the most recently available 12 months of the consumer price index for all urban consumers as of the first business day in December of the prior year.

(iv) Beginning in 2022, on the first business day in December of each year, ecology shall announce the allowance price containment reserve tier prices for the next year.

(c) Bidders in an allowance price containment reserve auction may submit multiple bids. Each bid must be at either the Tier 1 price or the Tier 2 price.

(d) Tier 1 allowances shall be sold first, then Tier 2 allowances. The auction of Tier 1 allowances shall continue until all Tier 1 allowances are sold or all bids are filled, whichever occurs first. If any Tier 1 allowances remain, ecology will award them to bidders for Tier 2 allowances at the Tier 1 price using a random number selection process that assigns random numbers to each lot bid and awards Tier 1 allowances starting with the lowest random number until all Tier 1 allowances are sold. The subsequent auction of Tier 2 allowances shall continue until all Tier 2 allowances are sold or all bids are filled, whichever occurs first.

(e) Ecology shall reject bids or portions of bids, starting with the smallest of the registered entity's Tier 2 bids, until the total

of the registered entity's bids remaining would, if accepted, not result in contravention of a holding limit.

(f) The registered entity's actual maximum bid value is determined as follows:

(i) Multiply the Tier 1 bid price by the total number of allowances the registered entity proposed to purchase at that bid price.

(ii) Multiply the Tier 2 bid price by the total number of allowances the registered entity proposed to purchase at that bid price.

(iii) The registered entity's actual maximum bid value is the sum of the results obtained in (i) of this subsection added to the results obtained in (ii) of this subsection.

(g) If the actual maximum bid value of a registered entity's bids exceeds the value of the registered entity's bid guarantee, ecology shall, starting with the registered entity's Tier 2 bids, remove enough lots, such that the remaining bids would not result in the actual maximum bid value exceeding the value of the bid guarantee.

(h) If the sum of the bids accepted for a tier is greater than the number of allowances in the tier, ecology will follow the process in WAC 173-446-357(5) to distribute the allowances from each tier.

(i) Allowances remaining unsold at the end of an allowance price containment reserve auction remain in the allowance price containment reserve to be available for sale at the next allowance price containment reserve auction.

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NEW SECTION

WAC 173-446-375 Emissions containment reserve account. (1) Ecology shall maintain an emissions containment reserve account containing the following allowances:

(a) Allowances amounting to two percent of the annual allowance budgets for years 2023 through 2026.

(b) Allowances submitted by ecology for auction that are unsold after being offered for sale for 24 months in current and past year vintage allowance auctions and future vintage allowance auctions.

(c) Allowances from EITE facilities that have been curtailed or closed.

(d) Allowances from facilities that fall below the emissions threshold. The number of these allowances must be proportionate to the amount of emissions the facility was previously emitting.

(e) Unless the emissions containment reserve trigger price is suspended under WAC 173-446-340, allowances withheld from auction as described in WAC 173-446-357(3).

(2) Ecology shall distribute allowances from the emissions containment reserve account as follows:

(a) By auction when new covered and opt-in entities enter the program; and

(b) By direct allocation at no cost to cover emissions for the first applicable compliance period for new or expanded EITE facilities that meet the following criteria:

(i) New facilities that have emissions greater than 25,000 MT CO_2e per year during the first applicable compliance period.

(ii) Expanded facilities that trigger the need for governmental approval or permits.

(c) If provided to expanded EITE facilities, the allowances provided must be limited to the number of allowances required to cover the covered emissions resulting from the expansion of the facility. When provided to either new or expanded EITE facilities, the allowances must be placed in the EITE facility's compliance account and used for compliance at the next compliance deadline.

(3)(a) Ecology shall hold auctions of allowances from the emissions containment reserve account when new covered and opt-in entities enter the program.

(b) Auctions of allowances from the emissions containment reserve account shall follow the processes and procedures specified in WAC 173-446-310 through 173-446-362. Only covered entities and opt-in entities may participate in the auctions.

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NEW SECTION

WAC 173-446-380 Price ceiling units. (1) Immediately prior to the deadline for compliance for each compliance period, in the event that no allowances remain in the allowance price containment reserve, ecology shall issue price ceiling units for sale at the ceiling price to covered entities that do not have sufficient eligible compliance instruments in their holding and compliance accounts to meet their compliance obligations for that compliance deadline.

(2) Each price ceiling unit covers the compliance obligation for the emission of one metric ton of CO_2e.

(3) Only covered entities that do not have sufficient eligible compliance instruments in their holding and compliance accounts to meet their requirements for the immediately upcoming compliance period compliance obligation may purchase price ceiling units. These covered entities may purchase only the number of price ceiling units necessary to meet their compliance obligations for the upcoming compliance period deadline and must use those price ceiling units for compliance at the immediately upcoming compliance deadline.

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NEW SECTION

WAC 173-446-385 Price ceiling unit sales. (1) Price ceiling unit sales shall only be held between the last allowance price containment reserve auction before the compliance deadline for a compliance period and the compliance period deadline itself.

(2) Price ceiling units shall be sold at the ceiling price.

(3) Price ceiling unit sales shall be held only if a covered entity requests a price ceiling unit sale at least 10 days before the immediately upcoming deadline for a compliance period.

(4) In a request for a price ceiling unit sale, the covered entity must provide an accounting to ecology showing that it has insuffi-

cient compliance instruments to meet its compliance obligations for the immediately upcoming deadline for a compliance period. This accounting must include any confirmed and finalized agreements to transfer compliance instruments to the covered entity prior to the compliance deadline.

(5) If the statutory conditions for the sale of price ceiling units outlined above are met, ecology shall instruct the financial services administrator to begin to accept cash payment for purchases from price ceiling sales no earlier than 10 business days after the previous allowance price containment reserve auction and to cease accepting payments no later than seven business days thereafter.

(7) The financial services administrator will inform ecology of the amounts of payments received from covered entities no later than one business day after it ceases to accept payments.

(8) After a sale, ecology will transfer purchased price ceiling units directly to each purchaser's compliance account for retirement at the immediately upcoming compliance deadline.

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NEW SECTION

WAC 173-446-390 Confidentiality. Records containing the following information are confidential and are exempt from public disclosure in their entirety:

(1) Bidding information as identified in WAC 173-446-317;

(2) Information contained in the secure, online electronic tracking system for compliance instruments;

(3) Financial, proprietary, and other market sensitive information as determined by ecology that is submitted to the department pursuant to this chapter;

(4) Financial, proprietary, and other market sensitive information as determined by ecology that is submitted to an independent contractor or the financial services administrator engaged by ecology; and

(5) Financial, proprietary, and other market sensitive information as determined by ecology that is submitted to a jurisdiction with which the department has entered into a linkage agreement pursuant to RCW 70A.65.210, and which is shared with ecology, the independent contractor, or the financial services administrator pursuant to a linkage agreement.

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COMPLIANCE INSTRUMENT TRANSACTIONS

NEW SECTION

WAC 173-446-400 Compliance instruments transactions—General information. (1) A compliance instrument can satisfy a covered or opt-in entity's compliance obligation arising from the emission of one metric ton of carbon dioxide equivalent in one calendar year. A compliance instrument does not expire, and may be held or banked. Once surrendered, a compliance instrument must be retired and never used, traded, or transferred again.

(2) By 5:00 p.m. Pacific Time November 1st of 2024 and each year thereafter, each covered entity and opt-in entity must have in its compliance account sufficient compliance instruments of former vintage years to cover at least 30 percent of its covered emissions for the previous calendar year. Except as provided in subsections (4) and (5) of this section, allowances used for this annual compliance requirement must be of the vintage of the year the emissions occurred or any year prior to that year.

(3) By 5:00 p.m. Pacific Time November 1st of the year following the final year of each compliance period, each covered entity and each opt-in entity must have transferred to its compliance account at least one compliance instrument for each metric ton of covered emissions of carbon dioxide equivalent emitted by that party during the compliance period. Except as provided in subsections (4) and (5) of this section, allowances used for compliance under this provision must be of the vintage of any year of the compliance period or of any prior year.

(4) When using allowances for compliance, EITE facilities may provide future vintage allowances obtained as described in WAC 173-446-260 in the process of reconciling their compliance obligation for a given year with their actual production data for that year.

(5) Allowances obtained from the allowance price containment reserve may be used for compliance at any time.

(6) Allowances may be obtained by direct distribution of no cost allowances from ecology, by purchase at auction, or by purchase, trade, or transfer from other parties owning allowances.

(7) A compliance instrument may be traded only among covered entities, opt-in entities, and general market participants registered with ecology or with an external GHG ETS to which Washington has linked.

(8) A registered entity may only hold compliance instruments for its own use and may not hold compliance instruments on behalf of another party having an interest in or control of the compliance instruments.

(9) Only compliance instruments recorded in a holding account may be traded. Once in a compliance account, compliance instruments may not be traded or sold, but may only be removed by ecology.

(10) Qualifying transfers of no cost allowances from an electric utility to an electrical generating facility may follow the process in WAC 173-446-425.

(11) Deferred compliance requirement for electricity exported to an external GHG emissions trading program for first compliance period. For any portion of covered emissions from a first jurisdictional deliverer in Washington state exported from Washington and imported into an external GHG emissions trading program, as demonstrated to ecology's satisfaction through means established under chapter 173-441 WAC, the requirements of subsection (2) of this section do not apply. Only the requirements of subsection (3) of this section apply to that por-

tion of covered emissions. This deferral is only in effect for the first compliance period, and for subsequent compliance periods subsections (2) and (3) both apply.

[]

NEW SECTION

WAC 173-446-410 Transfers among registered entities—Process. (1) Every registered entity wishing to trade compliance instruments with another party registered in Washington's program or with a party registered in an external GHG ETS to which Washington has linked must follow the procedures outlined below.

(a) To initiate the transfer, a transferor's account representative must submit to ecology and to all the transferor's other account representatives a transaction request containing the information outlined in WAC 173-446-430. A second transferor's account representative must submit confirmation of the transaction request to ecology and to all the transferee's account representatives within two calendar days after submission of the original request to ecology.

(b) If the intended transferee wishes to accept the transfer, within three calendar days after the initial transaction request referenced in this subsection, a transferee's account representative must submit to ecology and to the transferor confirmation of acceptance of the transfer.

(c) At each step in the transaction request, the account representative concerned must attest to holding due authorization to complete the transaction for the registered entity, and that the information contained in the transaction request is true, accurate, and complete.

(d) The account representatives involved in the transaction must provide ecology on request and within 10 business days with any additional information concerning the transaction.

(2) Ecology will transfer the compliance instruments unless:

(a) The transfer would result in noncompliance with chapter 70A.65 RCW or this chapter;

(b) Ecology has reasonable grounds to believe that a violation has been committed under chapter 70A.65 RCW in relation to the request; or

(c) The request contains errors, omissions, or is otherwise incomplete.

(3) Transfer refusal.

(a) If ecology refuses to transfer compliance instruments, ecology shall provide notice of the reason for the refusal to all designated account representatives who have taken steps under this regulation with respect to the request.

(b) If ecology refuses to transfer compliance instruments due to errors or omissions in the request, the notice shall identify the errors or omissions or shall include a description of how the request is otherwise incomplete.

[]

NEW SECTION

WAC 173-446-415 Transaction requests—Information required by ecology. Each transaction request submitted under WAC 173-446-410 must contain the following information:

(1) The holding account number of the transferor;

(2) The holding account number of the transferee;

(3) The quantity, type and, where applicable, vintage of the compliance instruments to be traded;

(4) The settlement price of each type, and, where applicable, each vintage of compliance instruments, as well as the method used to determine the settlement price; provided that a registered entity is not required to disclose the settlement price of transferred compliance instruments when the transaction is between registered entities in a direct corporate association or is a bundled transfer;

(5) The type of trading agreement, the date of signing of the agreement and the agreed upon trading date;

(6) Where applicable, all other transactions or products covered by the agreement, a description of those transactions or products, and the name and contact information of the parties involved; and

(7)(a) Except as provided in (b) of this subsection, the following attestation statement made and signed by the primary account representative or any alternate account representative: "I certify under penalty of perjury under the laws of the state of Washington that I am authorized to make this submission on behalf of the party that owns the compliance instruments held in the account. I certify under penalty of perjury under the laws of the state of Washington that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify under penalty of perjury under the laws of the state of Washington that the statements and information submitted to Ecology are true, accurate, and complete. I consent to the jurisdiction of Washington state, its courts and the pollution control hearings board for purposes of enforcement of the laws, rules and regulations pertaining to chapters 173-446 WAC and 70A.65 RCW. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(b) For federally recognized tribes who elect to participate as opt-in entities or general market participants pursuant to RCW 70A.65.090(5), each transaction request submitted under WAC 173-446-410 must include the following attestation statement made and signed by the primary account representative or the alternate account representative making the submission: "I certify under penalty of perjury under the laws of the state of Washington that I am authorized to make this submission on behalf of the tribal government that owns the compliance instruments held in the account. I certify under penalty of perjury under the laws of the state of Washington that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify under penalty of perjury under the laws of the state of Washington that the statements and information submitted to Ecology are true, accurate, and complete. The tribal government on whose behalf I am authorized to make this submission has entered into

a written agreement, negotiated on an individual basis between ecology and the tribal government, that establishes a dispute resolution process and/or other compliance mechanisms in order to ensure the enforceability of all program requirements applicable to the tribe in its role as an opt-in entity or a general market participant, as applicable. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

[]

NEW SECTION

WAC 173-446-420 Transfers to a compliance account—Process. (1) Every registered entity wishing to transfer compliance instruments from the registered entity's holding account to its compliance account must send ecology a request including:

(a) The registered entity's holding account number and its compliance account number; and

(b) The quantity, type, and, where applicable, vintage of the compliance instruments to be transferred.

(2) To initiate a transfer to a compliance account, an account representative from the registered entity must submit the transfer request to ecology and to all the registered entity's other account representatives. One of the other account representatives must confirm the transfer request within two business days after its submittal to ecology.

(3) Once the transfer has been confirmed, ecology will send a notice to all the registered entity's account representatives. Unless otherwise indicated by one of the account representatives, or ecology has reasonable grounds to believe that a violation under this rule has been committed, ecology will transfer the compliance instruments from the registered entity's holding account to its compliance account.

(4) Account representatives who have sent a transfer request for compliance instruments must provide ecology, on request and as soon as possible, any additional information concerning the transfer.

(5) When a transaction cannot be completed because of an error or omission in the information included in the request, or because the request does not meet the requirements of this section, or because an account does not contain enough compliance instruments or for any other reason, ecology will send notice to the parties concerned within five business days following the failure to complete the transaction.

[]

NEW SECTION

WAC 173-446-425 Transfers of no cost allowances from an electric utility to an electrical generating facility or to a federal power marketing administration. (1) An electric utility wishing to transfer no cost allowances to the compliance account of an electrical generating facility or federal power marketing administration may submit a

request to ecology asking for the transfer and providing the following information:

(a) The electric utility's holding account number;

(b) The compliance account number of the federal power marketing administration or the electrical generating facility;

(c) The quantity and vintage of no cost allowances to be transferred;

(d) The relationship between the electric utility and the federal power marketing administration or electric generating facility.

(2) Ecology may transfer the allowances only if:

(a) The electric generating facility is operated by the electric utility; or

(b) The electric utility has an agreement to purchase imported electricity or a power purchase agreement, including a custom product contract from the federal power marketing administration or the electric generating facility.

(c) The transfer will not violate the federal power marketing administration's or the electrical generator's holding limit.

[]

NEW SECTION

WAC 173-446-430 Transfers of no cost allowances from a utility's holding account to its limited use holding account for consignment to auction. (1) A utility wishing to consign no cost allowances to auction must transfer those no cost allowances from its holding account to its limited use holding account by submitting a request to ecology asking for the transfer and providing the following information:

(a) The utility's holding account number;

(b) The utility's limited use holding account number; and

(c) The quantity and vintage of no cost allowances to be transferred.

(2) Upon receipt of the required information, ecology will transfer the allowances from the utility's holding account to its limited use holding account.

[]

NEW SECTION

WAC 173-446-440 Compliance instrument transactions—Prohibited actions. (1) Other than the account representatives directly involved in a transaction, no party holding confidential or privileged information on a compliance instrument may trade that compliance instrument, disclose the information or recommend that another party trade the compliance instrument, except if the party has reason to believe that the information is known to the public or to the other party in the transaction. However, the party may disclose the information or recommend that another party trade the compliance instrument if the party is required to disclose the information in the course of business, and

if nothing leads the person to believe that the information will be used or disclosed in contravention of this section.

(2) No party prevented from trading compliance instruments pursuant to subsection (1) of this section may use the confidential or privileged information in any other way, unless the party has reason to believe that the information is known to the public. In particular, the party may not carry out operations on futures contracts or other derivatives within the meaning of the Commodities Exchange Act, 7 U.S.C. Chapter 1 involving a compliance instrument.

(3) A party with knowledge of material order information may not carry out or recommend that another party carry out a transaction involving a compliance instrument, or disclose the information to any other party except if:

(a) The party has reason to believe the other party is already aware of the information;

(b) The party must disclose the information in the course of business, and nothing leads the party to believe that it will be used or disclosed in contravention of this section; and

(c) The party carries out a transaction involving the compliance instrument concerned by the information in order to perform a written obligation that the party contracted before becoming aware of the information.

(d) For the purposes of this section, material order information is any information concerning an order to buy or an order to sell a compliance instrument that could have a material impact on the price of a compliance instrument.

(4) False or misleading information.

(a) No party may disclose false or misleading information or information that must be filed pursuant to this chapter before it is filed, in order to carry out a transaction.

(b) For the purpose of this section, false or misleading information is any information likely to mislead on an important fact, as well as the simple omission of an important fact; an important fact is any fact that may reasonably be believed to have a material impact on the price or value of a compliance instrument.

[]

OFFSETS

NEW SECTION

WAC 173-446-500 General requirements for ecology offset credits and registry offset credits. (1) In order to ensure an offset credit can be used as a compliance instrument under this chapter, an offset project operator or authorized project designee must demonstrate that the ecology offset credits and/or registry offset credits generated by its offset project meet the following requirements. A registry offset credit must:

(a) Represent a GHG emission reduction or GHG removal enhancement that is real, quantifiable, permanent, verifiable, enforceable, and additional to GHG reductions or removals otherwise required by law and other GHG reductions or removals that would otherwise occur;

(b) Result from the use of a compliance offset protocol that meets the requirements of WAC 173-446-505;

(c) Result from an offset project that is listed in accordance with WAC 173-446-520;

(d) Result from an offset project that complies with the monitoring, reporting and record retention requirements of WAC 173-446-525;

(e) Result from an offset project that is verified pursuant to the requirements of WAC 173-446-530;

(f) Result from an offset project that will not produce significant adverse environmental impacts after mitigation. When analysis under Washington's State Environmental Policy Act (SEPA) is required for an offset project, a project-level SEPA analysis finding no significant adverse environmental impact after mitigation fulfills this requirement; and

(g) Be issued by an offset project registry approved pursuant to the requirements of WAC 173-446-590.

(2) An ecology offset credit must meet the requirements of subsection (1) of this section and:

(a) Be issued pursuant to WAC 173-446-555;

(b) Be registered pursuant to WAC 173-446-565;

(c) Provide direct environmental benefits to the state pursuant to WAC 173-446-595; and

(d) When used for compliance be subject to the quantitative usage limits set forth in WAC 173-446-600(6).

[]

NEW SECTION

WAC 173-446-505 Requirements for compliance offset protocols. (1) In order for ecology to adopt an offset protocol as a compliance offset protocol the offset protocol must:

(a) Accurately determine the extent to which GHG emission reductions and GHG removal enhancements are achieved by the offset project type;

(b) Establish data collection and monitoring procedures relevant to the type of GHG emissions sources, GHG sinks, and GHG reservoirs for that offset project type;

(c) Establish a project baseline that reflects an estimate of business-as-usual performance or practices for comparison against the GHG emission reductions and/or GHG removal enhancements to be achieved by the offset project type;

(d) Account for activity-shifting leakage and market-shifting leakage for the offset project type, unless the offset protocol stipulates eligibility conditions limiting the use of the offset protocol that eliminate the risk of activity-shifting and/or market-shifting leakage;

(e) Account for any uncertainty in quantification factors for the offset project type;

(f) Ensure GHG emission reductions and GHG removal enhancements are permanent;

(g) Include a mechanism to ensure permanence of GHG removal enhancements for sequestration offset project types;

(h) Establish the length of the crediting period for the offset project type;

(i) Establish the eligibility and additionality of the offset project type and quantify GHG emission reductions and GHG removal enhancements using standardized baseline assumptions, emission factors, and monitoring methods; and

(j) Specify the geographic area(s) where the protocol is applicable.

(2) Crediting period. The crediting period for an offset project that does not involve sequestration must be no less than seven years and no greater than 10 years, unless specified otherwise in a compliance offset protocol that has been adopted by ecology under subsection (3) of this section. The crediting period for an offset project that involves sequestration must be no less than 10 years and no greater than 30 years.

(3) An ecology offset credit must result from the use of one of the following compliance offset protocols:

(a) The California Air Resources Board, Compliance Offset Protocol Livestock Projects, October 20, 2011, and Compliance Offset Protocol Livestock Projects, November 14, 2014, are adopted. All new offset projects with a commencement date after September 30, 2022, must use the most recent version of the adopted protocol. Exceptions are listed in this subsection:

(i) Exceptions to adopting the Livestock Projects Compliance Offset Protocol, November 14, 2014, by reference:

(A) Every use of the word "regulation" in the Livestock Compliance Offset Protocol, November 14, 2014, is amended to refer to chapter 173-446 WAC.

(B) Every reference to subarticle 13 is amended to WAC 173-446-500 through 173-446-595.

(C) Every reference to ARB is amended to ecology except in Table 6.1.

(D) Every reference to section 95973 of the regulation is amended to WAC 173-446-510.

(E) Every reference to section 95975 of the regulation is amended to WAC 173-446-520.

(F) Every reference to section 95976 of the regulation is amended to WAC 173-446-525.

(G) Every reference to section 95977 of the regulation is amended to WAC 173-446-530.

(H) Every reference to section 95986 of the regulation is amended to WAC 173-446-585.

(I) Every reference to section 95102 of the regulation is amended to WAC 173-446-020.

(J) Section 1.2(a)(8) is amended to: "Cap and trade regulation" or "regulation" means ecology's regulation establishing the Climate Commitment Act Program, chapter 173-446 WAC.

(K) Section 1.2(a)(24) is not adopted.

(L) Section 1.2(a)(29) is amended to: "Registry offset credit" means a credit issued by an offset project registry for a GHG reduction or GHG removal enhancement of one metric ton of CO_2e.

(M) Section 3.2(b) is not adopted and is replaced with: "If any portion of the offset project is located on land over which the state of Washington does not have jurisdiction, the offset project operator

must demonstrate that the landowner(s) consent(s) to regulation pursuant to WAC 173-446-520 (3)(d) or has entered into an agreement with ecology pursuant to WAC 173-446-520 (3)(e)."

(N) Section 5(c) is amended to: GHG emissions reductions must be quantified over an entire reporting period. The initial reporting period may consist of six to 24 consecutive months, and all subsequent reporting periods consist of 12 consecutive months and must meet the reporting requirements referred to in WAC 173-446-525.

(O) Section 5(e) is amended to: Global warming potential values must be determined consistent with the definition of carbon dioxide equivalent in WAC 176-441-040 Table A-1.

(ii) Exceptions to adopting the Compliance Offset Protocol Livestock Projects, October 20, 2011, by reference:

(A) Every reference to ARB is amended to ecology except Table 6.1.

(B) Section 1, Paragraph 4 is not adopted.

(C) Section 3.1 is not adopted and is replaced with: "If any portion of the offset project is located on land over which the state of Washington does not have jurisdiction, the offset project operator must demonstrate that the landowner(s) consent(s) to regulation pursuant to WAC 173-446-520 (3)(d) or has entered into an agreement with ecology pursuant to WAC 173-446-520 (3)(e)."

(b) The California Air Resources Board, Compliance Offset Protocol U.S. Forest Projects, October 20, 2011, Compliance Offset Protocol U.S. Forest Projects, November 14, 2014, and Compliance Offset Protocol U.S. Forest Projects, June 25, 2015, are adopted. All new offset projects with a commencement date after September 30, 2022, must use the most recent version of the adopted protocol. Exceptions are listed in this subsection:

(i) Exceptions to adopting the U.S. Forest Projects Compliance Offset Protocol, June 25, 2015:

(A) Every use of the word "regulation" in the U.S. Forest Projects Compliance Offset Protocol, June 25, 2015, is amended to refer to chapter 173-446 WAC.

(B) Every reference to subarticle 13 is amended to WAC 173-446-500 through 173-446-595.

(C) Every reference to ARB is amended to ecology except in section 2.1.(c.)(4), section 2.2.(b.)(6), section 2.3.(c.)(7), Table 3.1, 3.1.(a.)(2), section 3.2(b.), section 5.2.1.(c.), section 7.1.1.(26.), Table A.1, Appendix A (f.), Appendix A (g.), Appendix A (h.), Equation C.3., Appendix B(g.), Appendix C (a.)(3.)(A.)(2.), Appendix C (a.)(4.)(A.)(2.), Equation C.12., Appendix C (b.)(3.)(A.)(2.), Appendix C (b.)(4.)(A.)(2.), Appendix E.(b.)(2.), Appendix E.(b.)(3.), Appendix F.(a.), Appendix F.(b.), Appendix F.(d.), Appendix F.(g.).

(D) Every reference to section 95973 of the regulation is amended to WAC 173-446-510.

(E) Every reference to section 95974 of the regulation is amended to WAC 173-446-515.

(F) Every reference to section 95975 of the regulation is amended to WAC 173-446-520.

(G) Every reference to section 95976 of the regulation is amended to WAC 173-446-525.

(H) Every reference to section 95977 of the regulation is amended to WAC 173-446-530.

(I) Every reference to section 95983 of the regulation is amended to WAC 173-446-570.

(J) Every reference to section 95985 of the regulation is amended to WAC 173-446-580.

(K) Every reference to section 95986 of the regulation is amended to WAC 173-446-585.

(L) Section 1.1.(b.) is not adopted.

(M) Section 1.2(a.)(14) is amended to: "Cap and trade regulation" or "regulation" means ecology's regulation establishing the Climate Commitment Act Program, chapter 173-446 WAC.

(N) Section 3.2(f.) is not adopted and is replaced with: "If any portion of the offset project is located on land over which the state of Washington does not have jurisdiction, the offset project operator must demonstrate that the landowner(s) consent(s) to regulation pursuant to WAC 173-446-520 (3)(d) or has entered into an agreement with ecology pursuant to WAC 173-446-520 (3)(e)."

(O) Section 3.5.3.(b)(2) is amended to: For an improved forest management project, a quantity of compliance instruments equal to the total number of ARB offset credits issued to the project over all preceding reporting periods, multiplied by the appropriate compensation rate indicated in Table 3.2, must be retired.

(P) Section 3.6.(a)(2)(C)(1) is not adopted.

(ii) Exceptions to adopting the U.S. Forest Projects Compliance Offset Protocol, November 14, 2014:

(A) Every use of the word "regulation" in the U.S. Forest Projects Compliance Offset Protocol, November 14, 2014, is amended to refer to chapter 173-446 WAC.

(B) Every reference to subarticle 13 is amended to WAC 173-446-500 through 173-446-595.

(C) Every reference to ARB is amended to ecology except in section 3.8.2 Paragraph 3, Table 3.2, Section 6.2.1 Paragraph 3, Appendix A A.3, Appendix C C.1, Appendix C C.2, Appendix F.

(D) Every reference to section 95974 of the regulation is amended to WAC 173-446-515.

(E) Every reference to section 95975 of the regulation is amended to WAC 173-446-520.

(F) Every reference to section 95977 of the regulation is amended to WAC 173-446-530.

(G) Every reference to section 95983 of the regulation is amended to WAC 173-446-570.

(H) Section 1. Paragraph 3 is not adopted.

(I) Section 3.4. text stating "and where applicable, all Early Action Offset Credits issued pursuant to section 95990(i) of the Regulation" is not adopted.

(J) Section 3.5. Paragraph 3 text stating "The recordation of a conservation easement may be used to denote the commencement date of pre-existing projects between December 31, 2006, and December 31, 2010." is not adopted.

(K) Section 3.6. Paragraph 3 is not adopted and is replaced with: "If any portion of the offset project is located on land over which the state of Washington does not have jurisdiction, the offset project operator must demonstrate that the landowner(s) consent(s) to regulation pursuant to WAC 173-446-520 (3)(d) or has entered into an agreement with ecology pursuant to WAC 173-446-520 (3)(e)."

(iii) Exceptions to adopting the U.S. Forest Projects Compliance Offset Protocol, October 20, 2011:

(A) Every use of the word "regulation" in the U.S. Forest Projects Compliance Offset Protocol, October 20, 2011, is amended to refer to chapter 173-446 WAC.

(B) Every reference to subarticle 13 is amended to WAC 173-446-500 through 173-446-595.

(C) Every reference to ARB is amended to ecology except in section 3.8.2 Paragraph 3, Table 3.2, Section 6.2.1 Paragraph 3, Appendix A. A.3, Appendix C. C.2, Appendix C. C.3, Appendix E, Appendix F.

(D) Every reference to section 95973 of the regulation is amended to WAC 173-446-510.

(E) Every reference to section 95974 of the regulation is amended to WAC 173-446-515.

(F) Every reference to section 95975 of the regulation is amended to WAC 173-446-520.

(G) Every reference to section 95976 of the regulation is amended to WAC 173-446-525.

(H) Every reference to section 95977 of the regulation is amended to WAC 173-446-530.

(I) Every reference to section 95983 of the regulation is amended to WAC 173-446-570.

(J) Every reference to section 95985 of the regulation is amended to WAC 173-446-580.

(K) Every reference to section 95986 of the regulation is amended to WAC 173-446-585.

(L) Section 1. Paragraph 3 is not adopted.

(M) Section 3.4. text stating "and where applicable, all Early Action Offset Credits issued pursuant to section 95990(i) of the Regulation" is not adopted.

(N) Section 3.5. Paragraph 3 text stating "The recordation of a conservation easement may be used to denote the commencement date of pre-existing projects between December 31, 2006, and December 31, 2010." is not adopted.

(O) Section 3.6. Paragraph 3 is not adopted and is replaced with: "If any portion of the offset project is located on land over which the state of Washington does not have jurisdiction, the offset project operator must demonstrate that the landowner(s) consent(s) to regulation pursuant to WAC 173-446-520 (3)(d) or has entered into an agreement with ecology pursuant to WAC 173-446-520 (3)(e)."

(P) Section 11, "Forest Buffer Account" definition is amended to: Forest buffer account is defined in the regulation as a holding account for forest project compliance offset credits administered by ecology. It is used as a general insurance mechanism against unintentional reversals for all forest offset projects listed under a compliance offset protocol.

(Q) Section 11, "Listed" definition is amended to: A forest project is considered "listed" when the offset project operator or authorized project designee is registered with ecology or an approved offset project registry, submits all required documentation for project listing in the regulation and this protocol, and the project has been approved by ecology or an approved offset project registry for listing.

(c) The California Air Resources Board, Compliance Offset Protocol Ozone Depleting Substances Projects, October 20, 2011, and Compliance Offset Protocol Ozone Depleting Substances, November 14, 2014, are adopted. All new offset projects with a commencement date after September 30, 2022, must use the most recent version of the adopted protocol. Exceptions are listed in this subsection:

(i) Exceptions to adopting the Ozone Depleting Substances Compliance Offset Protocol, November 14, 2014, by reference:

(A) Every use of the word "regulation" in the Ozone Depleting Substances Compliance Offset Protocol, November 14, 2014, is amended to refer to chapter 173-446 WAC.

(B) Every reference to subarticle 13 is amended to refer to WAC 173-446-500 through 173-446-595.

(C) Every reference to ARB is amended to ecology.

(D) Every reference to section 95973 of the regulation is amended to WAC 173-446-510.

(E) Every reference to section 95975 of the regulation is amended to WAC 173-446-520.

(F) Every reference to section 95976 of the regulation is amended to WAC 173-446-525.

(G) Every reference to section 95977 of the regulation is amended to WAC 173-446-530.

(H) Section 1.1.(b.) is not adopted.

(I) Section 1.2 (a)(2) is amended to: "Cap and trade regulation" or "regulation" means ecology's regulation establishing the Climate Commitment Act Program, chapter 173-446 WAC.

(J) Section 1.2(a)(19) is amended to: "Registry offset credit" means a credit issued by an offset project registry for a GHG reduction or GHG removal enhancement of one metric ton of CO_2e.

(K) Section 3.2(d.) is not adopted and is replaced with: "If any portion of the offset project is located on land over which the state of Washington does not have jurisdiction, the offset project operator must demonstrate that the landowner(s) consent(s) to regulation pursuant to WAC 173-446-520 (3)(d) or has entered into an agreement with ecology pursuant to WAC 173-446-520 (3)(e)."

(L) Section 3.5.(c.) is not adopted.

(ii) Exceptions to adopting the Ozone Depleting Substances Compliance Offset Protocol, October 20, 2011, by reference:

(A) Every use of the word "Regulation" in the Ozone Depleting Substances Compliance Offset Protocol, October 20, 2011, is amended to refer to chapter 173-446 WAC.

(B) Every reference to ARB is amended to ecology.

(C) Every reference to section 95975 of the regulation is amended to WAC 173-446-520.

(D) Every reference to section 95976 of the regulation is amended to WAC 173-446-525.

(E) Section 1. Paragraph 4 is not adopted.

(F) Section 3.1 is not adopted and is replaced with: "If any portion of the offset project is located on land over which the state of Washington does not have jurisdiction, the offset project operator must demonstrate that the landowner(s) consent(s) to regulation pursuant to WAC 173-446-520 (3)(d) or has entered into an agreement with ecology pursuant to WAC 173-446-520 (3)(e)."

(d) The California Air Resources Board, Compliance Offset Protocol Urban Forest Projects October 20, 2011, is adopted. All new offset projects with a commencement date after September 30, 2022, must use the most recent version of the adopted protocol. Exceptions are listed in this subsection:

Exceptions to adopting the California Air Resources Board, Compliance Offset Protocol Urban Forest Projects, October 20, 2011:

(A) Every use of the word "regulation" in the Urban Forest Projects Compliance Offset Protocol, October 20, 2011, is amended to refer to chapter 173-446 WAC.

(B) Every reference to ARB is amended to ecology.

(C) Every reference to section 95975 of the regulation is amended to WAC 173-446-520.

(D) Section 1. Paragraph 5 is not adopted.

(E) Section 3.1 is not adopted and is replaced with: "If any portion of the offset project is located on land over which the state of Washington does not have jurisdiction, the offset project operator must demonstrate that the landowner(s) consent(s) to regulation pursuant to WAC 173-446-520 (3)(d) or has entered into an agreement with ecology pursuant to WAC 173-446-520 (3)(e)."

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NEW SECTION

WAC 173-446-510 Requirements for offset projects using ecology compliance offset protocols. (1) General requirements for offset projects. In order to ensure that offset credits generated by an offset project can be used as compliance instruments under this chapter, an offset project operator or authorized project designee must ensure that the offset project:

(a) Meets all of the requirements set forth in the applicable compliance offset protocol;

(b) Any offset credits used must have been issued for reporting periods wholly after July 25, 2021, or within two years prior to July 25, 2021;

(c) Provides direct environmental benefits in the state of Washington, pursuant to WAC 173-446-595; and

(d) Meets the following additionality requirements, regardless of whether such requirements are set forth in the applicable compliance offset protocol, as of the date of offset project commencement:

(i) The activities that result in GHG emission reductions and GHG removal enhancements are not required by law, regulation, or any other legally binding mandate applicable in jurisdiction in which the offset project is located, and would not otherwise occur in a conservative business-as-usual scenario; and

(ii) The GHG emission reductions and GHG removal enhancements resulting from the offset project must exceed the project baseline calculated pursuant to the applicable version of the compliance offset protocol under which the offset project has been listed, or under which the offset project has been transitioned for that offset project type, as set forth in WAC 173-446-505(3).

(iii) The offset project operator or authorized project designee may transition an offset project to the most recently adopted version of the compliance offset protocol by updating the listing information in an offset project data report.

(A) An offset project may only be transitioned to the most recently adopted version of the compliance offset protocol through an offset project data report submitted to ecology or the offset project registry prior to the site visit.

(B) To properly transition to the most recently adopted version of the compliance offset protocol, the offset project data report for the transitioning offset project must specify the most recently adopted compliance offset protocol as the version under which the offset project is reporting. Offset projects may only transition to the most

recently adopted version of the compliance offset protocol during a reporting period that is subject to a full offset verification.

(C) For projects using a U.S. Forest Projects protocol issued by the California Air Resources Board, the first offset verification after transitioning to the most recently adopted version of the compliance offset protocol must meet all the requirements of WAC 173-446-535.

(D) An offset project will be considered to have completed the transition to being listed under the most recently adopted version of the compliance offset protocol upon ecology's approval of a positive or qualified positive offset verification statement for the applicable reporting period.

(E) An offset project that transitions to being listed under a newly adopted version of the compliance offset protocol during a crediting period will continue in the same crediting period and not start a new crediting period.

(e) For purposes of subsection (1)(a) of this section, "the applicable compliance offset protocol" is the version of a compliance offset protocol under which the offset project has been listed or transitioned as described in (d)(iii) of this subsection, except as follows.

If, during an offset project's crediting period, any new law, regulation, or other legally binding mandate requiring GHG emission reductions or GHG removal enhancements goes into effect in Washington, in a linked jurisdiction, or in another jurisdiction in which the offset project is located, during an offset project's crediting period, then the offset project is eligible to continue to receive offset credits for those GHG emission reductions and GHG removal enhancements for the remainder of the offset project's crediting period, but the offset project may not renew that crediting period. If an offset project has not been listed under a compliance offset protocol prior to the effective date of the new law, regulation, or other legally binding mandate, or if the new law, regulation, or other legally binding mandate goes into effect before the offset project's crediting period renews, then only those GHG emission reductions or GHG removal enhancements that are in excess of what is required to comply with the new law, regulation, and/or other legally binding mandate are eligible for offset credits.

(2) Local, regional, state, and national regulatory compliance and environmental impact assessment requirements. In order to ensure that offset credits generated by an offset project can be used as compliance instruments under this chapter, an offset project operator or authorized project designee must comply with all local, regional, state, and national requirements for environmental impact assessments that apply in the jurisdiction where the offset project is located. In addition, an offset project must comply with all local, regional, state, and national requirements related to environmental and health and safety that apply in the jurisdiction where the offset project is located as well as those that directly apply to the offset project, including those specified in the applicable compliance offset protocol.

(a) An offset project may be considered out of regulatory compliance for purposes of this subsection if the project activities have been subject to formal enforcement action by a regulatory oversight body during the reporting period. Whether the project activities have been subject to such enforcement action is not the only consideration

ecology may use in determining whether an offset project is out of regulatory compliance.

(b) An offset project listed under a compliance offset protocol other than urban forest projects and that is out of regulatory compliance is not eligible to receive ecology offset credits or registry offset credits for GHG emission reductions or GHG removal enhancements that occurred during the period of time during which the offset project is out of regulatory compliance. The offset project operator or authorized project designee must provide documentation indicating the beginning and end of the time period that the offset project was out of regulatory compliance as well as documentation confirming to the satisfaction of ecology that the offset project has returned to regulator compliance.

(i) The time period that the offset project was out of regulatory compliance begins on the date that the activity(ies) which led to the enforcement action actually began, regardless of the date that the regulatory oversight body first became aware of the noncompliance. To determine the initial date of the offset project being out of regulatory compliance, the offset project operator or authorized project designee must provide one or more of the following to ecology:

(A) Documentation from the local, regional, state, or national regulatory oversight body that initiated the enforcement action, which expressly identifies the precise initial date of the offset project being out of regulatory compliance. Such documentation must include corroborating evidence of the initial date such as CEMS or other monitoring data, engineering estimates, satellite imagery, witness statements, or other reasonable methods to aid in the identification of the precise initial date; or

(B) Documentation of the most recent inspection by the local, regional, state, or national regulatory oversight body that initiated the enforcement action, which did not indicate the offset project was out of regulatory compliance for the activity(ies) in question. The offset project will be considered out of regulatory compliance beginning the day after such inspection.

(C) If the most recent inspection described in (b)(i)(B) of this subsection was prior to the beginning of the reporting period or if documentation regarding the initial date the project was out of regulatory compliance is not provided as set forth above to the satisfaction of ecology, then the time period that the offset project is out of regulatory compliance, for purposes of the reporting period, commences at the beginning of the reporting period.

(ii) The date when the offset project is deemed to have returned to regulatory compliance is the date that the local, regional, state, or national regulatory oversight body determines that the project activity(ies) returned to regulatory compliance. This date is not necessarily the date that the noncompliant activity(ies) ended or the device was repaired, and may include time for the payment of fines or completion of any additional requirements placed on the offset project by the applicable regulatory oversight body, as determined by the regulatory oversight body. To determine the end date when the offset project returned to regulatory compliance, the offset project operator or authorized project designee must provide documentation from the local, regional, state, or national regulatory oversight body attesting that the offset project is currently in regulatory compliance and identifying the date on which the offset project activity(ies) returned to compliance.

(A) If the regulatory oversight body does not provide written documentation regarding the date on which the project returned to regulatory compliance to the satisfaction of ecology, the offset project operator or authorized project designee may provide documentation to ecology from the regulatory oversight body clearly identifying the date the offset project returned to regulatory compliance. Such documentation must be official dated correspondence from the applicable regulatory oversight body such as an inspection report, an enforcement legal document such as a consent decree, or other such documentation identifying that the project has adequately remedied the condition(s) that rendered it out of regulatory compliance.

(B) If the regulatory oversight body does not provide written documentation regarding the date on which the project returned to regulatory compliance to the satisfaction of ecology, and the offset project operator or authorized project designee is unable to provide documentation clearly identifying the date the offset project returned to regulatory compliance to the satisfaction of ecology, then for purposes of the applicable reporting period, the offset project operator or authorized project designee must use the end of the reporting period for the date when the offset project returned to regulatory compliance.

(C) For purposes of this subsection, ecology may also take into consideration information pertaining to the date(s) the offset project activity(ies) subject to enforcement action occurred; whether the offset project operator, authorized project designee, or forest owner has acknowledged responsibility for the noncompliant activity(ies); and the status of any ongoing enforcement proceedings with the local, regional, state, or national regulatory oversight body.

(D) Nothing in this section precludes the invalidation of ecology offset credits issued for previous or subsequent reporting periods if ecology determines that the offset project was out of regulatory compliance in previous or subsequent reporting periods. The offset project will continue to be deemed out of regulatory compliance in subsequent reporting periods until the offset project operator or authorized project designee provides adequate documentation demonstrating regulatory compliance to ecology.

(E) Ecology's written determination and any supporting documents from the regulatory oversight body relating to the offset project being out of regulatory compliance and the time frame identified for removal from the reporting period will be made public.

(c) To determine the GHG emission reductions or GHG removal enhancements for the reporting period as modified to reflect any period the offset project was out of regulatory compliance, the offset project operator or authorized project designee must remove the days on which the offset project was out of regulatory compliance from the reporting period using the following methods:

(i) For projects using the livestock projects protocol, each calendar day during which any portion of the offset project was not in regulatory compliance must be removed from the modeled or measured project baseline;

(ii) For projects using an ozone depleting substances projects protocol, the entire destruction(s) under a certificate of destruction that contains any day the offset project is out of regulatory compliance must be removed. For projects that consist of a single destruction under a certificate of destruction that contains any day the offset project is out of regulatory compliance, the entire offset project

will be ineligible for ecology offset credits or registry offset credits;

(iii) For projects using a U.S. Forest Projects protocol, each calendar day during which any portion of the offset project was not in regulatory compliance must be removed by dividing the total calculated emissions reductions for the 12 month period from the end of the previous reporting period, by the total number of days in the previous 12 months, either 365 days or 366 days, to calculate daily emissions reductions. The daily emissions reductions will be multiplied by the number of days on which the project was not in regulatory compliance and this number will be added to the project baseline for the end of the reporting period and the emissions reductions for the reporting period, excluding the days on which the project was out of regulatory compliance, will be calculated.

(d) An offset project using an urban forest projects protocol is not eligible to receive ecology offset credits or registry offset credits for GHG emission reductions or GHG removal enhancements for the entire reporting period if the offset project is not in compliance with regulatory requirements directly applicable to the offset project during the reporting period.

(3) Only a primary account representative or alternate account representative on the offset project operator's tracking system account may sign any documents or attestations submitted to ecology or an offset project registry on behalf of the offset project operator for an offset project.

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NEW SECTION

WAC 173-446-515 Authorized project designee. (1) General requirements for designation of authorized project designee. An offset project operator may designate a party as an authorized project designee at the time of offset project listing or any time after offset project listing as long as the offset project operator meets the requirements of this section.

(a) The offset project operator may assign ownership rights of ecology offset credits or registry offset credits to any of the following parties at the time of issuance of a registry offset credit or ecology offset credit:

(i) Authorized project designee; or

(ii) Any other third party not otherwise prohibited from acquiring an ownership interest in compliance instruments under this chapter.

(b) The director or officer of the offset project operator, as identified pursuant to WAC 173-446-055 (3)(a)(ii) may delegate responsibility to the authorized project designee for performing or complying with all the requirements of WAC 173-446-520, 173-446-525, 173-446-530, 173-446-550, and 173-446-555, where the authorized project designee is specifically identified; and the requirements set forth in WAC 173-446-580 (8)(a)(iii)(B), (b)(ii)(B), and (c), for which the authorized project designee may act on behalf of the offset project operator.

(i) If an authorized project designee is designated pursuant to this subsection, the authorized project designee will be responsible

for performing all activities needed to meet the requirements set forth in this chapter and will be the main point of contact with regard to the offset project for the offset project registry and ecology. The offset project operator, however, ultimately remains responsible for ensuring compliance with the requirements of this chapter and the applicable compliance offset protocol. In addition, the offset project operator retains the authority to perform any activities required under this chapter, including signing documents and attestations.

(ii) If an authorized project designee is designated pursuant to this subsection, the offset project operator must also designate an individual employed by the authorized project designee as a primary account representative or alternate account representative on the offset project operator's tracking system account before the authorized project designee may act on behalf of the offset project operator or submit any documentation to the offset project registry and ecology.

(iii) Consultants. An offset project operator or authorized project designee may use a consultant to prepare documents or attestations for submittal by the offset project operator or authorized project designee to the offset project registry or ecology. However, a consultant may not sign any such documents or attestations on behalf of the offset project operator or authorized project designee. A consultant may only communicate with ecology or the offset project registry to the extent authorized by the offset project operator or authorized project designee, and the offset project operator or authorized project designee must be included in all communications regarding the offset project, whether written or otherwise, between the consultant and ecology or the offset project registry.

(2) Modifications to authorized project designee and activities. An offset project operator may modify or change its designation of an authorized project designee once within each calendar year after the offset project has been listed by ecology or an offset project registry by submitting a written request to ecology or the offset project registry.

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NEW SECTION

WAC 173-446-520 Listing of offset projects using ecology compliance offset protocols. (1) Registration requirements for offset project operators or authorized project designees who are submitting an offset project for listing. Before an offset project can be listed by ecology or an offset project registry, the party with legal authority to implement the offset project must be registered with ecology as an offset project operator under WAC 173-446-055. To register as a general market participant, the registered offset project operator or its authorized project designee must:

(a) Submit the information required by WAC 173-446-055 (3)(a); and

(b) Not be subject to any holding account restrictions.

(2) If an offset project is not listed by ecology, it must be listed by an approved offset project registry before the offset project operator for that offset project may receive offset credits under this chapter.

(3) General requirements for offset project listing. For offset projects being listed by ecology or an offset project registry in an initial or renewed crediting period, the offset project operator and its authorized project designee(s) must:

(a) Disclose all GHG emission reductions and GHG removal enhancements that are attributable to the offset project being listed and for which offset credits have been issued by any voluntary or mandatory program(s) or which have been used to satisfy any other GHG mitigation requirement; and

(b) Attest, in writing, to ecology as follows:

(i) "I certify under penalty of perjury under the laws of the state of Washington the GHG emission reductions and/or GHG removal enhancements for (project) from (date) to (date) will be measured in accordance with the (applicable Compliance Offset Protocol) and all information required to be submitted to ecology is true, accurate, and complete."; and

(ii) "I understand that the offset project activity(ies) and implementation of the offset project must be in accordance with all applicable local, regional, state, and national environmental and health and safety laws and regulations that apply in the jurisdiction in which the offset project is located. I understand that offset projects that are not in compliance with the requirements of this chapter are not eligible to receive Ecology offset credits or registry offset credits for GHG emission reductions and GHG removal enhancements."; and

(iii) Except as provided in (b)(iv) of this subsection: "I understand I am voluntarily participating in this program and by doing so, I am now subject to all regulatory requirements and enforcement mechanisms of this program and subject myself to the jurisdiction of Washington as the exclusive venue to resolve any and all disputes arising from the enforcement of provisions in this chapter."; and

(iv) For federally recognized tribes who elect to participate as offset project operators pursuant to RCW 70A.65.090(5), the following attestation may be submitted in lieu of the attestation required by (b)(iii) of this subsection: "I understand I am voluntarily participating in this program. The tribal government on whose behalf I am authorized to make this submission has entered into a written agreement, negotiated on an individual basis between ecology and the tribal government, that establishes a dispute resolution process and/or other compliance mechanisms in order to ensure the enforceability of all program requirements applicable to the tribe in its role as an offset project operator."

(c) Provide all documentation required to ecology or an offset project registry.

(d) Except as provided in (e) of this subsection, if any portion of the offset project is located on land over which the state of Washington does not have jurisdiction, the offset project operator must demonstrate that the landowner(s) consent(s) to regulation by ecology and the jurisdiction of the courts and administrative tribunals of the state of Washington with respect to any judicial or administrative enforcement action commenced by ecology to ensure compliance with the requirements of chapter 70A.65 RCW and this chapter.

(e) For offset projects located on tribal land, land that is owned by a tribe, or land that is subject to an ownership or possessory interest of a tribe, the offset project operator must demonstrate that the tribe has entered into a written agreement, negotiated on an individual basis between ecology and the tribal government, that es-

tablishes a dispute resolution process and/or other compliance mechanisms in order to ensure the enforceability of all program requirements applicable to the tribe in its role as the owner of land on which an offset project is located.

(4) The attestations required by subsection (3)(b) of this section must be provided to an offset project registry with the listing information, if the offset project is being listed with an offset project registry, or to ecology if the offset project is being listed with ecology.

(5) Offset project listing information requirements. Before an offset project can be publicly listed for an initial or renewed crediting period, the offset project operator or authorized project designee must provide the listing information in the most recently adopted version of the applicable compliance offset protocol for that offset project type as set forth in WAC 173-446-505(3).

(6) Review of offset project listing information. Ecology and/or the offset project registry, as applicable, will review the offset project listing information submitted pursuant to subsection (5) of this section for completeness.

(a) Notice of completeness for offset project listing information. Within 30 calendar days of receiving complete and accurate listing information as required by subsection (5) of this section, ecology or the offset project registry, as applicable, will notify the offset project operator or authorized project designee that the offset project may be listed.

(b) If ecology or the offset project registry, as applicable, determines that the information submitted is incomplete, inaccurate, or that rejection of the listing information is otherwise required, ecology or the offset project registry will notify the offset project operator or authorized project designee of this determination within 30 calendar days of receiving the listing information from the offset project operator or authorized project designee. The offset project operator or authorized project designee may resubmit offset project listing information.

(7) Timing for offset project listing in an initial crediting period. The offset project operator or authorized project designee must submit the information required by subsection (5) of this section to ecology or an offset project registry, as applicable, according to the following deadlines:

(a) No later than the date on which the offset project operator or authorized project designee submits its required offset project data report for its first reporting period under a compliance offset protocol to ecology or an offset project registry; and

(b) No later than one year after offset project commencement, or no later than one year after meeting all of the requirements of this section, whichever is later. If the offset project operator or authorized project designee does not submit the listing information for the offset project to ecology or an offset project registry within one year of offset project commencement, or within one year of meeting the requirements of this section, whichever is later, the offset project will be ineligible to be listed under a compliance offset protocol and will not be issued registry offset credits or ecology offset credits.

(8) Listing status of offset projects in an initial crediting period. After the offset project operator or authorized project designee submits the offset project for listing in an initial crediting period and all required documentation, and ecology or the offset project registry has reviewed the offset project listing information for com-

pleteness, the offset project listing status will be labeled "Proposed Project." If the offset project is not ultimately accepted for listing by an offset project registry, the offset project operator or authorized project designee may request that ecology make a final determination as to whether the offset project meets the requirements to be listed for an initial crediting period by the offset project registry. Ecology may consult with the offset project registry before making such a determination.

(9) Timing for offset project listing in a renewed crediting period. The offset project operator or authorized project designee must submit the information required by subsection (5) of this section for purposes of listing the offset project for a renewed crediting period to ecology or an offset project registry, as applicable, no earlier than 18 months and no later than nine months before conclusion of the initial crediting period or a previous renewed crediting period.

(10) Listing status of offset projects in a renewed crediting period. After the offset project operator or authorized project designee submits the offset project for listing in a renewed crediting period and all required documentation, and ecology or the offset project registry has reviewed the offset project listing information for completeness, the offset project listing status will be labeled "Proposed Renewal." The verification body must assess that the offset project meets the additionality requirements set forth in WAC 173-446-510 (1)(c) and in the applicable compliance offset protocol as of the date of the commencement of the renewed crediting period when conducting offset verification services for the first reporting period of a renewed crediting period. If the offset project is not ultimately accepted for listing by an offset project registry, the offset project operator or authorized project designee may request that ecology make a final determination as to whether the project meets the requirements of this section to be listed for a renewed crediting period by the offset project registry. Ecology may consult with the offset project registry before making such a determination.

(11) Once ecology or an offset project registry approves an offset project for listing, the listing information is considered final, and may not be changed unless the offset project operator changes during the crediting period. If the offset project operator changes during the crediting period, the new offset project operator or its authorized project designee must submit updated listing information for the information that pertains to the offset project operator and authorized project designee, if applicable, to ecology within 30 calendar days of the change.

(12) Limitations for crediting period renewals. A crediting period may be renewed if the offset project meets the requirements for additionality set forth in WAC 173-446-510 (1)(c) and in the applicable compliance offset protocol.

(a) The crediting period for offset projects that do not involve sequestration may be renewed twice for the length of time identified by the applicable compliance offset protocol.

(b) Offset projects that involve sequestration are not subject to any renewal limits.

(13) Transferring an offset project. If the offset project operator or authorized project designee transfers an offset project listed with ecology to an offset project registry, or transfers a project listed with an offset project registry to ecology or another offset project registry:

(a) Ecology or the offset project registry that originally listed the offset project must change the offset project listing status on its registry system to "transferred project."

(i) If the only action taken by the offset project operator or the authorized project designee was to have the listing documentation for the offset project approved by ecology or the original offset project registry, ecology or the original offset project registry, as applicable, must retain the information related to the offset project on its website for the duration of one year before it can be removed from the registry system.

(ii) If the listing documentation was only submitted by the offset project operator or authorized project designee, but not approved by ecology or the original offset project registry, ecology or the original offset project registry, as applicable, does not need to retain the submitted listing documentation on its website.

(iii) If a verification body submitted an offset verification statement for the offset project being transferred, ecology or the original offset project registry, as applicable, must retain the information related to the offset project on its website for the duration of the offset project life.

(iv) Ecology or the new offset project registry, as applicable, must retain the listing date and all listing information as approved by ecology or the original offset project registry. If the offset project has not undergone initial verification, the offset project commencement date may change as a result of verification activities only.

(b) The offset project operator or authorized project designee must submit the original listing documentation reviewed and accepted by ecology or the original offset project registry, as applicable, pursuant to this section to ecology or the new offset project registry, as applicable. The offset project operator or authorized project designee may only make changes to the listing documentation if the offset project operator changes during the crediting period pursuant to subsection (11) of this section.

(c) The offset project operator or authorized project designee may not transfer an offset project to ecology or another offset project registry once a notice of offset verification services has been submitted for a reporting period(s) or during the course of offset verification services for a reporting period(s). Once a notice of offset verification services has been submitted, the offset verification services must be completed for the applicable reporting period(s) before the offset project operator or authorized project designee may transfer the offset project to ecology or another offset project registry. Once the offset verification services are completed for the applicable reporting period(s), the offset project operator or authorized project designee may transfer the offset project to ecology or another offset project registry.

(14) Limitations for listing forest offset projects. Once a forest offset project has been issued registry offset credits or ecology offset credits, no other offset project may be listed within the offset project boundary of the previous offset project unless the previous offset project was terminated due to an unintentional reversal or otherwise specified in the applicable compliance offset protocol.

(15) Modification or waiver of requirements for purposes of aggregation. Ecology may elect to waive or modify listing requirements in this section for offset projects that are grouped together for the purposes of aggregation. Any proposed modifications or changes to the

procedures noted in this section must be approved in advance by ecology and be documented in writing in a manner and format specified by ecology.

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NEW SECTION

WAC 173-446-525 Monitoring, reporting, and record retention requirements for offset projects. (1) General requirements for monitoring equipment for offset projects. The offset project operator or authorized project designee must employ the procedures set forth in the applicable compliance offset protocol for monitoring measurements and project performance for offset projects. All required monitoring equipment must be maintained and calibrated in a manner and at a frequency required by the equipment manufacturer, unless otherwise specified in the applicable compliance offset protocol. All modeling, monitoring, sampling, and testing procedures must be conducted in a manner consistent with the applicable compliance offset protocol.

(2) The offset project operator or authorized project designee must use the missing data methods as provided in the applicable compliance offset protocol for that offset project type, if provided and applicable.

(3) An offset project operator or authorized project designee must install and operate all monitoring equipment and mechanisms required by the applicable compliance offset protocol for that offset project type as set forth in WAC 173-446-505(3).

(4) Offset project reporting requirements. An offset project operator or authorized project designee shall submit an offset project data report to ecology or the offset project registry, as applicable, for each reporting period.

(a) Each offset project data report must cover a single reporting period. Reporting periods must be contiguous, and there must be no gaps in reporting once the first reporting period has commenced.

(b) The offset project operator or authorized project designee must submit an offset project data report to ecology or the offset project registry, as applicable, within 28 months of listing their offset project and must also meet all other applicable deadlines pertaining to submittal of the offset project data report.

(i) An offset project data report may be submitted after the deadline identified in this subsection, but before the end of the next reporting period, to maintain continuous reporting for purposes of (a) of this subsection; however, no ecology offset credits will be issued for the GHG emission reductions or removal enhancements quantified and reported in the untimely offset project data report.

(ii) If the offset project operator or authorized project designee does not submit an offset project data report to ecology or an offset project registry within 28 months of listing an offset project, then the offset project operator or authorized project designee must update the listing information in the offset project data report to reflect the most recently adopted version of the applicable compliance offset protocol for that project type in order to remain eligible to be issued ecology offset credits. If an offset project data report that does not meet the 28 month deadline also fails to meet the four month deadline set in this section set forth in subsection (5) of this

section, an offset project data report covering the reporting period must be submitted using the most recently adopted version of the applicable compliance offset protocol; however, no ecology offset credits will be issued for the GHG emission reductions or removal enhancements.

(iii) For forestry offset projects, when an offset project data report is not filed within the deadline specified in this subsection, the values used for $AC_{onsite,y-1}$ and $BC_{onsite,y-1}$ in the offset project data report for the subsequent reporting period will be the $AC_{onsite,y}$ and $BC_{onsite,y}$ values reported in the untimely offset project data report for the preceding reporting period. The offset project data report shall contain the information required by the applicable version of the compliance offset protocol for that offset project type as set forth in WAC 174-446-505(3).

(iv) For ozone depleting substance projects, one offset project data report may be submitted for each offset project and the offset project data report may cover up to a maximum of 12 months of data.

(v) If the offset project operator or authorized project designee fails to submit an offset project data report as required by this subsection, then the offset project will be considered terminated and no longer eligible for ecology offset credits.

(5) An offset project data report must be submitted to ecology or the offset project registry, as applicable, within four months after the conclusion of each reporting period. For a submission to be considered valid, the submitted offset project data report must include all required attestation(s) and must be signed by the offset project operator's primary account representative or alternate account representative.

(a) The primary account representative or alternate account representative on the offset project operator's tracking system account must attest, in writing, as follows: "I certify under penalty of perjury under the laws of the state of Washington the GHG emission reductions and/or GHG removal enhancements for (project) from (date) to (date) are measured in accordance with the (applicable Compliance Offset Protocol) and all information required to be submitted to Ecology or the Offset Project Registry, as applicable, in the Offset Project Data Report is true, accurate, and complete." This attestation must be provided with each version of the offset project data report to an offset project registry if the offset project is listed with an offset project registry, or to ecology if the offset project is listed with ecology.

(b) If an offset project data report is not submitted to ecology or an offset project registry as required by this subsection by the four-month reporting deadline, the GHG emission reductions and GHG removal enhancements quantified and reported in the untimely offset project data report are not eligible to be issued registry offset credits or ecology offset credits.

(6) Each version of an offset project data report submitted to ecology or an offset project registry must specify the version number and the date submitted.

(7) For any offset project reporting under a different version of the applicable compliance offset protocol than the version under which the project was initially listed, the offset project data report must include reference to both the version of the applicable compliance offset protocol under which the project was initially listed and the version under which the project is reporting.

(8) Requirements for records retention for offset projects. An offset project operator or authorized project designee must meet the following requirements:

(a) The offset project operator or authorized project designee must retain records containing the following information:

(i) All information submitted to ecology or an offset project registry as part of the offset project data report;

(ii) Documentation of the offset project boundary, including a list of all GHG emissions sources, GHG sinks, and GHG reservoirs included in the offset project boundary and the project baseline;

(iii) Fuel use and any other underlying measured or sampled data used to calculate project baseline emissions, GHG emission reductions, and GHG removal enhancements for each source, categorized by process and fuel, or material type;

(iv) Documentation of the process for collecting fuel use or any other underlying measured or sampled data for the offset project and its GHG emissions sources, GHG sinks, and GHG reservoirs for quantifying project baseline emissions, project emissions, GHG emission reductions, and GHG removal enhancements;

(v) Documentation of all project baseline emissions, project emissions, GHG emission reductions, and GHG removal enhancements;

(vi) All point of origin and chain of custody documents required by the applicable compliance offset protocol, if any;

(vii) All chemical analyses, results, and testing-related documentation for material and sources used for inputs to calculate project baseline emissions, project emissions, GHG emission reductions, and GHG removal enhancements;

(viii) All model inputs and assumptions used for quantifying project baseline emissions, project emissions, GHG emission reductions, and GHG removal enhancements;

(ix) Any data used to assess the accuracy of project baseline emissions, GHG emission reductions, and GHG removal enhancements from each offset project GHG emissions source, GHG sink, and GHG reservoir, categorized by process;

(x) Quality assurance and quality control information, including information regarding any measurement gaps, missing data substitution, calibrations or maintenance records for monitoring equipment, or models providing data for calculating project baseline emissions, project emissions, GHG emission reductions, and GHG removal enhancements;

(xi) A detailed technical description of any offset project continuous measurement/monitoring system(s), including documentation of any related findings and approvals by federal, state, or local agencies;

(xii) Raw and aggregated data from any measurement system;

(xiii) Documentation of any changes over time and the log book on tests, down-times, calibrations, servicing, and maintenance for any measurement/monitoring equipment providing data for project baseline calculations, project emissions, GHG emission reductions, and GHG removal enhancements;

(xiv) For sequestration offset projects, documentation of inventory methodologies and sampling procedures, including all calculation methodologies and equations used, and any data related to plot sampling;

(xv) Any other documents associated with the preparation of an offset project data report; and

(xvi) Any other documentation or data required to be retained by the applicable compliance offset protocol, if any.

(b) All records containing the information set forth in (a) of this subsection shall be retained in paper, electronic, or other useable format for a minimum of 15 years. For documents associated with the preparation of a particular offset project data report, the 15-year timeline begins on the date of issuance of ecology offset credits based on that offset project data report.

(c) The documents retained pursuant to this section must be sufficient to allow for third-party verification of each offset project data report.

(d) Upon request by ecology or an offset project registry, the offset project operator or authorized project designee must provide to ecology or the offset project registry, as applicable, all documents retained pursuant to this subsection, including data used to develop an offset project data report within 10 calendar days of the request.

(9) General procedure for interim data collection. This section only applies if the applicable compliance offset protocol does not already include methods, or does not include a specific method for the data in question, for collecting or accounting for missing data in the event of an unforeseen breakdown of gas or fuel analytical monitoring equipment or other data collection systems.

(a) In the event of an unforeseen breakdown of offset project data monitoring equipment and gas or fuel flow monitoring devices required for the GHG emission reductions and GHG removal enhancement estimation, ecology may authorize an offset project operator or authorized project designee to use an interim data collection procedure if ecology determines that the offset project operator or authorized project designee has satisfactorily demonstrated that:

(i) The unforeseen breakdown may result in a loss of more than 20 percent of the source's data for the year covered by an offset project data report;

(ii) The data monitoring equipment cannot be promptly repaired or replaced without shutting down a process unit significantly affecting the offset project operations, or that the monitoring equipment must be replaced and replacement equipment is not immediately available;

(iii) The interim procedure will not remain in effect longer than is reasonably necessary for repair or replacement of the malfunctioning data monitoring equipment; and

(iv) The request was submitted within 30 calendar days of the unforeseen breakdown of the data monitoring equipment.

(b) An offset project operator or authorized project designee seeking approval of an interim data collection procedure must, within 30 calendar days of the unforeseen monitoring equipment breakdown, submit a written request to ecology that includes all of the following:

(i) The proposed start date and end date of the interim procedure;

(ii) A detailed description of what data are affected by the breakdown;

(iii) A discussion of the accuracy of data collected during the interim procedure compared with the data collected under the offset project;

(iv) The offset project operator's or authorized project designee's usual equipment-based method; and

(v) A demonstration that no feasible alternative procedure exists that would provide more accurate emissions data.

(c) When approving an interim data collection procedure, ecology shall determine whether the accuracy of data collected under the pro-

cedure is reasonably equivalent to data collected from properly functioning monitoring equipment, and if it is not, the relative accuracy to assign for purposes of assessing possible offset material misstatement. Ecology may limit the duration of the interim data collection procedure or include other conditions it deems necessary for approval.

(d) Data collected pursuant to an approved interim data collection procedure shall be considered captured data for purposes of compliance with the applicable compliance offset protocol.

(10) General procedure for approving alternate monitoring and measurement methods pursuant to compliance offset protocols. This subsection applies only to alternate methods for monitoring and measurement that were not in common usage at the time when ecology adopted the applicable compliance offset protocol under which an offset project data report is being submitted. Alternate methods may include remote sensing methods for forestry or other alternate methods that meet the requirements of this subsection.

(a) An offset project operator or authorized project designee seeking approval of an alternate monitoring and measurement method must, at least 30 calendar days prior to the beginning of the reporting period in which the alternate method will be used, submit a written request to ecology that includes all of the following:

(i) The name and identification numbers of the offset project for which the alternate method is proposed;

(ii) The beginning and end dates for the reporting period for which the alternate method is proposed;

(iii) A detailed description of the alternate method. This description must include:

(A) The purpose for which the alternate method is proposed;

(B) A discussion of the accuracy of the alternate method, including any peer-reviewed literature or other information that the offset project operator or authorized project designee believes may aid ecology in making a determination of the accuracy of the method; and

(C) A detailed analysis identifying how the alternate method is consistent with the relevant requirements, and not explicitly prohibited by the applicable compliance offset protocol.

(b) A request for approval of an alternate method may only be submitted for a reporting period for which a project is receiving a full offset verification.

(c) Ecology shall provide written notification to the offset project operator or the authorized project designee of approval or disapproval of the interim alternate method within 30 calendar days of receipt of the request, or within 30 calendar days of receipt of any additional information requested by ecology, whichever is later.

(i) Ecology may approve an alternate method on an interim basis for one reporting period to review the accuracy of the method before approving it for subsequent reporting periods. Approval of an alternate method on an interim basis in and of itself does not provide any presumption of approval on a longer term basis. Ecology may also include other conditions it deems necessary as part of its interim approval.

(ii) Before approving an alternate method, ecology shall determine that the accuracy of the alternate method is at least reasonably equivalent to the accuracy of the method(s) commonly employed when the applicable compliance offset protocol was adopted and that the alternate method is capable of being verified to a reasonable level of assurance.

(iii) Prior to approving any request for approval of an alternate method, ecology may request additional information from the offset project operator or authorized project designee seeking approval.

(d) Data collected pursuant to an approved alternate method shall be considered in compliance with the requirements of the applicable compliance offset protocol.

(e) If information comes to ecology's attention subsequent to approving an alternate method indicating that the alternate method is not at least reasonably equivalent to the accuracy of the method(s) commonly employed when the applicable compliance offset protocol was adopted, or is not capable of being verified to a reasonable level of assurance, ecology may rescind approval of the alternate method at any time.

(f) If after using the alternate method for one reporting period ecology has determined that the alternate method is at least reasonably equivalent to the accuracy of the method(s) commonly employed when the applicable compliance offset protocol was adopted, ecology may approve the alternate method, including any conditions, on a permanent basis.

(g) For the purposes of this section, "common usage" means a method that is demonstrated to be in use by an offset project using the same protocol type (e.g., U.S. forests, livestock, etc.) on the compliance or voluntary market in the U.S. at the time of adoption of the applicable compliance offset protocol.

(11) Modifications to the reporting period. Modifications to the reporting period are only allowed by notifying ecology in writing or by providing updated listing information with the submittal of the offset project data report, and only if ecology is notified in writing prior to any deadlines being missed.

(a) The first reporting period for an offset project in an initial crediting period may consist of six to 24 consecutive months.

(b) All subsequent reporting periods in an initial crediting period and all reporting periods in any renewed crediting period must consist of 12 consecutive months, except that offset projects that submitted a first reporting period in the initial crediting period that was less than 24 consecutive months may include any months not included in the first reporting period in the final reporting period of the initial crediting period, such that the combined duration of the initial and final reporting periods in the initial crediting period do not exceed 36 months total.

(c) The reporting period may not be longer than 12 months and there is no minimum time frame imposed for the reporting period.

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NEW SECTION

WAC 173-446-530 Verification of GHG emission reductions and GHG removal enhancements from offset projects. (1) General requirements. An offset project operator or authorized project designee must obtain the services of an ecology-accredited verification body for the purposes of verifying its offset project data reports.

(2) Schedule for verification of nonsequestration offset projects.

(a) The verification of GHG emission reductions for nonsequestration offset projects that achieve greater than or equal to 25,000 metric tons of GHG emission reductions must be performed on a reporting period basis and cover the reporting period for which the most recent offset project data report was submitted unless otherwise specified in the applicable compliance offset protocol.

(b) For reporting periods in which an offset project data report for a nonsequestration offset project shows that the offset project achieved fewer than 25,000 metric tons of GHG emission reductions in a reporting period, the offset project operator or authorized project designee may choose to perform verification that covers two consecutive reporting periods, even if the offset project produced greater than or equal to 25,000 metric tons of GHG emission reductions for the subsequent reporting period.

(c) If an offset project data report shows the offset project achieved zero GHG emission reductions, the offset project operator or authorized project designee may defer verification until the offset project produces an offset project data report that no longer shows the offset project achieved zero GHG emission reductions.

(3) Schedule for verification of sequestration offset projects.

(a) An initial verification of GHG emission reductions and GHG removal enhancements for all sequestration offset projects must be performed following the first reporting period and cover one reporting period.

(b) After the first reporting period, verification must be conducted at least once every six years and may cover up to six reporting periods for which offset project data reports were submitted.

(c) After an initial verification with a positive offset verification statement, reforestation offset projects and urban forest offset projects that meet the requirements of the applicable compliance offset protocol may defer the second verification for 12 years, but verification of offset project data reports must be performed at least once every six years thereafter.

(d) For offset projects that do not renew their crediting period, verification must still be conducted at least once every six years for the remainder of the project life. However, after a successful full offset verification of an offset project data report indicating that actual on-site carbon stocks (in MT CO_2e) are at least 10 percent greater than the actual on-site carbon stocks reported in the final offset project data report of the final crediting period that received a positive offset verification statement, the next full offset verification service may be deferred for 12 years.

(e) An offset project that has deferred verification for 12 years must resume conducting a full verification at least once every six years if it receives an adverse offset verification statement.

(4) Timing for submittal of offset verification statements to ecology or an offset project registry.

(a) The verification body must issue one offset verification statement for each offset project data report that it verifies for the offset project operator or authorized project designee.

(b) Any offset verification statement must be received by ecology or an offset project registry, as applicable, within 11 months after the conclusion of the reporting period for which offset verification services were performed, except for reporting periods for which verification is deferred in accordance with subsection (3) of this section. If the offset verification statement is not submitted to ecology

or an offset project registry by this verification deadline, the GHG emission reductions and GHG removal enhancements quantified and reported in the offset project data report are not eligible to be issued ecology offset credits or registry offset credits.

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NEW SECTION

WAC 173-446-535 Requirements for offset verification services. (1) Rotation of verification bodies. An offset project shall have no more than any six out of nine consecutive reporting periods verified by the same verification body or offset verification team member(s), unless otherwise specified. The rotation requirements in this section are applied between the offset project operator, the authorized project designee, if applicable, any technical consultant(s) used by the offset project operator or authorized project designee, if applicable, and the verification body and offset verification team member(s) on an offset project basis.

(2) Ozone depleting substances offset projects.

(a) Neither a verification body nor an offset verification team member may conduct offset verification services for more than any six out of nine consecutive offset projects developed by the following:

(i) Any given offset project operator;

(ii) Any authorized project designee on behalf of such an offset project operator; or

(iii) Any technical consultant(s) used by the offset project operator or its authorized project designee(s).

(b) For ozone depleting substances offset projects, the order of consecutive projects is determined by the project commencement dates. For purposes of this provision, an offset project is defined by any activities reported in an offset project data report, and is applied to offset projects listed by the offset project operator and authorized project designee, if applicable.

(3) Reforestation offset projects and urban forest offset projects.

(a) An offset project operator or authorized project designee that has deferred the second verification for six to 12 years pursuant to WAC 173-446-530(3) may have up to 13 offset project data reports verified by the same verification body and offset verification team member(s).

(b) If an offset project operator or authorized project designee has not deferred the second verification for six or more years, the following requirements for rotation of verification bodies and offset verification team member(s) shall apply.

(i) An offset project operator or authorized project designee may contract with a previously contracted verification body or offset verification team member(s) only if at least three consecutive offset project data reports for the offset project have been verified by a different verification body(ies) and offset verification team member(s) before the previously contracted verification body and offset verification team member(s) can be selected again.

(ii) When rotating verification bodies and offset verification team members under this subsection, the rotation requirements must al-

so apply to any technical consultant(s) used by the offset project operator or authorized project designee, if applicable.

(4) Offset verification services. Offset verification services shall be subject to the following requirements.

(a) Notice of offset verification services for offset projects. Before offset verification services may begin, the offset project operator or authorized project designee must submit the offset project data report to ecology or an offset project registry, as applicable, and the verification body must submit a notice of offset verification services to ecology and an offset project registry, if applicable.

(i) The verification body may begin offset verification services for the offset project operator or authorized project designee 10 calendar days after the notice for offset verification services is received by ecology and the offset project registry, if applicable.

(ii) The verification body may not conduct the site visit until at least 15 calendar days after the notice for offset verification services is received by ecology and the offset project registry, if applicable. If a verification is being audited by ecology or by an offset project registry and if ecology or the offset project registry notify the verification body of the audit in writing within five business days of receiving the notice for offset verification services, the verification body may not conduct the site visit until at least 40 calendar days after the notice for offset verification services is received by ecology and the offset project registry, if applicable, unless each auditing party approves in writing an earlier site visit date.

(b) The notice of offset verification services must include the following information:

(i) The offset project name and its identification numbers, the version of the applicable compliance offset protocol under which the offset project is reporting, indication of whether a single or multiple reporting periods will receive offset verification services, the reporting period start and end dates, and the crediting period start date;

(ii) A list of staff who will be designated to provide offset verification services as part of an offset verification team, including the names of each designated staff member, the lead verifier, independent reviewer, all subcontractors, and a description of the roles and responsibilities each team member will have during the offset verification process;

(iii) Documentation that the designated members of the offset verification team have the skills required to provide offset verification services for the offset project operator or authorized project designee, including documentation showing that at least one offset verification team member is accredited by ecology as an offset project specific verifier for an offset project of that type; and

(iv) General information about the offset project operator or authorized project designee, including:

(A) The name of the offset project operator or authorized project designee, and contact information, including mailing address, telephone number, and email address;

(B) The offset project boundary or the portion(s) thereof that will be subject to offset verification services;

(C) The date(s) of on-site visits, with contact information; and

(D) A brief description of expected offset verification services to be performed, including the expected date for submitting the offset verification statement to ecology or the offset project registry.

(c) If any information submitted pursuant to this subsection changes after the notice for offset verification services is submitted to ecology and the offset project registry, if applicable, the verification body must notify ecology and the offset project registry, as applicable, by submitting an updated notice of offset verification services within 10 business days.

(i) If the verification body has been notified by ecology or the offset project registry of an audit for the relevant verification, then the verification body must notify the auditing party at least two business days prior to a revised start date for offset verification services and at least 15 business days prior to a revised site visit date(s), unless each auditing party approves in writing an earlier date.

(ii) If ecology and the offset project registry, if applicable, request revisions to the notice of offset verification services, the verification body must resubmit the revised notice of offset verification services within 10 business days of such request, or if there is a reason the verification body cannot submit the revisions within 10 business days, the verification body must communicate in writing to ecology and the offset project registry, if applicable, as to the reasons why and get approval from the offset project registry or ecology for an extension.

(d) Offset verification services must include the following:

(i) Offset verification plan. The offset project operator or authorized project designee must submit the following information, which is necessary to develop an offset verification plan, to the offset verification team:

(A) Information to allow the offset verification team to develop a general understanding of offset project boundaries, operations, project baseline emissions, and reporting period GHG emission reductions and GHG removal enhancements;

(B) Information regarding the training or qualifications of personnel involved in developing the offset project data report;

(C) The name and date of the applicable compliance offset protocol used to quantify and report project baselines, GHG emission reductions, GHG removal enhancements, and other data as required in the applicable compliance offset protocol; and

(D) Information about any data management system, offset project monitoring system, and models used to track project baselines, GHG emission reductions, GHG removal enhancements, and other data required in the applicable compliance offset protocol.

(ii) Timing of offset verification services. The offset verification plan shall also include the following information:

(A) Dates of proposed meetings and interviews with personnel related to the offset project;

(B) Dates of proposed site visits;

(C) Types of proposed document and data reviews; and

(D) Expected date for completing offset verification services.

(iii) Planning meetings with the offset project operator or authorized project designee. The offset verification team must discuss with the offset project operator or authorized project designee the scope of the offset verification services and request any information and documents needed for initiating offset verification services.

(A) The offset verification team must review the documents submitted and plan and conduct a review of original documents and supporting data for the offset project data report. Information regarding

planning meetings may be included in the offset verification plan, but is not required.

(B) Any discussions or meetings to secure an offset verification services contract or to collect preliminary project documents to bid the offset verification services may occur prior to submitting the notice of offset verification services.

(iv) Site visits for offset projects.

(A) For a nonsequestration offset project, at least one accredited offset verifier in the offset verification team, including the offset project specific verifier, must make at least one site visit for each reporting period that an offset project data report is submitted, except for those nonsequestration offset projects for which the offset project data reports qualify for a two-year offset verification period. In this case, at least one offset verifier in the offset verification team, including the offset project specific verifier, must make a site visit each time offset verification services are performed; offset verification services for nonsequestration offset projects would include one or two reporting periods, depending on whether verification is eligible to be deferred.

(B) For ozone depleting substances and livestock offset projects, if the project is no longer in operation and all destruction devices, metering and monitoring equipment has been removed, the site visit can occur at the offices of the offset project operator, or authorized project designee. Such a site visit cannot be used for reducing the invalidation time frame.

(C) For a forest or urban forest offset project, at least one accredited offset verifier in the offset verification team, including the offset project specific verifier, must make a site visit every year that offset verification services are provided, except for those offset projects approved for less intensive verification, for which a site visit must be performed at least once every six years.

(D) A site visit is also required after the first reporting period of an offset project under a compliance offset protocol and after the first reporting period for each renewed crediting period under a compliance offset protocol. Any site visit performed under this subsection must be conducted after the offset project operator or authorized project designee submits its offset project data report to ecology or an offset project registry, as applicable.

(v) Scope of review. During the required verification, the offset verification team member(s) must conduct the following reviews, and document or explain how each requirement was fulfilled in the detailed verification report:

(A) During the initial verification conducted following the first reporting period of the crediting period, the offset verification team must complete all of the following requirements, either during the required site visit or as part of a desk review:

(I) Review the information submitted for listing and determine if it is complete and accurate;

(II) Assess whether the offset project meets the requirements for additionality set forth in WAC 173-446-510 (1)(d) and that it meets all the requirements set forth in the applicable compliance offset protocol pursuant to WAC 173-446-510 (1)(a);

(III) Assess whether the offset project boundary is appropriately defined;

(IV) Review project baseline calculations and modeling;

(V) Assess the operations, functionality, data control systems, and GHG measurement and monitoring techniques; and

(VI) Assess whether all applicable eligibility criteria to design, measure, establish the chain of custody, and monitor the offset project conforms to the requirements of the applicable compliance offset protocol.

(VII) All criteria pertaining to the eligibility of the offset project must be assessed during the first site visit in the first reporting period of each crediting period. All eligibility criteria must be met and are not subject to sampling. If any of the eligibility criteria are not met, the project would be ineligible for crediting and receive an adverse offset verification statement.

(B) During the initial verification conducted following the first reporting period of the crediting period and each subsequent verification, the offset verification team must complete all of the following requirements, either during the required site visit or as part of a desk review:

(I) Check that all offset project boundaries, GHG emissions sources, GHG sinks, and GHG reservoirs in the applicable compliance offset protocol are identified appropriately;

(II) Review and understand the data management systems used by the offset project operator or authorized project designee to track, quantify, and report GHG emission reductions, GHG removal enhancements, or other data required in the applicable compliance offset protocol. This includes reviewing data collection processes and procedures, sampling techniques and metering accuracy, quality assurance/quality control processes and procedures, and missing data procedures. The offset verification team member(s) must evaluate the uncertainty and effectiveness of these systems;

(III) Interview key personnel involved in collecting offset project data and preparing the offset project data report;

(IV) Make direct observations of equipment for data sources and equipment supplying data for GHG emission sources in the sampling plan determined to be high risk;

(V) Review all chain of custody documents as required in the applicable compliance offset protocol, if any;

(VI) Review offset project operations to identify applicable GHG emissions sources, project emissions, GHG sinks, and GHG reservoirs required to be included and quantified in the offset project data report as required by the applicable compliance offset protocol. This must include a review of each type of GHG emissions source, GHG sink, and GHG reservoir to ensure that all GHG emissions sources, GHG sinks, and GHG reservoirs required to be reported for the offset project are properly included in the offset project data report;

(VII) Confirm the offset project conforms with all local, regional, state, or national environmental regulatory requirements, including health and safety regulations; and

(VIII) Collect and review any other information that, in the professional judgment of the team, is needed in the offset verification process;

(C) If the offset project is found by the offset verification team to not meet the requirements of this chapter, the offset project is ineligible to receive ecology offset credits or registry offset credits for some or all GHG reductions and GHG removal enhancements quantified and reported in the offset project data report.

(vi) An offset project operator or authorized project designee must make available to the offset verification team all information and documentation used to calculate and report project baseline and project GHG emissions, GHG emission reductions, and GHG removal en-

hancements and other information required by the applicable compliance offset protocol.

(vii) Sampling plan for offset project data reports. As part of confirming the offset project data report, the offset verification team must develop a sampling plan that meets the following requirements:

(A) The sampling plan must be based on a strategic analysis developed from document reviews and interviews to assess the likely nature, scale, and complexity of the offset verification services for an offset project operator or authorized project designee. The analysis must review the inputs for the development of the submitted offset project data report, the rigor and appropriateness of the GHG data management systems, and the coordination within an offset project operator's or authorized project designee's organization to manage the operation and maintenance of equipment and systems used to develop the offset project data reports;

(B) The sampling plan must include a ranking of GHG emissions sources, GHG sinks, and GHG reservoirs within the offset project boundary by the amount of contribution to total project GHG emissions, GHG emission reductions, and GHG removal enhancements, and a ranking of GHG emissions sources, GHG sinks, or GHG reservoirs with the largest calculation uncertainty; and

(C) The sampling plan must include a qualitative narrative of uncertainty risk assessment in the following areas, as required in the applicable compliance offset protocol:

(I) Data acquisition equipment;

(II) Data sampling and frequency;

(III) Data processing and tracking;

(IV) Calculations of project baseline, project GHG emissions, GHG emission reductions, and GHG removal enhancements;

(V) Data reporting; and

(VI) Management policies or practices in developing offset project data reports.

(viii) After completing the analysis described in (d)(v) of this subsection, the offset verification team must include in the sampling plan a list that includes the following:

(A) GHG emissions sources, GHG sinks, and GHG reservoirs that will be targeted for document reviews to ensure conformance with the applicable compliance offset protocol and data checks as specified, and an explanation of why they were chosen;

(B) Methods used to conduct data checks for each GHG emissions source, GHG sink, and GHG reservoir; and

(C) A summary of the information analyzed in the data checks and document reviews conducted for each GHG emissions source, GHG sink, and GHG reservoir.

(ix) The sampling plan list must be updated and finalized prior to the completion of offset verification services. The final sampling plan must describe in detail how the GHG emissions sources, GHG sinks, and GHG reservoirs with identified risk, subject to data checks, were reviewed for accuracy.

The offset verification team must revise the sampling plan to describe tasks completed or needed to be completed by the offset verification team as relevant information becomes available and potential issues emerge of offset material misstatement or nonconformance with the requirements of the applicable compliance offset protocol and this chapter.

(x) Records retention.

(A) The verification body must retain the final sampling plan in paper, electronic, or other useable format for a period of not less than 15 years following the submission of each offset verification statement. The sampling plan must be made available at any time during offset verification services to ecology or the offset project registry, as applicable, within 10 calendar days of a request.

(B) The verification body must retain all materials received, reviewed, or generated to render an offset verification statement for an offset project operator or authorized project designee for 15 years following the submittal of each offset verification statement. The documentation must allow for a transparent review of how a verification body reached its conclusion in the detailed verification report and offset verification statement.

(xi) Data checks for offset project data reports. To determine the reliability of the submitted offset project data report, the offset verification team must use data checks. Such data checks must focus first on the largest and most uncertain estimates of project baseline GHG emissions, project emissions, GHG emission reductions, and GHG removal enhancements. Specifically, the offset verification team must:

(A) Use data checks to ensure that the appropriate methodologies and GHG emission factors have been applied in calculating the project baseline and reporting period GHG emissions, project emissions, GHG emission reductions, and GHG removal enhancements as required by the applicable compliance offset protocol.

(B) Select GHG emissions sources, project emissions, GHG sinks, and GHG reservoirs for data checks based on their relative sizes and risks of offset material misstatement or nonconformance as indicated in the sampling plan;

(C) Use professional judgment in the number of data checks required for the offset verification team to conclude with reasonable assurance whether the offset project operator's or authorized project designee's total reported GHG emission reductions and GHG removal enhancements are free of offset material misstatement and the offset project data report otherwise conforms to the requirements of the applicable compliance offset protocol and this chapter. At a minimum, a data check must include the following:

(I) Tracing data in the offset project data report to its origin;

(II) Looking at the process for data compilation and collection;

(III) Reviewing all GHG inventory designs for GHG sources, GHG sinks, and GHG reservoirs, and sampling procedures, if applicable;

(IV) Recalculating baseline GHG emissions, project emissions, GHG emission reductions, and GHG removal enhancements estimates to check original calculations;

(V) Reviewing calculation methodologies used by the offset project operator or authorized project designee for conformance with the applicable compliance offset protocol and this chapter;

(VI) Reviewing meter and fuel analytical instrumentation calibration, if applicable; and

(VII) Reviewing the quantification from models approved for use in the applicable compliance offset protocol, if any; and

(D) Compare its own calculated results for the data checks conducted with the reported offset project data in order to confirm the extent and impact of any omissions and errors.

(I) Any discrepancies must be identified in the issues log.

(II) The comparison of data checks must also include a narrative to indicate which GHG emissions sources, GHG sinks, and GHG reservoirs

were checked, the types and quantity of data that were evaluated for each GHG emissions source, GHG sink, and GHG reservoir, how the data checks were conducted including calculations, and any discrepancies that were identified.

(xii) Offset project data report modifications. Following the review by the offset verification team and prior to completion of an offset verification statement, the offset project operator or authorized project designee must make any possible improvements and fix correctable errors that affect GHG emissions reductions or GHG removal enhancements in the submitted offset project data report, and a revised offset project data report must be submitted to ecology or the offset project registry, as applicable.

(A) The offset verification team shall use professional judgment in the identification of correctable errors, including whether differences are not errors but result from truncation or rounding. The offset verification team must document in the issues log the source of any difference identified, including whether the difference results in a correctable error.

(B) Correctable errors that, when summed, result in less than a three percent overstatement of the GHG emissions reductions or GHG removal enhancements do not need to be fixed. However, correctable errors subject to the three percent exception that are attributable to the offset project operator or authorized designee providing false or misleading facts, or withholding material information that could influence a decision by ecology still constitute violations for which the offset project operator and authorized project designee, if applicable, are subject to enforcement under WAC 173-446-610(4).

(C) The revised offset project data report must include all components required in WAC 173-446-525.

(D) The verification body must issue an adverse offset verification statement if the offset project operator or authorized project designee does not make all possible improvements and fix any correctable errors to the offset project data report, except as provided in (d)(xii)(B) of this subsection the verification body must issue an adverse offset verification statement.

(E) Documentation for all revised offset project data report submittals must be retained by the offset project operator or authorized project designee for 15 years following the submittal.

(xiii) To verify that the offset project data report is free of offset material misstatement, the offset verification team must make its own determination of GHG emission reductions or GHG removal enhancements relative to the project baseline using the data check(s) conducted pursuant to (d)(xi) of this subsection, and must determine whether there is reasonable assurance that the offset project data report does not contain an offset material misstatement, on a CO_2e basis. To assess conformance with this chapter and the applicable compliance offset protocol, the offset verification team must review the methods and factors used to develop the offset project data report for adherence to the requirements of this chapter and the applicable compliance offset protocol and ensure that all other requirements of this chapter are met.

(xiv) Issues log. The offset verification team must keep a log of any issues identified in the course of offset verification services that may affect determinations of offset material misstatement and nonconformance.

(A) The issues log must identify the section(s) of this chapter or the applicable compliance offset protocol related to the nonconformance, if applicable, and indicate whether the identified issues were corrected by the offset project operator or authorized project designee prior to completing the offset verification services.

(B) Any other concerns that the offset verification team has with the preparation of the offset project data report must be documented in the issues log. The issues log must indicate whether the identified issues could have any bearing on offset material misstatement or conformance.

(xv) Offset material misstatements.

(A) The offset verification team must conduct an assessment of offset material misstatement(s) related to net GHG emission reductions and GHG removal enhancements achieved in a given reporting period relative to the project baseline in that reporting period in metric tons of CO_2e.

(B) The offset verification team must determine whether the GHG emission reductions and GHG removal enhancements quantified and reported in the offset project data report contain an offset material misstatement using the following equation:

$$\textit{Percent error} = \frac{[\sum \textit{Discrepancies} + \sum \textit{Omissions} + \sum \textit{Misreporting}] \times 100\%}{\textit{Total Reported GHG Emission Reductions and GHG Removal Enhancements}}$$

Where:

"Discrepancies" means any differences between the reported value(s) for GHG sources, GHG sinks, and GHG reservoirs for the project baseline or project GHG emissions, and the verifier-calculated value(s) for a data source subject to data checks conducted by the offset verification team pursuant to subsection (4)(d)(xi) of this section. Any discrepancies so identified by the offset verification team must include a description of the positive or negative impact of the GHG source, GHG sink, or GHG reservoir on the total reported GHG emission reductions and GHG removal enhancements when input into the offset material misstatement equation.

"Omissions" means any GHG emission reductions or GHG removal enhancements associated with required GHG sources, GHG sinks, and GHG reservoirs for the project baseline or project GHG emissions, that the offset verification team concludes are required to be part of the offset project data report, but were not included by the offset project operator or authorized project designee in the offset project data report. Any omissions so identified by the offset verification team must include a description of the positive or negative impact of the omission on the total reported GHG emission reductions and GHG removal enhancements when input into the offset material misstatement equation.

"Misreporting" means any duplicative, incomplete, or otherwise inappropriate GHG emission reductions or GHG removal enhancements for required GHG sources, GHG sinks, and GHG reservoirs in the project baseline or project GHG emissions, that the offset verification team concludes should, or should not, be part of the offset project data report. Any misreporting so identified by the offset verification team must include a description of the positive or negative impact of the misreporting on the total reported GHG emission reductions and GHG removal enhancements when input into the offset material misstatement equation.

"Total reported GHG emission reductions and GHG removal enhancements" means the total net GHG emission reductions and GHG removal enhancements reported by the offset project operator or authorized project designee for an offset project data report relative to the project baseline for that offset project data report, in metric tons CO_2e.

(e) Offset verification services are not complete until ecology offset credits are issued for the GHG emission reductions and GHG removal enhancements reported in the offset project data report for which such verification services were provided. Offset verification services must include:

(i) Offset verification statement. Prior to completion of the offset verification services, the verification body must complete an

offset verification statement for each offset project data report for which offset verification services were provided and submit the offset verification statement to the offset project operator or authorized project designee as well as ecology or the offset project registry, as applicable, by the verification deadline.

(ii) Independent review. Before the offset verification statement is submitted pursuant to (e)(i) of this subsection, the verification body must ensure its offset verification services and the findings of the offset verification team are independently reviewed within the verification body by an independent reviewer who was not involved in providing offset verification services for that offset project data report.

(A) The independent reviewer must concur with the findings of the offset verification team before the offset verification statement can be issued.

(B) The independent reviewer may not be the offset project specific verifier, and may not accompany the offset verification team on any of their site visits. The independent reviewer may conduct a separate site visit, if necessary.

(C) The independent reviewer shall serve as the final check of the offset verification team's work to identify any significant concerns, including:

(I) Errors in planning;

(II) Errors in data sampling; and

(III) Errors in judgment by the offset verification team that are related to the draft offset verification statement.

(D) The independent reviewer must maintain independence from the offset verification services and may not make specific recommendations about how the offset verification services should be conducted, except as necessary to identify significant concerns pursuant to (e)(ii)(B) of this subsection.

(E) The independent reviewer will review documents applicable to the offset verification services provided by the verification team and identify any failure(s) to comply with the requirements of this chapter, the applicable compliance offset protocol, or the verification body's internal policies and procedures for providing offset verification services.

(iii) Document submissions. After the offset verification team completes its findings and the independent reviewer concurs with those findings, the verification body must submit final documentation as follows:

(A) Detailed verification report. The verification body must provide to the offset project operator or authorized project designee a detailed verification report for each offset project data report for which offset verification services were conducted. The verification body must make the detailed verification report available to ecology within 10 calendar days upon request. The detailed verification report must at a minimum include the following:

(I) The offset verification plan required by (d)(i) of this subsection;

(II) The detailed comparison of the data checks conducted during offset verification services, including the required narrative, as required by (d)(xi) of this subsection;

(III) The issues log documenting all issues identified in the course of offset verification activities and the issue resolutions, as required by (d)(xiv) of this subsection;

(IV) The calculations performed pursuant to (d)(xv) of this subsection, with enough detail to enable a third-party reviewer to understand the relationship(s) between the data checks and the offset material misstatement evaluation; and

(V) Any qualifying comments made regarding the findings of the offset verification team during the independent review of offset verification services required by (e)(ii) of this subsection.

(B) Offset verification statement. If the offset verification statement is being submitted to an offset project registry, then the verification body must submit the detailed verification report required by (e)(iii)(A) of this subsection to the offset project registry together with the offset verification statement. The detailed verification report must be submitted to the offset project operator or authorized project designee at the same time or before the offset verification statement is submitted to ecology or the offset project registry.

(I) The verification body must provide the offset verification statement to the offset project operator or authorized project designee as well as ecology or the offset project registry, as applicable, attesting whether the verification body has found the submitted offset project data report to be free of offset material misstatement, and whether the offset project data report is in conformance with the requirements of this chapter and the applicable compliance offset protocol.

(II) A compliance offset protocol may restrict the use of a qualified positive offset verification statement for certain project types, in which case the verification body must submit either a positive offset verification statement or an adverse offset verification statement. In the case of a qualified positive offset verification statement, when not restricted by the applicable compliance offset protocol, the verification body will qualify the offset verification statement to indicate any nonconformances allowed for a qualified positive offset verification statement contained within the offset project data report and attest that these nonconformances do not result in an offset material misstatement.

(III) The offset verification team must have a final discussion with the offset project operator or authorized project designee explaining the offset verification team's findings and notifying the offset project operator or authorized project designee of any unresolved issues noted in the issues log before the offset verification statement is finalized and submitted to ecology or the offset project registry, as applicable.

(IV) The lead verifier in the offset verification team must attest to ecology or the offset project registry, as applicable, in the offset verification statement that the offset verification team has carried out all offset verification services as required by this section.

(V) The independent reviewer who conducted the review of offset verification services and findings pursuant to (e)(ii) of this subsection must attest to his or her independent review on behalf of the verification body and his or her concurrence with the offset verification team's findings. In particular, the independent reviewer must attest in writing to ecology or the offset project registry, as applicable, in the offset verification statement, as follows: "I certify under penalty of perjury under the laws of the state of Washington that the offset verification team has carried out all offset verification services as required by the applicable Compliance Offset Protocol and

this chapter, and the findings are true, accurate, and complete and have been independently reviewed by an independent reviewer."

(C) Prior to the verification body providing an adverse offset verification statement to ecology or the offset project registry, as applicable, the offset project operator or authorized project designee must be provided at least 10 business days to modify the offset project data report to correct any offset material misstatement(s) or nonconformance(s) identified by the offset verification team. The modified offset project data report and offset verification statement must be submitted to ecology or the offset project registry, as applicable, by the verification deadline, unless the offset project operator or authorized project designee obtains an extension of the deadline from ecology.

(D) If the offset project operator or authorized project designee and the verification body cannot reach agreement on modifications to the offset project data report that result in a positive offset or qualified positive offset verification statement due to a disagreement about the requirements of this chapter or the applicable compliance offset protocol, the offset project operator or authorized project designee may petition ecology to make a decision as to the verifiability of the submitted offset project data report.

(E) If ecology determines that the offset project data report does not meet the standards and requirements specified in this chapter or in the applicable compliance offset protocol, the offset project operator or authorized project designee must provide all necessary additional information within 30 calendar days of ecology's determination. Ecology will review the additional information and notify the offset project operator or authorized project designee and verification body of its final determination. In reverifying a revised offset project data report, the verification body and offset verification team shall be subject to the requirements of subsection (2)(c)(xviii)(A) through (D) of this section and must submit the revised offset verification statement to ecology or the offset project registry, as applicable, within 15 calendar days.

(iv) If ecology or the offset project registry, as applicable, determines that the detailed verification report submitted pursuant to (e)(iii)(A) of this subsection does not contain sufficient information to substantiate the attestations in the offset verification statement, then the verification body must submit a revised detailed verification report and a revised offset verification statement to ecology or the offset project registry, as applicable, within 15 calendar days of such a determination.

(v) Upon submission of the offset verification statement to ecology or the offset project registry, as applicable, the offset project data report must be considered final and no further changes may be made by the offset project operator or authorized project designee unless the offset project registry or ecology requests any changes as part of their review. Once ecology offset credits are issued for the offset project data report, all offset verification requirements of this chapter shall be considered complete for the applicable offset project data report.

(vi) If ecology finds that a of conflict of interest existed between a verification body and an offset project operator or authorized project designee to which the verification body provided its services, or if an offset project data report that received a positive offset or qualified positive offset verification statement subsequently fails an ecology audit, ecology may set aside the positive offset or qualified

positive offset verification statement submitted by the verification body and require the offset project operator or authorized project designee to have the offset project data report reverified by a different verification body within 90 calendar days of such a finding. Upon request by ecology or the offset project registry, as applicable, the offset project operator or authorized project designee must provide the data used to generate an offset project data report, including all data available to the offset verification team in the conduct of offset verification services, within 10 business days of the request.

(vii) Upon request by ecology or the offset project registry, as applicable, the verification body must provide the detailed verification report given to the offset project operator or authorized project designee, as well as the sampling plan, contracts for offset verification services, and any other supporting documentation. All documentation must be provided by the verification body to ecology or the offset project registry, as applicable, within 10 business days of the request.

(viii) Upon written notification by ecology the verification body and its staff must be available for an offset verification services audit regarding the offset verification services it provided for an offset project listed with ecology or an offset project registry using a compliance offset protocol.

(5) In addition to meeting the offset verification requirements described in this section, offset project operators or authorized project designees must ensure the GHG emission reductions and GHG removal enhancements resulting from an offset project meet any additional verification requirements set forth in the applicable compliance offset protocol, if any, for an offset project of that type.

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Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 173-446-540 Offset verifier and verification body accreditation. Accreditation of offset verification bodies and offset verifiers for the purpose of verifying offset project data reports under WAC 173-446-535 must be achieved separately from accreditation for the purpose of verifying reports submitted under chapter 173-441 WAC.

(1) An offset verifier or verification body must meet the following accreditation requirements to provide offset verification services to verify GHG emission reductions and GHG removal enhancements for offset projects listed pursuant to this chapter:

(a) Registration as a third-party verifier with ecology. Registration is required for both the offset verification body and all individuals performing verification services for the verification body.

(b) Demonstration to ecology's satisfaction that the offset verification body has sufficient knowledge of the relevant methods and protocols in this chapter. Certification may be limited to certain types or sources of emissions.

(c) Active accreditation or recognition as a third-party verifier under California ARB's offset verification program or another offset verification standard approved by ecology.

(2) Ecology may modify, suspend, or revoke the accreditation of an offset verification body or a member of the offset verification team based on the accuracy of their signed verification statements, conformance with conflict of interest provisions, or compliance with other requirements of this section.

(3) Accreditation of offset verification bodies and offset verifiers for the purpose of verifying offset project data reports under WAC 173-446-535 must be achieved separately from accreditation for the purpose of verifying reports submitted under chapter 173-441 WAC.

(4) An ecology-accredited offset verification body must make itself and its personnel available for an offset verification services audit by ecology.

(5) An ecology-accredited offset verification body may employ or contract with technical experts who are not accredited by ecology to assist with offset verification services, subject to the following requirements:

(a) All technical experts must be listed on the notice of offset verification services and must be included in the evaluation for conflicts of interest required by WAC 173-446-545.

(b) All technical experts must be under the direct supervision of an ecology-accredited offset verifier while performing verification activities.

(c) Technical experts may assist in underlying offset verification tasks, but may not be responsible for completing any offset verification service(s).

(6) "Direct supervision," for purposes of this section, means daily, on-site, close contact with an ecology-accredited verifier acting as a supervisor to a technical expert during a site visit, who is able to respond to the needs of the technical expert in real time. During a site visit, the supervisor must be physically present, or within four hours travel time and available to respond to the needs of the technical expert.

(7) "Technical expert," for purposes of this section, means a natural person, who is not an ecology-accredited verifier, and who has demonstrated expertise in a particular technical area for which the natural person was hired by the verification body to assist with underlying offset verification task(s) that require a particular expertise. A technical expert may be an employee of the verification body working to get the required experience to become an ecology-accredited verifier.

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NEW SECTION

WAC 173-446-545 Conflict of interest requirements for verification bodies and offset verifiers for verification of offset project data reports. (1) The conflict of interest provisions of this section shall apply to verification bodies, lead verifiers, and offset verifiers accredited by ecology to perform offset verification services for offset project operators, and authorized project designees, if applicable, as well as any other member(s) of the offset verification team and any technical expert(s) used by the offset project operator or authorized project designee, if applicable.

(a) "Member," for the purposes of this section, means any officer, employee, contractor, or subcontractor of the verification body or related parties of the verification body. "Member" also includes any individual who has a majority equity share in the verification body or its related parties.

(b) "Related party," for the purposes of this section, means any direct parent company, direct subsidiary, or sister company.

(c) "Nonoffset verification services," for purposes of this section, do not include independent, third-party certification or verification services which have been provided for ecology or any other voluntary or mandatory program; such certification and verification services may be counted as offset verification services for the purposes of this section.

(2) The potential for a conflict of interest must be deemed to be high where:

(a) The verification body and the offset project operator, including its authorized project designee, if applicable, and its technical consultant(s), share any senior management staff or board of directors membership; or

(b) Any of the senior management staff of the offset project operator, including its authorized project designee, if applicable, and its technical consultant(s), have been employed by the verification body, or vice versa, within the previous three years; or

(c) Within the previous five years, any member of the verification body or any related party, including any member of the offset verification team, has provided to the offset project operator, its authorized project designee, if applicable, or its technical consultant(s) any of the following nonoffset verification services:

(i) Designing, developing, implementing, reviewing, or maintaining an inventory or offset project information or data management system for air emissions, unless such services were part of providing offset verification services; or

(ii) Developing a forest management plan or timber harvest plan, unless such development was part of providing offset verification services;

(iii) Developing GHG emission factors or other GHG-related engineering analysis, including developing or reviewing a Washington State Environmental Policy Act (SEPA) GHG analysis that includes offset project specific information;

(iv) Designing energy efficiency, renewable power, or other projects which explicitly identify GHG emission reductions and/or GHG removal enhancements as a benefit;

(v) Designing, developing, implementing, internally auditing, consulting, or maintaining an offset project resulting in GHG emission reductions and/or GHG removal enhancements;

(vi) Owning, buying, selling, trading, or retiring shares, stocks, or ecology offset credits or registry offset credits from the offset project;

(vii) Dealing in or being a promoter of ecology offset credits or registry offset credits on behalf of an offset project operator, its authorized project designee, if applicable, or its technical consultant(s);

(viii) Preparing or producing GHG-related manuals, handbooks, or procedures specifically for the offset project operator, its authorized project designee, if applicable, or its technical consultant(s);

(ix) Appraisal services of carbon or GHG liabilities or assets;

(x) Brokering in, advising on, or assisting in any way in carbon or GHG-related markets;

(xi) Developing any health, environment or safety policies for the offset project operator, its authorized project designee, if applicable, or its technical consultant(s);

(xii) Bookkeeping or other services related to accounting records or financial statements;

(xiii) Any services related to information systems, including International Organization for Standardization 14001 Certification for Environmental Management (ISO 14001 Certification), unless those systems will not be reviewed as part of the offset verification process;

(xiv) Appraisal and valuation services, both tangible and intangible;

(xv) Fairness opinions and contribution-in-kind reports in which the verification body has provided its opinion on the adequacy of consideration in a transaction, unless the information reviewed in formulating the offset verification statement will not be reviewed as part of the offset verification services;

(xvi) Any actuarially oriented advisory services involving the determination of amounts recorded in financial statements and related accounts;

(xvii) Any internal audit service that has been outsourced by the offset project operator, its authorized project designee, if applicable, or its technical consultant(s) that relates to the offset project operator's, authorized project designee's, if applicable, and their technical consultant(s)' internal accounting controls, financial systems, or financial statements, unless the systems and data reviewed during those services, as well as the result of those services will not be part of the offset verification process;

(xviii) Any services related to internal accounting controls, financial systems, or financial statements, unless the systems and data reviewed during those services, as well as the result of those services will not be part of the offset verification process;

(xix) Acting as a broker-dealer (registered or unregistered), promoter, or underwriter on behalf of the offset project operator, its authorized project designee, if applicable, or its technical consultant(s);

(xx) Any legal services; and

(xxi) Expert services provided to the offset project operator, its authorized project designee, if applicable, or its technical consultant(s) or a legal representative for the purpose of advocating for the interests of the offset project operator, its authorized project designee's, if applicable, or its technical consultant(s) in litigation or in a regulatory or administrative proceeding or investigation, unless solely providing factual testimony; and

(d) Within the previous three years, any staff member of the verification body or any related entity or any member of the offset verification team has provided to an ozone depleting substances destruction facility a third-party certification to meet the requirements set forth by the United Nations Environment Programme Ozone Secretariat's Technology and Assessment Panel (TEAP) for ozone depleting substances destruction;

(e) Any member of the verification body provides any type of incentive to an offset project operator, its authorized project designee, if applicable, or its technical consultant(s) to secure an offset verification services contract.

(f) Any member of the verification body has previously provided offset verification services for the offset project operator, its authorized project designee, if applicable, or its technical consultant(s), except within the time periods in which the offset project operator, its authorized project designee, if applicable, and its technical consultant(s) are allowed to use the same verification body pursuant to WAC 173-446-535 (1) through (3).

(3) The potential for a conflict of interest must be deemed to be low where:

(a) No potential for a conflict of interest is identified; and

(b) Any nonoffset verification services provided by any member of the verification body to the offset project operator, its authorized project designee, if applicable, or its technical consultant(s) within the last five years are valued at less than 20 percent of the fee for the proposed offset verification services, except where a medium conflict of interest based on personal, employment, or familial relationships is identified under subsection (4)(b) of this section.

(4) The potential for a conflict of interest must be deemed to be medium where:

(a) The potential for a conflict of interest is not deemed to be either high or low; or

(b) There are any instances of personal, employment, or familial relationships between a member of the verification body and a member of the offset project operator, its authorized project designee, if applicable, or its technical consultant(s). For purposes of this section only, "employment" means the condition of having been paid for work as documented in a W-2 form.

(5) Conflict of interest submittal requirements for accredited verification bodies.

(a) Mitigation plan. If a verification body identifies a medium potential for conflict of interest pursuant to subsection (4) of this section and intends to provide offset verification services for the offset project operator, its authorized project designee, if applicable, or its technical consultant(s), the verification body must submit, in addition to the self-evaluation specified in (b) of this subsection, a plan to avoid, neutralize, or mitigate the potential conflict of interest. At a minimum, the conflict of interest mitigation plan must include:

(i) A demonstration that any members of the verification body with potential conflicts of interest have been removed and insulated from the offset verification team that will be providing verification services for the offset project;

(ii) An explanation of any changes to the organizational structure of the verification body that were made to remove the potential conflict(s) of interest.

(iii) A demonstration that any organizational unit with potential conflicts of interest has been divested or moved into an independent party; and

(iv) Any other circumstance that specifically addresses other sources for potential conflicts of interest.

(b) Self-evaluation. Before providing any offset verification services under this chapter, a verification body must submit to the offset project operator, its authorized project designee, if applicable, ecology, and the offset project registry, a self-evaluation of the potential for any conflicts of interest that the verification body, its members, or any subcontractors performing offset verification services may have with the offset project operator, its author-

ized project designee, if applicable, or its technical consultant(s) for which it will perform offset verification services. Offset verification services shall not commence prior to approval of the conflict of interest self-evaluation by ecology or the offset project registry, as applicable. The self-evaluation must include the following:

(i) Identification of whether the potential for conflict of interest is high, low, or medium based on factors specified in this section;

(ii) Identification of whether any member of the offset verification team has previously provided offset verification services for the offset project operator, its authorized project designee, if applicable, or its technical consultant(s), and, if so, the years in which such offset verification services were provided;

(iii) Identification of whether any member of the offset verification team or related party has engaged in any nonoffset verification services of any nature with the offset project operator, its authorized project designee, if applicable, or its technical consultant(s), either within or outside the state of Washington during the previous five years. If such nonoffset verification services have been provided during the previous five years, the following information must also be submitted:

(A) Identification of the nature and location of the work performed for the offset project operator, its authorized project designee, if applicable, or its technical consultant(s) and whether the work is similar to the type of work to be performed during offset verification; and

(B) The nature of past, present, or future relationship(s) with the offset project operator, its authorized project designee, if applicable, or its technical consultant(s), including:

(I) Instances when any member of the offset verification team has performed or intends to perform work for the offset project operator, its authorized project designee, if applicable, or its technical consultant(s);

(II) Identification of whether work is currently being performed for the offset project operator, its authorized project designee, if applicable, or its technical consultant(s), and if so, the nature of the work;

(III) The value of the work performed for the offset project operator, its authorized project designee, if applicable, or its technical consultant(s) in the last five years, in dollars;

(IV) Whether any member of the offset verification team has any contracts or other arrangements to perform work for the offset project operator, its authorized project designee, if applicable, or its technical consultant(s) or a related party; and

(V) The value of the work related to GHG emission reductions and GHG removal enhancements the offset verification team or a member thereof has performed for the offset project operator, its authorized project designee, if applicable, or its technical consultant(s) or related parties in the last five years, in dollars;

(iv) Explanation of how the amount and nature of work previously performed is such that the credibility and lack of bias of any member of the offset verification team should not be under question;

(v) A list of names of the staff that would perform offset verification services for the offset project operator and authorized project designee, if applicable, and a description of any instances of personal, employment, or familial relationships identified under sub-

section (4)(b) of this section that potentially represent a conflict of interest;

(vi) Identification of any other circumstances known to the verification body, or to the offset project operator, its authorized project designee, if applicable, or its technical consultant(s) that could result in a conflict of interest; and

(vii) Attestation, in writing, to ecology as follows: "I certify under penalty of perjury of the laws of the state of Washington the information provided in the Conflict of Interest self-evaluation is true, accurate, and complete."

(6) Approval of conflict of interest submittals. Ecology or the offset project registry, as applicable, must review the self-evaluation submitted by the verification body pursuant to subsection (5)(b) of this section and determine whether the verification body is authorized to perform the offset verification services for the offset project operator and authorized project designee, if applicable.

(a) Ecology or the offset project registry, as applicable, has 30 calendar days after submission of the self-evaluation to make a determination on whether to accept or deny the conflict of interest submittal and to notify the verification body as to whether it may proceed with the offset verification services for the offset project operator and authorized project designee, if applicable.

(i) If ecology or an offset project registry requests revisions to the conflict of interest self-evaluation prior to approval, the verification body must resubmit the revised conflict of interest self-evaluation within 10 business days of such request, or if there is a reason the verification body cannot submit the revisions within 10 business days, the verification body must communicate in writing to ecology or the offset project registry, as applicable, the reasons why and get approval from ecology or the offset project registry for an extension.

(ii) If ecology or the offset project registry finds that the verification body or any member of the offset verification team meets any of the criteria set forth in subsection (2) of this section, ecology or the offset project registry, as applicable, shall determine that there is a high potential for conflict of interest, and the proposed offset verification services may not proceed.

(iii) If ecology or the offset project registry determines that there is a low potential for conflict of interest pursuant to subsection (3) of this section, the proposed offset verification services may proceed.

(iv) If ecology or the offset project registry determines that the verification body or any member of the offset verification team have a medium potential for conflict of interest pursuant to subsection (4) of this section, ecology or the offset project registry, as applicable, shall evaluate the conflict of interest mitigation plan submitted by the verification body pursuant to subsection (5)(a) of this section, and may request additional information from the verification body to complete the determination of whether the proposed offset verification services may proceed.

(v) In determining whether the proposed offset verification services may proceed, ecology or the offset project registry, as applicable, may consider factors including, but not limited to, the nature of previous work performed, the current and past relationship(s) between the verification body, related parties, and its subcontractors with the offset project operator and authorized project designee, if applicable, and any technical consultant(s) used by the offset project op-

erator or authorized project designee, and related parties, and the cost of the offset verification services to be performed. If ecology or the offset project registry determines that these factors when considered in combination demonstrate an acceptable level of potential for conflict of interest, ecology or the offset project registry, as applicable, will authorize the verification body to proceed with the proposed offset verification services.

(b) If the offset project was listed with an offset project registry, the conflict of interest self-evaluation acceptance or denial notification will be provided by the offset project registry. Within 15 calendar days of approving a conflict of interest self-evaluation, the offset project registry must notify ecology in writing of the date on which it approved the self-evaluation.

(c) When a conflict of interest self-evaluation is updated before or during offset verification services to add a verification team member, ecology or the offset project registry, as applicable, must approve the updated self-evaluation before any new team member may participate in offset verification services. If the offset project was listed with an offset project registry, within 15 calendar days of approving an updated self-evaluation, the offset project registry must notify ecology in writing of the date on which it approved the updated self-evaluation.

(7) Monitoring conflict of interest situations.

(a) After commencement of offset verification services, the verification body must monitor and immediately make full disclosure, in writing, to ecology or the offset project registry, as applicable, regarding any potential for a conflict of interest that arises for an offset project using a compliance offset protocol. This disclosure must include a description of the actions that the verification body has taken or proposes to take to avoid, neutralize, or mitigate the potential for a conflict of interest.

(b) The verification body must continue to monitor arrangements or relationships that may present the potential for a conflict of interest for a period of at least one year after the completion of offset verification services for an offset project using a compliance offset protocol.

(i) During that one-year period, if the verification body or any verification team member enters into any contract with the offset project operator or its authorized project designee, if applicable, related to an offset project for which the verification body has previously provided offset verification services, the verification body must notify ecology or the offset project registry, as applicable, of the contract and the nature of the work to be performed within 30 calendar days of entering into such contract.

(ii) Within 30 business days after receipt of such notification, ecology or the offset project registry, as applicable, will evaluate the level of potential for conflict of interest using the criteria set forth in subsections (2) through (4) of this section, and will determine whether the offset project operator and its authorized project designee, if applicable, must reverify their offset project data report, and whether accreditation revocation is warranted.

(c) The verification body must notify ecology or the offset project registry, as applicable, within 30 calendar days of any emerging potential for conflicts of interest during the time offset verification services are being provided for an offset project using a compliance offset protocol.

(i) If ecology or the offset project registry determines that an emerging potential for conflict of interest disclosed by the verification body is low, or that it is medium but can be adequately mitigated, then the verification body meets the conflict of interest requirements to continue to provide offset verification services for the offset project operator and its authorized project designee, if applicable, and will not be subject to suspension or revocation of accreditation on the basis of conflict of interest.

(ii) If ecology or the offset project registry determines that an emerging potential for conflict of interest disclosed by the verification body is medium or high, and that this risk cannot be adequately mitigated, then the verification body will not be able to continue to provide offset verification services for the offset project operator or its authorized project designee, if applicable, and may be subject to the suspension or revocation of accreditation by ecology on the basis of conflict of interest.

(d) The verification body must report to ecology or the offset project registry, as applicable, any changes in its organizational structure, including mergers, acquisitions, or divestitures, for one year after completion of offset verification services.

(e) Ecology may void a positive offset or qualified positive offset verification statement if it discovers a potential for conflict of interest has arisen for any member of the offset verification team. In such a case, the offset project operator and its authorized project designee, if applicable, shall be provided 90 calendar days to complete reverification.

(f) If the verification body or its subcontractor(s) are found to have violated the conflict of interest requirements of this chapter, ecology may rescind accreditation of the body, its verifier staff, or its subcontractor(s) for any appropriate period of time.

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NEW SECTION

WAC 173-446-550 Issuance of registry offset credits. (1) One registry offset credit, which represents one metric ton of CO_2e for a direct GHG emission reduction or direct GHG removal enhancement, will be issued pursuant to this section only if:

(a) An offset project registry has listed the offset project;

(b) The GHG emission reductions or GHG removal enhancements were issued a positive offset or qualified positive offset verification statement; and

(c) An offset project registry has received a positive offset or qualified positive offset verification statement issued and attested to by an ecology-accredited verification body for the offset project data report for which registry offset credits would be issued.

(2) Within 45 calendar days of receiving a positive offset or qualified positive offset verification statement, the offset project registry will determine whether the information submitted is complete, whether the GHG emission reductions and GHG removal enhancements meet the requirements of this chapter and the applicable compliance offset protocol, and whether the positive offset or qualified positive offset verification statement meets the requirements WAC 173-446-535.

(3) Determination for timing and duration of initial crediting periods for offset projects submitted through an offset project registry.

(a) The initial crediting period will begin with the date that the first verified GHG emission reductions and GHG removal enhancements occur, according to the first positive offset or qualified positive offset verification statement that is received by an offset project registry, unless otherwise specified in the applicable compliance offset protocol.

(b) An early action offset project that transitioned pursuant to the program for recognition of early action offset credits is considered to have begun its initial crediting period on the date that the first verified GHG emission reductions and GHG removal enhancements under the applicable compliance offset protocol took place according to the first positive offset or qualified positive offset verification statement that was received by the offset project registry.

(4) Determination for timing and duration of renewed crediting for offset projects submitted through an offset project registry. A renewed crediting period will begin the day after the conclusion of the prior crediting period.

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NEW SECTION

WAC 173-446-555 Issuance of ecology offset credits. (1) One ecology offset credit, which represents one metric ton of CO_2e for a direct GHG emission reduction or direct GHG removal enhancement, will be issued only for a GHG emission reduction or GHG removal enhancement that occurs during a reporting period. One ecology offset credit will be issued for each metric ton of CO_2e only if:

(a) Ecology or an offset project registry has listed the offset project;

(b) The GHG emission reductions and GHG removal enhancements were issued a positive offset or qualified positive offset verification statement;

(c) Ecology or an offset project registry has received a positive offset or qualified positive offset verification statement issued and attested to by an ecology accredited verification body for the offset project data report for which registry offset credits were issued if the offset project was submitted for listing with an offset project registry, or for which ecology offset credits would be issued; and

(d) The issued ecology offset credits would not immediately be subject to invalidation.

(2) Requirements for offset projects submitted through an offset project registry seeking issuance of ecology offset credits. The offset project operator or its authorized project designee, if applicable, must submit a request for issuance of ecology offset credits to ecology for each offset project data report for which they are seeking issuance of ecology offset credits. Such a request must identify which holding account(s) the ecology offset credits should be placed into and how many ecology offset credits will be placed into each holding account, if applicable. The offset project operator or authorized project designee may request that ecology offset credits be placed in-

to the holding account of any party not prohibited from holding compliance instruments under this chapter.

(a) An offset project operator or authorized project designee may request that only a portion of the eligible GHG emission reductions and GHG removal enhancements for the applicable reporting period be issued ecology offset credits in the request for issuance.

(b) If the offset project was listed by an offset project registry, the request for issuance of ecology offset credits may not be provided to ecology until the offset project registry has issued registry offset credits for the applicable offset project data report(s).

(3) Within 45 calendar days of receiving a positive offset or qualified positive offset verification statement, ecology will determine whether the information submitted is complete, whether GHG emission reductions and GHG removal enhancements meet the requirements of this chapter and the applicable compliance offset protocol, and whether the positive offset or qualified positive offset verification statement meets the requirements of WAC 173-446-535.

(4) Before ecology issues an ecology offset credit for GHG emission reductions and GHG removal enhancements achieved by an offset project in a reporting period, the primary account representative or alternate account representative must attest, in writing, to ecology as follows:

(a) "I certify under penalty of perjury under the laws of the state of Washington the GHG emission reductions or GHG removal enhancements for (project) from (date) to (date) have been measured in accordance with the (applicable Compliance Offset Protocol) and all information required to be submitted to Ecology is true, accurate, and complete.";

(b) "I understand that the offset project activity(ies) and implementation of the offset project must be in accordance with all applicable local, regional, state, and national environmental and health and safety regulations that apply in the jurisdiction in which the offset project is located. I understand that offset projects are not eligible to receive Ecology or registry offset credits for GHG emission reductions and GHG removal enhancements that are not in compliance with the requirements of this chapter.";

(c) "I certify under penalty of perjury under the laws of the state of Washington that all information provided to Ecology in support of issuance of Ecology offset credits is true, accurate, and complete."; and

(d) "I certify under penalty of perjury under the laws of the state of Washington that the GHG emission reductions and GHG removal enhancements for which I am seeking Ecology Offset Credits have not been issued any offset credits or been used for any GHG mitigation requirements in any other voluntary or mandatory program, except, if applicable, an Offset Project Registry pursuant to this chapter."

(e) Except as provided in (f) of this subsection: "I understand I am voluntarily participating in the Washington cap and invest program, and by doing so, I am now subject to all regulatory requirements and enforcement mechanisms of this program and subject myself to the jurisdiction of Washington as the exclusive venue to resolve any and all disputes arising from the enforcement of provisions in this chapter.";

(f) For federally recognized tribes who elect to participate as offset project operators pursuant to RCW 70A.65.090(5), the following attestation may be submitted in lieu of the attestation required by (e) of this subsection: "I understand I am voluntarily participating in this program. The tribal government on whose behalf I am authorized

to make this submission has entered into a written agreement, negotiated on an individual basis between ecology and the tribal government, that establishes a dispute resolution process and/or other compliance mechanisms in order to ensure the enforceability of all program requirements applicable to the tribe in its role as an offset project operator."

(5) Determination for timing and duration of initial crediting periods for offset projects submitted through ecology. The initial crediting period will begin with the date that the first verified GHG emission reductions and GHG removal enhancements occur, according to the first positive offset or qualified positive offset verification statement that is received by ecology, unless otherwise specified in the applicable compliance offset protocol.

(6) Determination for timing and duration of renewed crediting for offset projects submitted through ecology. A renewed crediting period will begin the day after the conclusion of the prior crediting period.

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NEW SECTION

WAC 173-446-560 Process for issuance of ecology offset credits. (1) Ecology will issue ecology offset credits for GHG emission reductions and GHG removal enhancements achieved in a reporting period by an offset project that meets the requirements of WAC 173-446-555 (1) and (2) to the ecology issuance account, no later than 15 calendar days after ecology makes a determination pursuant to WAC 173-446-555(3) provided that all required attestations set forth in WAC 173-446-555(4) have been received by ecology prior to its determination.

(2) Change of listing status at ecology. When ecology issues an ecology offset credit for GHG emission reductions and GHG removal enhancements achieved by an offset project, the listing status for that offset project will be changed from "active registry project" to "active ecology project," or from "active registry renewal" to "active ecology renewal," at the offset project registry and ecology.

(3) Notice of issuance of ecology offset credits. Not later than five calendar days after ecology issues an ecology offset credit, ecology will notify the offset project operator or authorized project designee of the issuance of ecology offset credits.

(4) Requests for additional information. Ecology may request additional information about offset projects that are listed by an offset project registry and seeking issuance of ecology offset credits.

(a) If ecology determines the information submitted by the offset project operator or authorized project designee is incomplete, ecology will notify the offset project operator or authorized project designee within 15 calendar days of its determination of incompleteness and specify the additional information needed.

(b) Ecology may request any of the required additional information as specified under (a) of this subsection from the offset project operator, authorized project designee, offset project registry, or verification body before issuing ecology offset credits. The offset project operator, authorized project designee, offset project regis-

try, or verification body, as applicable, must submit the requested information to ecology within 10 calendar days of ecology's request.

(c) If ecology determines the information submitted by the offset project operator or authorized project designee does not meet the requirements for issuance of ecology offset credits, then ecology may deny issuance of ecology offset credits. The offset project operator or authorized project designee may petition ecology within 10 calendar days of such denial for a review of additional information. Such a petition may also respond to any issues that would prevent the issuance of ecology offset credits.

(d) Ecology must make a final determination within 30 calendar days of receiving a request under (c) of this subsection and may request additional information from the offset project operator, authorized project designee, verification body, or offset project registry in support of its review.

(5) A registry offset credit issued by an offset project registry must be removed or canceled by the offset project registry within one year after ecology issues an ecology offset credit for that offset project pursuant to this section, such that the registry offset credit is no longer available for use in transactions on the offset project registry system.

(a) Within five business days of the removal or cancellation of such registry offset credits, the offset project registry must provide proof to ecology that the registry offset credits have been permanently removed or canceled from the offset project registry system.

(b) If registry offset credits are not canceled within one year, ecology will cancel the ecology offset credits. Ecology offset credits that are canceled pursuant to this subsection may not be reissued.

(c) Ecology will transfer ecology offset credits into the holding account(s) of the offset project operator, authorized project designee, or any other third party designated by the offset project operator or authorized project designee to receive such ecology offset credits, within 15 business days of the offset project registry providing proof to ecology that the registry offset credits have been permanently removed or canceled from the offset project registry system.

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NEW SECTION

WAC 173-446-565 Registration of ecology offset credits. Ecology will register an ecology offset credit by:

(1) Creating a unique ecology serial number and assigning it to the ecology offset credit; and

(2) Transferring the ecology offset credit to the holding account(s) of the listed offset project operator, authorized project designee, or another third party as requested by the offset project operator or authorized project designee to receive ecology offset credits, unless otherwise required by a forestry offset reversal under WAC 173-446-570.

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NEW SECTION

WAC 173-446-570 Forestry offset reversals. (1) For forest sequestration projects, a portion of ecology offset credits issued to the offset project operator will be placed by ecology into the forest buffer account.

(a) The number of ecology offset credits that must be placed in the forest buffer account shall be determined as set forth in the applicable version of the compliance offset protocol.

(b) Ecology offset credits will be transferred to the forest buffer account by ecology at the time of ecology offset credit registration under WAC 173-446-565.

(c) If a forest offset project is originally listed by an offset project registry, an equal number of registry offset credits must be removed or canceled by the offset project registry, such that those registry offset credits are no longer available for use in transactions on the offset project registry system, and issued by ecology for placement in the forest buffer account.

(d) The ecology offset credits placed into the forest buffer account must correspond to the reporting period for which the ecology offset credits are issued.

(2) Unintentional reversals. If there has been an unintentional reversal, the offset project operator or authorized project designee must provide written notification of the reversal to ecology or the offset project registry, as applicable, and provide an explanation of the nature of the unintentional reversal within 30 calendar days of its discovery.

(a) In the event of an unintentional reversal, the offset project operator or authorized project designee shall provide in writing to ecology or the offset project registry, as applicable, a completed verified estimate of current carbon stocks within the offset project boundary within 23 months of the discovery of the unintentional reversal.

To determine the verified estimate of current carbon stocks, a full offset verification must be conducted, including a site visit. The verified estimate may be submitted as a separate offset verification service, or incorporated into a chapter of the detailed verification report prepared under WAC 173-446-535 (4)(e)(iii) when offset verification services are conducted for an offset project data report.

(b) After an unintentional reversal, the offset project operator or authorized project designee does not need to submit an offset project data report until the required verified estimate of current carbon stocks within the offset project boundary is completed.

(c) If ecology determines that there has been an unintentional reversal, and ecology offset credits have been issued to the offset project, ecology will retire a number of those ecology offset credits from the forest buffer account. Ecology will retire the number of ecology offset credits equal to the number of metric tons CO_2e reversed for all reporting periods.

(3) Intentional reversals. Requirements for intentional reversals are as follows:

(a) If an intentional reversal occurs, the offset project operator or authorized project designee shall, within 30 calendar days of the intentional reversal:

(i) Provide notice, in writing, to ecology or the offset project registry, as applicable, of the intentional reversal; and

(ii) Provide a written description and explanation of the nature of the intentional reversal to ecology or the offset project registry, as applicable.

(b) Within one year of the occurrence of an intentional reversal, the offset project operator or authorized project designee shall submit to ecology or the offset project registry, as applicable, a completed verified estimate of current carbon stocks within the offset project boundary.

To determine the verified estimate of current carbon stocks, a full offset verification must be conducted, including a site visit. The verified estimate may be submitted as a separate offset verification services, or incorporated into a chapter of the detailed verification report prepared under WAC 173-446-535 (4)(e)(iii) when offset verification services are conducted for an offset project data report.

(c) If an intentional reversal occurs from a forest offset project, and ecology offset credits have been issued to the offset project, the current or most recent (in the case of an offset project after the final crediting period) forest owner(s) must submit to ecology for placement in the retirement account a number of valid ecology offset credits or other approved compliance instruments within six months of notification by ecology. The forest owner(s) must turn in the number of such valid compliance instruments equal to the number of metric tons CO_2e reversed for all reporting periods.

(d) Notification by ecology of the requirement to submit compliance instruments under (c) of this subsection will occur after the verified estimate of carbon stocks has been submitted to ecology, or after one year has elapsed since the occurrence of the reversal if the offset project operator or authorized project designee fails to submit the verified estimate of carbon stocks.

(e) If the forest owner(s) fails to submit the required number of valid ecology offset credits or other approved compliance instruments to ecology within six months of notification by ecology under (d) of this subsection, ecology will retire a number of ecology offset credits equal to the difference between the number of metric tons of CO_2e determined pursuant to this section and the number of retired approved compliance instruments from the forest buffer account, and the forest owner(s) will be subject to enforcement action under WAC 173-446-610. Each ecology offset credit retired from the forest buffer account pursuant to this subsection will constitute a separate violation.

(f) Early project terminations. If a project termination, as defined in the applicable compliance offset protocol, occurs to a forest offset project, and ecology offset credits have been issued to the offset project, the current or most recent (in the case of an offset project after the final crediting period), forest owner(s) must submit to ecology for placement in the retirement account the number of valid ecology offset credits or other approved compliance instruments equal to the number of ecology offset credits issued to the offset project for each reporting period, except for improved forest management forest offset projects. If the project is an improved forest management forest offset project, the number of metric tons CO_2e reversed must be multiplied by the compensation rate in the applicable compliance offset protocol.

(i) Ecology will notify the forest owner(s) of how many ecology offset credits must be replaced with valid compliance instruments.

(ii) The forest owner(s) must submit to ecology for placement in the retirement account a valid ecology offset credit or another ap-

proved compliance instrument for each ecology offset credit required to be replaced within six months of ecology's retirement.

(iii) If the forest owner(s) fails to submit the required number of valid ecology offset credits or other approved compliance instruments to ecology within six months of ecology's notification, ecology will retire the number of ecology offset credits equal to the difference between the number of metric tons of CO_2e determined pursuant to this section and the number of retired approved compliance instruments from the forest buffer account, and the forest owner(s) will be subject to enforcement action under WAC 173-446-610. Each ecology offset credit retired from the forest buffer account pursuant to this subsection will constitute a separate violation.

(4) Disposition of forest sequestration projects after a reversal. If an unintentional or intentional reversal lowers the forest offset project's actual standing live carbon stocks below its project baseline standing live carbon stocks, the forest offset project will be terminated by ecology or the offset project registry, as applicable.

(a) If the forest offset project is terminated due to an unintentional reversal, ecology will retire from the forest buffer account the number of ecology offset credits equal to the total number of ecology offset credits issued pursuant to WAC 173-446-555.

(b) If the forest offset project is terminated due to an unintentional reversal, another offset project may be subsequently initiated and submitted to ecology or an offset project registry for listing within the same offset project boundary.

(c) If the forest offset project has experienced an unintentional reversal and its actual standing live carbon stocks are still above the approved baseline levels, it may continue without termination as long as the unintentional reversal has been compensated by the forest buffer account pursuant to subsection (2)(b) of this section. The offset project operator or authorized project designee must continue contributing to the forest buffer account in future years.

(d) If the forest offset project is terminated due to any reason except an unintentional reversal, new offset projects may not be initiated within the same offset project boundary, unless otherwise specified in the applicable compliance offset protocol.

(5) Change of forest owner or offset project operator. When a forest owner or offset project operator changes, whether by merger, acquisition, or any other means, the successor forest owner or offset project operator, after the change in ownership, as applicable, is expressly liable for all obligations of the predecessor forest owner or offset project operator to submit compliance instruments under this chapter. For the avoidance of doubt, this obligation of the successor forest owner or offset project operator, as applicable, consists of the difference between the number of metric tons of CO_2e determined pursuant to this section and the number of valid ecology offset credits or other approved compliance instruments submitted by the predecessor forest owner.

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NEW SECTION

WAC 173-446-575 Transferability of ecology offset credits. (1) An ecology offset credit may be sold, traded, or transferred, unless:

(a) It has been retired, used for compliance, or used to meet any GHG mitigation requirements in any voluntary or regulatory program;

(b) It resides in the forest buffer account; or

(c) It has been invalidated pursuant to WAC 173-446-580.

(2) An ecology offset credit may only be used:

(a) To meet a compliance obligation under this chapter, except if used by a covered entity in a program approved for linkage; or

(b) By a general market participant for purposes of voluntary retirement.

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NEW SECTION

WAC 173-446-580 Invalidation of ecology offset credits. (1) An ecology offset credit issued under this chapter will remain valid unless invalidated pursuant to this section.

(2) Time frame for invalidation. If a determination is made pursuant to subsection (6) of this section, ecology may invalidate an ecology offset credit pursuant to this section within the following time frame:

(a) Within eight years of issuance of an ecology offset credit, as that corresponds to the end of the reporting period for which the ecology offset credit is issued, if the ecology offset credit is issued pursuant to WAC 173-446-555, except as provided in (b) and (c) of this subsection.

(b) The eight-year time frame set forth in (a) of this subsection does not apply if one of the following requirements is met:

(i) The offset project operator or authorized project designee for an offset project developed under the applicable compliance offset protocol does all of the following:

(A) Engages a different verification body that has not verified the offset project data report for the issuance of ecology offset credits, and meets the requirements for conflict of interest in WAC 173-446-545 and rotation of verification services in WAC 173-446-535 (1) through (3), to conduct a second independent offset verification, except for offset project data report modifications, for the same offset project data report. Although the requirements for offset project data report modifications do not need to be met under this subsection, any misreporting, discrepancies, or omissions identified during the independent offset verification must be included in the offset material misstatement calculation prepared under WAC 173-446-535 (4)(d)(xv). If minor correctable errors that do not result in an offset material misstatement are identified during the independent offset verification and the verification body does not identify any other nonconformance that would result in an adverse offset verification statement, the verification body must issue a qualified positive offset verification statement and identify the correctable errors on the offset verification statement;

(B) The second independent offset verification must be completed within three years of ecology's issuance of the ecology offset credits

through the submittal of an offset verification statement, and the offset project operator or authorized project designee must receive a positive or qualified positive offset verification statement from the new verification body for the same offset project data report.

(I) If the offset project is listed with an offset project registry, the verification body must submit the detailed verification report and offset verification statement from the second independent offset verification to the offset project registry and ecology.

(II) The offset project registry must review the offset verification documents and submit a report to ecology that includes the details and findings of the offset project registry's review. During its review, the offset project registry may request additional information from the verification body and offset project operator or authorized project designee, if applicable, and may request clarifications and revisions to the materials, if necessary.

(III) The offset project registry has 45 calendar days to review the offset verification information once complete and accurate verification documents are received from the verification body.

(IV) The offset project registry has an additional 15 business days to submit its report to ecology. Ecology will review the offset project registry report and determine based on the report and all the information submitted by the verification body and offset project operator or authorized project designee, if applicable, if the invalidation time frame will be reduced. During its review, ecology may request additional information, clarifications, and revisions to the materials, if necessary.

(C) If the requirements in (b)(i)(A) and (B) of this subsection are met, the ecology offset credits issued under the offset project data report may only be subject to invalidation within three years of the date that corresponds to the end of the reporting period for which the ecology offset credits were issued, if the ecology offset credits were issued pursuant to WAC 173-446-555.

(ii) The offset project operator or authorized project designee for an offset project does all of the following:

(A) Engages a different verification body than the one which conducted the most recent verification, and that meets the requirements for conflict of interest in WAC 173-446-545 and rotation of verification services in WAC 173-446-535 (1) through (3), to verify a subsequent offset project data report; and

(B) The verification conducted by the new verification body for the subsequent offset project data report under this subsection in order to reduce the invalidation time frame of any ecology offset credits is completed through the submittal of an offset verification statement within, at a maximum, three years from the date that ecology offset credits were issued for the reporting period. The verification of the subsequent offset project data report must result in a positive or qualified positive offset verification statement from the new verification body.

(C) If the requirements in (b)(ii)(A) and (B) of this subsection are met, the ecology offset credits issued for no more than three reporting periods prior to the reporting period for which the subsequent offset project data report was verified by a new verification body may only be subject to invalidation within three years of the date that corresponds to the end of the reporting period for which the ecology offset credits were issued.

(c) If an offset project developed under one of the compliance offset protocols is in the last reporting period of a crediting peri-

od, and will not have a renewed crediting period, the invalidation time frame for up to the last three reporting periods may be reduced from eight years to three years if the following requirements are met for the last offset project data report of the crediting period:

(i) The offset project operator or authorized project designee engages a different verification body that has not verified the offset project data reports and that meets the requirements for conflict of interest in WAC 173-446-545 and rotation of verification services in WAC 173-446-535 (1) through (3), to conduct a second independent offset verification, except for offset project data report modifications, for the last offset project data report of the crediting period. Although the requirements for offset project data report modifications do not need to be met under this subsection, any misreporting, discrepancies, and omissions identified during the independent offset verification must be included in the offset material misstatement calculation prepared under WAC 173-446-535 (4)(d)(xv); and

(ii) The second independent offset verification must be completed within three years of ecology's issuance of the ecology offset credits through the submittal of an offset verification statement, and the offset project operator or authorized project designee must receive a positive or qualified positive offset verification statement from the new verification body for the same last offset project data report.

(iii) If the offset project is listed with an offset project registry, the verification body must submit the detailed verification report and offset verification statement for the second independent offset verification to the offset project registry and ecology.

(iv) The offset project registry must review the offset verification documents and submit a report to ecology that includes the details and findings of the offset project registry's review. During its review, the offset project registry may request additional information from the verification body and the offset project operator or authorized project designee, if applicable, and may request clarifications and revisions to the materials, if necessary.

(v) The offset project registry has 45 calendar days to review the offset verification information after complete and accurate verification documents are received from the verification body.

(vi) The offset project registry has an additional 15 business days to submit its report to ecology. Ecology will review the offset project registry's report and make a determination based on the report and all the information submitted by the verification body and offset project operator or authorized project designee, if applicable, and may request additional information, clarifications, and revisions to the materials, if necessary.

(3) Grounds for initial determination of invalidation. Ecology may determine that an ecology offset credit is invalid for the following reasons:

(a) The offset project data report contains errors that overstate the amount of GHG emission reductions or GHG removal enhancements by more than five percent;

(i) If ecology finds that there has been an overstatement by more than five percent, ecology shall determine how many GHG emission reductions and GHG removal enhancements were achieved by the offset project for the applicable reporting period. Within 10 calendar days of making this determination, ecology will notify the verification body that performed the offset verification and the offset project operator or authorized project designee.

(A) Within 25 calendar days of receiving a written notification by ecology under this subsection, the verification body shall provide ecology any available offset verification services information or correspondence related to the offset project data report.

(B) Within 25 calendar days of receiving a written notification by ecology under this subsection, the offset project operator or authorized project designee shall provide ecology data that is required to calculate GHG emission reductions and GHG removal enhancements for the offset project according to the requirements of this chapter or the applicable compliance offset protocol, the detailed offset verification report prepared by the verification body, and any other information requested by ecology. The offset project operator or authorized project designee shall also make available personnel who can assist in ecology's evaluation determination of how many GHG emission reductions and GHG removal enhancements were achieved by the offset project for the applicable reporting period.

(ii) Ecology shall determine how many GHG emission reductions and GHG removal enhancements were achieved by the offset project for the applicable reporting period using the best information available.

(A) Ecology will determine the actual GHG emission reductions and GHG removal enhancements achieved by the offset project for the applicable reporting period based on, at a minimum, the following information:

(I) The GHG sources, GHG sinks, and GHG reservoirs within the offset project boundary for that reporting period; and

(II) Any previous offset project data reports submitted by the offset project operator or authorized project designee, and the offset verification statements rendered for those reports.

(B) In determining how many GHG emission reductions and GHG removal enhancements were achieved by the offset project for the applicable reporting period, ecology may use the following methods, as applicable:

(I) The applicable compliance offset protocol;

(II) In the event of missing data, ecology will rely on the missing data provisions set forth in the applicable compliance offset protocol; and

(III) Any information reported under this chapter for this reporting period and past reporting periods.

(iii) If ecology determines that an overstatement has occurred, ecology shall determine the number of ecology offset credits that correspond to the overstatement using Eq. 580-1, rounded to the nearest whole ton:

If: $I\text{Ecology}OC > \times 1.05$

Then: $OR = I\text{Ecology}OC - ROPDR$ Eq. 580-1

Where:

"OR" is the amount of overstated GHG emission reductions and GHG removal enhancements for the applicable offset project data report, rounded to the nearest whole ton;

"IEcologyOC" is the number of ecology offset credits issued under the applicable offset project data report;

"ROPDR" is the number of GHG emissions reductions and GHG removal enhancements determined by ecology for the applicable offset project data report;

(b) The offset project activity(ies) or implementation of the offset project was not in accordance with all local, regional, state, and national environmental and health and safety laws and regulations that apply in the jurisdiction in which the offset project is located

and that directly apply to the offset project, including as specified in the applicable compliance offset protocol during the reporting period for which the ecology offset credit was issued.

(i) For offset projects using a forestry, ozone depleting substances, or livestock protocol, if ecology finds that the offset project is out of regulatory compliance, then ecology shall determine how many GHG emission reductions and GHG removal enhancements were achieved by the offset project for the applicable reporting period. Within 10 calendar days of making this determination, ecology will notify the verification body that performed the offset verification and the offset project operator or authorized project designee.

(A) Within 25 calendar days of receiving a written notification by ecology under this subsection, the verification body shall provide ecology any available offset verification services information or correspondence related to the relevant offset project data report(s).

(B) Within 25 calendar days of receiving a written notification by ecology under this subsection, the offset project operator or authorized project designee shall provide ecology data that is required to calculate GHG emission reductions and GHG removal enhancements for the offset project according to the requirements of this chapter or the applicable compliance offset protocol, the detailed offset verification report prepared by the verification body, and any other information requested by ecology. The offset project operator or authorized project designee shall also make available personnel who can assist in ecology's evaluation of how many GHG emission reductions and GHG removal enhancements were achieved by the offset project for the applicable reporting period.

(ii) Ecology shall determine how many GHG emission reductions and GHG removal enhancements were achieved by the offset project for the applicable reporting period using the best information available.

(A) Ecology will determine the actual GHG emission reductions and GHG removal enhancements achieved by the offset project for the applicable reporting period based on, at a minimum, the following information:

(I) The GHG sources, GHG sinks, and GHG reservoirs within the offset project boundary for that reporting period;

(II) Any previous offset project data reports submitted by the offset project operator or authorized project designee, and the offset verification statements rendered for those reports; and

(III) Any information relating to the regulatory compliance of the offset project provided by the offset project operator, authorized project designee, or regulatory oversight body.

(B) In determining how many GHG emission reductions and GHG removal enhancements were achieved by the offset project for the applicable reporting period, ecology may use the following methods, as applicable:

(I) The applicable compliance offset protocol;

(II) In the event of missing data, ecology will rely on the missing data provisions set forth in the applicable compliance offset protocol; and

(III) Any information reported under this chapter for this reporting period and past reporting periods.

(iii) If ecology determines that an offset project is out of regulatory compliance then ecology shall determine the number of ecology offset credits, rounded to the nearest whole number, that correspond to the time period that the offset project is determined to be out of regulatory compliance. All offset credits corresponding to this time

period shall be deemed ineligible for crediting, and therefore any offset credits corresponding to this time period are subject to invalidation.

(iv) For offset projects using an urban forestry protocol, if ecology finds that the offset project is out of regulatory compliance, then ecology shall determine that all ecology offset credits issued for the applicable reporting period are subject to invalidation; or

(c) Ecology determines that offset credits have been issued in any other voluntary or mandatory program within the same offset project boundary and for the same reporting period in which ecology offset credits were issued for GHG emission reductions and GHG removal enhancements.

(d) The following circumstances shall not be grounds for invalidation under this section:

(i) A reversal that occurs under a forest offset project. If such a reversal occurs, the provisions in WAC 173-446-570 apply in lieu of this section; and

(ii) An update to a compliance offset protocol will not result in an invalidation of ecology offset credits issued to an offset project listed or reporting under a previous version of the compliance offset protocol.

(4) Suspension of transfers. When ecology makes an initial determination that one of the invalidation circumstances listed in subsection (3) of this section has occurred, ecology will immediately block any transfers of ecology offset credits for the applicable offset project data report. Once ecology makes a final determination under subsection (6) of this section, the block on transfers for any ecology offset credits not invalidated will be canceled.

(5) Identification of affected parties. If ecology makes an initial determination that one of the invalidation circumstances listed in subsection (3) of this section has occurred, ecology will identify the following parties:

(a) Any registered entities that currently hold any ecology offset credits in their holding and/or compliance accounts from the applicable offset project data report;

(b) The parties for which ecology transferred any ecology offset credits from the applicable offset project data report into the retirement account; and

(c) The current, or most recent (in the case of an offset project after the final crediting period) offset project operator and authorized project designee, and, for forest offset projects the current, or most recent (in the case of an offset project after the final crediting period) forest owner(s).

(6) Final determination and process of invalidation.

(a) Ecology will provide notification of its initial determination to the parties identified under subsection (5) of this section, and provide each party an opportunity to submit additional information to ecology prior to making its final determination, as follows:

(i) Ecology will specify in its notification the reason for its initial determination that one of the invalidation circumstances listed in subsection (3) of this section has occurred.

(ii) The parties identified under subsection (5) of this section will have 25 calendar days after receiving such notification to provide any additional information to ecology.

(iii) Ecology may request any additional information as needed.

(b) Within 30 calendar days after all information is submitted under this subsection, ecology will make a final determination of

whether one or more circumstances listed in subsection (3) of this section has occurred and whether to invalidate ecology offset credits.

(i) Ecology will notify the parties identified under subsection (5) of this section of ecology's final determination of invalidation.

(ii) Ecology will notify any approved program for linkage of the invalidation at the time of ecology's final determination.

(7) Removal of invalidated ecology offset credits from holding, compliance, and/or forest buffer accounts. If ecology makes a final determination under subsection (6) of this section that an ecology offset credit is invalid, then:

(a) Ecology offset credits will be removed from any holding, compliance, or forest buffer account, as follows;

(i) If an ecology offset credit is determined to be invalid due to any of the circumstances listed in subsection (3)(a) or (b)(i) of this section, then:

(A) Ecology will determine which ecology offset credits will be removed from the compliance and/or holding accounts of each party identified under subsection (5)(a) of this section according to Eq. 580-2, truncated to the nearest whole ton:

$$H\text{Ecology} = \frac{TOTHolding}{I\text{Ecology}OC} \; OR \qquad \text{Eq. 580-2}$$

Where:

"OR" is the number of overstated GHG emission reductions and GHG removal enhancements for the applicable offset project data report;

"IEcologyOC" is the number of ecology offset credits issued under the applicable offset project data report;

"TOTHolding" is the total number of ecology offset credits currently being held in a compliance and/or holding account by each party identified under subsection (5)(a) of this section for the applicable offset project data report; and

"HEcology" is the total number of ecology offset credits, rounded to the nearest whole ton, that will be removed from the holding and/or compliance account of each party identified under subsection (5)(a) of this section.

(B) Ecology will determine the number of ecology offset credits issued to each party identified in subsection (5)(a) of this section, under the applicable offset project data report using Eq. 580-2, and remove that number of ecology offset credits from each party's holding and/or compliance account.

(C) Ecology will determine the number of ecology offset credits issued under the applicable offset project data report, for all projects that contribute to the forest buffer account, using Eq. 580-2, multiply that number by the project's reversal risk rating, and remove the resulting number of ecology offset credits from the forest buffer account.

(ii) If an ecology offset credit is determined to be invalid due to any of the circumstances listed in subsection (3)(b)(ii) or (c) of this section, ecology will remove all ecology offset credits issued under the applicable offset project data report from any holding and/or compliance accounts of the parties identified under subsection (5)(a) of this section, and from the forest buffer account.

(b) The parties identified in subsection (5) of this section will be notified of which ecology offset credits, identified by serial numbers, were removed from any compliance, holding, and/or forest buffer accounts.

(c) Any approved program for linkage will be notified of which ecology offset credits, identified by serial numbers, were removed from any compliance, holding, and/or forest buffer accounts.

(8) Requirements for replacement of ecology offset credits.

(a) If an ecology offset credit that was issued to a nonsequestration offset project or an urban forest offset project, or that was issued to a U.S. forest offset project, and that has been transferred to the retirement account, is subsequently determined by ecology to be invalid for only the circumstances listed in subsection (3)(a) or (b)(i) of this section, then:

(i) Each party identified under subsection (5)(b) of this section must replace ecology offset credits with the number of valid offset credits or other approved compliance instruments determined for the individual party using Eq. 580-3, truncated to the nearest whole ton:

$$REcologyOC = (TOTRetired/IEcologyOC) * OR \quad \text{Eq. 580-3}$$

Where:

"REcologyOC" is the calculated total number of retired ecology offset credits for the applicable offset project data report, rounded to the nearest whole ton, that must be replaced by each individual party identified under subsection (5)(b) of this section;

"TOTRetired" is the total number of ecology offset credits from the applicable offset project data report ecology transferred into the retirement account;

"IEcologyOC" is the number of ecology offset credits issued under the applicable offset project data report; and

"OR" is the number of metric tons of overstated GHG emission reductions and GHG removal enhancements calculated for the applicable offset project data report.

(ii) Each party identified under subsection (5)(b) of this section must replace the ecology offset credits with the number of valid ecology offset credits or other approved compliance instruments calculated using Eq. 580-3, within six months of notification by ecology.

(iii) If each party identified under subsection (5)(b) of this section does not replace the number of invalidated ecology offset credits calculated using Eq. 580-3, within six months of ecology's notice of invalidation, each unreplaced invalidated ecology offset credit will constitute a violation for that party under WAC 173-446-610.

(A) If a party identified under subsection (5)(b) of this section is no longer in business, ecology will require the offset project operator identified under subsection (5)(c) of this section to replace the number of invalidated ecology offset credits calculated for that party using Eq. 580-3 and will notify the offset project operator that they must replace the credits.

(B) If the offset project operator is required to replace ecology offset credits pursuant to (a)(iii)(A) of this subsection, the offset project operator must replace each invalidated ecology offset credit with a valid ecology offset credit or another approved compliance instrument, within six months of notification by ecology.

(C) If the offset project operator is required to replace ecology offset credits pursuant to (a)(iii)(A) of this subsection, and the offset project operator does not replace each invalid ecology offset credit within six months of notification by ecology, each unreplaced invalidated ecology offset credit will constitute a violation for that offset project operator under WAC 173-446-610.

(iv) Ecology will determine the number of invalid ecology offset credits issued under the applicable offset project data report and invalidate that number of ecology offset credits.

(v) The parties identified under subsection (5) of this section will be notified of the number of ecology offset credits, identified by serial numbers, that were invalidated.

(vi) Any approved program for linkage will be notified of which ecology offset credits, identified by serial numbers, were invalidated.

(b) If an ecology offset credit that was issued to a nonsequestration offset project or an urban forest project, or that was issued to a U.S. forest offset project, and that has been transferred to the retirement account, is subsequently determined to be invalid due to any of the circumstances listed in subsection (3)(b)(ii) or (c) of this section, then:

(i) The parties identified under subsection (5)(b) of this section must replace each ecology offset credit for the applicable offset project data report that it previously requested ecology transfer into the retirement account with a valid ecology offset credit or another approved compliance instrument within six months of notification by ecology.

(ii) If a party identified under subsection (5)(b) of this section does not replace each invalidated ecology offset credit within six months of ecology's notice of invalidation, each unreplaced invalidated ecology offset credit will constitute a violation for that party under WAC 173-446-610.

(A) If the party identified under subsection (5)(b) of this section is no longer in business, ecology will require the offset project operator identified under subsection (5)(c) of this section to replace the number of invalidated ecology offset credits calculated for that party using Eq. 580-3 and will notify the offset project operator that they must replace them.

(B) If the offset project operator is required to replace ecology offset credits pursuant to (b)(ii)(A) of this subsection, the offset project operator must replace each invalidated ecology offset credit with a valid ecology offset credit or another approved compliance instrument, within six months of notification by ecology.

(C) If the offset project operator is required to replace ecology offset credits pursuant to (b)(ii)(A) of this subsection and the offset project operator does not replace each invalidated ecology offset credit within six months of notification by ecology, each unreplaced invalidated ecology offset credit will constitute a violation for that offset project operator under WAC 173-446-610.

(iii) The parties identified under subsection (5) of this section will be notified of which ecology offset credits, identified by serial numbers, were invalidated.

(iv) Any approved program for linkage will be notified of which ecology offset credits, identified by serial numbers, were invalidated.

(c) The offset project operator of an offset project that had ecology offset credits removed from the forest buffer account must replace a percentage of the ecology offset credits removed from the forest buffer account equal to the percentage of ecology offset credits retired from the forest buffer account for unintentional reversals as of the date ecology makes the final determination of invalidation, rounding up to the next whole number, with a valid ecology offset credit or another approved compliance instrument, within six months of notification by ecology. If the offset project operator does not replace the required number of ecology offset credits within six months of notification by ecology, each unreplaced invalidated ecology offset credit will constitute a violation for that offset project operator under WAC 173-446-610.

(9) Change of forest owner or offset project operator. When a forest owner or offset project operator changes, whether by merger, acquisition, or any other means, the successor forest owner or offset project operator, after the change in ownership, as applicable, is expressly liable for all obligations of the predecessor forest owner or offset project operator to submit compliance instruments. For the avoidance of doubt, this obligation of the successor forest owner or offset project operator, as applicable, consists of the difference between the number of metric tons of CO_2e and the number of valid ecology offset credits or other approved compliance instruments submitted by the predecessor forest owner.

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NEW SECTION

WAC 173-446-585 Approval requirements for offset project registries. (1) The approval requirements specified in this section apply to all offset project registries that will operate to provide offset registry services under this chapter.

(2) Ecology may approve offset project registries that meet and maintain compliance with the requirements specified in this section.

(a) Offset project registry approval application. To apply for approval as an offset project registry, the applicant shall submit the following information to ecology, in a manner specified by ecology:

(i) Name of applicant;

(ii) Name of president or chief executive officer;

(iii) List of all board members, if applicable;

(iv) Addresses of all offices located in the United States;

(v) Documentation that the applicant carries at least $5,000,000 U.S. dollars of active professional liability insurance; and

(vi) List of any judicial proceedings and administrative actions filed against the applicant within the previous five years, with a detailed explanation as to the nature and outcome of the proceedings.

(b) In addition to the information required under (a) of this subsection, the applicant must submit, in writing, its procedures to screen and address internal conflicts of interest. The applicant must provide the following information to ecology:

(i) A staff, management, and board member conflict of interest policy where there are clear criteria for what constitutes a conflict of interest. The policy must:

(A) Identify specific activities and limits on monetary and nonmonetary gifts that staff, management, and board members must not conduct or accept to meet the offset project registry's internal policies regarding conflicts of interest, or alternatively provide a comprehensive policy on the applicant's requirements for the reporting of any and all conflicts of interest based on internal policies that guard against conflicts of interest; and

(B) Documentation that the applicant has an internal requirement for annual disclosure by each staff, management, and board member of any items or instances that are covered by the applicant's conflict of interest policy on an ongoing basis or for the previous calendar year.

(C) Documentation that the applicant has appropriate conflict of interest and confidentiality requirements in place for any of its contractors;

(ii) List of all service types provided by the applicant;

(iii) List of the industrial sectors the applicant serves;

(iv) Locations where services are provided; and

(v) A detailed organizational chart that includes the applicant and any parent, subsidiary, and affiliate companies.

(vi) If the applicant is going to designate a subdivision of its organization to provide registry services, then the prohibition on serving as an offset project consultant shall apply at the subdivision level and the applicant must provide the following general information for its self:

(A) General types of services; and

(B) General locations where services are provided.

(c) The applicant must have the following capabilities for registration and tracking of registry offset credits issued under this chapter:

(i) A comprehensive registration requirement for all registry participants;

(ii) A system for tracking ownership and transactions of all registry offset credits it issues at all times; and

(iii) A permanent repository of ownership information on all transactions involving all registry offset credits it issues under this chapter from the time they are issued to the time they are retired, invalidated, or canceled.

(3) The applicant's primary business must be operating an offset project registry for voluntary or regulatory purposes and the applicant must meet the following business requirements:

(a) Once approved as an offset project registry, the applicant may not act as an offset project operator, authorized project designee, or offset project consultant for offset projects registered or listed on its own offset project registry and developed using a compliance offset protocol. The applicant must annually disclose to ecology any nonoffset project related consulting services it provides to an offset project operator or authorized project designee who lists a project using a compliance offset project with the applicant as part of the information included in the annual report;

(b) The applicant may not act as an offset verification body or provide offset verification services once approved as an offset project registry;

(c) If the applicant designates a subdivision of its organization to provide registry services, the applicant may not be an offset project operator or authorized project designee for offset projects listed at the subdivision's registry, act as a verification body, or be a covered entity or opt-in entity;

(d) The applicant must demonstrate experience in the continuous operation of a registry serving an environmentally focused market that includes the trading of carbon emissions-based commodities for a minimum of two years in a mandatory and/or voluntary market; and

(e) The applicant's primary incorporation or other business formation and primary place of business, or the primary place of business of the designated subdivision, if the applicant designates a subdivision to provide registry services pursuant to this section, must be in the United States of America.

(4) The offset project registry must continue to maintain the professional liability insurance required by subsection (2)(a)(v) of

this section while it provides registry services to offset project operators or authorized project designees who are implementing offset projects using compliance offset protocols.

(5) If any information submitted pursuant to this section changes after the approval of an offset project registry, the offset project registry must notify ecology within 30 calendar days of the change and provide updated information consistent with that required in this section.

(6) The offset project registry must attest, in writing, to ecology as follows:

(a) "As the authorized representative for this Offset Project Registry, I understand that the Offset Project Registry is voluntarily participating in the program under this chapter and the Offset Project Registry is now subject to all regulatory requirements and enforcement mechanisms of this program.";

(b) "All information generated and submitted to Ecology by the Offset Project Registry related to an offset project that uses a Compliance Offset Protocol will be true, accurate, and complete.";

(c) "All information provided to Ecology as part of an Ecology audit of the Offset Project Registry will be true, accurate, and complete.";

(d) "All registry services provided will be in accordance with the requirements of WAC 173-446-590.";

(e) "The Offset Project Registry is committed to participating in all Ecology training related to Ecology's compliance offset program or Compliance Offset Protocols."; and

(f) The authorized representative of the offset project registry must attest in writing, to ecology: "I certify under penalty of perjury under the laws of the state of Washington I have authority to represent the Offset Project Registry and all information provided as part of this application is true, accurate, and complete."

(7) At least two of the management staff at the offset project registry must take an ecology-approved training on ecology's compliance offset program and pass an ecology-approved examination upon completion of training.

(8) The offset project registry must have staff members who have collectively completed the ecology-provided training described in subsection (7) of this section and passed an examination upon completion of training in all applicable compliance offset protocols.

(9) The offset project registry must have at least two years of demonstrated experience in, and requirements for, direct staff oversight and review of offset projects, project listing, offset verification, and registry offset credit issuance.

(10) Ecology approval.

(a) The applicant may be allowed to submit additional supporting documentation before a decision is made by ecology.

(b) Within 60 calendar days of receiving an application for approval as an offset project registry and completion by all management staff of the training required by subsection (7) of this section, ecology will inform the applicant in writing either that the application is complete or that additional specific information is required to make the application complete.

(c) Within 60 calendar days following completion of the application process, ecology shall approve an offset project registry if evidence of qualification submitted by the applicant has been found to meet the requirements of this section.

(d) Ecology and the applicant may mutually agree, in writing, to longer time periods than those specified in this section.

(e) Ecology approval for an offset project registry is valid for a period of 10 years, whereupon the applicant may reapply. At the time of reapplication, the offset project registry must:

(i) Demonstrate it consistently met all of the requirements in this section;

(ii) Pass a performance review, which, at a minimum shows the offset project registry consistently:

(A) Demonstrates knowledge of the ecology compliance offset program and compliance offset protocols;

(B) Meets all regulatory deadlines; and

(C) Provides registry services in accordance with the requirements of this chapter; and

(iii) Not have been subject to enforcement action under WAC 173-446-610.

(11) Modification, suspension, and revocation of ecology's approval of an offset project registry. Ecology may review, and, for good cause, modify, suspend, or revoke its prior approval of an offset project registry.

(a) During revocation proceedings, the offset project registry may not continue to provide registry services for ecology.

(b) Within five business days of suspension or revocation of approval, an offset project registry must notify all offset project operators or authorized project designees for whom it is providing registry services, or for whom it has provided registry services within the past 12 months, of its suspension or revocation of approval.

(c) An offset project operator or authorized project designee who has been notified by an offset project registry of a suspended or revoked approval under (b) of this subsection must resubmit its offset project information to a new offset project registry or ecology. An offset project listed by ecology or a new offset project registry will continue to operate under its originally approved crediting period, provided that ecology may extend the crediting period or the relevant deadline for one year if ecology determines that such extension is necessary to provide time for resubmission of information to the new offset project registry or ecology.

(12) If the applicant under this section is going to designate a subdivision of its organization to provide registry services, all the requirements of this section may be applied at the designated subdivision level.

(13) An approved offset project registry must make itself and its personnel available for an ecology audit.

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NEW SECTION

WAC 173-446-590 Offset project registry requirements. (1) The offset project registry shall use compliance offset protocols approved pursuant to the requirements of this section to determine whether an offset project may be listed with the offset project registry for issuance of registry offset credits. The offset project registry may list projects under noncompliance offset protocols, but must make it clear that any GHG emission reductions and GHG removal enhancements

achieved under those protocols are not eligible to be issued registry offset credits or ecology offset credits.

(2) The offset project registry must make the following information publicly available for each offset project developed under a compliance offset protocol:

(a) Within 10 business days of the offset project listing requirements being deemed complete:

(i) Offset project name;

(ii) Offset project location;

(iii) Offset project operator and, if applicable, the authorized project designee;

(iv) Type of offset project;

(v) Name and date of the compliance offset protocol used by the offset project;

(vi) Date of offset project listing submittal and offset project;

(vii) Commencement date; and

(viii) Identification of whether the offset project is in an initial or renewed crediting period;

(b) Within 10 business days of the offset project registry making a determination of registry offset credit issuance:

(i) reporting period verified project baseline emissions;

(ii) reporting period verified GHG emission reductions and GHG removal enhancements achieved by the offset project;

(iii) The unique serial numbers of registry offset credits issued to the offset project for the applicable offset project data report;

(iv) Total verified GHG emission reductions and GHG removal enhancements for the offset project by reporting period for when an offset project data report was submitted;

(v) The final offset project data report for each reporting period; and

(vi) Offset verification statement for each year the offset project data report was verified; and

(c) Clear identification of which offset projects are listed and submitting offset project data reports using compliance offset protocols. Once an offset project registry has approved a project listing, the offset project registry must continue to list the offset project but may update the project listing status to "inactive" if the project has not been issued any registry offset credits or ecology offset credits or may update the listing status to "terminated" if the project has been issued any registry offset credits or ecology offset credits. The offset project registry may update the listing status to "inactive" or "terminated" if any of the following circumstances exist:

(i) The offset project has missed the 28-month reporting deadline;

(ii) The offset project has missed the deadline for continuous reporting;

(iii) The offset project terminates; or

(iv) The offset project operator submits a letter to the offset project registry stating that it no longer intends to pursue registry offset credit issuance for this project. The letter must be signed by the offset project operator's primary or alternate account representative and must include the following:

(A) Offset project operator name;

(B) Offset project name and both ecology and offset project registry identification numbers;

(C) Name and date of the compliance offset protocol used by the offset project;

(D) Date on which the offset project registry approved the listing;

(E) Indication that the offset project operator will no longer pursue any registry offset credits for the project;

(F) Request to change the project status to "inactive" or "terminated"; and

(G) Signature, printed name, title, and date signed.

(d) When an offset project registry updates the listing status to "inactive" or "terminated," the offset project registry must make publicly available a copy of the letter or must make publicly available a memo authored by the offset project registry explaining the change of status. The memo must include the following:

(i) Offset project operator name and (offset credit registry) identification number;

(ii) Offset project name and both ecology and offset project registry identification numbers;

(iii) Name and date of the compliance offset protocol used by the offset project;

(iv) Date on which the offset project registry approved the listing;

(v) Indication of the deadline(s) missed; and

(vi) Date on which the offset project registry has updated the status to "inactive" or "terminated."

(e) An offset project registry may update an offset project's listing status to "completed" if:

(i) Ecology offset credits have been issued for the offset project;

(ii) No further ecology offset credits will be issued to the project;

(iii) The project may no longer undergo offset verification services that could reduce the invalidation period for any ecology offset credits from eight years to three years;

(iv) The project is no longer required to monitor, report, and verify the permanence of its GHG emission reductions or GHG removal enhancements; and

(v) The end of the project life has been reached as defined in the compliance offset protocols, if applicable.

(f) An offset project registry may update an offset project's listing status to "monitored" if:

(i) Ecology offset credits have been issued for the offset project;

(ii) No further ecology offset credits will be issued to the project; and

(iii) The project is still required to monitor, report, and verify the permanence of its GHG emission reductions or GHG removal enhancements.

(3) Conflict of interest review by offset project registries. The offset project registry must apply the conflict of interest requirements in WAC 173-466-545 when making a conflict of interest determination for a verification body proposing to conduct offset verification services. The offset project registry must review and make sure the conflict of interest submittal is complete. When an offset project operator or authorized project designee submits its information to ecology, the offset project registry must provide ecology with the information and attestation within 15 calendar days.

(4) The offset project registry may provide guidance to offset project operators, authorized project designees, or offset verifiers for offset projects using a compliance offset protocol, if there is no clear requirement for the topic in the applicable compliance offset protocol, this chapter, or an ecology guidance document, after consulting and coordinating with ecology.

(a) An offset project registry must maintain all correspondence and records of communication with an offset project operator, authorized project designee, or offset verifier when providing clarifications or guidance for an offset project using a compliance offset protocol.

(b) Before providing such guidance, the offset project registry may request ecology to provide clarification on the topic.

(c) Any offset project operator or authorized project designee requests for clarifications or guidance must be documented and the offset project registry response must be submitted on an ongoing monthly basis to ecology beginning with the date of approval as an offset project registry.

(5) The offset project registry must audit at least 10 percent of the annual full offset verifications developed for offset projects using a compliance offset protocol.

(a) The audit must include the following checks:

(i) Attendance with the offset verification team on the offset project site visit;

(ii) In-person or conference call attendance for the first offset verification team and offset project operator or authorized project designee meeting;

(iii) In-person or conference call attendance to the last meeting or discussion between the offset verification team and offset project operator or authorized project designee;

(iv) Documentation of any findings during the audit that cause the offset project registry to provide guidance to, or require corrective action with, the offset verification team, including a list of issues noted during the audit and how those were resolved;

(v) A review of the detailed verification report and sampling plan to ensure that it meets the minimum requirements and documentation of any discrepancies found during the review; and

(vi) An investigative review of the conflict of interest assessment provided by the verification body, which includes the following:

(A) Discussions with the lead verifier, the verification body officer or staff person most knowledgeable about the conflict of interest self-evaluation, and the offset project operator or authorized project designee to confirm the information on the conflict of interest self-assessment form is true, accurate, and complete;

(B) An internet-based search to ascertain the existence of any previous relationship between the verification body and the offset project operator or authorized project designee, and if so the nature and extent; and

(C) Any other follow up by the offset project registry to have reasonable assurance that the information provided on the conflict of interest assessment form is true, accurate, and complete.

(b) All information related to audits of offset projects developed using a compliance offset protocol must be provided to ecology within 10 calendar days of an ecology request.

(c) The audits must be selected to provide a representative sampling of geographic locations of all offset projects, representative sampling of verification bodies, representative sampling of lead veri-

fiers, representative sampling of offset project types, and representative sampling of offset projects by size.

(d) The offset project registry must provide an annual report to ecology by January 31st for its previous year's audit program of offset projects developed using compliance offset protocols that includes:

(i) A list of all offset projects audited;

(ii) Locations of all offset projects audited;

(iii) Verification bodies associated with each offset project and names of offset verification team members;

(iv) Dates of site visits;

(v) Offset project registry staff that conducted the audit; and

(vi) Audit findings as required in this section.

(6) The offset project registry must review each detailed verification report for completeness and accuracy and to ensure it meets the requirements before accepting the associated offset verification statement for the offset project data report and issuing registry offset credits. The offset project registry must maintain a log of all issues raised during its review of a detailed verification report and the corresponding offset project data report and offset verification statement and how the issues were resolved. Within three business days of issuing registry offset credits, the offset project registry must provide the following to ecology:

(a) The attestations required in this section and any in the applicable compliance offset protocol;

(b) The final offset project data reports submitted to an offset project registry;

(c) The final offset verification statements; and

(d) The offset project registry's log of all issues raised during its review.

(7) The offset project registry must provide all information in its possession, custody, or control related to a listed offset project under a compliance offset protocol within 10 calendar days of request by ecology.

(8) The offset project registry must make its staff and all information related to listed offset projects under compliance offset protocols by the offset project registry available to ecology during any audits or oversight activities initiated by ecology to ensure the requirements of this section are being carried out as required by this chapter.

(9) The offset project registry must remove or cancel any registry offset credits issued for an offset project using a compliance offset protocol, such that the registry offset credits are no longer available for transaction on the offset project registry system, once notified by ecology that the offset project is eligible to be issued ecology offset credits.

(10) The offset project registry must provide an annual report by January 31st of the previous year's offset projects that are listed using a compliance offset protocol. The report must contain the name of the offset project, type of offset project and applicable compliance offset protocol, name of offset project operator or authorized project designee, location of offset project, status of offset project, associated verification body, crediting period, amount of any registry offset credits issued to date, amount of any registry offset credits retired or canceled for the offset project by the offset project registry to date.

(11) The offset project registry may choose to offer insurance or other products to cover the risk of invalidation of ecology offset credits, but purchase or use of the insurance or other invalidation risk mechanisms will be optional for all parties involved with registry offset credits and ecology offset credit transactions.

(12) Within 10 business days of first receiving an offset project data report to meet the reporting deadline pursuant to WAC 173-446-525 (5)(b), an offset project registry must provide ecology a copy of the offset project data report and confirm the date on which the offset project data report was submitted to the offset project registry.

(13) All information submitted, and correspondence related to, listed offset projects under compliance offset protocols by the offset project registry must be maintained by the offset project registry for a minimum of 15 years.

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NEW SECTION

WAC 173-446-595 Direct environmental benefits in the state. (1) Offset projects that are located within the state of Washington, or that reduce or avoid GHG emissions that would otherwise occur within the state of Washington, are presumed to provide direct environmental benefits in the state.

(2) For any offset project located outside the state of Washington, the offset project operator or authorized project designee may request a determination by ecology of whether the offset project provides direct environmental benefits in the state.

(a) Such a determination must be based on a showing that the offset project or offset project type provides for either:

(i) The reduction or avoidance of emissions of any air pollutant that is not credited pursuant to the applicable compliance offset protocol in the state of Washington; or

(ii) A reduction or avoidance of any pollutant that is not credited pursuant to the applicable compliance offset protocol that could have an adverse impact on waters of the state of Washington.

(b) To support a request for such a determination, the offset project operator or authorized project designee may submit the following information to ecology:

(i) Scientific, peer-reviewed information or reports demonstrating that the offset project or offset project type results in this type of reduction or avoidance of any pollutant in the state of Washington;

(ii) Governmental reports from local, regional, state, or national environmental, health, or energy agencies, or multinational bodies (such as the intergovernmental panel on climate change) demonstrating that the offset project or offset project type results in this type of reduction or avoidance of any pollutant in the state of Washington; or

(iii) Monitoring or other analytical data demonstrating that the offset project or offset project type results in this type of reduction or avoidance of any pollutant in the state of Washington.

(3) New offset projects. In order to be eligible to demonstrate that a new offset project located outside the state of Washington provides direct environmental benefits in the state, the offset project operator or authorized project designee shall submit all relevant ma-

terials listed in subsection (2)(b) of this section along with or prior to the first reporting period offset project data report.

[]

COMPLIANCE AND ENFORCEMENT

NEW SECTION

WAC 173-446-600 Compliance obligations. (1) All covered entities and opt-in entities must comply with all requirements for monitoring, reporting, participating in auctions, and holding and transferring compliance instruments, as well as all other provisions of this chapter. All general market participants must comply with all requirements for participating in auctions, and holding and transferring compliance instruments, as well as all other provisions of this chapter.

(2) Unless otherwise required by specific provisions of this regulation, all parties participating in the program must provide to ecology within 14 calendar days any additional information requested by ecology concerning their participation in the program.

(3) By 5:00 p.m. Pacific Time November 1st of 2024 and each year thereafter, each covered entity and opt-in entity must have in its compliance account sufficient compliance instruments of former vintage years to cover at least 30 percent of its covered emissions for the previous calendar year.

(4) By 5:00 p.m. Pacific Time November 1st of the year following the final year of each compliance period, each covered entity and each opt-in entity must have transferred to its compliance account one compliance instrument for each metric ton of covered emissions of carbon dioxide equivalent emitted by that party during the compliance period. Except as provided in (a) and (b) of this subsection, allowances used for compliance under this provision must be of the vintage of any year of the compliance period or of any prior year.

(a) When using allowances for compliance, EITE facilities may provide future vintage allowances obtained as described in WAC 173-446-260 in the process of reconciling their compliance obligation for a given year with their actual production data for that year.

(b) Allowances obtained from the allowance price containment reserve may be used for compliance at any time.

(5) Compliance instruments to be used for compliance must be in the complying covered or opt-in entity's compliance account. Once placed in a compliance account, compliance instruments can only be removed by ecology. Immediately after each compliance deadline, ecology will remove and permanently retire sufficient compliance instruments from each covered entity's or opt-in entity's compliance account to cover that covered entity's or opt-in entity's compliance obligation.

(6) Deferred compliance requirement for electricity exported to an external GHG emissions trading program for first compliance period.

For any portion of covered emissions from a first jurisdictional deliverer in Washington state exported from Washington and imported into an external GHG emissions trading program, as demonstrated to ecology's satisfaction through means established under chapter 173-441 WAC, the requirements of subsection (2) of this section do not apply. Only the requirements of subsection (3) of this section apply to that portion of covered emissions. This deferral is only in effect for the first compliance period, and for subsequent compliance periods subsections (2) and (3) of this section both apply.

(7) A portion of each covered entity's or opt-in entity's compliance obligation may be met by offset credits placed in the covered entity's or opt-in entity's compliance account. Each offset credit is worth one metric ton of carbon dioxide equivalent.

(a) For the first compliance period (January 1, 2023, through December 31, 2026):

(i) No more than five percent of a covered entity's or opt-in entity's compliance obligation may be satisfied by offset credits from projects not located on federally recognized tribal land.

(ii) In addition to, but separate from the limit in (a)(i) of this subsection, a covered entity or opt-in entity may satisfy up to three percent of its compliance obligation using offset credits generated from offset projects on federally recognized tribal land.

(iii) Unless ecology has linked with an external GHG trading system, all offset credits must provide direct environmental benefits to Washington state.

(iv) If ecology has linked with an external GHG trading system, at least 50 percent of any offset credits used by a covered entity or opt-in entity for compliance must be sourced from offset projects that provide direct environmental benefits in Washington state. The remaining amount must be located in a jurisdiction with which ecology has linked.

(b) For the second compliance period (January 1, 2027, through December 31, 2030):

(i) No more than four percent of a covered entity's or opt-in entity's compliance obligation may be satisfied by offset credits from projects not located on federally recognized tribal land.

(ii) In addition to, but separate from the limit in (b)(i) of this subsection, a covered entity or opt-in entity may satisfy up to two percent of its compliance obligation using offset credits generated from offset projects on federally recognized tribal land.

(iii) Unless ecology has linked with an external GHG trading system, all offset credits must provide direct environmental benefits to Washington state.

(iv) If ecology has linked with an external GHG trading system, at least 75 percent of any offset credits used by a covered entity or opt-in entity for compliance must be sourced from offset projects that provide direct environmental benefits in Washington state. The remaining amount must be located in a jurisdiction with which ecology has linked.

(c) For the third and subsequent compliance periods:

(i) No more than four percent of a covered entity's or opt-in entity's compliance obligation may be satisfied by offset credits including offset credits from projects on federally recognized tribal land.

(ii) A covered entity or opt-in entity may satisfy an additional two percent of its compliance obligation using offset credits generated from offset projects on federally recognized tribal land.

(iii) Unless ecology has linked with an external GHG trading system, all offset credits must provide direct environmental benefits to the state.

(iv) If ecology has linked with an external GHG trading system, at least 75 percent of any offset credits used by a covered entity or opt-in entity for compliance must be sourced from offset projects that provide direct environmental benefits in Washington state. The remaining amount must be located in a jurisdiction with which ecology has linked.

(d) Ecology may reduce the limits in (a)(i) and (b)(i) of this subsection for a specific covered entity or opt-in entity if ecology, in consultation with the environmental justice council, determines that the covered or opt-in entity has or is likely to:

(i) Contribute substantively to cumulative air pollution burden in an overburdened community identified by ecology, in consultation with the environmental justice council.

(ii) Violate any permits required by any federal, state, or local air pollution control agency where the violation may result in any increase in emissions.

[]

NEW SECTION

WAC 173-446-610 Enforcement. (1) If a covered or opt-in entity does not have sufficient compliance instruments in its compliance account to meet its compliance obligation by the compliance deadlines specified in WAC 173-446-600 (3) and (4), it has violated its compliance obligation and correction is not possible. As a result of such noncompliance, the covered or opt-in entity must, within six months after the compliance deadline submit to ecology four penalty allowances for every one compliance instrument that it failed to have in its compliance account by the compliance deadline.

(2) When a covered entity or opt-in entity reasonably believes that it will be unable to meet a compliance obligation, the entity shall immediately notify ecology. Upon receiving notification, ecology will issue an order requiring the covered or opt-in entity to submit the penalty allowances.

(3) If a covered entity or opt-in entity fails to submit penalty allowances as required by subsection (1) of this section, ecology must issue an order or issue a penalty of up to $10,000 per day per violation, or both, for failure to submit penalty allowances as required by subsection (1) of this section. Each metric ton of CO_2e not covered by a compliance instrument constitutes a separate violation. The order may include a plan and schedule for coming into compliance.

(4) Ecology may issue a penalty of up to $50,000 per day per violation if ecology determines that a registered entity has:

(a) Provided false or misleading facts;

(b) Withheld material information that could influence a decision by ecology;

(c) Violated any part of the auction rules;

(d) Violated registration requirements; or

(e) Violated any rules regarding the conduct of the auction.

(5) In addition to the specific sanctions in subsections (3) and (4) of this section, any person that violates the terms of this chapter or an order issued under this chapter incurs a penalty of up to $10,000 per day per violation for each day that the person does not comply. All penalties under subsections (3) and (4) of this section and this subsection must be deposited into the climate investment account.

(6) Violators are also subject to the sanctions authorized in chapter 19.86 RCW, as appropriate.

(7) Orders and penalties issued under this chapter are appealable to the pollution control hearings board under chapter 43.21B RCW.

(8) For the first compliance period, ecology may reduce the amount of the penalty by adjusting the monetary amount of a civil penalty or reducing the number of penalty allowances required to be provided within six months under subsection (1) of this section. In no case will ecology reduce the number of penalty allowances required to a number below one allowance for each missing compliance instrument.

(9) An electric utility or natural gas utility must notify its retail customers and the Environmental Justice Council in published form within three months after paying a monetary penalty under this section.

(10) If ecology determines that a covered entity or an opt-in entity has over reported its GHG emissions under chapter 173-441 WAC, ecology will reduce the covered or opt-in entity's compliance obligation by sufficient compliance instruments to cover the amount of over-reported emissions.

(11) If ecology determines that a covered entity or an opt-in entity has under reported its GHG emissions under chapter 173-441 WAC:

(a) The covered or opt-in entity must, by November 1st of the year in which ecology makes the determination, provide sufficient compliance instruments to cover the additional emissions.

(b) If the covered or opt-in entity fails to submit the compliance instruments required under (a) of this subsection, the covered or opt-in entity must, within six months after the compliance deadline, submit four penalty allowances for every one compliance instrument that it failed to submit.

[]

NEW SECTION

WAC 173-446-620 Contact information. Unless otherwise specified, all requests, notifications, and communications to ecology pursuant to this chapter, must be submitted in a format as specified by ecology to either of the following:

For U.S. mail:

Climate Commitment Act Program
Air Quality Program
Department of ecology
P.O. Box 47600
Olympia, WA 98504-7600

For email: CCAmailbox@ecy.wa.gov

[]

SEVERABILITY

NEW SECTION

WAC 173-446-700 Severability. If any provision of the rule or its application to any covered entity or other person or party or circumstances is held invalid, the remainder of the rule or application of the provision to other covered entities or other persons or parties or circumstances is not affected.

[]

WSR 22-20-057
PERMANENT RULES
OLYMPIC REGION
CLEAN AIR AGENCY

[Filed September 29, 2022, 8:41 a.m., effective October 30, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This action updates the effective date of the state and federal regulations that have been adopted by the agency.

Citation of Rules Affected by this Order: Olympic Region Clean Air Agency Rule 1.11 and 1.12.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Adopted under notice filed as WSR 22-15-032 on July 13, 2022.

Date Adopted: September 14, 2022.

Jeff C. Johnston, Ph.D.
Executive Director

AMENDATORY SECTION
RULE 1.11 FEDERAL REGULATION REFERENCE DATE

Whenever federal regulations are referenced in ORCAA's rules, the effective date shall be July 1, 202((~~1~~))2.

AMENDATORY SECTION
RULE 1.12 STATE REGULATION REFERENCE DATE

Whenever state regulations are referenced in ORCAA's rules, the effective date shall be July 1, 202((~~1~~))2.

WSR 22-20-074
PERMANENT RULES
HEALTH CARE AUTHORITY
[Filed September 30, 2022, 11:59 a.m., effective October 31, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The agency is amending these rules to align with the Additional Ukraine Supplemental Appropriations Act (AUSAA), 2022, P.L. 117-128. AUSAA provides for resettlement assistance, entitlement programs, and other benefits available to refugees for Ukrainian populations and other non-Ukrainian people in response to their displacement from Ukraine and entry into the United States.

Citation of Rules Affected by this Order: Amending WAC 182-503-0535 and 182-507-0135.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: P.L. 117-128.

Adopted under notice filed as WSR 22-17-067 on August 15, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: September 30, 2022.

Wendy Barcus
Rules Coordinator

OTS-3918.3

AMENDATORY SECTION (Amending WSR 22-08-002, filed 3/23/22, effective 4/23/22)

WAC 182-503-0535 Washington apple health—Citizenship and immigration status. (1) **Definitions.**

(a) **Nonqualified alien** means someone who is lawfully present in the United States (U.S.) but who is not a qualified alien, a U.S. citizen, a U.S. national, or a qualifying American Indian born abroad.

(b) **Qualified alien** means someone who is lawfully present in the United States and who is one or more of the following:

(i) A person lawfully admitted for permanent residence (LPR).

(ii) An abused spouse or child, a parent of an abused child, or a child of an abused spouse who no longer resides with the person who committed the abuse, and who has one of the following:

(A) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse of an unmarried LPR younger than 21 years of age.

(B) Proof of a pending application for suspension of deportation or cancellation of removal under the Violence Against Women Act (VAWA).

(C) A notice of prima facie approval of a pending self-petition under VAWA. An abused spouse's petition covers his or her child if the child is younger than 21 years of age. In that case, the child retains qualified alien status even after he or she turns 21 years of age.

(iii) A person who has been granted parole into the U.S. for one year or more, under the Immigration and Nationality Act (INA) Section 212 (d)(5), including public interest parolees.

(iv) A member of a Hmong or Highland Laotian tribe that rendered military assistance to the U.S. between August 5, 1964, and May 7, 1975, including the spouse, unremarried widow or widower, and unmarried dependent child of the tribal member.

(v) A person who was admitted into the U.S. as a conditional entrant under INA Section 203 (a)(7) before April 1, 1980.

(vi) A person admitted to the U.S. as a refugee under INA Section 207.

(vii) A person who has been granted asylum under INA Section 208.

(viii) A person granted withholding of deportation or removal under INA Section 243(h) or 241 (b)(3).

(ix) A Cuban or Haitian national who was paroled into the U.S. or given other special status.

(x) An Amerasian child of a U.S. citizen under 8 C.F.R. Section 204.4(a).

(xi) A person from Iraq or Afghanistan who has been granted one of the following:

(A) Special immigrant status under INA Section 101 (a)(27);

(B) Special immigrant conditional permanent resident; or

(C) Parole under Section 602 (b)(1) of the Afghan Allies Protection Act of 2009 or Section 1059(a) of the National Defense Authorization Act of 2006.

(xii) An Afghan granted humanitarian parole between July 31, 2021, and September 30, 2022, their spouse or child, or a parent or guardian of an unaccompanied minor who is granted parole after September 30, 2022, under Section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021.

(xiii) A citizen or national of Ukraine (or a person who last habitually resided in Ukraine) who, under section 401 of the Additional Ukraine Supplemental Appropriations Act, 2022 (AUSAA), was:

(A) Granted parole into the United States between February 24, 2022, and September 30, 2023; or

(B) Granted parole into the United States after September 30, 2023, and is:

(I) The spouse or child of a person described in (b)(xiii)(A) of this subsection; or

(II) The parent, legal guardian, or primary caregiver of a person described in (b)(xiii)(A) of this subsection who is determined to be an unaccompanied child under section 462 (g)(2) of the Homeland Security Act of 2002 or section 412 (d)(2)(B) of the Immigration and Nationality Act.

(xiv) A person who has been certified or approved as a victim of trafficking by the federal office of refugee resettlement, or who is:

(A) The spouse or child of a trafficking victim of any age; or

(B) The parent or minor sibling of a trafficking victim who is younger than 21 years of age.

((~~(xiv)~~)) (xv) A person from the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands living in the United States in accordance with the Compacts of Free Association.

(c) **U.S. citizen** means someone who is a United States citizen under federal law.

(d) **U.S. national** means someone who is a United States national under federal law.

(e) **Undocumented person** means someone who is not lawfully present in the U.S.

(f) **Qualifying American Indian born abroad** means someone who:

(i) Was born in Canada and has at least 50 percent American Indian blood, regardless of tribal membership; or

(ii) Was born outside of the United States and is a member of a federally recognized tribe or an Alaska Native enrolled by the Secretary of the Interior under the Alaska Native Claims Settlement Act.

(2) **Eligibility.**

(a) A U.S. citizen, U.S. national or qualifying American Indian born abroad may be eligible for:

(i) Apple health for adults;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Classic medicaid.

(b) A qualified alien who meets or is exempt from the five-year bar may be eligible for:

(i) Apple health for adults;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Classic medicaid.

(c) A qualified alien who neither meets nor is exempt from the five-year bar may be eligible for:

(i) Alien medical programs;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Medical care services.

(d) A nonqualified alien may be eligible for:

(i) Alien medical programs;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Medical care services.

(e) An undocumented person may be eligible for:

(i) Alien medical programs;

(ii) State-only funded apple health for kids; or

(iii) State-only funded apple health for pregnant women.

(3) **The five-year bar.**

(a) A qualified alien meets the five-year bar if he or she:

(i) Continuously resided in the U.S. for five years or more from the date he or she became a qualified alien; or

(ii) Entered the U.S. before August 22, 1996, and:

(A) Became a qualified alien before August 22, 1996; or

(B) Became a qualified alien on or after August 22, 1996, and has continuously resided in the U.S. between the date of entry into the U.S. and the date he or she became a qualified alien.

(b) A qualified alien is exempt from the five-year bar if he or she is:

(i) A qualified alien as defined in subsection (1)(b)(vi) through ((~~(xiv)~~)) (xv) of this section;

(ii) An LPR, parolee, or abused person, who is also an armed services member or veteran, or a family member of an armed services member or veteran, as described below:

(A) An active-duty member of the U.S. military, other than active-duty for training;

(B) An honorably discharged U.S. veteran;

(C) A veteran of the military forces of the Philippines who served before July 1, 1946, as described in Title 38 U.S.C. Section 107; or

(D) The spouse, unremarried widow or widower, or unmarried dependent child of an honorably discharged U.S. veteran or active-duty member of the U.S. military.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-08-002, § 182-503-0535, filed 3/23/22, effective 4/23/22; WSR 21-19-029, § 182-503-0535, filed 9/9/21, effective 10/10/21; WSR 15-10-002, § 182-503-0535, filed 4/22/15, effective 5/23/15. Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-503-0535, filed 7/29/14, effective 8/29/14.]

OTS-3917.3

AMENDATORY SECTION (Amending WSR 22-08-002, filed 3/23/22, effective 4/23/22)

WAC 182-507-0135 Immigration status requirement for refugee medical assistance (RMA). (1) An individual is eligible for refugee medical assistance (RMA) if the individual provides documentation issued by the United States Citizenship and Immigration Services (USCIS) to show that the individual is:

(a) Admitted as a refugee under section 207 of the Immigration and Nationalities Act (INA);

(b) Paroled into the United States as a refugee or asylee under section 212 (d)(5) of the INA;

(c) Granted conditional entry under section 203 (a)(7) of the INA;

(d) Granted asylum under section 208 of the INA;

(e) Admitted as an Amerasian immigrant from Vietnam through the orderly departure program, under section 584 of the Foreign Operations Appropriations Act, incorporated in the FY88 continuing resolution P.L. 100-212;

(f) A Cuban-Haitian entrant who was admitted as a public interest parolee under section 212 (d)(5) of the INA;

(g) Certified as a victim of human trafficking by the federal Office of Refugee Resettlement (ORR);

(h) An eligible family member of a victim of human trafficking certified by ORR who has a T-2, T-3, T-4, or T-5 visa; or

(i) Admitted as special immigrant from Iraq or Afghanistan under one of the following:

(i) Special immigrant status under section 101 (a)(27) of the INA;

(ii) Special immigrant conditional permanent resident; or

(iii) Parole under section 602 (b)(1) of the Afghan Allies Protection Act of 2009 or section 1059(a) of the National Defense Authorization Act of 2006.

(j) An Afghan granted humanitarian parole between July 31, 2021, and September 30, 2022, their spouse or child, or a parent or guardian of an unaccompanied minor who is granted parole after September 30, 2022, under section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021;

(k) A citizen or national of Ukraine (or a person who last habitually resided in Ukraine) who, under section 401 of the Additional Ukraine Supplemental Appropriations Act, 2022 (AUSAA), was:

(i) Granted parole into the United States between February 24, 2022, and September 30, 2023; or

(ii) Granted parole into the United States after September 30, 2023, and is:

(A) The spouse or child of a person described in (k)(i) of this subsection; or

(B) The parent, legal guardian, or primary caregiver of a person described in (k)(i) of this subsection who is determined to be an unaccompanied child under section 462 (g)(2) of the Homeland Security Act of 2002 or section 412 (d)(2)(B) of the Immigration and Nationality Act.

(2) A permanent resident alien meets the immigration status requirements for RCA and RMA if the individual was previously in one of the statuses described in subsection (1)((~~(a) through (i)~~)) of this section.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-08-002, § 182-507-0135, filed 3/23/22, effective 4/23/22. Statutory Authority: RCW 41.05.021 and 2011 1st sp.s. c 15. WSR 12-19-001, § 182-507-0135, filed 9/5/12, effective 10/6/12.]

WSR 22-20-078
PERMANENT RULES
EVERETT COMMUNITY COLLEGE
[Filed September 30, 2022, 3:43 p.m., effective October 31, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The Washington state community college state system has defined and approved a uniform FERPA directory information policy. This policy will provide students across the state attending community colleges a uniform directory information policy, for ease of understanding across the state.

Citation of Rules Affected by this Order: New [WAC 132E-122-130].

Statutory Authority for Adoption: RCW 28B.50.140; chapters 34.05 and 42.56 RCW. Washington Higher Education Administrative Procedure Act, FERPA (20 U.S.C. § 1232g) and its implementing regulation (34 C.F.R. § 99).

Other Authority: FERPA (20 U.S.C. § 1232g) and its implementing regulation (34 C.F.R. § 99).

Adopted under notice filed as WSR 22-15-012 on July 7, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 20, 2022.

Rita Belvill
Executive Assistant to the President

OTS-3882.1

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-130 Disclosure of student information. (1) Unless the student has provided the office of enrollment services with written notice which specifically requests otherwise, designated officials of the college may routinely respond to requests for the following directory information about a student:

(a) Student's name;
(b) Major field of study;
(c) ((~~Extracurricular activities;~~
~~(d) Height and weight of athletic team members;~~
~~(e) Quarters of attendance;~~
~~(f) Degrees and awards received;~~

~~(g) The most recent previous educational agency or institutions attended;~~

~~(h) Date of birth;~~

~~(i) Email address;~~

~~(j) Student enrollment status.~~

~~(2) Recognized college student organizations, such as scholastic and service clubs, may obtain information relating to a student's academic record and status; requests of this nature are handled on an individual basis and only through the organization's appointed advisor.~~)) Dates of attendance;

(d) Degrees or certificates earned;

(e) Term degree or certificate awarded;

(f) Honors;

(g) Enrollment status;

(h) Participation in recognized sports.

(2) Pursuant to the National Defense Authorization Act for Fiscal Year 1995, the college must release directory information to military recruiters unless the student specifically denies permission. The college shares selected records with organizations with which the college has contractual agreements for services. The college may also release enrollment data for loan processing, enrollment and degree verification, and records archiving purposes through contractual agreements, and to other schools in which a student seeks or intends to enroll. The college releases Social Security and enrollment data to the Federal Government for Financial Aid and Veterans' eligibility evaluation and for Hope Scholarship/Lifetime Learning tax credit programs. The college may release records following a receipt of a lawfully issued subpoena, attempting to notify the student beforehand. The college does not disclose records to family members without student consent.

(3) No other information is to be given without the prior consent of the student or parent/guardian as appropriate. The college registrar or their designee will be responsible for reviewing unusual requests for information and assistance in the interpretation of the provisions of the Federal Family Educational Rights and Privacy Act (Buckley Amendment). See Family Educational Rights and Privacy Act of 1974 in the student handbook for more information on confidentiality of student information and records.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-130, filed 12/19/17, effective 1/19/18.]

WSR 22-20-081
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed October 3, 2022, 8:33 a.m., effective November 3, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending WAC 388-412-0046 What is the purpose of DSHS cash and food assistance benefits and how can I use my benefits?

Citation of Rules Affected by this Order: Amending WAC 388-412-0046.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, 74.08.580.

Adopted under notice filed as WSR 22-09-055 on April 18, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: October 3, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4918.1

AMENDATORY SECTION (Amending WSR 20-23-044, filed 11/12/20, effective 12/13/20)

WAC 388-412-0046 What is the purpose of DSHS cash and food assistance benefits and how can I use my benefits? (1) What is the purpose of DSHS cash benefits?

(a) DSHS cash assistance benefits are provided to low-income residents who qualify for public assistance programs. These benefits are intended to help pay for basic living expenses as described under RCW 74.04.770. TANF cash grants must be used for the sole benefit of the children, and we may require proof that you are using your TANF cash assistance to benefit your children as allowed under RCW 74.12.260.

(b) Your electronic benefit transfer (EBT) card or cash assistance benefits may only be used by you, an eligible member of your household, an authorized non-member, or an authorized representative/protective payee for the purposes of your cash assistance program. You are not allowed to sell, attempt to sell, exchange, or donate your EBT card or benefits to any other person or entity.

(i) An authorized non-member is a person selected, by the household, to use the EBT card and make purchases for the sole benefit of the household, on behalf of the household, on an as-needed basis.

(c) You may use your cash benefits to pay a reasonable amount of basic living expenses such as:

(i) Shelter;

(ii) Utilities such as heating, telephone, water, sewer, garbage, and recycling;

(iii) Food;

(iv) Transportation;

(v) Clothing;

(vi) Household maintenance;

(vii) Personal hygiene;

(viii) Employment- or school-related items; and

(ix) Other necessary incidentals and items.

(d) It is ((~~not legal~~)) illegal to use electronic benefit transfer (EBT) cards or cash obtained with EBT cards to:

(i) Gamble. Gambling includes:

(A) The purchase of lottery tickets;

(B) The purchase of pull tabs;

(C) Use of punch boards;

(D) Purchase of bingo cards;

(E) Betting on horse racing;

(F) Participating in casino games; and

(G) Participating in other games of chance as found in chapters 9.46, 67.16 and 67.70 RCW.

(ii) Purchase cigarettes as defined in RCW 82.24.010 or tobacco products as defined in RCW 82.26.010;

(iii) Purchase any items regulated under Title 66 RCW;

(iv) Purchase or participate in any activities in any of the following locations:

(A) Taverns licensed under RCW 66.24.330;

(B) Beer/wine specialty stores licensed under RCW 66.24.371, except if the store is an authorized supplemental nutrition assistance program or women, infants, and children retailer;

(C) Nightclubs licensed under RCW 66.24.600;

(D) Bail bond agencies regulated under chapter 18.185 RCW;

(E) Gambling establishments licensed under chapter 9.46 RCW;

(F) Tattoo, body piercing, or body art shops regulated under chapter 18.300 RCW;

(G) Adult entertainment venues with performances that contain erotic material where minors under the age of ((~~eighteen~~)) 18 are prohibited under RCW 9.68A.150;

(H) Any establishments where persons under the age of ((~~eighteen~~)) 18 are not permitted.

(e) If you use your electronic benefit transfer (EBT) card or cash obtained from your EBT card illegally we may:

(i) Assign a protective payee to manage your cash assistance benefits under WAC 388-460-0035;

(ii) For households receiving TANF, require proof that your benefits are being used for the benefit of the children in the household;

(iii) Terminate your cash benefits; or

(iv) Pursue legal action, including criminal prosecution.

(2) What is the purpose of DSHS food assistance benefits?

(a) DSHS food assistance benefits, including those from the basic food program, state funded basic food program for legal immigrants (FAP), Washington state combined application project (WASHCAP), and

transitional food assistance (TFA), help low-income individuals and families have a more nutritious diet by providing food assistance benefits through EBT cards for eligible households to buy groceries.

(b) You, members of your household, an authorized non-member, or an authorized representative may use your food assistance benefits to buy food items for your household from a food retailer authorized to accept supplemental nutrition assistance program (SNAP) benefits by the U.S. Department of Agriculture Food and Nutrition Service (FNS).

(i) An authorized non-member is a person selected by the household to use the EBT card and make purchases for the sole benefit of the household, on behalf of the household, on an as-needed basis.

(c) You can use your food assistance benefits to buy items such as:

(i) Breads and cereals;

(ii) Fruits and vegetables;

(iii) Cheese, milk, and other dairy products;

(iv) Meats, fish, poultry, and eggs;

(v) Most other food items that are not prepared hot foods; and

(vi) Seeds and plants that produce food.

(d) It is ((~~not legal~~)) illegal to:

(i) Give your EBT card or benefits to anyone who is not in your food assistance household, not an authorized non-member, or not your authorized representative.

(ii) Use food benefits for any purpose other than to buy food for eligible household members.

(iii) Exchange food benefits for anything of value (trafficking). Examples of illegal trafficking include exchanging ((~~food benefits~~)) or attempting to exchange food benefits for cash, drugs, weapons, or anything other than food from an authorized retailer.

(iv) Sell, attempt to sell, exchange, or donate an EBT card, EBT card number, personal identification numbers (PINs), or any benefits to any person or entity.

(v) Buy, attempt to buy, or steal someone's EBT card, EBT card number, or PIN.

(vi) Sell or trade any food that was purchased using food assistance benefits for cash, drugs, alcohol, tobacco products, firearms, or anything of value.

(vii) Use food benefits to buy nonfood items such as cigarettes, tobacco, beer, wine, liquor, household supplies, soaps, paper products, vitamins, medicine, or pet food.

(viii) Commit any other act in violation of the Food Nutrition Act of 2008, regulations for the supplemental nutrition assistance program (SNAP) under Title 7 of the Code of Federal Regulations or any Washington state administrative code relating to the use, presentation, transfer, acquisition, receipt, trafficking, or possession of food assistance benefits.

(e) If you intentionally misuse food assistance benefits, you may be:

(i) Disqualified for an intentional program violation under WAC 388-446-0015 and 388-446-0020. If you are disqualified you will lose your benefits for at least one year and up to a lifetime. The disqualification continues even if you move to another state.

(ii) Subject to fines.

(iii) Subject to legal action, including criminal prosecution. DSHS will cooperate with state, local, and federal prosecuting authorities to prosecute trafficking in food assistance/SNAP benefits.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08.580 and 7 C.F.R. §§ 271.2 and 273.16. WSR 20-23-044, § 388-412-0046, filed 11/12/20, effective 12/13/20. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. §§ 271.2 and 273.16. WSR 19-03-054, § 388-412-0046, filed 1/10/19, effective 2/10/19. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. § 271.2. WSR 14-05-063, § 388-412-0046, filed 2/18/14, effective 3/21/14. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, 74.04.770, 74.12.260, 74.08.580, 9.91.142, 7 C.F.R. 273.16, the Food and Nutrition Act of 2008 as amended and 42 U.S.C. 601a; and 2011 c 42. WSR 11-19-047, § 388-412-0046, filed 9/13/11, effective 10/14/11.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

WSR 22-20-087
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed October 4, 2022, 8:14 a.m., effective November 4, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of this rule making is to extend the occupational disease presumption to law enforcement officers, emergency medical technicians (EMTs), and fire investigators, as well as update the list of covered conditions. This rule making also allows a presumption of occupational disease for posttraumatic stress disorder for firefighters, EMTs, and law enforcement officers.

Citation of Rules Affected by this Order: Amending WAC 296-14-310, 269-14-325, and 296-14-330.

Statutory Authority for Adoption: RCW 51.04.020 and 51.04.030.

Other Authority: RCW 51.32.185.

Adopted under notice filed as WSR 22-15-088 on July 19, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 4, 2022.

Joel Sacks
Director

OTS-2137.1

AMENDATORY SECTION (Amending WSR 03-12-046, filed 5/30/03, effective 7/1/03)

WAC 296-14-310 When does a presumption of occupational disease for certain members of firefighters' and law enforcement officers' retirement systems apply? RCW 51.32.185 specifies a presumption that certain medical conditions are occupational diseases ((~~for firefighters~~)). A presumption of occupational disease applies to firefighters and emergency medical technicians (EMTs) as defined in RCW 41.26.030 (17)(a), (b), (c), and (h) and fire investigators. The presumption also applies to law enforcement officers as defined in RCW 41.26.030 (19)(b), (c), and (e).

(1) For firefighters and EMTs those conditions are heart problems experienced within seventy-two hours of exposure to smoke, fumes, or toxic substances; or experienced within twenty-four hours of strenuous physical exertion due to firefighting activities; respiratory disease;

specific cancers ((~~as defined by RCW 51.32.185; and~~)); infectious diseases ((~~as defined by RCW 51.32.185.~~)); and posttraumatic stress disorder (PTSD).

(2) For fire investigators those conditions are heart problems experienced within seventy-two hours of exposure to smoke, fumes, or toxic substances, or experienced within twenty-four hours of strenuous physical exertion due to firefighting activities; respiratory disease; specific cancers; and infectious diseases.

(3) For law enforcement officers those conditions are heart problems experienced within seventy-two hours of exposure to smoke, fumes, or toxic substances, or experienced within twenty-four hours of strenuous physical exertion in the line of duty; infectious diseases; and PTSD.

(4) The presumption extends to covered members after the last date of employment for a period of three calendar months for each year of service. The presumption may not extend more than sixty months after the last date of employment.

(5) For consideration of a PTSD presumption, the active or former firefighter or law enforcement officer must work on or after July 7, 2018, and serve at least ten years before the PTSD develops.

(6) For consideration of a cancer presumption, the active or former firefighter or fire investigator must serve at least ten years before the cancer develops.

(7) For claims filed on or after July 1, 2003, the presumption may not apply to heart or lung conditions ((~~if a firefighter is a~~)) for users of tobacco products.

(8) When the presumption does not apply, the claim is not automatically denied. However, the burden is on the worker to prove that the condition is ((~~an~~)) otherwise allowable as an injury or occupational disease.

[Statutory Authority: RCW 51.04.020, 51.32.185. WSR 03-12-046, § 296-14-310, filed 5/30/03, effective 7/1/03.]

AMENDATORY SECTION (Amending WSR 03-12-046, filed 5/30/03, effective 7/1/03)

WAC 296-14-325 When does the presumption apply to firefighters, emergency medical technicians (EMTs), fire investigators and law enforcement officers who are former smokers with heart or lung conditions? (1) **Heart problems:** The presumption for heart problems ((~~will apply~~)) applies if a firefighter or EMT as defined in RCW 41.26.030 (17)(a), (b), (c), and (h) or fire investigator is a former smoker and last smoked two years or more prior to the cardiac event. The presumption for heart problems also applies if a law enforcement officer as defined in RCW 41.26.030 (19)(b), (c), and (e) is a former smoker and last smoked two years or more prior to the cardiac event.

(2) **Lung conditions:** The presumption for lung conditions in firefighters, EMTs, and fire investigators will apply:

(a) For **asthma** if ((~~the firefighter is~~)) they are a former smoker ((~~who~~)) and last smoked five years or more prior to the date of manifestation of the disease; or

(b) For **((~~COPD~~)) chronic obstructive pulmonary disease/emphysema/chronic bronchitis** if ((~~the firefighter is~~)) they are a former smoker

who last smoked fifteen years or more prior to the date of manifestation of the disease; or

(c) For **lung cancer** if ((~~the firefighter is~~)) they are a former smoker who last smoked fifteen years or more prior to the date of manifestation of the disease.

[Statutory Authority: RCW 51.04.020, 51.32.185. WSR 03-12-046, § 296-14-325, filed 5/30/03, effective 7/1/03.]

AMENDATORY SECTION (Amending WSR 03-12-046, filed 5/30/03, effective 7/1/03)

WAC 296-14-330 What tobacco use ((~~shall~~)) may exclude a firefighter, emergency medical technician (EMT), fire investigator, or law enforcement officer from a presumption of coverage? The following table summarizes the situations listed in WAC 296-14-310 through 296-14-325 under which a presumption of coverage ((~~shall or shall not~~)) may not apply for firefighters and EMTs as defined in RCW 41.26.030 (17)(a), (b), (c), and (h) and fire investigators; and law enforcement officers as defined in RCW 41.26.030 (19)(b), (c), and (e) due to tobacco use.

Medical condition	Presumptions shall not apply	Presumption shall apply
Heart problems experienced within seventy-two hours of exposure to smoke, fumes, or toxic substance	Firefighters, EMTs, fire investigators, and law enforcement officers that are current smokers	Firefighters, EMTs, fire investigators, and law enforcement officers that never smoked tobacco
	Firefighters, EMTs, fire investigators, and law enforcement officers that are former smokers ((~~who~~)) and last smoked **less** than two years prior to the cardiac event	Firefighters, EMTs, fire investigators, and law enforcement officers that are former smokers ((~~who~~)) and last smoked two years or **more** prior to the cardiac event
Asthma	Firefighters, EMTs, and fire investigators that are current smokers	Firefighters, EMTs, and fire investigators that never smoked tobacco
	Firefighters, EMTs, and fire investigators that are former smokers ((~~who~~)) and last smoked **less** than five years before date of manifestation of the disease	Firefighters, EMTs, and fire investigators that are former smokers ((~~who~~)) and last smoked five years or **more** before date of manifestation of the disease

Medical condition	Presumptions shall not apply	Presumption shall apply
((~~COPD~~)) Chronic obstructive pulmonary disease/ emphysema/ chronic bronchitis	Firefighters, EMTs, and fire investigators that are current smokers	Firefighters, EMTs, and fire investigators that never smoked tobacco
	Firefighters, EMTs, and fire investigators that are former smokers ((~~who~~)) and last smoked **less** than fifteen years before date of manifestation of the disease	Firefighters, EMTs, and fire investigators that are former smokers ((~~who~~)) and last smoked fifteen years or **more** before date of manifestation of the disease
Lung cancer	Firefighters, EMTs, and fire investigators that are current smokers	Firefighters, EMTs, and fire investigators that never smoked tobacco
	Firefighters, EMTs, and fire investigators that are former smokers ((~~who~~)) and last smoked **less** than fifteen years before date of manifestation of the disease	Firefighters, EMTs, and fire investigators that are former smokers ((~~who~~)) and last smoked fifteen years or **more** before date of manifestation of the disease

[Statutory Authority: RCW 51.04.020, 51.32.185. WSR 03-12-046, § 296-14-330, filed 5/30/03, effective 7/1/03.]

WSR 22-20-090
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed October 4, 2022, 9:28 a.m., effective November 4, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Expanding the scope of transitional certificate as a pandemic response for certificate renewal. Educators were impacted in their access to clock hour offerings due to the pandemic.

Citation of Rules Affected by this Order: Amending WAC 181-79A-231.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Adopted under notice filed as WSR 22-16-034 on September 22 [July 26], 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 22, 2022.

Jisu Ryu
Rule Coordinator

OTS-3791.1

AMENDATORY SECTION (Amending WSR 21-15-085, filed 7/16/21, effective 8/16/21)

WAC 181-79A-231 Limited certificates. All applicants for limited certificates must meet the age, good moral character, and personal fitness requirements of WAC 181-79A-150 (1) and (2).

Nothing within chapter 181-79A WAC authorizes practice by an educational staff associate which is otherwise prohibited or restricted by any other law, including licensure statutes and rules and regulations adopted by the appropriate licensure board or agency.

(1) **Conditional certificate.**

(a) **Intent.** The intent of the conditional certificate is to assist school districts, approved private schools, and educational service districts in meeting the state's educational goals by giving them flexibility in hiring decisions based on shortages or the opportunity to secure the services of unusually talented individuals.

(b) **Roles.**

(i) Teacher roles. The conditional certificate may be issued to teachers in all endorsement areas. Specific minimum requirements defined in this section apply to the following:

(A) Special education teachers;

(B) Nonimmigrant exchange teachers;

(C) Traffic safety education teachers.

(ii) Educational staff associate roles. The conditional certificate may be issued in the following education staff associate roles:

(A) School counselor;

(B) School nurse;

(C) School psychologist;

(D) School social worker;

(E) School speech language pathologist or audiologist;

(F) School behavior analyst;

(G) School orientation and mobility specialist.

(iii) Administrator role. The conditional certificate may be issued in the following administrator role: Principal.

(c) **Request requirements.**

(i) When requesting the conditional certificate, the district, the educational service district, or the approved private school will verify that one or more of the following criteria have been met:

(A) The individual has extensive experience, unusual distinction, or exceptional talent in the subject matter to be taught or in the certificate role; or

(B) No person with regular certification in the area is available; or

(C) The individual holds a bachelor's degree or higher from an accredited college or university; or

(D) The individual is enrolled in an educator preparation program specific to the certificate role for which they are applying; or

(E) The individual will serve as a nonimmigrant exchange teacher and meets the specific minimum requirements defined in this section; or

(F) The individual will serve as a traffic safety education teacher and meets the specific minimum requirements defined in this section; or

(G) Circumstances warrant.

(ii) When requesting the conditional certificate, the district, the educational service district, or the approved private school will verify that all of the following criteria have been met:

(A) The district, educational service district, or approved private school has determined that the individual is competent for the assignment; and

(B) After specific inclusion on the agenda and a formal vote, the school board or educational service district board has authorized the conditional certificate; and

(C) The individual is being certificated for a specific assignment and responsibility in a specified activity/field; and

(D) The individual will be delegated primary responsibility for planning, conducting, and evaluating instructional activities; and

(E) The individual will not be serving in a paraeducator role; and

(F) The individual will be oriented and prepared for the assignment. In addition, prior to service, the individual will be apprised of any legal liability, the responsibilities of a professional educator, the lines of authority, and the duration of the assignment; and

(G) The individual will be assigned a mentor within ((~~twenty~~)) 20 working days from the commencement of the assignment; and

(H) A written plan of support will be developed within ((~~twenty~~)) 20 working days from the commencement of the assignment.

(d) **Minimum requirements.**

(i) Individuals must complete ((~~fifty~~)) 50 continuing education credit hours after the issuance of the certificate, and prior to the reissuance of the certificate. Holders of conditional certificates in the role of nonimmigrant exchange teacher are not required to complete ((~~fifty~~)) 50 continuing education credit hours.

(ii) Special education teacher. The applicant for a conditional teaching certificate in special education shall hold a bachelor's degree or higher from an accredited college or university.

The issuance of a conditional certificate to a special education teacher is contingent upon the individual being enrolled in a state-approved teacher preparation program resulting in a teacher certificate endorsed in special education.

An individual with full certification and endorsed in special education shall be assigned as a mentor to the special education teacher serving on a conditional certificate for the duration of the conditional certificate.

(iii) Traffic safety education teacher. The applicant qualifies to instruct in the traffic safety program under WAC 392-153-021. Written plans of support and mentors are not required for holders of conditional certificates in the role of traffic safety education teacher.

(iv) Nonimmigrant exchange. A conditional certificate in the role of teacher may be issued to an individual admitted to the United States for the purpose of serving as an exchange teacher.

The individual must be eligible to serve as a teacher in the elementary or secondary schools in their country of nationality or last residence.

(v) School counselor. The applicant must hold a bachelor's degree or higher from an accredited college or university, and be enrolled in a state-approved preparation program for the role, in accordance with Washington requirements for certification.

(vi) School nurse. The applicant possesses a state of Washington license for a registered nurse. Applicants who meet the requirements for the initial school nurse certificate will not be issued a conditional school nurse certificate.

(vii) School psychologist. The applicant must hold a bachelor's degree or higher from an accredited college or university, and be enrolled in a state-approved preparation program for school psychologists, in accordance with Washington requirements for certification.

In addition, the candidate shall have completed all course work for the required master's degree, and shall be participating in the required internship.

(viii) School social worker. The applicant must hold a bachelor's degree or higher from an accredited college or university. The applicant must be enrolled in a master's degree program in social work or social welfare.

(ix) School speech language pathologist or audiologist. The applicant has completed a bachelor's degree or higher from an accredited college or university.

(x) School behavior analyst. Applicants must meet one or more of the following:

(A) Hold a valid Washington state department of health license as an assistant behavior analyst. The district, educational service dis-

trict, or approved private school must provide a supervisor who meets the department of health requirements for a supervisor of assistant behavior analysts; or

(B) Hold a valid board certified assistant behavior analyst (BCABA) certificate from the behavior analyst certification board (BACB). The district, educational service district, or approved private school must provide a supervisor who meets the behavior analyst certification board (BACB) requirements for a supervisor of board certified assistant behavior analyst (BCABA); or

(C) Hold a bachelor's degree, and, must be enrolled in or have completed the course work requirements for the board certified behavior analyst (BCBA) certificate from the behavior analyst certification board (BACB), as verified by the institution providing the behavior analysis course work.

(xi) School orientation and mobility specialist.

(A) Applicants must have completed all requirements for an approved national certificate with the exception of the internship and the assessment, as verified by the institution providing the coursework for the national certificate. The approved national certificates are the certified orientation and mobility specialist (COMS) certificate from the academy for certification of vision rehabilitation and education professionals (ACVREP), and the national orientation and mobility certification (NOMC) from the national blindness professional certification board (NBPCB).

(B) The school employer must ensure the candidate has access to a mentor who meets the requirements for an intern supervisor set by the academy for certification of vision rehabilitation and education professionals (ACVREP) or the national blindness professional certification board (NBPCB).

(xii) Principal. The applicant holds a bachelor's degree from an accredited college or university.

The candidate for conditional certification as a principal shall be enrolled in a program resulting in the issuance of a residency principal certificate, in accordance with Washington requirements for certification.

(e) **Validity.** The conditional certificate is valid for two years or less, and is only valid for the activity or role specified on the certificate.

The reissuance of the special education conditional certificate will have a validity period of three years or less.

(f) **Reissuance.**

(i) The conditional certificate may be reissued upon request by the employing local school district, approved private school, or educational service district, provided all conditions for the first issuance of the certificate are met.

(ii) The requesting school district, approved private school, or educational service district will verify that the ((~~fifty~~)) 50 continuing education credit hours earned as a requirement for reissuance of the certificate are designed to support the individual's professional growth, and enhance the individual's knowledge or skills to better assist students in meeting state learning goals.

(iii) Nonimmigrant exchange. The conditional certificate in the role of teacher may be reissued while the individual is being sponsored by a school district in an exchange and visiting teacher program.

(iv) Special education teacher. Conditional certificates in special education may only be reissued once. The reissuance of the spe-

cial education conditional certificate will have a validity period of three years or less. The special education conditional certificate may only be reissued upon verification by the preparation program provider that the individual is completing satisfactory progress in a state-approved teacher certificate program leading to a special education endorsement.

(v) School speech language pathologist or audiologist. Conditional certificates as a school speech language pathologist or audiologist may be reissued twice.

The conditional certification as a school speech language pathologist or audiologist may be reissued if the candidate is enrolled in a master's degree program resulting in issuance of an initial ESA certificate in accordance with Washington requirements for certification.

The school speech language pathologist or audiologist conditional certificate may be reissued a second time upon verification by the degree provider that the individual is completing satisfactory progress in a master's degree program resulting in issuance of an initial school speech language pathologist or audiologist certificate in accordance with Washington requirements for certification.

(vi) Conditional certificates as a school behavior analyst may be reissued twice.

(vii) Conditional certificates as a school orientation and mobility specialist may be reissued once.

(2) **Transitional certificate.**

(a) **Intent.** The transitional certificate provides flexibility for school districts in employing an individual according to this chapter.

(i) Individuals whose continuing certificate has lapsed or expired.

(ii) Individuals whose certificate has lapsed or expired by June 30, 2022, under WAC 181-79A-240.

(b) **Roles.** The transitional certificate may be issued in roles of teacher, education staff associate, and administrator for continuing certificates or other certificates subject to renewal under WAC 181-79A-240.

(c) **Request requirements.**

(i) The transitional certificate is issued upon request by a school district, approved private school, or educational service district for an individual whose continuing certificate has lapsed or expired according to this chapter.

(ii) The transitional certificate is issued upon request by a school district, approved private school, or educational service district for an individual whose certificate has expired according to this chapter.

(A) Districts may request a transitional certificate for all certificates other than continuing certificates under this section through December 31, 2023.

(B) Educators under this section must apply for the transitional certificate through the office of the superintendent of public instruction no later than June 30, 2024.

(iii) School districts, approved private schools, and educational service districts are strongly encouraged to develop with the holder of a transitional certificate a plan of support for the holder to complete the necessary certificate renewal requirements under this chapter.

(d) **Minimum requirements.**

(i) The holder of the transitional certificate must complete the requirements for certificate renewal within two years of the date the holder was issued the transitional certificate.

(ii) No individual whose certificate has been suspended, revoked, or surrendered shall be eligible to be employed under this section.

(e) **Validity.** The transitional certificate is valid until two years from the date the holder was issued the certificate. The transitional certificate expiration date shall not be calculated under professional educator standards board policy WAC 181-79A-117.

(f) **Reissuance.** The transitional certificate is not renewable and may not be reissued.

(3) **Emergency substitute certificate.**

(a) **Intent.** The intent of the emergency substitute certificate is to assist school districts, approved private schools, and educational service districts with flexibility in meeting educator workforce needs.

(b) **Roles.**

(i) The emergency substitute certificate may be issued in the role of teacher.

(ii) To ensure that related services personnel deliver special education services in their respective discipline or profession, the emergency substitute certificate may not be issued for individuals to serve in an educational staff associate role in accordance with 34 C.F.R. Part 300.156 (b)(2)(ii).

(iii) Holders of the emergency substitute certificate may serve in the local school district, approved private school, or educational service district which requested the certificate.

(iv) Holders of the emergency substitute certificate may serve as substitutes if the local school district, approved private school, or educational service district has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes under WAC 181-79A-232.

(c) **Request requirements.**

(i) The emergency substitute certificate is issued upon request by a school district, approved private school, or educational service district.

(ii) If the local school district, approved private school, or educational service district has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes who are willing to serve as substitutes, emergency substitute certificates may be issued to persons not fully qualified as substitutes under WAC 181-79A-232.

(d) **Validity.** Emergency substitute certificates shall be valid for two years or less.

(e) **Reissuance.** The emergency substitute certificate may be reissued upon request by the employing local school district, approved private school, or educational service district.

(4) **Intern substitute certificate.**

(a) **Intent.** The intent of the intern substitute certificate is to provide the intern the opportunity to serve as a substitute when the cooperating teacher is absent. This provides the intern with experience while allowing for consistency in instruction for the students.

(b) **Roles.** The intern substitute certificate may be issued to student teachers or intern teachers.

(c) **Request requirements.**

(i) School districts, educational service districts, and approved private schools may request intern substitute teacher certificates for

individuals enrolled in student teaching and internships to serve as substitute teachers in the absence of the cooperating teacher.

(ii) The supervising preparation program provider must approve the candidate for the intern substitute teacher certificate.

(d) **Minimum requirements.** The holder of the intern substitute certificate may be called at the discretion of the school district, education service district, or approved private school to serve as a substitute teacher only in the classroom(s) to which the individual is assigned as a student teacher or intern.

(e) **Validity.** The intern substitute teacher certificate is valid for one year or less.

(f) **Reissuance.** The intern substitute certificate may be reissued upon request by the local school district, approved private school, or educational service district, and approved by the educator preparation program provider.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-15-085, § 181-79A-231, filed 7/16/21, effective 8/16/21; WSR 21-08-024, § 181-79A-231, filed 3/29/21, effective 4/29/21. Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-110, § 181-79A-231, filed 7/22/19, effective 8/22/19. Statutory Authority: RCW 28A.410.220. WSR 18-21-072, § 181-79A-231, filed 10/11/18, effective 11/11/18; WSR 17-23-176, § 181-79A-231, filed 11/21/17, effective 12/22/17. Statutory Authority: RCW 28A.410.210. WSR 17-08-037, § 181-79A-231, filed 3/29/17, effective 4/29/17; WSR 16-16-044, § 181-79A-231, filed 7/26/16, effective 8/26/16; WSR 15-20-058, § 181-79A-231, filed 10/1/15, effective 11/1/15; WSR 10-16-124, § 181-79A-231, filed 8/3/10, effective 9/3/10; WSR 07-04-003, § 181-79A-231, filed 1/24/07, effective 2/24/07; WSR 06-14-010, § 181-79A-231, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-79A-231, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 04-20-090, § 180-79A-231, filed 10/5/04, effective 11/5/04;WSR 03-14-115, § 180-79A-231, filed 6/30/03, effective 7/31/03; WSR 03-12-035, § 180-79A-231, filed 5/30/03, effective 6/30/03. Statutory Authority: RCW 28A.410.010 and 28A.305.130. WSR 02-13-027, § 180-79A-231, filed 6/12/02, effective 7/13/02. Statutory Authority: RCW 28A.410.010. WSR 00-13-063, § 180-79A-231, filed 6/16/00, effective 7/17/00. Statutory Authority: RCW 28A.410.010 and 28A.305.130 (1) and (2). WSR 99-23-023, § 180-79A-231, filed 11/9/99, effective 12/10/99. Statutory Authority: RCW 28A.305.130 (1) and (2), 28A.410.010 and 28A.150.220(4). WSR 99-01-174, § 180-79A-231, filed 12/23/98, effective 1/23/99.]

WSR 22-20-091
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed October 4, 2022, 9:41 a.m., effective November 4, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: On August 5, 2022, Governor Inslee issued Directive #22-13.1, COVID-19 Vaccination Standards for State Employees, which directs a COVID-19 vaccination requirement as a condition of employment for state executive and small cabinet agencies. Although the emergency proclamation is expiring, COVID-19 and the risk of person-to-person transmission continues to impact the life and health of all Washingtonians, as well as the economy of Washington state. COVID-19 vaccines are effective in reducing infection and serious disease, and widespread vaccination is the primary means we have as a state to protect the health and safety of our workforce. As an employer, there is an obligation to maintain a safe and healthy work environment for all state employees. The vaccination requirements set forth in these proposed rules will help establish and maintain a healthy and safe work environment to protect the welfare of all state employees.

This rule making will place new provisions in Title 357 WAC requiring employers to ensure that nonrepresented state employees who are employed by general government executive and small cabinet agencies, or an eligible candidate for such a position, are fully vaccinated; or are granted an exemption and approved for an accommodation due to a disability and/or medical condition or sincerely held religious belief that prevents them from receiving the COVID-19 vaccine; and requiring employers to separate an employee, or not hire an eligible candidate, if they cannot provide proof they are fully vaccinated and the employer cannot provide an accommodation. These requirements are optional for higher education employers, independent agencies, boards, councils, commissions, and separately elected officials.

Citation of Rules Affected by this Order: New WAC 357-01-1745, 357-04-125, 357-16-197 and 357-19-413; and amending WAC 357-46-165, 357-46-195, and 357-58-190.

Statutory Authority for Adoption: RCW 41.06.133 and 41.06.150.

Adopted under notice filed as WSR 22-17-122 on August 23, 2022.

Changes Other than Editing from Proposed to Adopted Version: The office of financial management made several nonsubstantial, nonsubstantive edits for the purpose of clarification, as follows:

Changed reference from "Directive 22-13" to "Directive 22-13.1" in WAC 357-04-125 and 357-16-197 to clarify that these rules apply to executive and small cabinet agencies as defined in Directive 22-13.1, issued August 5, 2022, by the governor.

Modified title and language in WAC 357-16-197 and 357-19-413(2) to clarify that these rules establish requirements directed at state employers, not eligible candidates.

Changed reference from "vaccination" in WAC 357-58-190(10) to "COVID-19 vaccination" for clarity.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 4, Amended 3, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 4, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 3, Repealed 0.

Date Adopted: October 4, 2022.

Nathan Sherrard
Assistant Legal Affairs Counsel

OTS-4048.1

NEW SECTION

WAC 357-01-1745 Fully vaccinated. A person is "fully vaccinated" against COVID-19 two weeks after they have received the second dose in a two-dose series of a COVID-19 vaccine or a single-dose COVID-19 vaccine authorized for emergency use, licensed or otherwise authorized or approved by the U.S. Food and Drug Administration or listed for emergency use or otherwise approved by the World Health Organization.

[]

OTS-3934.4

NEW SECTION

WAC 357-04-125 Must an employee provide proof of being fully vaccinated as a condition of employment? As a condition of employment, an employee must be fully vaccinated or request an exemption due to a disability and/or medical condition or if the requirement conflicts with an employee's sincerely held religious belief, practice, or observance. If a requested exemption is granted, an employer must determine whether or not the employee can be reasonably accommodated. If the employer determines an employee can be accommodated in accordance with state and federal laws, the employee may continue their employment. An employee who fails to meet this condition of employment will be subject to a separation in accordance with WAC 357-19-410, or a disability separation in accordance with WAC 357-46-160, or a non-disciplinary separation in accordance with WAC 357-46-195.

This section applies to executive and small cabinet agencies as defined in Directive 22-13.1, issued August 5, 2022, by the governor. Higher education employers, independent agencies, boards, councils, commissions, and separately elected officials may require an employee to meet the requirements of this section.

[]

OTS-3935.5

NEW SECTION

WAC 357-16-197 Must an employer require an eligible candidate to provide proof of being fully vaccinated? After a conditional offer of employment is made, an employer must require an eligible candidate to provide proof of being fully vaccinated or to request an exemption due to a disability and/or medical condition or if the requirement conflicts with an eligible candidate's sincerely held religious belief, practice, or observance. If a requested exemption is granted, an employer must determine whether or not the eligible candidate can be reasonably accommodated. If the employer determines an eligible candidate can be accommodated in accordance with state and federal laws, the eligible candidate may be considered for employment. If the employer cannot provide an accommodation and the eligible candidate does not provide proof of being fully vaccinated, the employer may not consider the eligible candidate for employment.

This section applies to executive and small cabinet agencies as defined in Directive 22-13.1, issued August 5, 2022, by the governor. Higher education employers, independent agencies, boards, councils, commissions, and separately elected officials may require an eligible candidate to meet the requirements of this section.

[]

OTS-3936.4

NEW SECTION

WAC 357-19-413 What are the requirements for a nonpermanent employee to be fully vaccinated or for an employer to require an eligible candidate to provide proof of being fully vaccinated? (1) A nonpermanent employee must comply with the COVID-19 vaccination requirements set forth in WAC 357-04-125. A nonpermanent employee who fails to comply must be separated in accordance with WAC 357-19-410.

(2) After a conditional offer of employment for a nonpermanent appointment is made, an employer must require an eligible candidate to provide proof of being fully vaccinated in accordance with WAC 357-16-197.

[]

OTS-3937.2

AMENDATORY SECTION (Amending WSR 04-18-114, filed 9/1/04, effective 7/1/05)

WAC 357-46-165 When may an employer separate an employee in accordance with WAC 357-46-160? An employer may separate an employee due to disability when any of the following circumstances exist:

(1) The employer is unable to reasonably accommodate the employee.

(2) The employer has medical documentation of the employee's inability to work in any capacity.

(3) The employee requests separation due to disability and the employer has medical information which documents that the employee cannot perform the essential functions of the employee's position or class.

(4) The employer must separate an employee from employment for failure to comply with the COVID-19 vaccination requirements set forth in WAC 357-04-125 where an exemption was approved due to a disability and/or medical condition and the employer is unable to reasonably accommodate the employee.

[Statutory Authority: Chapter 41.06 RCW. WSR 04-18-114, § 357-46-165, filed 9/1/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 04-18-114, filed 9/1/04, effective 7/1/05)

WAC 357-46-195 ((~~Can~~)) May an employer separate an employee for nondisciplinary reasons? An employer **may** separate a permanent employee from a position or from employment for nondisciplinary reasons such as failure to comply with the conditions of employment which may or may not have existed at the time of initial appointment or failure to authorize or to pass a background check required by the position.

The employer may consider other employment options such as transfer or voluntary demotion in lieu of separation.

The employer must separate an employee from employment for nondisciplinary reasons for failure to comply with the COVID-19 vaccination requirements set forth in WAC 357-04-125.

[Statutory Authority: Chapter 41.06 RCW. WSR 04-18-114, § 357-46-195, filed 9/1/04, effective 7/1/05.]

OTS-3938.3

AMENDATORY SECTION (Amending WSR 22-12-074, filed 5/27/22, effective 7/1/22)

WAC 357-58-190 What must be addressed in agency's WMS recruitment and selection policy and/or procedure? An agency's WMS recruitment and selection policy and/or procedure must:

(1) Provide for the ability to consider any or all qualified candidates for hire, promotion, or internal movement;

(2) Ensure that hiring decisions are fair, objective, and based on the evaluation of leadership and other job related competencies and characteristics required for successful job performance and performance management;

(3) Support workforce diversity and affirmative action goals;

(4) Consider the career development of the agency's employees and other state employees;

(5) Consider making appointments from a veterans placement program;

(6) Ensure that hiring decisions are not based on patronage or political affiliation;

(7) Ensure compliance with state and federal laws relating to employee selection and nondiscrimination;

(8) Encourage decentralized and regional administration of the recruitment and selection processes when it is appropriate for the agency;

(9) Ensure compliance with requirements governing wage and salary information in accordance with RCW 49.58.100, 49.58.110, WAC 357-16-017, 357-16-215, and 357-16-220; and

(10) Ensure compliance with the COVID-19 vaccination requirements in accordance with WAC 357-04-125 and 357-16-197.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-074, § 357-58-190, filed 5/27/22, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW, RCW 49.58.100 and 49.58.110. WSR 20-06-009, § 357-58-190, filed 2/20/20, effective 3/30/20. Statutory Authority: Chapter 41.06 RCW. WSR 05-12-069, § 357-58-190, filed 5/27/05, effective 7/1/05.]

WSR 22-20-092
PERMANENT RULES
DEPARTMENT OF HEALTH
(Podiatric Medical Board)
[Filed October 4, 2022, 9:56 a.m., effective November 4, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 246-922-300 Podiatric continuing education required and 246-922-310 Categories of creditable podiatric continuing education activities. The podiatric medical board (board) adopted amendments to WAC 246-922-300 and 246-922-310 concerning continuing medical education (CME) requirements for podiatric physicians.

The adopted rule amendments include acceptance of maintenance of specialty board certification as meeting the full 100-hour CME requirement; clarification on how participation in residency training qualifies for CME; and clarification that CME activities may be completed through either in-person, by remote attendance, or interactive online or prerecorded courses. The board also adopted changes to the numbers of hours required or allowed in the various categories of CME and added additional options to the activities recognized under Category 3.

Citation of Rules Affected by this Order: Amending WAC 246-922-300 and 246-922-310.

Statutory Authority for Adoption: RCW 18.22.015.

Adopted under notice filed as WSR 22-14-103 on July 5, 2022.

Changes Other than Editing from Proposed to Adopted Version: A typographical edit was made to the rule in response to public comment. The term "continuing education" was updated to "continuing medical education" in WAC 246-922-300(2).

A final cost-benefit analysis is available by contacting Susan Gragg, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4941, fax 360-236-2901, TTY 711, email podiatric@doh.wa.gov, website www.doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: August 11, 2022.

DJ Wardle, DPM, Chair
Podiatric Medical Board

OTS-3714.3

AMENDATORY SECTION (Amending WSR 16-01-106, filed 12/16/15, effective 10/1/17)

WAC 246-922-300 Podiatric continuing medical education required. (1) ((~~The board encourages podiatric physicians and surgeons to deliver high-quality patient care. The board recognizes that continuing education programs designed to inform practitioners of recent developments within podiatric medicine and relative fields and review of various aspects of basic professional education and podiatric practice are beneficial to professional growth.~~)) The board requires ((~~participation~~)) a licensed podiatric physician and surgeon to participate in podiatric continuing medical education as a mechanism to maintain and enhance competence and stay informed of recent developments within podiatric medicine and related fields.

(2) A podiatric physician and surgeon must complete ((~~one hundred~~)) 100 hours of continuing medical education every two years and comply with ((~~chapter 246-12 WAC, Part 7~~)) WAC 246-12-170 through 246-12-240 and WAC 246-922-310.

(3) To satisfy the continuing medical education requirements identified in subsection (2) of this section, a podiatric physician and surgeon may:

(a) Serve as a resident in an approved postgraduate residency training program; ((~~or~~)) such individuals shall be credited 50 hours for each year of training completed during their continuing medical education cycle;

(b) Certify or recertify within the previous four years with a specialty board recognized by the Council on Podiatric Medical Education (CPME); or

(c) Meet the requirements for participation in a maintenance of certification program for a specialty board recognized by the CPME.

[Statutory Authority: RCW 18.22.005, 18.22.015, and 18.130.050. WSR 16-01-106, § 246-922-300, filed 12/16/15, effective 10/1/17. Statutory Authority: RCW 18.22.015. WSR 99-20-096, § 246-922-300, filed 10/5/99, effective 11/5/99. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-922-300, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 18.22.015. WSR 94-05-051, § 246-922-300, filed 2/10/94, effective 3/13/94; WSR 91-10-041 (Order 158B), § 246-922-300, filed 4/25/91, effective 5/26/91.]

AMENDATORY SECTION (Amending WSR 16-01-106, filed 12/16/15, effective 10/1/17)

WAC 246-922-310 Categories of creditable podiatric continuing medical education activities. To meet the requirements of WAC 246-922-300, a podiatric physician and surgeon shall earn continuing medical education in the following board-approved categories; such activities may be obtained through in-person or remote attendance, or through interactive online or prerecorded courses:

(1) Category 1 - A minimum of ((~~fifty~~)) 40 hours; however, all ((~~one hundred~~)) 100 credit hours may be earned in this category. Category 1 activities include:

(a) Scientific courses or seminars approved, offered, or sponsored by the American Podiatric Medical Association and its component societies and affiliated and related organizations; ((~~and~~))

(b) Scientific courses or seminars offered or sponsored by entities such as the American College of Foot and Ankle Surgery, the American Medical Association, the American Osteopathic Association, the American Heart Association, the American Diabetes Association, or the American Physical Therapy Association when offering or sponsoring continuing medical education programs related to podiatric medicine; and

(c) Scientific courses or seminars accredited by the Council on Podiatric Medical Education or the Accrediting Council for Continuing Medical Education.

(2) Category 2 - A maximum of ((~~fifty~~)) 50 hours. Category 2 activities include courses or seminars related to health care delivery offered or sponsored by entities such as nonprofit organizations, other proprietary organizations, and individuals when offering or sponsoring continuing medical education in health care delivery.

(3) Category 3 - A maximum of ((~~fifty~~)) 60 hours. Category 3 credit hours and activities include:

(a) Up to ((~~twenty~~)) 30 hours through teaching, lecturing, and publishing in a peer-reviewed, scientific journal or textbook;

(b) Up to ((~~twenty~~)) 30 hours through online prerecorded or remote-attended study and programs not otherwise specified in subsection (1) or (2) of this section;

(c) Up to ((~~twenty~~)) 30 hours through self-study including, but not limited to, specialty board examination preparation, reading books, papers, and publications, participating in journal clubs, or viewing or attending exhibits; and

(d) Up to ((~~thirty~~)) 30 hours for participation ((~~on a staff committee for quality of care or utilization review~~)) in a health care institution or government agency((~~, such as serving on a hospital~~)):

(i) Peer-review committee;

(ii) Staff committee for subjects including, but not limited to, quality of care, utilization review, credentialing, bylaws, and medical records;

(iii) Surgical privilege credentialing to include proctoring activity; or

(iv) Serving as a board member on the podiatric medical board.

(4) One contact hour is defined as a typical ((~~fifty-minute~~)) 50-minute classroom instructional session or its equivalent.

(5) The board will not give prior approval for any continuing medical education. The board will accept any continuing medical education that reasonably falls within these regulations and relies upon the integrity of each individual podiatric physician and surgeon to comply with these requirements.

[Statutory Authority: RCW 18.22.005, 18.22.015, and 18.130.050. WSR 16-01-106, § 246-922-310, filed 12/16/15, effective 10/1/17. Statutory Authority: RCW 18.22.015. WSR 99-20-096, § 246-922-310, filed 10/5/99, effective 11/5/99; WSR 94-05-051, § 246-922-310, filed 2/10/94, effective 3/13/94; WSR 91-10-041 (Order 158B), § 246-922-310, filed 4/25/91, effective 5/26/91.]

WSR 22-20-094
PERMANENT RULES
PUGET SOUND
CLEAN AIR AGENCY

[Filed October 4, 2022, 12:37 p.m., effective November 1, 2022]

Effective Date of Rule: November 1, 2022.

Purpose: Section 3.11: The agency's practice for many years has been to annually adjust the maximum civil penalty amount as allowed by law. The proposed adjustment to the maximum civil penalty amount accounts for inflation, as authorized by RCW 70A.15.3160 (formerly RCW 70.94.431) and as determined by the state office of the economic and revenue forecast council. Without this adjustment, the maximum penalty amount would effectively decrease each year. The consumer price index (CPI) for the Seattle/Tacoma/Bellevue area increased by 7.81 percent for the 2021 calendar year, which amounts to an increase of $1,631.00 in the maximum civil penalty amount. The agency has used CPI for wage earners (CPI-W) in the Puget Sound region for many years to make this inflation-based adjustment because it reflects the data of what happened (i.e., not a forecast) and it represents local economic information.

The proposed amendment does not affect the way the agency determines actual civil penalty amounts in individual cases. This continues to be done following civil penalty worksheets previously approved by the board.

Section 3.25: This section currently provides that, whenever federal rules are referenced in agency regulations, the effective date of the federal regulations referred to is July 1, 2021. This provides certainty so that persons affected by the regulations and agency staff know which version of a federal regulation to reference. For many years, the agency's practice has been to update this date annually to stay current with federal regulations. Following this practice, the proposed amendments would change the reference date to July 1, 2022.

Citation of Rules Affected by this Order: Amending Regulation I, Sections 3.11 (Civil Penalties) and 3.25 (Federal Regulation Reference Date).

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Adopted under notice filed as WSR 22-16-095 on August 2, 2022.

Date Adopted: September 22, 2022.

Christine R. Cooley
Executive Director

AMENDATORY SECTION

SECTION 3.11 CIVIL PENALTIES

(a) Any person who violates any of the provisions of chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed $((~~20,866.00~~)) 22,497.00, per day for each violation.

(b) Any person who fails to take action as specified by an order issued pursuant to chapter 70.94 RCW or Regulations I, II, and III of the Puget Sound Clean Air Agency shall be liable for a civil penalty of not more than $((~~20,866.00~~)) 22,497.00, for each day of continued noncompliance.

(c) Within 30 days of the date of receipt of a Notice and Order of Civil Penalty, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the pen-

alty. To be considered timely, a mitigation request must be actually received by the Agency, during regular office hours, within 30 days of the date of receipt of a Notice and Order of Civil Penalty. This time period shall be calculated by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, and then it is excluded and the next succeeding day that is not a Saturday, Sunday, or legal holiday is included. The date stamped by the Agency on the mitigation request is prima facie evidence of the date the Agency received the request.

(d) A mitigation request must contain the following:

(1) The name, mailing address, telephone number, and telefacsimile number (if available) of the party requesting mitigation;

(2) A copy of the Notice and Order of Civil Penalty involved;

(3) A short and plain statement showing the grounds upon which the party requesting mitigation considers such order to be unjust or unlawful;

(4) A clear and concise statement of facts upon which the party requesting mitigation relies to sustain his or her grounds for mitigation;

(5) The relief sought, including the specific nature and extent; and

(6) A statement that the party requesting mitigation has read the mitigation request and believes the contents to be true, followed by the party's signature. The Control Officer shall remit or mitigate the penalty only upon a demonstration by the requestor of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(e) Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC. An appeal must be filed with the Hearings Board and served on the Agency within 30 days of the date of receipt of the Notice and Order of Civil Penalty or the notice of disposition on the application for relief from penalty.

(f) A civil penalty shall become due and payable on the later of:

(1) 30 days after receipt of the notice imposing the penalty;

(2) 30 days after receipt of the notice of disposition on application for relief from penalty, if such application is made; or

(3) 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.

(g) If the amount of the civil penalty is not paid to the Agency within 30 days after it becomes due and payable, the Agency may bring action to recover the penalty in King County Superior Court or in the superior court of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(h) Civil penalties incurred but not paid shall accrue interest beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal.

(i) To secure the penalty incurred under this section, the Agency shall have a lien on any vessel used or operated in violation of Regulations I, II, and III which shall be enforced as provided in RCW 60.36.050.

AMENDATORY SECTION

SECTION 3.25 FEDERAL REGULATION REFERENCE DATE

Whenever federal regulations are referenced in Regulation I, II, or III, the effective date shall be July 1, ((~~2021~~)) 2022.

WSR 22-20-102
PERMANENT RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2022-04—Filed October 4, 2022, 2:38 p.m., effective November 4, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To amend existing rules so a required statement for consumer adverse benefit determination notices will be at a lower, more accessible reading level.

Citation of Rules Affected by this Order: Amending WAC 284-43-3070.

Statutory Authority for Adoption: RCW 48.02.060 and 48.43.530.

Adopted under notice filed as WSR 22-17-132 on August 23, 2022.

A final cost-benefit analysis is available by contacting Shari Maier, P.O. Box 40255, Olympia, WA 98504-0255, phone 360-725-7173, fax 360-586-3109, email Shari.Maier@oic.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 4, 2022.

Mike Kreidler
Insurance Commissioner

OTS-4024.1

AMENDATORY SECTION (Amending WSR 21-24-072, filed 11/30/21, effective 1/1/22)

WAC 284-43-3070 Notice and explanation of adverse benefit determination—General requirements. (1) A carrier must notify enrollees of an adverse benefit determination either electronically or by U.S. mail. The notification must be provided:

(a) To an appellant or their authorized representative;

(b) To the provider if the adverse benefit determination involves the preservice denial of treatment or procedure prescribed by the provider; and

(c) Whenever an adverse benefit determination relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.

(2) A carrier or health plan's notice must include the following information, worded in plain language:

(a) The specific reasons for the adverse benefit determination;

(b) The specific health plan policy or contract sections on which the determination is based, including references to the provisions;

(c) The plan's review procedures, including the appellant's right to a copy of the carrier and health plan's records related to the adverse benefit determination;

(d) The time limits applicable to the review;

(e) The right of appellants and their providers to present evidence as part of a review of an adverse benefit determination;

(f) Effective April 1, 2022, through December 31, 2022, the following statement or the statement from (g) of this subsection: "Enrollees may request that a health insurer identify the medical, vocational, or other experts whose advice was obtained in connection with the adverse benefit determination, even if the advice was not relied on in making the determination. Health insurers may satisfy this requirement by providing the job title, a statement as to whether the expert is affiliated with the carrier as an employee, and the expert's specialty, board certification status, or other criteria related to the expert's qualification without providing the expert's name or address."; ((~~and~~))

(g) No later than January 1, 2023, the following statement: "You can ask a health carrier to identify the experts who were consulted about the adverse benefit determination – even if the expert's advice was not used to make the determination. The carrier is not required to identify the expert by name or provide their address. The carrier can instead provide the expert's job title and specialty, board certification status or other information related to their qualifications and also state whether or not they are employed by the carrier."; and

(h) When the adverse benefit determination concerns gender affirming treatment or services, a confirmation that a health care provider experienced with prescribing or delivering gender affirming treatment has reviewed the determination and confirmed that an adverse benefit determination denying or limiting the service is appropriate and provide information to confirm that the reviewing provider has clinically appropriate expertise prescribing or delivering gender affirming treatment.

(3) If an adverse benefit determination is based on medical necessity, decisions related to experimental treatment, or a similar exclusion or limit involving the exercise of professional judgment, the notification must contain either an explanation of the scientific or clinical basis for the determination, the manner in which the terms of the health plan were applied to the appellant's medical circumstances, or a statement that such explanation is available free of charge upon request.

(4) A health carrier must not issue an adverse benefit determination concerning gender affirming services or treatment until a health care provider with experience prescribing or delivering gender affirming treatment has reviewed and confirmed the appropriateness of the adverse benefit determination.

(5) If an internal rule, guideline, protocol, or other similar criterion was relied on in making the adverse benefit determination, the notice must contain either the specific rule, guideline, protocol, or other similar criterion; or a statement that a copy of the rule, guideline, protocol, or other criterion will be provided free of charge to the appellant on request.

(6) The notice of an adverse benefit determination must include an explanation of the right to review the records of relevant information, including evidence used by the carrier or the carrier's repre-

sentative that influenced or supported the decision to make the adverse benefit determination.

(a) For purposes of this subsection, "relevant information" means information relied on in making the determination, or that was submitted, considered, or generated in the course of making the determination, regardless of whether the document, record, or information was relied on in making the determination.

(b) Relevant information includes any statement of policy, procedure, or administrative process concerning the denied treatment or benefit, regardless of whether it was relied on in making the determination.

(7) If the carrier and health plan determine that additional information is necessary to perfect the denied claim, the carrier and health plan must provide a description of the additional material or information that they require, with an explanation of why it is necessary, as soon as the need is identified.

(8) An enrollee or covered person may request that a carrier identify the medical, vocational, or other experts whose advice was obtained in connection with the adverse benefit determination, even if the advice was not relied on in making the determination. The carrier may satisfy this requirement by providing the job title, a statement as to whether the expert is affiliated with the carrier as an employee, and the expert's specialty, board certification status, or other criteria related to the expert's qualification without providing the expert's name or address. The carrier must be able to identify for the commissioner upon request the name of each expert whose advice was obtained in connection with the adverse benefit determination.

(9) The notice must include language substantially similar to the following:

> "If you request a review of this adverse benefit determination, (Company name) will continue to provide coverage for the disputed benefit pending outcome of the review if you are currently receiving services or supplies under the disputed benefit. If (Company name) prevails in the appeal, you may be responsible for the cost of coverage received during the review period. The decision at the external review level is binding unless other remedies are available under state or federal law."

[Statutory Authority: RCW 48.02.060, 48.43.515 and 2021 c 280. WSR 21-24-072 (Matter No. R 2021-14), § 284-43-3070, filed 11/30/21, effective 1/1/22. Statutory Authority: RCW 48.02.060, 48.43.505, and 48.43.5051. WSR 20-24-120, § 284-43-3070, filed 12/2/20, effective 1/2/21. WSR 16-01-081, recodified as § 284-43-3070, filed 12/14/15, effective 12/14/15. Statutory Authority: RCW 48.02.060, 48.43.525, 48.43.530, 48.43.535, and The Patient Protection and Affordable Care Act, P.L. 111-148, as amended (2010). WSR 12-23-005 (Matter No. R 2011-11), § 284-43-515, filed 11/7/12, effective 11/20/12.]