
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5842

State of Washington

67th Legislature

2022 Regular Session

By Senate Ways & Means (originally sponsored by Senators Carlyle, Liias, Das, Nguyen, and Nobles)

READ FIRST TIME 02/07/22.

1 AN ACT Relating to state laws that address climate change;
2 amending RCW 70A.65.070, 70A.65.100, 70A.65.200, 70A.65.020,
3 70A.65.150, 70A.65.160, 70A.65.230, 70A.15.2200, 70A.65.010,
4 70A.65.140, and 70A.65.170; and adding a new section to chapter
5 70A.65 RCW.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 70A.65.070 and 2021 c 316 s 9 are each amended to
8 read as follows:

9 (1)(a) The department shall commence the program by January 1,
10 2023, by determining an emissions baseline establishing the
11 proportionate share that the total greenhouse gas emissions of
12 covered entities for the first compliance period bears to the total
13 anthropogenic greenhouse gas emissions in the state during 2015
14 through 2019, based on data reported to the department under RCW
15 70A.15.2200 or provided as required by this chapter, as well as other
16 relevant data. By October 1, 2022, the department shall adopt annual
17 allowance budgets for the first compliance period of the program,
18 calendar years 2023 through 2026, to be distributed from January 1,
19 2023, through December 31, 2026.

20 (b) By October 1, 2026, the department shall add to its emissions
21 baseline by incorporating the proportionate share that the total

1 greenhouse gas emissions of new covered entities in the second
2 compliance period bear to the total anthropogenic greenhouse gas
3 emissions in the state during ((2023)) 2015 through ((2025)) 2019. In
4 determining the addition to the baseline, the department may exclude
5 a year from the determination if the department identifies that year
6 to have been an outlier due to a state of emergency. The department
7 shall adopt annual allowance budgets for the second compliance period
8 of the program, calendar years 2027 through 2030, that will be
9 distributed from January 1, 2027, through December 31, 2030.

10 (c) By October 1, 2028, the department shall adopt by rule the
11 annual allowance budgets for calendar years 2031 through 2040.

12 (2) The annual allowance budgets must be set to achieve the share
13 of reductions by covered entities necessary to achieve the 2030,
14 2040, and 2050 statewide emissions limits established in RCW
15 70A.45.020, based on data reported to the department under chapter
16 70A.15 RCW or provided as required by this chapter. Annual allowance
17 budgets must be set such that the use of offsets as compliance
18 instruments, consistent with RCW 70A.65.170, does not prevent the
19 achievement of the emissions limits established in RCW 70A.45.020. In
20 so setting annual allowance budgets, the department must reduce the
21 annual allowance budget relative to the limits in an amount
22 equivalent to offset use, or in accordance with a similar methodology
23 adopted by the department. The department must adopt annual allowance
24 budgets for the program on a calendar year basis that provide for
25 progressively equivalent reductions year over year. An allowance
26 distributed under the program, either directly by the department
27 under RCW 70A.65.110 through 70A.65.130 or ((~~though—[through]~~))
28 through auctions under RCW 70A.65.100, does not expire and may be
29 held or banked consistent with RCW 70A.65.100(6) and 70A.65.150(1).

30 (3) The department must complete an evaluation by December 31,
31 2027, and by December 31, 2035, of the performance of the program,
32 including its performance in reducing greenhouse gases. If the
33 evaluation shows that adjustments to the annual allowance budgets are
34 necessary for covered entities to achieve their proportionate share
35 of the 2030 and 2040 emission reduction limits identified in RCW
36 70A.45.020, as applicable, the department shall adjust the annual
37 allowance budgets accordingly. The department must complete
38 additional evaluations of the performance of the program by December
39 31, 2040, and by December 31, 2045, and make any necessary
40 adjustments in the annual allowance budgets to ensure that covered

1 entities achieve their proportionate share of the 2050 emission
2 reduction limit identified in RCW 70A.45.020. Nothing in this
3 subsection precludes the department from making additional
4 adjustments to annual allowance budgets as necessary to ensure
5 successful achievement of the proportionate emission reduction limits
6 by covered entities. The department shall determine and make public
7 the circumstances, metrics, and processes that would initiate the
8 public consideration of additional allowance budget adjustments to
9 ensure successful achievement of the proportionate emission reduction
10 limits.

11 (4) Data reported to the department under RCW 70A.15.2200 or
12 provided as required by this chapter for 2015 through 2019 is deemed
13 sufficient for the purpose of adopting annual allowance budgets and
14 serving as the baseline by which covered entities demonstrate
15 compliance under the first compliance period of the program. Data
16 reported to the department under RCW 70A.15.2200 or provided as
17 required by this chapter for 2023 through 2025 is deemed sufficient
18 for adopting annual allowance budgets and serving as the baseline by
19 which covered entities demonstrate compliance under the second
20 compliance period of the program.

21 (5) The legislature intends to promote a growing and sustainable
22 economy and to avoid leakage of emissions from manufacturing to other
23 jurisdictions. Therefore, the legislature finds that implementation
24 of this section is contingent upon the enactment of RCW 70A.65.110.

25 NEW SECTION. **Sec. 2.** A new section is added to chapter 70A.65
26 RCW to read as follows:

27 (1) A covered or opt-in entity has a compliance obligation for
28 its emissions during each four-year compliance period, with the first
29 compliance period commencing January 1, 2023. The department shall by
30 rule require that covered or opt-in entities annually transfer a
31 percentage of compliance instruments in order to smooth their
32 compliance obligation, but must fully satisfy their compliance
33 obligation, for each compliance period, in a manner similar to
34 external greenhouse gas emissions trading programs in other
35 jurisdictions.

36 (2) Compliance occurs through the transfer of the required
37 compliance instruments or price ceiling units, on or before the
38 transfer date, from the holding account to the compliance account of
39 the covered or opt-in entity as described in RCW 70A.65.080.

1 (3) (a) A covered entity may substitute the submission of
2 compliance instruments with price ceiling units.

3 (b) A covered or opt-in entity submitting insufficient compliance
4 instruments to meet its compliance obligation is subject to a penalty
5 as provided in RCW 70A.65.200.

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

8 (5) Upon receipt by the department of all compliance instruments
9 transferred by a covered entity or opt-in entity to meet its
10 compliance obligation, the department shall retire the allowances or
11 offset credits.

12 **Sec. 3.** RCW 70A.65.100 and 2021 c 316 s 12 are each amended to
13 read as follows:

14 (1) Except as provided in RCW 70A.65.110, 70A.65.120, and
15 70A.65.130, the department shall distribute allowances through
16 auctions as provided in this section and in rules adopted by the
17 department to implement these sections. An allowance is not a
18 property right.

19 (2) (a) The department shall hold a maximum of four auctions
20 annually, plus any necessary reserve auctions. An auction may include
21 allowances from the annual allowance budget of the current year and
22 allowances from the annual allowance budgets from prior years that
23 remain to be distributed. The department must transmit to the
24 environmental justice council an auction notice at least 60 days
25 prior to each auction, as well as a summary results report and a
26 postauction public proceeds report within 60 days after each auction.
27 The department must communicate the results of the previous calendar
28 year's auctions to the environmental justice council on an annual
29 basis beginning in 2024.

30 (b) The department must make future vintage allowances available
31 through parallel auctions at least twice annually in addition to the
32 auctions through which current vintage allowances are exclusively
33 offered under (a) of this subsection.

34 (3) The department shall engage a qualified, independent
35 contractor to run the auctions. The department shall also engage a
36 qualified financial services administrator to hold the bid
37 guarantees, evaluate bid guarantees, and inform the department of the
38 value of bid guarantees once the bids are accepted.

1 (4) Auctions are open to covered entities, opt-in entities, and
2 general market participants that are registered entities in good
3 standing. The department shall adopt by rule the requirements for a
4 registered entity to register and participate in a given auction.

5 (a) Registered entities intending to participate in an auction
6 must submit an application to participate at least 30 days prior to
7 the auction. The application must include the documentation required
8 for review and approval by the department. A registered entity is
9 eligible to participate only after receiving a notice of approval by
10 the department.

11 (b) Each registered entity that elects to participate in the
12 auction must have a different representative. Only a representative
13 with an approved auction account is authorized to access the auction
14 platform to submit an application or confirm the intent to bid for
15 the registered entity, submit bids on behalf of the registered entity
16 during the bidding window, or to download reports specific to the
17 auction.

18 (5) The department may require a bid guarantee, payable to the
19 financial services administrator, in an amount greater than or equal
20 to the sum of the maximum value of the bids to be submitted by the
21 registered entity.

22 (6) To protect the integrity of the auctions, a registered entity
23 or group of registered entities with a direct corporate association
24 are subject to auction purchase and holding limits. The department
25 may impose additional limits if it deems necessary to protect the
26 integrity and functioning of the auctions:

27 (a) A covered entity or an opt-in entity may not buy more than 10
28 percent of the allowances offered during a single auction;

29 (b) A general market participant may not buy more than four
30 percent of the allowances offered during a single auction and may not
31 in aggregate own more than 10 percent of total allowances to be
32 issued in a calendar year;

33 (c) No registered entity may buy more than the entity's bid
34 guarantee; and

35 (d) No registered entity may buy allowances that would exceed the
36 entity's holding limit at the time of the auction.

37 (7)(a) For fiscal year 2023, upon completion and verification of
38 the auction results, the financial services administrator shall
39 notify winning bidders and transfer the auction proceeds to the state
40 treasurer for deposit as follows: (i) \$127,341,000 must first be

1 deposited into the carbon emissions reduction account created in RCW
2 70A.65.240; and (ii) the remaining auction proceeds to the climate
3 investment account created in RCW 70A.65.250 and the air quality and
4 health disparities improvement account created in RCW 70A.65.280.

5 (b) For fiscal year 2024, upon completion and verification of the
6 auction results, the financial services administrator shall notify
7 winning bidders and transfer the auction proceeds to the state
8 treasurer for deposit as follows: (i) \$356,697,000 must first be
9 deposited into the carbon emissions reduction account created in RCW
10 70A.65.240; and (ii) the remaining auction proceeds to the climate
11 investment account created in RCW 70A.65.250 and the air quality and
12 health disparities improvement account created in RCW 70A.65.280.

13 (c) For fiscal year 2025, upon completion and verification of the
14 auction results, the financial services administrator shall notify
15 winning bidders and transfer the auction proceeds to the state
16 treasurer for deposit as follows: (i) \$366,558,000 must first be
17 deposited into the carbon emissions reduction account created in RCW
18 70A.65.240; and (ii) the remaining auction proceeds to the climate
19 investment account created in RCW 70A.65.250 and the air quality and
20 health disparities improvement account created in RCW 70A.65.280.

21 (d) For fiscal years 2026 through 2037, upon completion and
22 verification of the auction results, the financial services
23 administrator shall notify winning bidders and transfer the auction
24 proceeds to the state treasurer for deposit as follows: (i)
25 \$359,117,000 per year must first be deposited into the carbon
26 emissions reduction account created in RCW 70A.65.240; and (ii) the
27 remaining auction proceeds to the climate investment account created
28 in RCW 70A.65.250 and the air quality and health disparities
29 improvement account created in RCW 70A.65.280.

30 (e) The deposits into the carbon emissions reduction account
31 pursuant to (a) through (d) of this subsection must not exceed
32 \$5,200,000,000 over the first 16 years and any remaining auction
33 proceeds must be deposited into the climate investment account
34 created in RCW 70A.65.250 and the air quality and health disparities
35 improvement account created in RCW 70A.65.280.

36 (f) For fiscal year 2038 and each year thereafter, upon
37 completion and verification of the auction results, the financial
38 services administrator shall notify winning bidders and transfer the
39 auction proceeds to the state treasurer for deposit as follows: (i)
40 50 percent of the auction proceeds to the carbon emissions reduction

1 account created in RCW 70A.65.240; and (ii) the remaining auction
2 proceeds to the climate investment account created in RCW 70A.65.250
3 and the air quality and health disparities improvement account
4 created in RCW 70A.65.280.

5 (8) The department shall adopt by rule provisions to guard
6 against bidder collusion and minimize the potential for market
7 manipulation. A registered entity may not release or disclose any
8 bidding information including: Intent to participate or refrain from
9 participation; auction approval status; intent to bid; bidding
10 strategy; bid price or bid quantity; or information on the bid
11 guarantee provided to the financial services administrator. The
12 department may cancel or restrict a previously approved auction
13 participation application or reject a new application if the
14 department determines that a registered entity has:

15 (a) Provided false or misleading facts;

16 (b) Withheld material information that could influence a decision
17 by the department;

18 (c) Violated any part of the auction rules;

19 (d) Violated registration requirements; or

20 (e) Violated any of the rules regarding the conduct of the
21 auction.

22 (9) Records containing the following information are confidential
23 and are exempt from public disclosure in their entirety:

24 (a) Bidding information as identified in subsection (8) of this
25 section;

26 (b) Information contained in the secure, online electronic
27 tracking system established by the department pursuant to RCW
28 70A.65.090(6);

29 (c) Financial, proprietary, and other market sensitive
30 information as determined by the department that is submitted to the
31 department pursuant to this chapter;

32 (d) Financial, proprietary, and other market sensitive
33 information as determined by the department that is submitted to the
34 independent contractor or the financial services administrator
35 engaged by the department pursuant to subsection (3) of this section;
36 and

37 (e) Financial, proprietary, and other market sensitive
38 information as determined by the department that is submitted to a
39 jurisdiction with which the department has entered into a linkage
40 agreement pursuant to RCW 70A.65.210, and which is shared with the

1 department, the independent contractor, or the financial services
2 administrator pursuant to a linkage agreement.

3 (10) Any cancellation or restriction approved by the department
4 under subsection (8) of this section may be permanent or for a
5 specified number of auctions and the cancellation or restriction
6 imposed is not exclusive and is in addition to the remedies that may
7 be available pursuant to chapter 19.86 RCW or other state or federal
8 laws, if applicable.

9 ~~((10))~~ (11) The department shall design allowance auctions so
10 as to allow, to the maximum extent practicable, linking with external
11 greenhouse gas emissions trading programs in other jurisdictions and
12 to facilitate the transfer of allowances when the state's program has
13 entered into a linkage agreement with other external greenhouse gas
14 emissions trading programs. The department may conduct auctions
15 jointly with linked jurisdictions.

16 ~~((11))~~ (12) In setting the number of allowances offered at each
17 auction, the department shall consider the allowances in the
18 marketplace due to the marketing of allowances issued as required
19 under RCW 70A.65.110, 70A.65.120, and 70A.65.130 in the department's
20 determination of the number of allowances to be offered at auction.
21 The department shall offer only such number of allowances at each
22 auction as will enhance the likelihood of achieving the goals of RCW
23 70A.45.020.

24 **Sec. 4.** RCW 70A.65.200 and 2021 c 316 s 23 are each amended to
25 read as follows:

26 (1) All covered and opt-in entities are required to submit
27 compliance instruments in a timely manner to meet the entities'
28 compliance obligations and shall comply with all requirements for
29 monitoring, reporting, holding, and transferring emission allowances
30 and other provisions of this chapter.

31 (2) If a covered or opt-in entity does not submit sufficient
32 compliance instruments to meet its compliance obligation by the
33 specified transfer dates, a penalty of four allowances for every one
34 compliance instrument that is missing must be submitted to the
35 department within six months. When a covered entity or opt-in entity
36 reasonably believes that it will be unable to meet a compliance
37 obligation, the entity shall immediately notify the department. Upon
38 receiving notification, the department shall issue an order requiring
39 the entity to submit the penalty allowances.

1 (3) If a covered entity or opt-in entity fails to submit penalty
2 allowances as required by subsection (2) of this section, the
3 department must issue an order or issue a penalty of up to \$10,000
4 per day per violation, or both, for failure to submit penalty
5 allowances as required by subsection (2) of the section. The order
6 may include a plan and schedule for coming into compliance.

7 (4) The department may issue a penalty of up to \$50,000 per day
8 per violation for violations of RCW 70A.65.100(8) (a) through (e).

9 (5) Except as provided in subsections (3) and (4) of this
10 section, any person that violates the terms of this chapter or an
11 order issued under this chapter incurs a penalty of up to \$10,000 per
12 day per violation for each day that the person does not comply. All
13 penalties under subsections (3) and (4) of this section and this
14 subsection must be deposited into the climate investment account
15 created in RCW 70A.65.250.

16 (6) Orders and penalties issued under this chapter are appealable
17 to the pollution control hearings board under chapter 43.21B RCW.

18 (7) For the first compliance period, the department may reduce
19 the amount of the penalty by adjusting the monetary amount or the
20 number of penalty allowances described in subsections (2) and (3) of
21 this section.

22 (8) An electric utility or natural gas utility must notify its
23 retail customers and the environmental justice council in published
24 form within three months of paying a monetary penalty under this
25 section.

26 (9)(a) No city, town, county, township, or other subdivision or
27 municipal corporation of the state may implement a charge or tax
28 based exclusively upon the quantity of greenhouse gas emissions.

29 (b) No state agency may adopt or enforce a (~~program that~~
30 ~~regulates greenhouse gas emissions from a stationary source except as~~
31 ~~provided in this chapter~~) greenhouse gas pricing or market-based
32 emissions cap and reduce program for stationary sources, or adopt or
33 enforce emission limitations on greenhouse gas emissions from
34 stationary sources except as:

35 (i) Provided in this chapter;

36 (ii) Authorized or directed by state statute; or

37 (iii) Required to implement a federal statute, rule, or program.

38 (c) This chapter preempts the provisions of chapter 173-442 WAC,
39 and the department shall repeal chapter 173-442 WAC.

1 **Sec. 5.** RCW 70A.65.020 and 2021 c 316 s 3 are each amended to
2 read as follows:

3 (1) To ensure that the program created in RCW 70A.65.060 through
4 70A.65.210 achieves reductions in criteria pollutants as well as
5 greenhouse gas emissions in overburdened communities highly impacted
6 by air pollution, the department must:

7 (a) Identify overburdened communities, which may be accomplished
8 through the department's process to identify overburdened communities
9 under chapter (~~314, Laws of 2021~~) 70A.02 RCW;

10 (b) Deploy an air monitoring network in overburdened communities
11 to collect sufficient air quality data for the 2023 review and
12 subsequent reviews of criteria pollutant reductions conducted under
13 subsection (2) of this section; and

14 (c)(i) Within the identified overburdened communities, analyze
15 and determine which sources are the greatest contributors of criteria
16 pollutants and develop a high priority list of significant emitters.

17 (ii) Prior to listing any entity as a high priority emitter, the
18 department must notify that entity and share the data used to rank
19 that entity as a high priority emitter, and provide a period of not
20 less than 60 days for the covered entity to submit more recent data
21 or other information relevant to the designation of that entity as a
22 high priority emitter.

23 (2)(a) Beginning in 2023, and every two years thereafter, the
24 department must conduct a review to determine levels of criteria
25 pollutants, as well as greenhouse gas emissions, in the overburdened
26 communities identified under subsection (1) of this section. This
27 review must also include an evaluation of initial and subsequent
28 health impacts related to criteria pollution in overburdened
29 communities. The department may conduct this evaluation jointly with
30 the department of health.

31 (b) Once this review determines the levels of criteria pollutants
32 in an identified overburdened community, then the department, in
33 consultation with local air pollution control authorities, must:

34 (i) Establish air quality targets to achieve air quality
35 consistent with whichever is more protective for human health:

36 (A) National ambient air quality standards established by the
37 United States environmental protection agency; or

38 (B) The air quality experienced in neighboring communities that
39 are not identified as overburdened;

1 (ii) Identify the stationary and mobile sources that are the
2 greatest contributors of those emissions that are either increasing
3 or not decreasing;

4 (iii) Achieve the reduction targets through adoption of emission
5 control strategies or other methods;

6 (iv) Adopt, along with local air pollution control authorities,
7 stricter air quality standards, emission standards, or emissions
8 limitations on criteria pollutants, consistent with the authority of
9 the department provided under RCW 70A.15.3000, and may consider
10 alternative mitigation actions that would reduce criteria pollution
11 by similar amounts; and

12 (v) After adoption of the stricter air quality standards,
13 emission standards, or emissions limitations on criteria pollutants
14 under (b)(iv) of this subsection, issue an enforceable order or the
15 local air authority must issue an enforceable order, as authorized
16 under RCW 70A.15.1100, as necessary to comply with the stricter
17 standards or limitations and the requirements of this section. The
18 department or local air authority must initiate the process,
19 including provision of notice to all relevant affected permittees or
20 registered sources and to the public, to adopt and implement an
21 enforceable order required under this subsection within six months of
22 the adoption of standards or limitations under (b)(iv) of this
23 subsection.

24 (c) Actions imposed under this section may not impose
25 requirements on a permitted stationary source that are
26 disproportionate to the permitted stationary source's contribution to
27 air pollution compared to other permitted stationary sources and
28 other sources of criteria pollutants in the overburdened community.

29 (3) An eligible facility sited after July 25, 2021, that receives
30 allowances under RCW 70A.65.110 must mitigate increases in (~~its~~
31 ~~emissions of~~) particulate matter in overburdened communities due to
32 its emissions.

33 (4) (a) The department must create and adopt a supplement to the
34 department's community engagement plan developed pursuant to chapter
35 (~~314, Laws of 2021~~) 70A.02 RCW. The supplement must describe how
36 the department will engage with overburdened communities and
37 vulnerable populations in:

38 (i) Identifying emitters in overburdened communities; and

39 (ii) Monitoring and evaluating criteria pollutant emissions in
40 those areas.

1 (b) The community engagement plan must include methods for
2 outreach and communication with those who face barriers, language or
3 otherwise, to participation.

4 **Sec. 6.** RCW 70A.65.150 and 2021 c 316 s 17 are each amended to
5 read as follows:

6 (1) To help minimize allowance price volatility in the auction,
7 the department shall adopt by rule an auction floor price and a
8 schedule for the floor price to increase by a predetermined amount
9 every year. The department may not sell allowances at bids lower than
10 the auction floor price. The department's rules must specify holding
11 limits that determine the maximum number of allowances that may be
12 held for use or trade by a registered entity at any one time. The
13 department shall also establish (~~(an auction ceiling)~~) a reserve
14 auction floor price to limit extraordinary prices and to determine
15 when to offer allowances through the allowance price containment
16 reserve auctions authorized under this section.

17 (2) For calendar years 2023 through 2026, the department must
18 place no less than two percent of the total number of allowances
19 available from the allowance budgets for those years in an allowance
20 price containment reserve. The reserve must be designed as a
21 mechanism to assist in containing compliance costs for covered and
22 opt-in entities in the event of unanticipated high costs for
23 compliance instruments.

24 (3)(a) The department shall adopt rules for holding auctions of
25 allowances from the price containment reserve when the settlement
26 prices in the preceding auction (~~(approach)~~) exceed the adopted
27 (~~(auction ceiling)~~) reserve auction floor price. The auction must be
28 separate from auctions of other allowances.

29 (b) Allowances must also be distributed from the allowance price
30 containment reserve by auction when new covered and opt-in entities
31 enter the program and allowances in the emissions containment reserve
32 under RCW 70A.65.140(5) are exhausted.

33 (4) Only covered and opt-in entities may participate in the
34 auction of allowances from the allowance price containment reserve.

35 (5) The process for reserve auctions is the same as the process
36 provided in RCW 70A.65.100 and the proceeds from reserve auctions
37 must be treated the same.

38 (6) The department shall by rule:

1 (a) Set the reserve auction floor price in advance of the reserve
2 auction. The department may choose to establish multiple price tiers
3 for the allowances from the reserve;

4 (b) Establish the requirements and schedule for the allowance
5 price containment reserve auctions; and

6 (c) Establish the amount of allowances to be placed in the
7 allowance price containment reserve after the first compliance period
8 ending in 2026.

9 **Sec. 7.** RCW 70A.65.160 and 2021 c 316 s 18 are each amended to
10 read as follows:

11 (1) The department shall establish a price ceiling to provide
12 cost protection for facilities obligated to comply with this chapter.
13 The ceiling must be set at a level sufficient to facilitate
14 investments to achieve further emission reductions beyond those
15 enabled by the price ceiling, with the intent that investments
16 accelerate the state's achievement of greenhouse gas limits
17 established under RCW 70A.45.020. The price ceiling must increase
18 annually in proportion to the ((~~price floor~~)) reserve auction floor
19 price established in RCW 70A.65.150(1).

20 (2) In the event that no allowances remain in the allowance price
21 containment reserve, the department must issue the number of price
22 ceiling units for sale sufficient to provide cost protection for
23 facilities as established under subsection (1) of this section.
24 Purchases must be limited to entities that do not have sufficient
25 eligible compliance instruments in their holding and compliance
26 accounts for the next compliance period and these entities may only
27 purchase what they need to meet their compliance obligation for the
28 current compliance period. Price ceiling units may not be sold or
29 transferred and must be retired for compliance in the current
30 compliance period. A price ceiling unit is not a property right.

31 (3) Funds raised in connection with the sale of price ceiling
32 units must be expended to achieve emissions reductions on at least a
33 metric ton for metric ton basis that are real, permanent,
34 quantifiable, verifiable, enforceable by the state, and in addition
35 to any greenhouse gas emission reduction otherwise required by law or
36 regulation and any other greenhouse gas emission reduction that
37 otherwise would occur.

1 **Sec. 8.** RCW 70A.65.230 and 2021 c 316 s 26 are each amended to
2 read as follows:

3 (1) It is the intent of the legislature that each year the total
4 investments made through the carbon emissions reduction account
5 created in RCW 70A.65.240, the climate commitment account created in
6 RCW 70A.65.260, the natural climate solutions account created in RCW
7 70A.65.270, and the air quality and health disparities improvement
8 account created in RCW 70A.65.280, achieve the following:

9 (a) A minimum of not less than 35 percent and a goal of 40
10 percent of total investments that provide direct and meaningful
11 benefits to vulnerable populations within the boundaries of
12 overburdened communities identified under chapter (~~(314, Laws of~~
13 ~~2021)~~) 70A.02 RCW; and

14 (b) In addition to the requirements of (a) of this subsection, a
15 minimum of not less than 10 percent of total investments that are
16 used for programs, activities, or projects formally supported by a
17 resolution of an Indian tribe, with priority given to otherwise
18 qualifying projects directly administered or proposed by an Indian
19 tribe. An investment that meets the requirements of both this
20 subsection (1)(b) and (a) of this subsection may count toward the
21 minimum percentage targets for both subsections.

22 (2) The expenditure of moneys under this chapter must be
23 consistent with applicable federal, state, and local laws, and treaty
24 rights including, but not limited to, prohibitions on uses of funds
25 imposed by the state Constitution.

26 (3) For the purposes of this section, "benefits" means
27 investments or activities that:

28 (a) Reduce vulnerable population characteristics, environmental
29 burdens, or associated risks that contribute significantly to the
30 cumulative impact designation of (~~(highly impacted)~~) overburdened
31 communities;

32 (b) Meaningfully protect an overburdened community from, or
33 support community response to, the impacts of air pollution or
34 climate change; or

35 (c) Meet a community need identified by vulnerable members of the
36 overburdened community that is consistent with the intent of this
37 chapter.

38 (4) The state must develop a process by which to evaluate the
39 impacts of the investments made under this chapter, work across state
40 agencies to develop and track priorities across the different

1 eligible funding categories, and work with the environmental justice
2 council pursuant to RCW 70A.65.040.

3 (5) No expenditures may be made from the carbon emissions
4 reduction account created in RCW 70A.65.240, the climate investment
5 account created in RCW 70A.65.250, or the air quality and health
6 disparities improvement account created in RCW 70A.65.280 if, by
7 April 1, 2023, the legislature has not considered and enacted request
8 legislation brought forth by the department under RCW 70A.65.060 that
9 outlines a compliance pathway specific to emissions-intensive, trade-
10 exposed businesses for achieving their proportionate share of the
11 state's emissions reduction limits through 2050.

12 **Sec. 9.** RCW 70A.15.2200 and 2021 c 316 s 33 are each amended to
13 read as follows:

14 (1) The board of any activated authority or the department, may
15 classify air contaminant sources, by ordinance, resolution, rule or
16 regulation, which in its judgment may cause or contribute to air
17 pollution, according to levels and types of emissions and other
18 characteristics which cause or contribute to air pollution, and may
19 require registration or reporting or both for any such class or
20 classes. Classifications made pursuant to this section may be for
21 application to the area of jurisdiction of such authority, or the
22 state as a whole or to any designated area within the jurisdiction,
23 and shall be made with special reference to effects on health,
24 economic and social factors, and physical effects on property.

25 (2) Except as provided in subsection (3) of this section, any
26 person operating or responsible for the operation of air contaminant
27 sources of any class for which the ordinances, resolutions, rules or
28 regulations of the department or board of the authority, require
29 registration or reporting shall register therewith and make reports
30 containing information as may be required by such department or board
31 concerning location, size and height of contaminant outlets,
32 processes employed, nature of the contaminant emission and such other
33 information as is relevant to air pollution and available or
34 reasonably capable of being assembled. In the case of emissions of
35 greenhouse gases as defined in RCW 70A.45.010 the department shall
36 adopt rules requiring reporting of those emissions. The department or
37 board may require that such registration or reporting be accompanied
38 by a fee, and may determine the amount of such fee for such class or
39 classes: PROVIDED, That the amount of the fee shall only be to

1 compensate for the costs of administering such registration or
2 reporting program which shall be defined as initial registration and
3 annual or other periodic reports from the source owner providing
4 information directly related to air pollution registration, on-site
5 inspections necessary to verify compliance with registration
6 requirements, data storage and retrieval systems necessary for
7 support of the registration program, emission inventory reports and
8 emission reduction credits computed from information provided by
9 sources pursuant to registration program requirements, staff review,
10 including engineering or other reliable analysis for accuracy and
11 currentness, of information provided by sources pursuant to
12 registration program requirements, clerical and other office support
13 provided in direct furtherance of the registration program, and
14 administrative support provided in directly carrying out the
15 registration program: PROVIDED FURTHER, That any such registration
16 made with either the board or the department shall preclude a further
17 registration and reporting with any other board or the department,
18 except that emissions of greenhouse gases as defined in RCW
19 70A.45.010 must be reported as required under subsection (5) of this
20 section.

21 All registration program and reporting fees collected by the
22 department shall be deposited in the air pollution control account.
23 All registration program fees collected by the local air authorities
24 shall be deposited in their respective treasuries.

25 (3) If a registration or report has been filed for a grain
26 warehouse or grain elevator as required under this section,
27 registration, reporting, or a registration program fee shall not,
28 after January 1, 1997, again be required under this section for the
29 warehouse or elevator unless the capacity of the warehouse or
30 elevator as listed as part of the license issued for the facility has
31 been increased since the date the registration or reporting was last
32 made. If the capacity of the warehouse or elevator listed as part of
33 the license is increased, any registration or reporting required for
34 the warehouse or elevator under this section must be made by the date
35 the warehouse or elevator receives grain from the first harvest
36 season that occurs after the increase in its capacity is listed in
37 the license.

38 This subsection does not apply to a grain warehouse or grain
39 elevator if the warehouse or elevator handles more than ((~~ten~~
40 million)) 10,000,000 bushels of grain annually.

1 (4) For the purposes of subsection (3) of this section:

2 (a) A "grain warehouse" or "grain elevator" is an establishment
3 classified in standard industrial classification (SIC) code 5153 for
4 wholesale trade for which a license is required and includes, but is
5 not limited to, such a licensed facility that also conducts cleaning
6 operations for grain;

7 (b) A "license" is a license issued by the department of
8 agriculture licensing a facility as a grain warehouse or grain
9 elevator under chapter 22.09 RCW or a license issued by the federal
10 government licensing a facility as a grain warehouse or grain
11 elevator for purposes similar to those of licensure for the facility
12 under chapter 22.09 RCW; and

13 (c) "Grain" means a grain or a pulse.

14 (5)(a) The department shall adopt rules requiring persons to
15 report emissions of greenhouse gases as defined in RCW 70A.45.010
16 where those emissions from a single facility, or from electricity or
17 fossil fuels sold in Washington by a single supplier or local
18 distribution company, meet or exceed (~~ten thousand~~) 10,000 metric
19 tons of carbon dioxide equivalent annually. The rules adopted by the
20 department must support implementation of the program created in RCW
21 70A.65.060. In addition, the rules must require that:

22 (i) Emissions of greenhouse gases resulting from the combustion
23 of fossil fuels be reported separately from emissions of greenhouse
24 gases resulting from the combustion of biomass; and

25 (ii) Each annual report must include emissions data for the
26 preceding calendar year and must be submitted to the department by
27 March 31st of the year in which the report is due, except for an
28 electric power entity, which must submit its report by June 1st of
29 the year in which the report is due.

30 (b)(i) The department may by rule include additional gases to the
31 definition of "greenhouse gas" in RCW 70A.45.010 only if the gas has
32 been designated as a greenhouse gas by the United States congress, by
33 the United States environmental protection agency, or included in
34 external greenhouse gas emission trading programs with which
35 Washington has pursuant to RCW 70A.65.210. Prior to including
36 additional gases to the definition of "greenhouse gas" in RCW
37 70A.45.010, the department shall notify the appropriate committees of
38 the legislature.

39 (ii) The department may by rule exempt persons who are required
40 to report greenhouse gas emissions to the United States environmental

1 protection agency and who emit less than (~~ten thousand~~) 10,000
2 metric tons carbon dioxide equivalent annually.

3 (iii) The department must establish a methodology for persons who
4 are not required to report under this section to voluntarily report
5 their greenhouse gas emissions.

6 (c)(i) The department shall review and if necessary update its
7 rules whenever:

8 (A) The United States environmental protection agency adopts
9 final amendments to 40 C.F.R. Part 98 to ensure consistency with
10 federal reporting requirements for emissions of greenhouse gases; or

11 (B) Needed to ensure consistency with emissions reporting
12 requirements for jurisdictions with which Washington has entered a
13 linkage agreement.

14 (ii) The department shall not amend its rules in a manner that
15 conflicts with this section.

16 (d) The department shall share any reporting information reported
17 to it with the local air authority in which the person reporting
18 under the rules adopted by the department operates.

19 (e) The fee provisions in subsection (2) of this section apply to
20 reporting of emissions of greenhouse gases. Persons required to
21 report under (a) of this subsection who fail to report or pay the fee
22 required in subsection (2) of this section are subject to enforcement
23 penalties under this chapter. The department shall enforce the
24 reporting rule requirements. When a person that holds a compliance
25 obligation under RCW 70A.65.080 fails to submit an emissions data
26 report or fails to obtain a positive emissions data verification
27 statement in accordance with (g)(ii) of this subsection, the
28 department may assign an emissions level for that person.

29 (f) The energy facility site evaluation council shall,
30 simultaneously with the department, adopt rules that impose
31 greenhouse gas reporting requirements in site certifications on
32 owners or operators of a facility permitted by the energy facility
33 site evaluation council. The greenhouse gas reporting requirements
34 imposed by the energy facility site evaluation council must be the
35 same as the greenhouse gas reporting requirements imposed by the
36 department. The department shall share any information reported to it
37 from facilities permitted by the energy facility site evaluation
38 council with the council, including notice of a facility that has
39 failed to report as required. The energy facility site evaluation

1 council shall contract with the department to monitor the reporting
2 requirements adopted under this section.

3 (g) (i) The department must establish by rule the methods of
4 verifying the accuracy of emissions reports.

5 (ii) Verification requirements apply at a minimum to persons
6 required to report under (a) of this subsection with emissions that
7 equal or exceed 25,000 metric tons of carbon dioxide equivalent
8 emissions, including carbon dioxide from biomass-derived fuels, or to
9 persons who have a compliance obligation under RCW 70A.65.080 in any
10 year of the current compliance period. The department may adopt rules
11 to accept verification reports from another jurisdiction with a
12 linkage agreement pursuant to RCW 70A.65.180 in cases where the
13 department deems that the methods or procedures are substantively
14 similar.

15 (h) (i) The definitions in RCW 70A.45.010 apply throughout this
16 subsection (5) unless the context clearly requires otherwise.

17 (ii) For the purpose of this subsection (5), the term "supplier"
18 includes: (A) Suppliers that produce, import, or deliver, or any
19 combination of producing, importing, or delivering, a quantity of
20 fuel products in Washington that, if completely combusted, oxidized,
21 or used in other processes, would result in the release of greenhouse
22 gases in Washington equivalent to or higher than the threshold
23 established under (a) of this subsection; and (B) suppliers of carbon
24 dioxide that produce, import, or deliver a quantity of carbon dioxide
25 in Washington that, if released, would result in emissions equivalent
26 to or higher than the threshold established under (a) of this
27 subsection.

28 (iii) For the purpose of this subsection (5), the term "person"
29 includes: (A) An owner or operator of a facility; (B) a supplier; or
30 (C) an electric power entity.

31 (iv) For the purpose of this subsection (5), the term "facility"
32 includes facilities that directly emit greenhouse gases in Washington
33 equivalent to the threshold established under (a) of this subsection
34 with at least one source category listed in the United States
35 environmental protection agency's mandatory greenhouse gas reporting
36 regulation, 40 C.F.R. Part 98 Subparts C through II and RR through
37 UU, as adopted on April 25, 2011.

38 (v) For the purpose of this subsection (5), the term "electric
39 power entity" includes any of the following that supply electric
40 power in Washington with associated emissions of greenhouse gases

1 equal to or above the threshold established under (a) of this
2 subsection: (A) Electricity importers and exporters; (B) retail
3 providers, including multijurisdictional retail providers; and (C)
4 first jurisdictional deliverers, as defined in RCW 70A.65.010, not
5 otherwise included here.

6 **Sec. 10.** RCW 70A.65.010 and 2021 c 316 s 2 are each amended to
7 read as follows:

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

10 (1) "Allowance" means an authorization to emit up to one metric
11 ton of carbon dioxide equivalent.

12 (2) "Allowance price containment reserve" means an account
13 maintained by the department with allowances available for sale
14 through separate reserve auctions at predefined prices to assist in
15 containing compliance costs for covered and opt-in entities in the
16 event of unanticipated high costs for compliance instruments.

17 (3) "Annual allowance budget" means the total number of
18 greenhouse gas allowances allocated for auction and distribution for
19 one calendar year by the department.

20 (4) "Asset controlling supplier" means any entity that owns or
21 operates interconnected electricity generating facilities or serves
22 as an exclusive marketer for these facilities even though it does not
23 own them, and has been designated by the department and received a
24 department-published emissions factor for the wholesale electricity
25 procured from its system. The department shall use a methodology
26 consistent with the methodology used by an external greenhouse gas
27 emissions trading program that shares the regional electricity
28 transmission system. Electricity from an asset controlling supplier
29 is considered a specified source of electricity.

30 (5) "Auction" means the process of selling greenhouse gas
31 allowances by offering them up for bid, taking bids, and then
32 distributing the allowances to winning bidders.

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

35 (7) "Auction purchase limit" means the limit on the number of
36 allowances one registered entity or a group of affiliated registered
37 entities may purchase from the share of allowances sold at an
38 auction.

1 (8) "Balancing authority" means the responsible entity that
2 integrates resource plans ahead of time, maintains load-interchange-
3 generation balance within a balancing authority area, and supports
4 interconnection frequency in real time.

5 (9) "Balancing authority area" means the collection of
6 generation, transmission, and load within the metered boundaries of a
7 balancing authority. A balancing authority maintains load-resource
8 balance within this area.

9 (10) "Best available technology" means a technology or
10 technologies that will achieve the greatest reduction in greenhouse
11 gas emissions, taking into account the fuels, processes, and
12 equipment used by facilities to produce goods of comparable type,
13 quantity, and quality. Best available technology must be technically
14 feasible, commercially available, economically viable, not create
15 excessive environmental impacts, and be compliant with all applicable
16 laws while not changing the characteristics of the good being
17 manufactured.

18 (11) "Biomass" means nonfossilized and biodegradable organic
19 material originating from plants, animals, and microorganisms,
20 including products, by-products, residues, and waste from
21 agriculture, forestry, and related industries as well as the
22 nonfossilized and biodegradable organic fractions of municipal
23 wastewater and industrial waste, including gases and liquids
24 recovered from the decomposition of nonfossilized and biodegradable
25 organic material.

26 (12) "Biomass-derived fuels," "biomass fuels," or "biofuels"
27 means fuels derived from biomass that have at least 40 percent lower
28 greenhouse gas emissions based on a full life-cycle analysis when
29 compared to petroleum fuels for which biofuels are capable as serving
30 as a substitute.

31 (13) "Carbon dioxide equivalents" means a measure used to compare
32 the emissions from various greenhouse gases based on their global
33 warming potential.

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

1 (15) "Climate commitment" means the process and mechanisms to
2 ensure a coordinated and strategic approach to advancing climate
3 resilience and environmental justice and achieving an equitable and
4 inclusive transition to a carbon neutral economy.

5 (16) "Climate resilience" is the ongoing process of anticipating,
6 preparing for, and adapting to changes in climate and minimizing
7 negative impacts to our natural systems, infrastructure, and
8 communities. For natural systems, increasing climate resilience
9 involves restoring and increasing the health, function, and integrity
10 of our ecosystems and improving their ability to absorb and recover
11 from climate-affected disturbances. For communities, increasing
12 climate resilience means enhancing their ability to understand,
13 prevent, adapt, and recover from climate impacts to people and
14 infrastructure.

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

18 (18) "Compliance instrument" means an allowance or offset credit
19 issued by the department or by an external greenhouse gas emissions
20 trading program to which Washington has linked its greenhouse gas
21 emissions cap and invest program. One compliance instrument is equal
22 to one metric ton of carbon dioxide equivalent.

23 (19) "Compliance obligation" means the requirement to submit to
24 the department the number of compliance instruments equivalent to a
25 covered or opt-in entity's covered emissions during the compliance
26 period.

27 (20) "Compliance period" means the four-year period for which the
28 compliance obligation is calculated for covered entities.

29 (21) "Cost burden" means the impact on rates or charges to
30 customers of electric utilities in Washington state for the
31 incremental cost of electricity service to serve load due to the
32 compliance cost for greenhouse gas emissions caused by the program.
33 Cost burden includes administrative costs from the utility's
34 participation in the program.

35 (22) "Covered emissions" means the emissions for which a covered
36 entity has a compliance obligation under RCW 70A.65.080.

37 (23) "Covered entity" means a person that is designated by the
38 department as subject to RCW 70A.65.060 through 70A.65.210.

39 (24) "Cumulative environmental health impact" has the same
40 meaning as provided in RCW 70A.02.010.

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

5 (26) "Department" means the department of ecology.

6 (27) "Electricity importer" means:

7 (a) For electricity that is scheduled with a NERC e-tag to a
8 final point of delivery into a balancing authority area located
9 entirely within the state of Washington, the electricity importer is
10 identified on the NERC e-tag as the purchasing-selling entity on the
11 last segment of the tag's physical path with the point of receipt
12 located outside the state of Washington and the point of delivery
13 located inside the state of Washington;

14 (b) For facilities physically located outside the state of
15 Washington with the first point of interconnection to a balancing
16 authority area located entirely within the state of Washington when
17 the electricity is not scheduled on a NERC e-tag, the electricity
18 importer is the facility operator or owner;

19 (c) For electricity imported through a centralized market, the
20 electricity importer will be defined by rule consistent with the
21 rules required under RCW 70A.65.080(1)(c);

22 (d) For electricity from facilities allocated to serve retail
23 electricity customers of a multijurisdictional electric company, the
24 electricity importer is the multijurisdictional electric company;

25 (e) If the importer identified under (a) of this subsection is a
26 federal power marketing administration over which the state of
27 Washington does not have jurisdiction, and the federal power
28 marketing administration has not voluntarily elected to comply with
29 the program, then the electricity importer is the next purchasing-
30 selling entity in the physical path on the NERC e-tag, or if no
31 additional purchasing-selling entity over which the state of
32 Washington has jurisdiction, then the electricity importer is the
33 electric utility that operates the Washington transmission or
34 distribution system, or the generation balancing authority;

35 (f) For electricity that is imported into the state by a federal
36 power marketing administration and sold to a public body or
37 cooperative customer or direct service industrial customer located in
38 Washington pursuant to section 5(b) or (d) of the Pacific Northwest
39 electric power planning and conservation act of 1980, P.L. 96-501,
40 the electricity importer is the federal marketing administration;

1 (g) If the importer identified under (f) of this subsection has
2 not voluntarily elected to comply with the program, then the
3 electricity importer is the public body or cooperative customer or
4 direct service industrial customer; or

5 (h) For electricity from facilities allocated to a consumer-owned
6 utility inside the state of Washington from a multijurisdictional
7 consumer-owned utility, the electricity importer is the consumer-
8 owned utility inside the state of Washington.

9 (28) "Emissions containment reserve allowance" means a
10 conditional allowance that is withheld from sale at an auction by the
11 department or its agent to secure additional emissions reductions in
12 the event prices fall below the emissions containment reserve trigger
13 price.

14 (29) "Emissions containment reserve trigger price" means the
15 price below which allowances will be withheld from sale by the
16 department or its agent at an auction, as determined by the
17 department by rule.

18 (30) "Emissions threshold" means the greenhouse gas emission
19 level at or above which a person has a compliance obligation.

20 (31) "Environmental benefits" has the same meaning as defined in
21 RCW 70A.02.010.

22 (32) "Environmental harm" has the same meaning as defined in RCW
23 70A.02.010.

24 (33) "Environmental impacts" has the same meaning as defined in
25 RCW 70A.02.010.

26 (34) "Environmental justice" has the same meaning as defined in
27 RCW 70A.02.010.

28 (35) "Environmental justice assessment" has the same meaning as
29 identified in RCW 70A.02.060.

30 (36) "External greenhouse gas emissions trading program" means a
31 government program, other than Washington's program created in this
32 chapter, that restricts greenhouse gas emissions from sources outside
33 of Washington and that allows emissions trading.

34 (37) "Facility" means any physical property, plant, building,
35 structure, source, or stationary equipment located on one or more
36 contiguous or adjacent properties in actual physical contact or
37 separated solely by a public roadway or other public right-of-way and
38 under common ownership or common control, that emits or may emit any
39 greenhouse gas.

1 (38) "First jurisdictional deliverer" means the owner or operator
2 of an electric generating facility in Washington or an electricity
3 importer.

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

8 (40) "Greenhouse gas" has the same meaning as in RCW 70A.45.010.

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

11 (42) "Imported electricity" means electricity generated outside
12 the state of Washington with a final point of delivery within the
13 state.

14 (a) "Imported electricity" includes electricity from an organized
15 market, such as the energy imbalance market.

16 (b) "Imported electricity" includes imports from linked
17 jurisdictions, but such imports shall be construed as having no
18 emissions.

19 (c) Electricity from a system that is marketed by a federal power
20 marketing administration shall be construed as "imported
21 electricity," not electricity generated in the state of Washington.

22 (d) "Imported electricity" does not include electricity imports
23 of unspecified electricity that are netted by exports of unspecified
24 electricity to any jurisdiction not covered by a linked program by
25 the same entity within the same hour.

26 (e) For a multijurisdictional electric company, "imported
27 electricity" means electricity, other than from in-state facilities,
28 that contributes to a common system power pool. Where a
29 multijurisdictional electric company has a cost allocation
30 methodology approved by the utilities and transportation commission,
31 the allocation of specific facilities to Washington's retail load
32 will be in accordance with that methodology.

33 (f) For a multijurisdictional consumer-owned utility, "imported
34 electricity" includes electricity from facilities that contribute to
35 a common system power pool that are allocated to a consumer-owned
36 utility inside the state of Washington pursuant to a methodology
37 approved by the governing board of the consumer-owned utility.

38 (43) "Leakage" means a reduction in emissions of greenhouse gases
39 within the state that is offset by a directly attributable increase
40 in greenhouse gas emissions outside the state and outside the

1 geography of another jurisdiction with a linkage agreement with
2 Washington.

3 (44) "Limits" means the greenhouse gas emissions reductions
4 required by RCW 70A.45.020.

5 (45) "Linkage" means a bilateral or multilateral decision under a
6 linkage agreement between greenhouse gas market programs to accept
7 compliance instruments issued by a participating jurisdiction to meet
8 the obligations of regulated entities in a partner jurisdiction and
9 to otherwise coordinate activities to facilitate operation of a joint
10 market.

11 (46) "Linkage agreement" means a nonbinding agreement that
12 connects two or more greenhouse gas market programs and articulates a
13 mutual understanding of how the participating jurisdictions will work
14 together to facilitate a connected greenhouse gas market.

15 (47) "Linked jurisdiction" means a jurisdiction with which
16 Washington has entered into a linkage agreement.

17 (48) "Multijurisdictional consumer-owned utility" means a
18 consumer-owned utility that provides electricity to member owners in
19 Washington and in one or more other states in a contiguous service
20 territory or from a common power system.

21 (49) "Multijurisdictional electric company" means an investor-
22 owned utility that provides electricity to customers in Washington
23 and in one or more other states in a contiguous service territory or
24 from a common power system.

25 (50) "NERC e-tag" means North American electric reliability
26 corporation (NERC) energy tag representing transactions on the North
27 American bulk electricity market scheduled to flow between or across
28 balancing authority areas.

29 (51) "Offset credit" means a tradable compliance instrument that
30 represents an emissions reduction or emissions removal of one metric
31 ton of carbon dioxide equivalent.

32 (52) "Offset project" means a project that reduces or removes
33 greenhouse gases that are not covered emissions under this chapter.

34 (53) "Offset protocols" means a set of procedures and standards
35 to quantify greenhouse gas reductions or greenhouse gas removals
36 achieved by an offset project.

37 (54) "Overburdened community" means a geographic area where
38 vulnerable populations face combined, multiple environmental harms
39 and health impacts or risks due to exposure to environmental

1 pollutants or contaminants through multiple pathways, which may
2 result in significant disparate adverse health outcomes or effects.

3 (a) "Overburdened community" includes, but is not limited to:

4 (i) Highly impacted communities as defined in RCW 19.405.020;

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

7 (iii) Populations, including Native Americans or immigrant
8 populations, who may be exposed to environmental contaminants and
9 pollutants outside of the geographic area in which they reside based
10 on the populations' use of traditional or cultural foods and
11 practices, such as the use of resources, access to which is protected
12 under treaty rights in ceded areas, when those exposures in
13 conjunction with other exposures may result in disproportionately
14 greater risks, including risks of certain cancers or other adverse
15 health effects and outcomes.

16 (b) Overburdened communities identified by the department may
17 include the same communities as those identified by the department
18 through its process for identifying overburdened communities under
19 RCW 70A.02.010.

20 (55) "Person" has the same meaning as defined in RCW
21 70A.15.2200(5)(h)(iii).

22 (56) "Point of delivery" means a point on the electricity
23 transmission or distribution system where a deliverer makes
24 electricity available to a receiver, or available to serve load. This
25 point may be an interconnection with another system or a substation
26 where the transmission provider's transmission and distribution
27 systems are connected to another system, or a distribution substation
28 where electricity is imported into the state over a
29 multijurisdictional retail provider's distribution system.

30 (57) "Price ceiling unit" means the units issued at a fixed price
31 by the department for the purpose of limiting price increases and
32 funding further investments in greenhouse gas reductions.

33 (58) "Program" means the greenhouse gas emissions cap and invest
34 program created by and implemented pursuant to this chapter.

35 (59) "Program registry" means the data system in which covered
36 entities, opt-in entities, and general market participants are
37 registered and in which compliance instruments are recorded and
38 tracked.

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

4 (61) "Resilience" means the ability to prepare, mitigate and plan
5 for, withstand, recover from, and more successfully adapt to adverse
6 events and changing conditions, and reorganize in an equitable manner
7 that results in a new and better condition.

8 (62) "Retire" means to permanently remove a compliance instrument
9 such that the compliance instrument may never be sold, traded, or
10 otherwise used again.

11 (63) "Specified source of electricity" or "specified source"
12 means a facility, unit, or asset controlling supplier that is
13 permitted to be claimed as the source of electricity delivered. The
14 reporting entity must have either full or partial ownership in the
15 facility or a written power contract to procure electricity generated
16 by that facility or unit or from an asset controlling supplier at the
17 time of entry into the transaction to procure electricity.

18 (64) "Supplier" means a supplier of fuel in Washington state as
19 defined in RCW 70A.15.2200(5)(h)(ii).

20 (65) "Tribal lands" has the same meaning as defined in RCW
21 70A.02.010.

22 (66) "Unspecified source of electricity" or "unspecified source"
23 means a source of electricity that is not a specified source at the
24 time of entry into the transaction to procure electricity.

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

32 (68) "Vulnerable populations" has the same meaning as defined in
33 RCW 70A.02.010.

34 **Sec. 11.** RCW 70A.65.140 and 2021 c 316 s 16 are each amended to
35 read as follows:

36 (1) To help ensure that the price of allowances remains
37 sufficient to incentivize reductions in greenhouse gas emissions, the
38 department must establish an emissions containment reserve and set an
39 emissions containment reserve trigger price by rule. The price must

1 be set at a reasonable amount above the auction floor price and equal
2 to the level established in jurisdictions with which the department
3 has entered into a linkage agreement. (~~In the event that~~) If a
4 jurisdiction with which the department (~~has entered~~) might enter
5 into a linkage agreement has no emissions containment trigger price,
6 the department (~~shall~~) may suspend the trigger price under this
7 subsection. The purpose of withholding allowances in the emissions
8 containment reserve is to secure additional emissions reductions.

9 (2) In the event that the emissions containment reserve trigger
10 price is met during an auction, the department must automatically
11 withhold allowances as needed. The department must convert and
12 transfer any allowances that have been withheld from auction into the
13 emissions containment reserve account.

14 (3) Emissions containment reserve allowances may only be withheld
15 from an auction if the demand for allowances would result in an
16 auction clearing price that is less than the emissions containment
17 reserve trigger price prior to the withholding from the auction of
18 any emissions containment reserve allowances.

19 (4) The department shall transfer allowances to the emissions
20 containment reserve in the following situations:

21 (a) No less than two percent of the total number of allowances
22 available from the allowance budgets for calendar years 2023 through
23 2026;

24 (b) When allowances are unsold in auctions under RCW 70A.65.100;

25 (c) When facilities curtail or close consistent with RCW
26 70A.65.110(6); or

27 (d) When facilities fall below the emissions threshold. The
28 amount of allowances withdrawn from the program budget must be
29 proportionate to the amount of emissions such a facility was
30 previously using.

31 (5)(a) Allowances must be distributed from the emissions
32 containment reserve by auction when new covered and opt-in entities
33 enter the program.

34 (b) Allowances equal to the greenhouse gas emissions resulting
35 from a new or expanded emissions-intensive, trade-exposed facility
36 with emissions in excess of 25,000 metric tons per year during the
37 first applicable compliance period will be provided to the facility
38 from the reserve created in this section and must be retired by the
39 facility. In subsequent compliance periods, the facility will be

1 subject to the regulatory cap and related requirements under this
2 chapter.

3 **Sec. 12.** RCW 70A.65.170 and 2021 c 316 s 19 are each amended to
4 read as follows:

5 (1) The department shall adopt by rule the protocols for
6 establishing offset projects and securing offset credits that may be
7 used to meet a portion of a covered or opt-in entity's compliance
8 obligation under chapter 316, Laws of 2021. The protocols adopted by
9 the department under this section must align with the policies of the
10 state established under RCW 70A.45.090 and 70A.45.100.

11 (2) Offset projects must:

12 (a) Provide direct environmental benefits to the state or be
13 located in a jurisdiction with which Washington has entered into a
14 linkage agreement;

15 (b) Result in greenhouse gas reductions or removals that:

16 (i) Are real, permanent, quantifiable, verifiable, and
17 enforceable; and

18 (ii) Are in addition to greenhouse gas emission reductions or
19 removals otherwise required by law and other greenhouse gas emission
20 reductions or removals that would otherwise occur; and

21 (c) Have been certified by a recognized registry (~~after July 25,~~
22 ~~2021, or within two years prior to July 25, 2021~~)).

23 (3) (a) A total of no more than five percent of a covered or opt-
24 in entity's compliance obligation during the first compliance period
25 may be met by transferring offset credits. During these years, at
26 least 50 percent of a covered or opt-in entity's compliance
27 obligation satisfied by offset credits must be sourced from offset
28 projects that provide direct environmental benefits in the state.

29 (b) A total of no more than four percent of a covered or opt-in
30 entity's compliance obligation during the second compliance period
31 may be met by transferring offset credits. During these years, at
32 least 75 percent of a covered or opt-in entity's compliance
33 obligation satisfied by offset credits must be sourced from offset
34 projects that provide direct environmental benefits in the state. The
35 department may reduce the 75 percent requirement if it determines
36 there is not sufficient offset supply in the state to meet offset
37 demand during the second compliance period.

38 (c) The limits in (a) and (b) of this subsection may be modified
39 by rule as adopted by the department when appropriate to ensure

1 achievement of the proportionate share of statewide emissions limits
2 established in RCW 70A.45.020 and to provide for alignment with other
3 jurisdictions to which the state has linked.

4 (d) The limits in (a) and (b) of this subsection may be reduced
5 for a specific covered or opt-in entity if the department determines,
6 in consultation with the environmental justice council, that the
7 covered or opt-in entity has or is likely to:

8 (i) Contribute substantively to cumulative air pollution burden
9 in an overburdened community as determined by criteria established by
10 the department, in consultation with the environmental justice
11 council; or

12 (ii) Violate any permits required by any federal, state, or local
13 air pollution control agency where the violation may result in an
14 increase in emissions.

15 (e) An offset project on federally recognized tribal land does
16 not count against the offset credit limits described in (a) and (b)
17 of this subsection. No more than three percent of a covered or opt-in
18 entity's compliance obligation may be met by transferring offset
19 credits from projects on federally recognized tribal land during the
20 first compliance period. No more than two percent of a covered or
21 opt-in entity's compliance obligation may be met by transferring
22 offset credits from projects on federally recognized tribal land
23 during the second compliance period.

24 (4) In adopting protocols governing offset projects and covered
25 and opt-in entities' use of offset credits, the department shall:

26 (a) Take into consideration standards, rules, or protocols for
27 offset projects and offset credits established by other states,
28 provinces, and countries with programs comparable to the program
29 established in this chapter;

30 (b) Encourage opportunities for the development of offset
31 projects in this state by adopting offset protocols that may include,
32 but need not be limited to, protocols that make use of aggregation or
33 other mechanisms to reduce transaction costs related to the
34 development of offset projects and that support the development of
35 carbon dioxide removal projects;

36 (c) Adopt a process for monitoring and invalidating offset
37 credits as necessary to ensure the credit reflects emission
38 reductions or removals that continue to meet the standards required
39 by subsection (1) of this section. If an offset credit is
40 invalidated, the covered or opt-in entity must, within six months of

1 the invalidation, transfer replacement credits or allowances to meet
2 its compliance obligation. Failure to transfer the required credits
3 or allowances is a violation subject to penalties as provided in RCW
4 70A.65.200; and

5 (d) Make use of aggregation or other mechanisms, including cost-
6 effective inventory and monitoring provisions, to increase the
7 development of offset and carbon removal projects by landowners
8 across the broadest possible variety of types and sizes of lands,
9 including lands owned by small forestland owners.

10 (5) Any offset credits used (~~may not~~) must:

11 (a) Not be in addition to or allow for an increase in the
12 emissions limits established under RCW 70A.45.020, as reflected in
13 the annual allowance budgets developed under RCW 70A.65.070;

14 (b) Have been issued for reporting periods wholly after the
15 effective date of this section or within two years prior to the
16 effective date of this section; and

17 (c) Be consistent with offset protocols adopted by the
18 department.

19 (6) The offset credit must be registered and tracked as a
20 compliance instrument.

21 (7) Beginning in 2031, the limits established in subsection (3)
22 of this section apply unless modified by rule as adopted by the
23 department after a public consultation process.

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