

WAC 173-424-610 Obtaining a carbon intensity. (1) Fuel producers can apply to obtain a carbon intensity for their transportation fuels by following the process under this section.

(2) Applicants seeking approval to use a carbon intensity that is currently approved by CARB or OR-DEQ must provide:

(a) The application package submitted to CARB or OR-DEQ;

(b) The Tier 1 or Tier 2 CA-GREET or OR-GREET calculator approved by CARB or OR-DEQ, and the WA-GREET 3.0 equivalent with the fuel transportation and distribution cells modified for that fuel's pathway to Washington;

(c) The CARB or OR-DEQ review report for the approved fuel pathway;

(d) Annual fuel pathway report, if submitted to CARB or OR-DEQ;

(e) Any other supporting materials relating to the pathway, as requested by ecology; and

(f) If the applicant is seeking to use a provisional pathway approved by CARB or OR-DEQ, then the applicant must submit to ecology the ongoing documentation it provides to CARB or OR-DEQ, and as required in subsection (6) of this section. The applicant must provide to ecology within 14 days:

(i) Any additional documentation it has submitted to CARB or DEQ; and

(ii) A notification of any changes to the status of its provisional pathway approved by CARB or OR-DEQ.

(3) **General requirements.** Applicants seeking to obtain a carbon intensity using either the Tier 1 or Tier 2 calculator must submit the following information:

(a) Company name and full mailing address.

(b) Company contact person's contact information including the name, title or position, phone number, mobile phone number, facsimile number, email address, and website address.

(c) Facility name (or names if more than one facility is covered by the application).

(d) Facility address (or addresses if more than one facility is covered by the application).

(e) Facility ID for facilities covered by the RFS program.

(f) Facility geographical coordinates (for each facility covered by the application).

(g) Facility contact person's contact information including the name, title or position, phone number, mobile phone number, facsimile number, and email address.

(h) Facility nameplate production capacity in million gallons per year (for each facility covered by the application).

(i) If applicable, consultant's contact information including the name, title or position, phone number, mobile phone number, facsimile number, email address, and website URL.

(j) Declaration whether the applicant is applying for a carbon intensity for a Tier 1 or Tier 2 fuel.

(4) **Tier 1.** In addition to the items in subsection (3) of this section, applicants seeking to obtain a carbon intensity for a Tier 1 fuel using one of the simplified calculators must submit the following:

(a) The applicable simplified calculator with all necessary inputs completed, following the instructions in the applicable manual for that calculator;

(b) All documentation related to the approval and verification of the fuel pathway application from the jurisdiction and from the third-

party verifier. This includes a positive verification statement from CARB or OR-DEQ approved verification body, stating that it has reviewed and validated all of the data used to form the inputs for the Tier 1 calculator submitted under (a) of this subsection, or the invoices and receipts for all forms of energy consumed in the production process, all fuel sales, all feedstock purchases, and all coproducts sold for the most recent 24 months of full commercial production, along with a summary of those invoices and receipts; and

(c) The most recent RFS third-party engineering report, if one has been conducted for the facility.

(5) **Tier 2.** In addition to the items in subsection (3) of this section, applicants seeking to obtain a carbon intensity for a Tier 2 fuel using the full WA-GREET 3.0 model must submit the following:

(a) A positive verification statement from CARB or OR-DEQ approved verification body, stating that it has reviewed and validated all of the data used to form the inputs for the Tier 2 calculator submitted under (c) of this subsection, or the invoices and receipts for all forms of energy consumed in the production process, all fuel sales, all feedstock purchases, and all coproducts sold for the most recent 24 months of full commercial production, and a summary of those invoices and receipts;

(b) The geographical coordinates of the fuel production facility;

(c) A completed Tier 2 model;

(d) Process flow diagrams that depict the complete fuel production process;

(e) Applicable air permits issued for the facility;

(f) A copy of the RFS third-party engineering report, if available;

(g) A copy of the RFS fuel producer coproducts report; and

(h) A life cycle analysis report that describes the fuel pathway and describes in detail the calculation of carbon intensity for the fuel. The report shall contain sufficient detail to allow staff to replicate the carbon intensity the applicant calculated. The applicant must describe all inputs to, and outputs from, the fuel production process that are part of the fuel pathway.

(6) **Applicants seeking a provisional carbon intensity.** If a fuel production facility has been in full commercial production for at least 90 days but less than 24 months, it can apply for a provisional carbon intensity.

(a) The applicant shall submit operating records covering all periods of full commercial operation in accordance with subsections (2) through (5) of this section.

(b) Ecology may approve the provisional carbon intensity under subsection (9) of this section.

(c) At any time before the plant reaches a full 24 months of full commercial production, ecology may revise as appropriate the operational carbon intensity based on the required ongoing submittals or other information it learns.

(d) If, after a plant has been in full commercial production for more than 24 months, the facility's operational carbon intensity is higher than the provisionally-certified carbon intensity, ecology will replace the certified carbon intensity with the operational carbon intensity in the WFRS and adjust the credit balance accordingly.

(e) If the facility's operational carbon intensity appears to be lower than the certified carbon intensity, ecology will take no action. The applicant may; however, petition ecology for a new carbon intensity that reflects the operational data. In support of such a pe-

tion, the applicant must submit a revised application packet that fully documents the requested reduction.

(7) Applicants employing co-processing at a petroleum refinery.

(a) Applicants employing co-processing of biogenic feedstocks at a petroleum refinery must submit all information required under subsections (3) and (5) of this section.

(b) For the renewable diesel or other renewable refinery product of the fuel, the applicant must also submit:

(i) The planned proportions of biogenic feedstocks to be processed;

(ii) A detailed methodology for the allocation of biogenic feedstocks to the renewable products; and

(iii) The corresponding carbon intensities from each biogenic feedstock.

(c) The allocation methodology for associating amount of the biogenic feedstocks to the production a unit of fuel shall be equivalent to allocation methodologies accepted in the federal and other states' similar programs, and will be subject to ecology approval and may be modified at ecology's discretion based on ongoing quarterly reporting of production data at the refinery.

(d) Ecology may adjust the carbon intensities applied for under this section as it determines is appropriate.

(8) Temporary fuel pathway codes for fuels with indeterminate carbon intensities.

(a) A registered party that has purchased a fuel without a carbon intensity must submit a request to ecology for permission to use a temporary fuel pathway code in (a)(i) or (ii) of this subsection. A fuel producer may also apply to ecology for approval to have a temporary fuel pathway code assigned to its facility. Temporary fuel pathway code that:

(i) Already exist in Table 8 under WAC 173-424-900; or

(ii) Ecology newly approved and posted on its website under subsection (11) of this section.

(b) The request must:

(i) Be submitted within 45 days after the end of the calendar quarter for which the applicant is seeking to use a temporary fuel pathway code; and

(ii) Explain and document that the production facility is unknown or that the production facility is known but there is no approved fuel pathway code.

(c) Temporary fuel pathway codes may be used for up to two calendar quarters. If more time is needed to obtain a carbon intensity, the party that obtained the temporary fuel pathway must submit an additional request to ecology for an extension of the authorization to use a temporary fuel pathway code.

(d) If ecology grants a request to use a temporary fuel pathway code, credits and deficits may be generated subject to the quarterly reporting provisions in WAC 173-424-410.

(9) Approval process to use carbon intensities for fuels other than electricity.

(a) For applications proposing to use fuel pathways approved by CARB or OR-DEQ, including provisional pathways, ecology will:

(i) Confirm that the proposed fuel pathway is consistent with WA-GREET 3.0; and

(ii) Review the materials submitted under subsection (2) of this section.

(b) For applications proposing to use the Tier 1 or Tier 2 calculators, ecology may approve the application if it can:

(i) Verify the energy consumption and other inputs.

(ii) Replicate the calculator outputs; and

(c) If ecology has approved or denied the application for a carbon intensity, ecology will notify the applicant of its determination.

(d) Ecology may impose conditions in its approval of the carbon intensity. Conditions may include specific limitations, recordkeeping or reporting requirements, adherence to protocols to assure carbon reduction or sequestration claims, or operational conditions that ecology determines should apply to assure the ongoing accuracy of the approved carbon intensity. Failure to meet those conditions may result in the carbon intensity approval being revoked.

(e) For applicants seeking a provisional pathway, ecology will specify the conditions used to establish the pathway.

(i) In order to maintain an active provisional pathway eligible to generate credits, the applicant must file the annual fuel pathway report and seek third-party verification if required under WAC 173-424-800.

(ii) At any point during the 24 months following the certification of a provisional pathway, ecology may revise as appropriate the CI score for the provisional pathway, and adjust any credits in the fuel reporting entity based on new information or a better understanding of the pathway.

(iii) Ecology may remove the provisional status of the pathway after the applicant provides 24 months of operational data with a positive or qualified positive verification status, if verification is required under WAC 173-424-800.

(iv) For pathways that are not subject to verification, ecology may remove the provisional status upon review of 24 months of operational data demonstrating that the pathway data supports the provisional CI.

(f) For a fuel pathway approved by CARB or OR-DEQ that ecology has approved for use in Washington, if at any time the pathway's approval is revoked by CARB or OR-DEQ then:

(i) The fuel pathway holder must inform ecology within 14 days of the revocation and provide ecology with the documentation related to that decision.

(ii) Upon ecology request, the fuel pathway holder must provide to ecology additional documentation.

(iii) Ecology may at its discretion revoke its approval of the pathway's use in Washington at any time.

(iv) If CARB or OR-DEQ modifies its approval of the pathway, then the fuel pathway holder must notify ecology of the modification not later than 14 days after CARB's or OR-DEQ modification and must provide to ecology any accompanying documentation the fuel pathway holder received from CARB or OR-DEQ.

(v) Based on the underlying facts that led to CARB's and OR-DEQ's modification of the pathway's status, within 30 days ecology may modify its approval, take no action, or revoke its approval and will provide the fuel pathway holder with written notice of its decision.

(g) In order to receive and maintain an active fuel pathway code, the producer of any fuel must:

(i) Maintain an active registration with the AFP;

(ii) Provide proof of delivery to Washington through a physical pathway demonstration in the quarter in which the fuel is first reported in the WFRS;

(iii) Each fuel pathway holder must submit an annual fuel pathway report into the AFP no later than March 31st of each calendar year. The annual fuel pathway report must include:

(A) The certified version of the simplified WA-GREET or full WA-GREET calculator, as applicable, updated to include the most recent two calendar years of operational data;

(B) The annual fuel pathway report for renewable electricity and hydrogen lookup table pathways, in lieu of the CI calculator, must include invoices or metering records substantiating the quantity of renewable or low-CI inputs procured from a qualifying source;

(C) If the fuel or fuel production process involves biomethane or renewable electricity, the fuel producer must:

(I) Provide the attestation regarding environmental attributes or proof of nongeneration or retirement of any RECs and RTCs as required by WAC 173-424-420 or 173-424-630 (4) (d); and

(II) For biomethane injected into a natural gas common carrier pipeline, RTCs from an ecology recognized renewable thermal tracking system are required to be retired and used instead of an attestation and the specific volume of biomethane claimed as being used in the fuel production process must have been injected into the pipeline in the current or prior quarter as the fuel is being produced. Biomethane can only be claimed in this manner in a fuel pathway application as the feedstock for CNG, LNG, L-CNG or hydrogen production, and cannot be claimed as an energy source for another fuel production process.

(D) Any fuel pathway holder, including a joint applicant, who is not subject to site visits by a third-party verifier, whose fuel pathway involves the use of renewable or low-CI process energy, must submit invoices for that energy to the AFP. Additionally, for any on-site or directly connected renewable electricity that is used to reduce the carbon intensity of electricity used as a transportation fuel or hydrogen production via electrolysis, the pathway holder must upload records demonstrating that any renewable energy certificates generated were retired in WREGIS or another comparable, recognized REC tracking system for the purpose of lowering the certified CI, or for credit generation. Any offsite source of renewable electricity must meet the requirements under WAC 173-424-630 (5);

(E) Any temporally variable information that was requested or required by ecology to be included in the initial application as supplemental information, or any required data or documentation listed in the pathway's operating conditions. The information required to be submitted under this subsection must cover the same time period as the updated WA-GREET model required under (g) (iii) (A) of this subsection;

(F) If the verified operational CI as calculated from the operational data covering the prior two calendar years of production is found to be lower than the certified CI, and a positive verification statement is issued for this period, the fuel pathway holder may elect to keep the original certified CI, or may request to replace the certified CI with the verified operational CI. The new certified CI will take effect for the following reporting year. The fuel pathway holder may elect to add a margin of safety to the new certified CI, and must submit an attestation that the new CI can be maintained through the next reporting period with the acknowledgment that exceeding the newly certified CI in subsequent annual reports or verifications is a violation of the requirements of this division; and

(iv) Comply with the requirements of this chapter. Failure to timely submit an annual fuel pathway report or a required verification

statement for a facility's pathways will result in the deactivation of those pathways; and

(v) If a pathway employs carbon capture and sequestration, the fuel pathway holder or joint applicant must submit annual reports of greenhouse gas emissions reductions, project operations, and ongoing monitoring results. Reports must include measurements of relevant parameters sufficient to ensure that the quantification and documentation of CO₂ sequestered is replicable and verifiable. Ecology may specify a protocol for measuring and reporting such information in its approval of such an application.

(h) If ecology determines the proposal for the carbon intensity has not met the criteria in (b) of this subsection, ecology will notify the applicant that the proposal is denied and identify the basis for the denial.

(i) Ecology may modify an approved fuel pathway's CI or approval conditions upon receipt of a verification statement that shows that the verified operational CI is higher than the certified CI.

(j) Any applicant may include a margin of safety in its application which will increase its certified CI in order to account for potential process variability and to reduce the risk that it will violate this division by having its operational CI exceed its certified CI.

(k) Ecology may prioritize the review of fuel pathway applications according to the date the application is submitted, the application deemed complete date, and the potential GHG emission reduction potential.

(10) Completeness determination process.

(a) Within one month after receiving a registration application using the Tier 1 or Tier 2 calculator, ecology will advise in writing whether:

(i) The proposal is complete; or

(ii) The application is incomplete, in which case ecology identifies the deficiencies.

(b) The applicant may submit supplemental information to correct the ecology identified deficiencies. Ecology has 30 calendar days to determine if the supplemental submittal is complete, or to notify the party and identify the continued deficiencies. If the applicant is unable to achieve a complete application within 180 days of ecology's receipt of the original application, the application will be denied on that basis, and the applicant will be informed in writing.

(11) Issuing additional substitute and temporary fuel pathway codes.

(a) For new fuels or new fuel blends being used in Washington state, registered parties may request ecology for an additional fuel pathway codes that can be used in the same manner as those in Table 7 or 8 (substitute or temporary pathway codes) under WAC 173-424-900.

(b) Ecology may approve such substitute or temporary pathway codes if it concludes they are technically sound and supported by appropriate evidence. If any are approved, ecology will post these additional pathway codes in the WFRS and on its public website for the clean fuels program.

(c) All of the following requirements apply to such requests:

(i) Requests must be made in writing to ecology.

(ii) If ecology concludes the proposed pathway may be technically sound and supported by appropriate evidence, then it will post the

proposed new substitute or temporary pathway codes on its website and take comments for:

(A) Fourteen calendar days in the case of a substitute fuel pathway code; or

(B) Forty-five calendar days in the case of a temporary fuel pathway code.

(iii) Ecology will consider any comments received, make any modifications, if necessary, and make a final decision on the proposed pathway.

(iv) Ecology may approve the fuel pathway and publish it on its website, if ecology concludes the proposed pathway is technically sound and supported by appropriate evidence.

(d) Any newly approved substitute or temporary fuel pathway code will be effective for use in the quarter in which it is approved.

(12) Measurement accuracy.

(a) **Calibration requirement.** All measurement devices that log or record data for use in a fuel pathway application must comply with the manufacturer-recommended calibration frequency and precision requirements. If manufacturer recommendations are not provided, the measurement devices must be calibrated at least every six years.

(b) **Requests to postpone calibration.** For units and processes that operate continuously with infrequent outages, it may not be possible to meet manufacturer-recommended calibration deadlines for measurement devices. In such cases, the owner or operator may submit a written request to ecology to postpone calibration or inspection until the next scheduled maintenance outage. Such postponements are subject to the procedures of (b) (ii) (A) and (B) of this subsection and must be documented in the monitoring plan required under WAC 173-424-400.

(i) A written request for postponement must be submitted to ecology not less than 30 days before the required calibration, recalibration or inspection date. Ecology may request additional documentation to validate the operator's claim that the device meets the accuracy requirements of this section. The operator shall provide any additional documentation to ecology within 10 business days of a request for documentation.

(ii) The request must include:

(A) The date of the required calibration, recalibration, or inspection;

(B) The date of the last calibration or inspection;

(C) The date of the most recent field accuracy assessment, if applicable;

(D) The results of the most recent field accuracy assessment, if applicable, clearly indicating a pass/fail status;

(E) The proposed date for the next field accuracy assessment, if applicable;

(F) The proposed date for calibration, recalibration, or inspection which must be during the time period of the next scheduled shutdown. If the next shutdown will not occur within three years, this must be noted and a new request must be received every three years until the shutdown occurs and the calibration, recalibration or inspection is completed; and

(G) A description of the meter or other device including, at a minimum, the:

(I) Make and model;

(II) Installation date;

(III) Location;

(IV) Parameter measured by the meter or other device, including the rate of data capture;

(V) Description of how data from the meter or other device is used in a fuel pathway;

(VI) Calibration or inspection procedure;

(VII) Reason for delaying the calibration or inspection;

(VIII) Proposed method to ensure that the precision requirements listed by the manufacturer are upheld; and

(IX) The contact details for an individual at the fuel production facility who can answer questions about the meter or other device.

(iii) Ecology will approve or deny the request at its discretion based on whether or not it concludes that the device's calibration is reasonably reliable.

(13) Missing data provisions.

(a) Meter record, accuracy, or calibration requirements not met.

If a measurement device is not functional, not calibrated within the time period recommended by the manufacturer, or fails a field accuracy assessment, the fuel production facility operator must otherwise demonstrate to a verifier or ecology that the reported data are accurate within +/- five percent. The following requirements apply to such demonstration:

(i) If the operator can demonstrate to the verifier or ecology staff that reported data are accurate, the data are acceptable. The entity must then provide a detailed plan describing when the measurement device will be brought into calibration. This plan is subject to ecology approval; and

(ii) If the operator cannot demonstrate to the verifier or ecology that reported data are accurate, the data is not acceptable and the missing data provisions in (b) of this subsection apply.

(b) Missing data provisions. If missing data exists, the entity must submit for ecology approval an alternate method of reporting the missing data. Alternate methods shall be evaluated on a case-by-case basis for reasonableness and continuity with the rest of the dataset. Ecology may choose to require a more conservative approach to the missing data if it is concerned that the alternative method may understate actual life cycle emissions associated with the fuel or fuels produced by the facility.

(c) Force majeure events. In the event of a facility shutdown or disruption drastically affecting production attributable to a force majeure event, the fuel pathway applicant or holder must notify ecology. Ecology may require the reporting entity to provide documentation to support the force majeure event timeline.

(14) Biomethane applications. In addition to the other requirements of this rule, for any fuel pathway where biomethane is being injected into a natural gas common carrier pipeline to be reported in the CFP using book and claim accounting, the fuel pathway holder, fuel producer, or both must ensure that no other party can make a claim on the specific biomethane attributes that are being used in the CFP. If the biomethane is being injected into the pipe of a local distribution company, the fuel producer must have an agreement with that company along with any other purchaser of the physical gas that they will not make any claims on the biomethane reported through book and claim in this program. That agreement must be submitted at the time of the fuel pathway application or in the next annual fuel pathway report if the fuel pathway is currently certified.

(15) For nonprovisional pathways. If a fuel pathway's operational CI is found to be greater than its certified CI, the fuel pathway

holder is out of compliance with this chapter and may be subject to investigation and enforcement by ecology.

[Statutory Authority: Chapter 70A.535 RCW. WSR 22-24-004 (Order 21-04), § 173-424-610, filed 11/28/22, effective 12/29/22.]