

E2SSB 6058 - H COMM AMD

By Committee on Environment & Energy

NOT ADOPTED 02/29/2024

1 Strike everything after the enacting clause and insert the
2 following:

3 **"Sec. 1.** RCW 70A.65.010 and 2022 c 181 s 10 are each amended to
4 read as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

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

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

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

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

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

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

1 (7) "Auction purchase limit" means the limit on the number of
2 allowances one registered entity or a group of affiliated registered
3 entities may purchase from the share of allowances sold at an
4 auction.

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

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

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

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

30 (12) "Biomass-derived fuels," "biomass fuels," or "biofuels"
31 means (~~fuels derived from biomass that have at least 40 percent~~
32 ~~lower greenhouse gas emissions based on a full life-cycle analysis~~
33 ~~when compared to petroleum fuels for which biofuels are capable as~~
34 ~~servicing as a substitute~~)) whichever of the following fuels derived
35 from biomass has lower associated life-cycle greenhouse gas
36 emissions: (a) Fuels that have at least 30 percent lower greenhouse
37 gas emissions based on a full life-cycle analysis when compared to
38 petroleum fuels for which biofuels are capable as servicing as a
39 substitute; or (b) fuels that meet a standard adopted by the
40 department by rule that align with the definition of biofuel, or

1 other standards applicable to biofuel, established by a jurisdiction
2 with which the department has entered into a linkage agreement.

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

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

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

16 (16) "Climate resilience" is the ongoing process of anticipating,
17 preparing for, and adapting to changes in climate and minimizing
18 negative impacts to our natural systems, infrastructure, and
19 communities. For natural systems, increasing climate resilience
20 involves restoring and increasing the health, function, and integrity
21 of our ecosystems and improving their ability to absorb and recover
22 from climate-affected disturbances. For communities, increasing
23 climate resilience means enhancing their ability to understand,
24 prevent, adapt, and recover from climate impacts to people and
25 infrastructure.

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

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

34 (19) "Compliance obligation" means the requirement to submit to
35 the department the number of compliance instruments equivalent to a
36 covered or opt-in entity's covered emissions during the compliance
37 period.

38 (20) "Compliance period" means the four-year period, except as
39 provided in RCW 70A.65.070(1)(a)(ii), for which the compliance
40 obligation is calculated for covered entities.

1 (21) "Cost burden" means the impact on rates or charges to
2 customers of electric utilities in Washington state for the
3 incremental cost of electricity service to serve load due to the
4 compliance cost for greenhouse gas emissions caused by the program.
5 Cost burden includes administrative costs from the utility's
6 participation in the program.

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

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

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

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

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

18 (27) "Electricity importer" means:

19 (a) For electricity that is scheduled with a NERC e-tag to a
20 final point of delivery into a balancing authority area located
21 entirely within the state of Washington, the electricity importer is
22 identified on the NERC e-tag as the purchasing-selling entity on the
23 last segment of the tag's physical path with the point of receipt
24 located outside the state of Washington and the point of delivery
25 located inside the state of Washington;

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

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

34 (d) For electricity provided as balancing energy in the state of
35 Washington, including balancing energy that is also inside a
36 balancing authority area that is not located entirely within the
37 state of Washington, the electricity importer may be defined by the
38 department by rule;

1 (e) For electricity from facilities allocated to serve retail
2 electricity customers of a multijurisdictional electric company, the
3 electricity importer is the multijurisdictional electric company;

4 ~~((e))~~ (f) If the importer identified under (a) of this
5 subsection is a federal power marketing administration over which the
6 state of Washington does not have jurisdiction, and the federal power
7 marketing administration has not voluntarily elected to comply with
8 the program, then the electricity importer is the next purchasing-
9 selling entity in the physical path on the NERC e-tag, or if no
10 additional purchasing-selling entity over which the state of
11 Washington has jurisdiction, then the electricity importer is the
12 electric utility that operates the Washington transmission or
13 distribution system, or the generation balancing authority;

14 ~~((f))~~ (g) For electricity that is imported into the state by a
15 federal power marketing administration and sold to a public body or
16 cooperative customer or direct service industrial customer located in
17 Washington pursuant to section 5(b) or (d) of the Pacific Northwest
18 electric power planning and conservation act of 1980, P.L. 96-501,
19 the electricity importer is the federal marketing administration;

20 ~~((g))~~ (h) If the importer identified under ~~((f))~~ (g) of this
21 subsection has not voluntarily elected to comply with the program,
22 then the electricity importer is the public body or cooperative
23 customer or direct service industrial customer; ~~((e~~

24 ~~(h))~~ (i) For electricity from facilities allocated to a
25 consumer-owned utility inside the state of Washington from a
26 multijurisdictional consumer-owned utility, the electricity importer
27 is the consumer-owned utility inside the state of Washington; or

28 (j) For imported electricity not otherwise assigned an
29 electricity importer by this subsection, the electricity importer may
30 be defined by the department by rule.

31 (28) "Emissions containment reserve allowance" means a
32 conditional allowance that is withheld from sale at an auction by the
33 department or its agent to secure additional emissions reductions in
34 the event prices fall below the emissions containment reserve trigger
35 price.

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

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

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

5 (32) "Environmental harm" has the same meaning as defined in RCW
6 70A.02.010.

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

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

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

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

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

23 (38) "First jurisdictional deliverer" means the owner or operator
24 of an electric generating facility in Washington or an electricity
25 importer.

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

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

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

33 (42) "Imported electricity" means electricity generated outside
34 the state of Washington with a final point of delivery within the
35 state.

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

38 (b) "Imported electricity" includes imports from linked
39 jurisdictions, but such imports shall be construed as having no
40 emissions.

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

4 (d) "Imported electricity" does not include any electricity
5 (~~imports of unspecified electricity that are netted by exports of~~
6 ~~unspecified electricity to any jurisdiction not covered by a linked~~
7 ~~program by the same entity within the same hour)) that the department
8 determines by rule to be: (i) Wheeled through the state; or (ii)
9 separately accounted for in this chapter.~~

10 (e) For a multijurisdictional electric company, "imported
11 electricity" means electricity, other than from in-state facilities,
12 that contributes to a common system power pool. Where a
13 multijurisdictional electric company has a cost allocation
14 methodology approved by the utilities and transportation commission,
15 the allocation of specific facilities to Washington's retail load
16 will be in accordance with that methodology.

17 (f) For a multijurisdictional consumer-owned utility, "imported
18 electricity" includes electricity from facilities that contribute to
19 a common system power pool that are allocated to a consumer-owned
20 utility inside the state of Washington pursuant to a methodology
21 approved by the governing board of the consumer-owned utility.

22 (43) "Leakage" means a reduction in emissions of greenhouse gases
23 within the state that is offset by a directly attributable increase
24 in greenhouse gas emissions outside the state and outside the
25 geography of another jurisdiction with a linkage agreement with
26 Washington.

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

29 (45) "Linkage" means a bilateral or multilateral decision under a
30 linkage agreement between greenhouse gas market programs to accept
31 compliance instruments issued by a participating jurisdiction to meet
32 the obligations of regulated entities in a partner jurisdiction and
33 to otherwise coordinate activities to facilitate operation of a joint
34 market.

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

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

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

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

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

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

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

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

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

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

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

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

30 (iii) Populations, including Native Americans or immigrant
31 populations, who may be exposed to environmental contaminants and
32 pollutants outside of the geographic area in which they reside based
33 on the populations' use of traditional or cultural foods and
34 practices, such as the use of resources, access to which is protected
35 under treaty rights in ceded areas, when those exposures in
36 conjunction with other exposures may result in disproportionately
37 greater risks, including risks of certain cancers or other adverse
38 health effects and outcomes.

39 (b) Overburdened communities identified by the department may
40 include the same communities as those identified by the department

1 through its process for identifying overburdened communities under
2 RCW 70A.02.010.

3 (55) "Person" has the same meaning as defined in RCW
4 70A.15.2200(5) (~~(h)~~) (g)(iii).

5 (56) "Point of delivery" means a point on the electricity
6 transmission or distribution system where a deliverer makes
7 electricity available to a receiver, or available to serve load. This
8 point may be an interconnection with another system or a substation
9 where the transmission provider's transmission and distribution
10 systems are connected to another system, or a distribution substation
11 where electricity is imported into the state over a
12 multijurisdictional retail provider's distribution system.

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

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

18 (59) "Program registry" means the data system in which covered
19 entities, opt-in entities, and general market participants are
20 registered and in which compliance instruments are recorded and
21 tracked.

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

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

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

32 (63) "Specified source of electricity" or "specified source"
33 means a facility, unit, or asset controlling supplier that is
34 permitted to be claimed as the source of electricity delivered. The
35 reporting entity must have either full or partial ownership in the
36 facility or a written power contract to procure electricity generated
37 by that facility or unit or from an asset controlling supplier at the
38 time of entry into the transaction to procure electricity.

39 (64) "Supplier" means a supplier of fuel in Washington state as
40 defined in RCW 70A.15.2200(5) (~~(h)~~) (g)(ii).

1 (65) "Tribal lands" has the same meaning as defined in RCW
2 70A.02.010.

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

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

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

15 (69) "Electricity wheeled through the state" means electricity
16 that is generated outside the state of Washington and delivered into
17 Washington with the final point of delivery outside Washington
18 including, but not limited to, electricity wheeled through the state
19 on a single NERC e-tag, or wheeled into and out of Washington at a
20 common point or trading hub on the power system on separate e-tags
21 within the same hour.

22 **Sec. 2.** RCW 70A.65.060 and 2021 c 316 s 8 are each amended to
23 read as follows:

24 (1) In order to ensure that greenhouse gas emissions are reduced
25 by covered entities consistent with the limits established in RCW
26 70A.45.020, the department must implement a cap on greenhouse gas
27 emissions from covered entities and a program to track, verify, and
28 enforce compliance through the use of compliance instruments.

29 (2) The program must consist of:

30 (a) Annual allowance budgets that limit emissions from covered
31 entities, as provided in this section and RCW 70A.65.070 and
32 70A.65.080;

33 (b) Defining those entities covered by the program, and those
34 entities that may voluntarily opt into coverage under the program, as
35 provided in this section and RCW 70A.65.070 and 70A.65.080;

36 (c) Distribution of emission allowances, as provided in RCW
37 70A.65.100, and through the allowance price containment provisions
38 under RCW 70A.65.140 and 70A.65.150;

1 (d) Providing for offset credits as a method for meeting a
2 compliance obligation, pursuant to RCW 70A.65.170;

3 (e) Defining the compliance obligations of covered entities, as
4 provided in chapter 316, Laws of 2021;

5 (f) Establishing the authority of the department to enforce the
6 program requirements, as provided in RCW 70A.65.200;

7 (g) Creating a climate investment account for the deposit of
8 receipts from the distribution of emission allowances, as provided in
9 RCW 70A.65.250;

10 (h) Providing for the transfer of allowances and recognition of
11 compliance instruments, including those issued by jurisdictions with
12 which Washington has linkage agreements;

13 (i) Providing monitoring and oversight of the sale and transfer
14 of allowances by the department;

15 (j) Creating a price ceiling and associated mechanisms as
16 provided in RCW 70A.65.160; and

17 (k) Providing for the allocation of allowances to emissions-
18 intensive, trade-exposed industries pursuant to RCW 70A.65.110.

19 (3) The department shall consider opportunities to implement the
20 program in a manner that allows linking the state's program with
21 those of other jurisdictions. The department must evaluate whether
22 such linkage will provide for a more cost-effective means for covered
23 entities to meet their compliance obligations in Washington while
24 recognizing the special characteristics of the state's economy,
25 communities, and industries. The department is authorized to enter
26 into a linkage agreement with another jurisdiction after conducting
27 an environmental justice assessment and after formal notice and
28 opportunity for a public hearing, and when consistent with the
29 requirements of RCW 70A.65.210. The department is authorized to
30 withdraw from a linkage agreement and every linkage agreement must
31 provide that the department reserves the right to withdraw from the
32 agreement.

33 (4) During the 2022 regular legislative session, the department
34 must bring forth agency request legislation developed in consultation
35 with emissions-intensive, trade-exposed businesses, covered entities,
36 environmental advocates, and overburdened communities that outlines a
37 compliance pathway specific to emissions-intensive, trade-exposed
38 businesses for achieving their proportionate share of the state's
39 emissions reduction limits through 2050.

1 (5) By December 1, 2027, and ~~((at least every four years~~
2 ~~thereafter))~~ by December 1st of each year that is one year after the
3 end of a compliance period, and in compliance with RCW 43.01.036, the
4 department must submit a report to the legislature that includes a
5 comprehensive review of the implementation of the program to date,
6 including but not limited to outcomes relative to the state's
7 emissions reduction limits, overburdened communities, covered
8 entities, and emissions-intensive, trade-exposed businesses. The
9 department must transmit the report to the environmental justice
10 council at the same time it is submitted to the legislature.

11 (6) The department must bring forth agency request legislation if
12 the department finds that any provision of this chapter prevents
13 linking Washington's cap and invest program with that of any other
14 jurisdiction.

15 **Sec. 3.** RCW 70A.65.070 and 2022 c 181 s 1 are each amended to
16 read as follows:

17 (1) (a) (i) The department shall commence the program by January 1,
18 2023, by determining an emissions baseline establishing the
19 proportionate share that the total greenhouse gas emissions of
20 covered entities for the first compliance period bears to the total
21 anthropogenic greenhouse gas emissions in the state during 2015
22 through 2019, based on data reported to the department under RCW
23 70A.15.2200 or provided as required by this chapter, as well as other
24 relevant data. By October 1, 2022, the department shall adopt annual
25 allowance budgets for the first compliance period of the program,
26 calendar years 2023 through 2026, to be distributed from January 1,
27 2023, through December 31, 2026.

28 (ii) If the department enters into a linkage agreement, and the
29 linked jurisdictions do not amend their rules to synchronize with
30 Washington's compliance periods, the department must amend its rules
31 to synchronize Washington's compliance periods with those of the
32 linked jurisdiction or jurisdictions. The department may not by rule
33 amend the length of the first compliance period to end on a date
34 other than December 31, 2026.

35 (b) By October 1, 2026, the department shall add to its emissions
36 baseline by incorporating the proportionate share that the total
37 greenhouse gas emissions of new covered entities in the second
38 compliance period bear to the total anthropogenic greenhouse gas
39 emissions in the state during 2015 through 2019. In determining the

1 addition to the baseline, the department may exclude a year from the
2 determination if the department identifies that year to have been an
3 outlier due to a state of emergency. The department shall adopt
4 annual allowance budgets for the second compliance period of the
5 program(~~(, calendar years 2027 through 2030,)~~) that will be
6 distributed (~~(from January 1, 2027, through December 31, 2030)~~)
7 during the second compliance period.

8 (c) By October 1, 2028, the department shall adopt by rule the
9 annual allowance budgets for (~~calendar years 2031~~) the end of the
10 second compliance period through 2040.

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

29 (3) The department must complete evaluations by December 31,
30 2027, and (~~by~~) December (~~31, 2035~~) 31st of the year following the
31 conclusion of the third compliance period, of the performance of the
32 program, including its performance in reducing greenhouse gases. If
33 the evaluation shows that adjustments to the annual allowance budgets
34 are necessary for covered entities to achieve their proportionate
35 share of the 2030 and 2040 emission reduction limits identified in
36 RCW 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~~) 31st of the year following the
40 conclusion of the fifth and sixth compliance periods, and make any

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

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

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

26 **Sec. 4.** RCW 70A.65.080 and 2022 c 179 s 14 are each amended to
27 read as follows:

28 (1) A person is a covered entity as of the beginning of the first
29 compliance period and all subsequent compliance periods if the person
30 reported emissions under RCW 70A.15.2200 for any calendar year from
31 2015 through 2019, or if additional data provided as required by this
32 chapter indicates that emissions for any calendar year from 2015
33 through 2019 equaled or exceeded any of the following thresholds, or
34 if the person is a first jurisdictional deliverer and imports
35 electricity into the state during the compliance period:

36 (a) Where the person owns or operates a facility and the
37 facility's emissions equal or exceed 25,000 metric tons of carbon
38 dioxide equivalent;

1 (b) Where the person is a first jurisdictional deliverer and
2 generates electricity in the state and emissions associated with this
3 generation equals or exceeds 25,000 metric tons of carbon dioxide
4 equivalent;

5 (c) (i) Where the person is a first jurisdictional deliverer
6 importing electricity into the state and:

7 (A) For specified sources, the cumulative annual total of
8 emissions associated with the imported electricity (~~(, whether from~~
9 ~~specified or unspecified sources,~~) exceeds 25,000 metric tons of
10 carbon dioxide equivalent;

11 (B) For unspecified sources, the cumulative annual total of
12 emissions associated with the imported electricity exceeds 0 metric
13 tons of carbon dioxide equivalent; or

14 (C) For electricity purchased from a federal power marketing
15 administration pursuant to section 5(b) of the Pacific Northwest
16 electric power planning and conservation act of 1980, P.L. 96-501, if
17 the department determines such electricity is not from a specified
18 source, the cumulative annual total of emissions associated with the
19 imported electricity exceeds 25,000 metric tons of carbon dioxide
20 equivalent.

21 (ii) In consultation with any linked jurisdiction to the program
22 created by this chapter, by October 1, 2026, the department, in
23 consultation with the department of commerce and the utilities and
24 transportation commission, shall adopt by rule a methodology for
25 addressing imported electricity associated with a centralized
26 electricity market;

27 (d) Where the person is a supplier of fossil fuel other than
28 natural gas and from that fuel 25,000 metric tons or more of carbon
29 dioxide equivalent emissions would result from the full combustion or
30 oxidation, excluding the amounts for fuel products that are produced
31 or imported with a documented final point of delivery outside of
32 Washington and combusted outside of Washington; and

33 (e) (i) Where the person supplies natural gas in amounts that
34 would result in exceeding 25,000 metric tons of carbon dioxide
35 equivalent emissions if fully combusted or oxidized, excluding the
36 amounts for fuel products that are produced or imported with a
37 documented final point of delivery outside of Washington and
38 combusted outside of Washington, and excluding the amounts: (A)
39 Supplied to covered entities under (a) through (d) of this
40 subsection; and (B) delivered to opt-in entities;

1 (ii) Where the person who is not a natural gas company and has a
2 tariff with a natural gas company to deliver to an end-use customer
3 in the state in amounts that would result in exceeding 25,000 metric
4 tons of carbon dioxide equivalent emissions if fully combusted or
5 oxidized, excluding the amounts: (A) Supplied to covered entities
6 under (a) through (d) of this subsection; and (B) the amounts
7 delivered to opt-in entities;

8 (iii) Where the person is an end-use customer in the state who
9 directly purchases natural gas from a person that is not a natural
10 gas company and has the natural gas delivered through an interstate
11 pipeline to a distribution system owned by the purchaser in amounts
12 that would result in exceeding 25,000 metric tons of carbon dioxide
13 equivalent emissions if fully combusted or oxidized, excluding the
14 amounts: (A) Supplied to covered entities under (a) through (d) of
15 this subsection; and (B) delivered to opt-in entities.

16 (2) A person is a covered entity as of the beginning of the
17 second compliance period and all subsequent compliance periods if the
18 person reported emissions under RCW 70A.15.2200 or provided emissions
19 data as required by this chapter for any calendar year from 2023
20 through 2025, where the person owns or operates a waste to energy
21 facility utilized by a county and city solid waste management program
22 and the facility's emissions equal or exceed 25,000 metric tons of
23 carbon dioxide equivalent.

24 (3) A person is a covered entity (~~((beginning January 1, 2031))~~) as
25 of the beginning of the third compliance period, and all subsequent
26 compliance periods if the person reported emissions under RCW
27 70A.15.2200 or provided emissions data as required by this chapter
28 for (~~((any calendar year from))~~) 2027 (~~((through 2029))~~) or 2028, where
29 the person owns or operates a railroad company, as that term is
30 defined in RCW 81.04.010, and the railroad company's emissions equal
31 or exceed 25,000 metric tons of carbon dioxide equivalent.

32 (4) When a covered entity reports, during a compliance period,
33 emissions from a facility under RCW 70A.15.2200 that are below the
34 thresholds specified in subsection (1) or (2) of this section, the
35 covered entity continues to have a compliance obligation through the
36 current compliance period. When a covered entity reports emissions
37 below the threshold for each year during an entire compliance period,
38 or has ceased all processes at the facility requiring reporting under
39 RCW 70A.15.2200, the entity is no longer a covered entity as of the
40 beginning of the subsequent compliance period unless the department

1 provides notice at least 12 months before the end of the compliance
2 period that the facility's emissions were within 10 percent of the
3 threshold and that the person will continue to be designated as a
4 covered entity in order to ensure equity among all covered entities.
5 Whenever a covered entity ceases to be a covered entity, the
6 department shall notify the appropriate policy and fiscal committees
7 of the legislature of the name of the entity and the reason the
8 entity is no longer a covered entity.

9 (5) For types of emission sources described in subsection (1) of
10 this section that begin or modify operation after January 1, 2023,
11 and types of emission sources described in subsection (2) of this
12 section that begin or modify operation after 2027, coverage under the
13 program starts in the calendar year in which emissions from the
14 source exceed the applicable thresholds in subsection (1) or (2) of
15 this section, or upon formal notice from the department that the
16 source is expected to exceed the applicable emissions threshold,
17 whichever happens first. Sources meeting these conditions are
18 required to transfer their first allowances on the first transfer
19 deadline of the year following the year in which their emissions were
20 equal to or exceeded the emissions threshold.

21 (6) For emission sources described in subsection (1) of this
22 section that are in operation or otherwise active between 2015 and
23 2019 but were not required to report emissions for those years under
24 RCW 70A.15.2200 for the reporting periods between 2015 and 2019,
25 coverage under the program starts in the calendar year following the
26 year in which emissions from the source exceed the applicable
27 thresholds in subsection (1) of this section as reported pursuant to
28 RCW 70A.15.2200 or provided as required by this chapter, or upon
29 formal notice from the department that the source is expected to
30 exceed the applicable emissions threshold for the first year that
31 source is required to report emissions, whichever happens first.
32 Sources meeting these criteria are required to transfer their first
33 allowances on the first transfer deadline of the year following the
34 year in which their emissions, as reported under RCW 70A.15.2200 or
35 provided as required by this chapter, were equal to or exceeded the
36 emissions threshold.

37 (7) The following emissions are exempt from coverage in the
38 program, regardless of the emissions reported under RCW 70A.15.2200
39 or provided as required by this chapter:

40 (a) Emissions from the combustion of aviation fuels;

1 (b) Emissions from watercraft fuels supplied in Washington that
2 are combusted outside of Washington;

3 (c) Emissions from a coal-fired electric generation facility
4 exempted from additional greenhouse gas limitations, requirements, or
5 performance standards under RCW 80.80.110;

6 (d) Carbon dioxide emissions from the combustion of biomass or
7 biofuels;

8 (e)(i) Motor vehicle fuel or special fuel that is used
9 exclusively for agricultural purposes by a farm fuel user. This
10 exemption is available only if a buyer of motor vehicle fuel or
11 special fuel provides the seller with an exemption certificate in a
12 form and manner prescribed by the department. For the purposes of
13 this subsection, "agricultural purposes" and "farm fuel user" have
14 the same meanings as provided in RCW 82.08.865.

15 (ii) The department must determine a method for expanding the
16 exemption provided under (e)(i) of this subsection to include fuels
17 used for the purpose of transporting agricultural products on public
18 highways. The department must maintain this expanded exemption for a
19 period of five years, in order to provide the agricultural sector
20 with a feasible transition period;

21 (f) Emissions from facilities with North American industry
22 classification system code 92811 (national security); and

23 (g) Emissions from municipal solid waste landfills that are
24 subject to, and in compliance with, chapter 70A.540 RCW.

25 (8) The department shall not require multiple covered entities to
26 have a compliance obligation for the same emissions. The department
27 may by rule authorize refineries, fuel suppliers, facilities using
28 natural gas, and natural gas utilities to provide by agreement for
29 the assumption of the compliance obligation for fuel or natural gas
30 supplied and combusted in the state. The department must be notified
31 of such an agreement at least 12 months prior to the compliance
32 obligation period for which the agreement is applicable.

33 (9)(a) The legislature intends to promote a growing and
34 sustainable economy and to avoid leakage of emissions from
35 manufacturing to other locations. The legislature further intends to
36 see innovative new businesses locate and grow in Washington that
37 contribute to Washington's prosperity and environmental objectives.

38 (b) Consistent with the intent of the legislature to avoid the
39 leakage of emissions to other jurisdictions, in achieving the state's
40 greenhouse gas limits in RCW 70A.45.020, the state, including lead

1 agencies under chapter 43.21C RCW, shall pursue the limits in a
2 manner that recognizes that the siting and placement of new or
3 expanded best-in-class facilities with lower carbon emitting
4 processes is in the economic and environmental interests of the state
5 of Washington.

6 (c) In conducting a life-cycle analysis, if required, for new or
7 expanded facilities that require review under chapter 43.21C RCW, a
8 lead agency must evaluate and attribute any potential net cumulative
9 greenhouse gas emissions resulting from the project as compared to
10 other existing facilities or best available technology including
11 best-in-class facilities and emerging lower carbon processes that
12 supply the same product or end use. The department may adopt rules to
13 determine the appropriate threshold for applying this analysis.

14 (d) Covered emissions from an entity that is or will be a covered
15 entity under this chapter may not be the basis for denial of a permit
16 for a new or expanded facility. Covered emissions must be included in
17 the analysis undertaken pursuant to (c) of this subsection. Nothing
18 in this subsection requires a lead agency or a permitting agency to
19 approve or issue a permit to a permit applicant, including to a new
20 or expanded fossil fuel project.

21 (e) A lead agency under chapter 43.21C RCW or a permitting agency
22 shall allow a new or expanded facility that is a covered entity or
23 opt-in entity to satisfy a mitigation requirement for its covered
24 emissions under this chapter (~~(316, Laws of 2021)~~) and under any
25 greenhouse gas emission mitigation requirements for covered emissions
26 under chapter 43.21C RCW by submitting to the department the number
27 of compliance instruments equivalent to its covered emissions during
28 a compliance period.

29 **Sec. 5.** RCW 70A.65.100 and 2023 c 475 s 937 are each amended to
30 read as follows:

31 (1) Except as provided in RCW 70A.65.110, 70A.65.120, and
32 70A.65.130, the department shall distribute allowances through
33 auctions as provided in this section and in rules adopted by the
34 department to implement these sections. An allowance is not a
35 property right.

36 (2)(a) The department shall hold a maximum of four auctions
37 annually, plus any necessary reserve auctions. An auction may include
38 allowances from the annual allowance budget of the current year and
39 allowances from the annual allowance budgets from prior years that

1 remain to be distributed. The department must transmit to the
2 environmental justice council an auction notice at least 60 days
3 prior to each auction, as well as a summary results report and a
4 postauction public proceeds report within 60 days after each auction.
5 The department must communicate the results of the previous calendar
6 year's auctions to the environmental justice council on an annual
7 basis beginning in 2024.

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

12 (3) The department shall engage a qualified, independent
13 contractor to run the auctions. The department shall also engage a
14 qualified financial services administrator to hold the bid
15 guarantees, evaluate bid guarantees, and inform the department of the
16 value of bid guarantees once the bids are accepted.

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

21 (a) Registered entities intending to participate in an auction
22 must submit an application to participate at least 30 days prior to
23 the auction. The application must include the documentation required
24 for review and approval by the department. A registered entity is
25 eligible to participate only after receiving a notice of approval by
26 the department.

27 (b) Each registered entity that elects to participate in the
28 auction must have a different representative. Only a representative
29 with an approved auction account is authorized to access the auction
30 platform to submit an application or confirm the intent to bid for
31 the registered entity, submit bids on behalf of the registered entity
32 during the bidding window, or to download reports specific to the
33 auction.

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

38 (6) To protect the integrity of the auctions, a registered entity
39 or group of registered entities with a direct corporate association
40 are subject to auction purchase and holding limits. The department

1 may impose additional limits if it deems necessary to protect the
2 integrity and functioning of the auctions:

3 (a) A covered entity or an opt-in entity may not buy more than
4 ~~((10))~~ 25 percent of the allowances offered during a single auction;

5 (b) A general market participant may not buy more than four
6 percent of the allowances offered during a single auction ~~((and))~~;

7 (c) Until Washington links with a jurisdiction that does not have
8 this requirement, a general market participant may not in aggregate
9 own more than 10 percent of total allowances to be issued in a
10 calendar year;

11 ~~((e))~~ (d) No registered entity may buy more than the entity's
12 bid guarantee; and

13 ~~((d))~~ (e) No registered entity may buy allowances that would
14 exceed the entity's holding limit at the time of the auction.

15 (7)(a) For fiscal year 2023, upon completion and verification of
16 the auction results, the financial services administrator shall
17 notify winning bidders and transfer the auction proceeds to the state
18 treasurer for deposit as follows: (i) \$127,341,000 must first be
19 deposited into the carbon emissions reduction account created in RCW
20 70A.65.240; and (ii) the remaining auction proceeds to the climate
21 investment account created in RCW 70A.65.250 and the air quality and
22 health disparities improvement account created in RCW 70A.65.280.

23 (b) For fiscal year 2024, upon completion and verification of the
24 auction results, the financial services administrator shall notify
25 winning bidders and transfer the auction proceeds to the state
26 treasurer for deposit as follows: (i) \$356,697,000 must first be
27 deposited into the carbon emissions reduction account created in RCW
28 70A.65.240, except during fiscal year 2024, the deposit as provided
29 in this subsection (7)(b)(i) may be prorated equally across each of
30 the auctions occurring in fiscal year 2024; and (ii) the remaining
31 auction proceeds to the climate investment account created in RCW
32 70A.65.250 and the air quality and health disparities improvement
33 account created in RCW 70A.65.280, which may be prorated equally
34 across each of the auctions occurring in fiscal year 2024.

35 (c) For fiscal year 2025, upon completion and verification of the
36 auction results, the financial services administrator shall notify
37 winning bidders and transfer the auction proceeds to the state
38 treasurer for deposit as follows: (i) \$366,558,000 must first be
39 deposited into the carbon emissions reduction account created in RCW
40 70A.65.240, except that during fiscal year 2025, the deposit as

1 provided in this subsection (7)(c)(i) may be prorated equally across
2 each of the auctions occurring in fiscal year 2025; and (ii) the
3 remaining auction proceeds to the climate investment account created
4 in RCW 70A.65.250 and the air quality and health disparities
5 improvement account created in RCW 70A.65.280, which may be prorated
6 equally across each of the auctions occurring in fiscal year 2025.

7 (d) For fiscal years 2026 through 2037, upon completion and
8 verification of the auction results, the financial services
9 administrator shall notify winning bidders and transfer the auction
10 proceeds to the state treasurer for deposit as follows: (i)
11 \$359,117,000 per year must first be deposited into the carbon
12 emissions reduction account created in RCW 70A.65.240; and (ii) the
13 remaining auction proceeds to the climate investment account created
14 in RCW 70A.65.250 and the air quality and health disparities
15 improvement account created in RCW 70A.65.280.

16 (e) The deposits into the carbon emissions reduction account
17 pursuant to (a) through (d) of this subsection must not exceed
18 \$5,200,000,000 over the first 16 fiscal years and any remaining
19 auction proceeds must be deposited into the climate investment
20 account created in RCW 70A.65.250 and the air quality and health
21 disparities improvement account created in RCW 70A.65.280.

22 (f) For fiscal year 2038 and each year thereafter, upon
23 completion and verification of the auction results, the financial
24 services administrator shall notify winning bidders and transfer the
25 auction proceeds to the state treasurer for deposit as follows: (i)
26 50 percent of the auction proceeds to the carbon emissions reduction
27 account created in RCW 70A.65.240; and (ii) the remaining auction
28 proceeds to the climate investment account created in RCW 70A.65.250
29 and the air quality and health disparities improvement account
30 created in RCW 70A.65.280.

31 (8) The department shall adopt by rule provisions to guard
32 against bidder collusion and minimize the potential for market
33 manipulation. A registered entity may not release or disclose any
34 bidding information including: Intent to participate or refrain from
35 participation; auction approval status; intent to bid; bidding
36 strategy; bid price or bid quantity; or information on the bid
37 guarantee provided to the financial services administrator. The
38 department may cancel or restrict a previously approved auction
39 participation application or reject a new application if the
40 department determines that a registered entity has:

- 1 (a) Provided false or misleading facts;
- 2 (b) Withheld material information that could influence a decision
3 by the department;
- 4 (c) Violated any part of the auction rules;
- 5 (d) Violated registration requirements; or
- 6 (e) Violated any of the rules regarding the conduct of the
7 auction.
- 8 (9) Records containing the following information are confidential
9 and are exempt from public disclosure in their entirety:
- 10 (a) Bidding information as identified in subsection (8) of this
11 section;
- 12 (b) Information contained in the secure, online electronic
13 tracking system established by the department pursuant to RCW
14 70A.65.090(6);
- 15 (c) Financial, proprietary, and other market sensitive
16 information as determined by the department that is submitted to the
17 department pursuant to this chapter;
- 18 (d) Financial, proprietary, and other market sensitive
19 information as determined by the department that is submitted to the
20 independent contractor or the financial services administrator
21 engaged by the department pursuant to subsection (3) of this section;
22 and
- 23 (e) Financial, proprietary, and other market sensitive
24 information as determined by the department that is submitted to a
25 jurisdiction with which the department has entered into a linkage
26 agreement pursuant to RCW 70A.65.210, and which is shared with the
27 department, the independent contractor, or the financial services
28 administrator pursuant to a linkage agreement.
- 29 (10) Any cancellation or restriction approved by the department
30 under subsection (8) of this section may be permanent or for a
31 specified number of auctions and the cancellation or restriction
32 imposed is not exclusive and is in addition to the remedies that may
33 be available pursuant to chapter 19.86 RCW or other state or federal
34 laws, if applicable.
- 35 (11) The department shall design allowance auctions so as to
36 allow, to the maximum extent practicable, linking with external
37 greenhouse gas emissions trading programs in other jurisdictions and
38 to facilitate the transfer of allowances when the state's program has
39 entered into a linkage agreement with other external greenhouse gas

1 emissions trading programs. The department may conduct auctions
2 jointly with linked jurisdictions.

3 (12) In setting the number of allowances offered at each auction,
4 the department shall consider the allowances in the marketplace due
5 to the marketing of allowances issued as required under RCW
6 70A.65.110, 70A.65.120, and 70A.65.130 in the department's
7 determination of the number of allowances to be offered at auction.
8 The department shall offer only such number of allowances at each
9 auction as will enhance the likelihood of achieving the goals of RCW
10 70A.45.020.

11 **Sec. 6.** RCW 70A.65.110 and 2021 c 316 s 13 are each amended to
12 read as follows:

13 (1) Facilities owned or operated by a covered entity must receive
14 an allocation of allowances for the covered emissions at those
15 facilities under this subsection at no cost if the operations of the
16 facility are classified as emissions-intensive and trade-exposed, as
17 determined by being engaged in one or more of the processes described
18 by the following industry descriptions and codes in the North
19 American industry classification system:

20 (a) Metals manufacturing, including iron and steel making,
21 ferroalloy and primary metals manufacturing, secondary aluminum
22 smelting and alloying, aluminum sheet, plate, and foil manufacturing,
23 and smelting, refining, and alloying of other nonferrous metals,
24 North American industry classification system codes beginning with
25 331;

26 (b) Paper manufacturing, including pulp mills, paper mills, and
27 paperboard milling, North American industry classification system
28 codes beginning with 322;

29 (c) Aerospace product and parts manufacturing, North American
30 industry classification system codes beginning with 3364;

31 (d) Wood products manufacturing, North American industry
32 classification system codes beginning with 321;

33 (e) Nonmetallic mineral manufacturing, including glass container
34 manufacturing, North American industry classification system codes
35 beginning with 327;

36 (f) Chemical manufacturing, North American industry
37 classification system codes beginning with 325;

1 (g) Computer and electronic product manufacturing, including
2 semiconductor and related device manufacturing, North American
3 industry classification system codes beginning with 334;

4 (h) Food manufacturing, North American industry classification
5 system codes beginning with 311;

6 (i) Cement manufacturing, North American industry classification
7 system code 327310;

8 (j) Petroleum refining, North American industry classification
9 system code 324110;

10 (k) Asphalt paving mixtures and block manufacturing from refined
11 petroleum, North American industry classification system code 324121;

12 (l) Asphalt shingle and coating manufacturing from refined
13 petroleum, North American industry classification system code 324122;
14 and

15 (m) All other petroleum and coal products manufacturing from
16 refined petroleum, North American industry classification system code
17 324199.

18 (2) By July 1, 2022, the department must adopt by rule objective
19 criteria for both emissions' intensity and trade exposure for the
20 purpose of identifying emissions-intensive, trade-exposed
21 manufacturing businesses during the second compliance period of the
22 program and subsequent compliance periods. A facility covered by
23 subsection (1)(a) through (m) of this section is considered an
24 emissions-intensive, trade-exposed facility and is eligible for
25 allocation of no cost allowances as described in this section. In
26 addition, any covered party that is a manufacturing business that can
27 demonstrate to the department that it meets the objective criteria
28 adopted by rule is also eligible for treatment as emissions-
29 intensive, trade-exposed and is eligible for allocation of no cost
30 allowances as described in this section. In developing the objective
31 criteria under this subsection, the department must consider the
32 locations of facilities potentially identified as emissions-
33 intensive, trade-exposed manufacturing businesses relative to
34 overburdened communities.

35 (3) (a) For the (~~first compliance period beginning in January 1,~~
36 ~~2023~~) years 2023 through 2026, the annual allocation of no cost
37 allowances for direct distribution to a facility identified as
38 emissions-intensive and trade-exposed must be equal to the facility's
39 baseline carbon intensity established using data from 2015 through
40 2019, or other data as allowed under this section, multiplied by the

1 facility's actual production for each calendar year during the
2 compliance period. For facilities using the mass-based approach, the
3 allocation of no cost allowances shall be equal to the facility's
4 mass-based baseline using data from 2015 through 2019, or other data
5 as allowed under this section.

6 (b) For the ~~((second compliance period, beginning in January,~~
7 ~~2027,))~~ four years beginning January 2027 and in each subsequent
8 ~~((compliance))~~ four-year period, the annual allocation of no cost
9 allowances established in (a) of this subsection shall be adjusted
10 according to the benchmark reduction schedules established in (b) (ii)
11 and (iii) and (e) of this subsection multiplied by the facility's
12 actual production during the period. The department shall adjust the
13 no cost allocation of allowances and credits to an emissions-
14 intensive and trade-exposed facility to avoid duplication with any no
15 cost allowances transferred pursuant to RCW 70A.65.120 and
16 70A.65.130, if applicable.

17 (i) For the purpose of this section, "carbon intensity" means the
18 amount of carbon dioxide equivalent emissions from a facility in
19 metric tons divided by the facility specific measure of production
20 including, but not limited to, units of product manufactured or sold,
21 over the same time interval.

22 (ii) If an emissions-intensive and trade-exposed facility is not
23 able to feasibly determine a carbon intensity benchmark based on its
24 unique circumstances, the entity may elect to use a mass-based
25 baseline that does not vary based on changes in production volumes.
26 The mass-based baseline must be based upon data from 2015 through
27 2019, unless the emissions-intensive, trade-exposed facility can
28 demonstrate that there have been abnormal periods of operation that
29 materially impacted the facility and the baseline period should be
30 expanded to include years prior to 2015. For ~~((each year during the~~
31 ~~first four-year compliance period that begins January 1, 2023))~~ the
32 years 2023 through 2026, these facilities must be awarded no cost
33 allowances equal to 100 percent of the facility's mass-based
34 baseline. For each year during the ~~((second four-year compliance~~
35 ~~period that begins January 1, 2027))~~ years 2027 through 2030, these
36 facilities must be awarded no cost allowances equal to 97 percent of
37 the facility's mass-based baseline. For each year during the ~~((third~~
38 ~~compliance period that begins January 1, 2031))~~ years 2031 through
39 2034, these facilities must be awarded no cost allowances equal to 94
40 percent of the facility's mass-based baseline. Except as provided in

1 (b) (iii) of this subsection, if a facility elects to use a mass-based
2 baseline, it may not later convert to a carbon intensity benchmark
3 during the (~~(first three compliance periods)~~) years 2023 through
4 2034.

5 (iii) A facility with a North American industry classification
6 system code beginning with 3364 that is utilizing a mass-based
7 baseline in (b) (ii) of this subsection must receive an additional no
8 cost allowance allocation under this section in order to accommodate
9 an increase in production that increases its emissions above the
10 baseline on a basis equivalent in principle to those awarded to
11 entities utilizing a carbon intensity benchmark pursuant to this
12 subsection (3) (b). The department shall establish methods to award,
13 for any annual period, additional no cost allowance allocations under
14 this section and, if appropriate based on projected production, to
15 achieve a similar ongoing result through the adjustment of the
16 facility's mass-based baseline. An eligible facility under this
17 subsection that has elected to use a mass-based baseline may not
18 convert to a carbon intensity benchmark until the next compliance
19 period.

20 (c) (i) By September 15, 2022, each emissions-intensive, trade-
21 exposed facility shall submit its carbon intensity baseline for the
22 first compliance period to the department. The carbon intensity
23 baseline for the first compliance period must use data from
24 2015-2019, unless the emissions-intensive, trade-exposed facility can
25 demonstrate that there have been abnormal periods of operation that
26 materially impacted the facility and the baseline period should be
27 expanded to include years prior to 2015.

28 (ii) By November 15, 2022, the department shall review and
29 approve each emissions-intensive, trade-exposed facility's baseline
30 carbon intensity for the (~~(first compliance period)~~) years 2023
31 through 2026.

32 (d) During the (~~(first four-year compliance period that begins~~
33 ~~January 1, 2023)~~) years 2023 through 2026, each emissions-intensive,
34 trade-exposed facility must record its facility-specific carbon
35 intensity baseline based on its actual production.

36 (e) (i) For the (~~(second four-year compliance period that begins~~
37 ~~January 1, 2027)~~) years 2027 through 2030, the second period
38 benchmark for each emissions-intensive, trade-exposed facility is
39 three percent below the first period baseline specified in (a), (b),
40 and (c) of this subsection.

1 (ii) For the (~~third four-year compliance period that begins~~
2 ~~January 1, 2031~~) years 2031 through 2034, the third period benchmark
3 for each emissions-intensive, trade-exposed facility is three percent
4 lower than the (~~second period benchmark~~) years 2027 through 2030.

5 (f) Prior to the beginning of (~~either the second, third, or~~
6 ~~subsequent compliance~~) 2027, 2031, or subsequent four-year periods,
7 the department may make an upward adjustment in the next
8 (~~compliance~~) four-year period's benchmark for an emissions-
9 intensive, trade-exposed facility based on the facility's
10 demonstration to the department that additional reductions in carbon
11 intensity or mass emissions are not technically or economically
12 feasible. The department may base the upward adjustment applicable to
13 an emissions-intensive, trade-exposed facility in the next
14 (~~compliance~~) four-year period on the facility's best available
15 technology analysis. The department shall by rule provide for
16 emissions-intensive, trade-exposed facilities to apply to the
17 department for an adjustment to the allocation for direct
18 distribution of no cost allowances based on its facility-specific
19 carbon intensity benchmark or mass emissions baseline. The department
20 shall make adjustments based on:

21 (i) A significant change in the emissions use or emissions
22 attributable to the manufacture of an individual good or goods in
23 this state by an emissions-intensive, trade-exposed facility based on
24 a finding by the department that an adjustment is necessary to
25 accommodate for changes in the manufacturing process that have a
26 material impact on emissions;

27 (ii) Significant changes to an emissions-intensive, trade-exposed
28 facility's external competitive environment that result in a
29 significant increase in leakage risk; or

30 (iii) Abnormal operating periods when an emissions-intensive,
31 trade-exposed facility's carbon intensity has been materially
32 affected so that these abnormal operating periods are either excluded
33 or otherwise considered in the establishment of the (~~compliance~~
34 ~~period~~) carbon intensity benchmarks.

35 (4) (a) By December 1, 2026, the department shall provide a report
36 to the appropriate committees of the senate and house of
37 representatives that describes alternative methods for determining
38 the amount and a schedule of allowances to be provided to facilities
39 owned or operated by each covered entity designated as an emissions-
40 intensive, trade-exposed facility from January 1, 2035, through

1 January 1, 2050. The report must include a review of global best
2 practices in ensuring against emissions leakage and economic harm to
3 businesses in carbon pricing programs and describe alternative
4 methods of emissions performance benchmarking and mass-based
5 allocation of no cost allowances. At a minimum, the department must
6 evaluate benchmarks based on both carbon intensity and mass, as well
7 as the use of best available technology as a method for compliance.
8 In developing the report, the department shall form an advisory group
9 that includes representatives of the manufacturers listed in
10 subsection (1) of this section.

11 (b) If the legislature does not adopt a compliance obligation for
12 emissions-intensive, trade-exposed facilities by December 1, 2027,
13 those facilities must continue to receive allowances as provided in
14 the ~~((third four-year compliance period that begins January 1, 2031))~~
15 years 2031 through 2034.

16 (5) If the actual emissions of an emissions-intensive, trade-
17 exposed facility exceed the facility's no cost allowances assigned
18 for that compliance period, it must acquire additional compliance
19 instruments such that the total compliance instruments transferred to
20 its compliance account consistent with this chapter ~~((316, Laws of~~
21 ~~2021))~~ equals emissions during the compliance period. An emissions-
22 intensive, trade-exposed facility must be allowed to bank unused
23 allowances, including for future sale and investment in best
24 available technology when economically feasible. The department shall
25 limit the use of offset credits for compliance by an emissions-
26 intensive, trade-exposed facility, such that the quantity of no cost
27 allowances plus the provision of offset credits does not exceed 100
28 percent of the facility's total compliance obligation over a
29 compliance period.

30 (6) The department must withhold or withdraw the relevant share
31 of allowances allocated to a covered entity under this section in the
32 event that the covered entity ceases production in the state and
33 becomes a closed facility. In the event an entity curtails all
34 production and becomes a curtailed facility, the allowances are
35 retained but cannot be traded, sold, or transferred and are still
36 subject to the emission reduction requirements specified in this
37 section. An owner or operator of a curtailed facility may transfer
38 the allowances to a new operator of the facility that will be
39 operated under the same North American industry classification system
40 codes. If the curtailed facility becomes a closed facility, then all

1 unused allowances will be transferred to the emissions containment
2 reserve. A curtailed facility is not eligible to receive free
3 allowances during a period of curtailment. Any allowances withheld or
4 withdrawn under this subsection must be transferred to the emissions
5 containment reserve.

6 (7) An owner or operator of more than one facility receiving no
7 cost allowances under this section may transfer allowances among the
8 eligible facilities.

9 (8) Rules adopted by the department under this section must
10 include protocols for allocating allowances at no cost to an eligible
11 facility built after July 25, 2021. The protocols must include
12 consideration of the products and criteria pollutants being produced
13 by the facility, as well as the local environmental and health
14 impacts associated with the facility. For a facility that is built on
15 tribal lands or is determined by the department to impact tribal
16 lands and resources, the protocols must be developed in consultation
17 with the affected tribal nations.

18 **Sec. 7.** RCW 70A.65.170 and 2022 c 181 s 12 are each amended to
19 read as follows:

20 (1) The department shall adopt by rule the protocols for
21 establishing offset projects and (~~securing~~) generating offset
22 credits that may be used to meet a portion of a covered or opt-in
23 entity's compliance obligation under this chapter. The protocols
24 adopted by the department under this section must align with the
25 policies of the state established under RCW 70A.45.090 and
26 70A.45.100.

27 (2) Offset projects must:

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

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

32 (i) Are real, permanent, quantifiable, verifiable, and
33 enforceable; and

34 (ii) Are in addition to greenhouse gas emission reductions or
35 removals otherwise required by law and other greenhouse gas emission
36 reductions or removals that would otherwise occur; and

37 (c) Have been certified by a recognized registry.

38 (3) (a) A total of no more than five percent of a covered or opt-
39 in entity's compliance obligation during the first compliance period

1 may be met by transferring offset credits, regardless of whether or
2 not the offset project is located on federally recognized tribal
3 land. During these years, at least 50 percent of a covered or opt-in
4 entity's compliance obligation satisfied by offset credits must be
5 sourced from offset projects that provide direct environmental
6 benefits in the state.

7 (b) A total of no more than four percent of a covered or opt-in
8 entity's compliance obligation during the second compliance period
9 may be met by transferring offset credits, regardless of whether or
10 not the offset project is located on federally recognized tribal
11 land. During these years, at least 75 percent of a covered or opt-in
12 entity's compliance obligation satisfied by offset credits must be
13 sourced from offset projects that provide direct environmental
14 benefits in the state. The department may reduce the 75 percent
15 requirement if it determines there is not sufficient offset supply in
16 the state to meet offset demand during the second compliance period.

17 (c) The limits in (a) and (b) of this subsection may be modified
18 by rule as adopted by the department when appropriate to ensure
19 achievement of the proportionate share of statewide emissions limits
20 established in RCW 70A.45.020 and to provide for alignment with other
21 jurisdictions to which the state has linked.

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

26 (i) Contribute substantively to cumulative air pollution burden
27 in an overburdened community as determined by criteria established by
28 the department, in consultation with the environmental justice
29 council; or

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

33 (e) (~~(An offset project on federally recognized tribal land does~~
34 ~~not count against)~~) In addition to the offset credit limits described
35 in (a) and (b) of this subsection((-)):

36 (i) No more than an additional three percent of a covered or opt-
37 in entity's compliance obligation may be met by transferring offset
38 credits from projects on federally recognized tribal land during the
39 first compliance period.

1 (ii) No more than an additional two percent of a covered or opt-
2 in entity's compliance obligation may be met by transferring offset
3 credits from projects on federally recognized tribal land during the
4 second compliance period.

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

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

11 (b) Take into consideration forest practices rules where a
12 project is located, or applicable best management practices
13 established by federal, state, or local governments that relate to
14 forest management;

15 (c) Encourage opportunities for the development of offset
16 projects in this state by adopting offset protocols that may include,
17 but need not be limited to, protocols that make use of aggregation or
18 other mechanisms to reduce transaction costs related to the
19 development of offset projects and that support the development of
20 carbon dioxide removal projects;

21 ~~((e))~~ (d) Adopt a process for monitoring and invalidating
22 offset credits as necessary to ensure the credit reflects emission
23 reductions or removals that continue to meet the standards required
24 by subsection (1) of this section. If an offset credit is
25 invalidated, the covered or opt-in entity must, within six months of
26 the invalidation, transfer replacement credits or allowances to meet
27 its compliance obligation. Failure to transfer the required credits
28 or allowances is a violation subject to penalties as provided in RCW
29 70A.65.200; and

30 ~~((d))~~ (e) Make use of aggregation or other mechanisms,
31 including cost-effective inventory and monitoring provisions, to
32 increase the development of offset and carbon removal projects by
33 landowners across the broadest possible variety of types and sizes of
34 lands, including lands owned by small forestland owners.

35 (5) Any offset credits used must:

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

39 (b) Have been issued for reporting periods wholly after July 25,
40 2021, or within two years prior to July 25, 2021; and

1 (c) (~~Be consistent with offset protocols adopted by the~~
2 ~~department~~) For offset credits issued by a jurisdiction with which
3 Washington has entered into a linkage agreement, come from offset
4 projects located in Washington or in the linked jurisdiction.

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

7 (7) Beginning in 2031, the limits established in subsection
8 (3)(b) and (e)(ii) of this section apply unless modified by rule as
9 adopted by the department after a public consultation process.

10 **Sec. 8.** RCW 70A.65.200 and 2022 c 181 s 4 are each amended to
11 read as follows:

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

17 (2) If a covered or opt-in entity does not submit sufficient
18 compliance instruments to meet its compliance obligation by the
19 specified transfer dates, a penalty of four allowances for every one
20 compliance instrument that is missing must be submitted to the
21 department within six months. When a covered entity or opt-in entity
22 reasonably believes that it will be unable to meet a compliance
23 obligation, the entity shall immediately notify the department. Upon
24 receiving notification, the department shall issue an order requiring
25 the entity to submit the penalty allowances.

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

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

34 (5) Except as provided in subsections (3) and (4) of this
35 section, any person that violates the terms of this chapter or an
36 order issued under this chapter incurs a penalty of up to \$10,000 per
37 day per violation for each day that the person does not comply. All
38 penalties under subsections (3) and (4) of this section and this

1 subsection must be deposited into the climate investment account
2 created in RCW 70A.65.250.

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

5 (7) (~~For~~) Until the department enters into a linkage agreement
6 or until the end of the first compliance period, whichever is sooner,
7 the department may reduce the amount of the penalty by adjusting the
8 monetary amount or the number of penalty allowances described in
9 subsections (2) and (3) of this section.

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

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

17 (b) No state agency may adopt or enforce a greenhouse gas pricing
18 or market-based emissions cap and reduce program for stationary
19 sources, or adopt or enforce emission limitations on greenhouse gas
20 emissions from stationary sources except as:

21 (i) Provided in this chapter;

22 (ii) Authorized or directed by a state statute in effect as of
23 July 1, 2022; or

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

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

27 (10)(a) By December 1, 2023, the office of financial management
28 must submit a report to the appropriate committees of the legislature
29 that summarizes two categories of state laws other than this chapter:

30 (i) Laws that regulate greenhouse gas emissions from stationary
31 sources, and the greenhouse gas emission reductions attributable to
32 each chapter, relative to a baseline in which this chapter and all
33 other state laws that regulate greenhouse gas emissions are presumed
34 to remain in effect; and

35 (ii) Laws whose implementation may effectuate reductions in
36 greenhouse gas emissions from stationary sources.

37 (b) The state laws that the office of financial management may
38 address in completing the report required in this subsection include,
39 but are not limited to:

40 (i) Chapter 19.27A RCW;

- 1 (ii) Chapter 19.280 RCW;
- 2 (iii) Chapter 19.405 RCW;
- 3 (iv) Chapter 36.165 RCW;
- 4 (v) Chapter 43.21F RCW;
- 5 (vi) Chapter 70.30 RCW;
- 6 (vii) Chapter 70A.15 RCW;
- 7 (viii) Chapter 70A.45 RCW;
- 8 (ix) Chapter 70A.60 RCW;
- 9 (x) Chapter 70A.535 RCW;
- 10 (xi) Chapter 80.04 RCW;
- 11 (xii) Chapter 80.28 RCW;
- 12 (xiii) Chapter 80.70 RCW;
- 13 (xiv) Chapter 80.80 RCW; and
- 14 (xv) Chapter 81.88 RCW.

15 (c) The office of financial management may contract for all or
16 part of the work product required under this subsection.

17 **Sec. 9.** RCW 70A.65.210 and 2021 c 316 s 24 are each amended to
18 read as follows:

19 (1) Subject to making the findings and conducting the public
20 comment process described in subsection (3) of this section, the
21 department shall seek to enter into linkage agreements with other
22 jurisdictions with external greenhouse gas emissions trading programs
23 in order to:

24 (a) Allow for the mutual use and recognition of compliance
25 instruments issued by Washington and other linked jurisdictions;

26 (b) Broaden the greenhouse gas emission reduction opportunities
27 to reduce the costs of compliance on covered entities and consumers;

28 (c) Enable allowance auctions to be held jointly and provide for
29 the use of a unified tracking system for compliance instruments;

30 (d) Enhance market security;

31 (e) Reduce program administration costs; and

32 (f) Provide consistent requirements for covered entities whose
33 operations span jurisdictional boundaries.

34 (2) The director of the department is authorized to execute
35 linkage agreements with other jurisdictions with external greenhouse
36 gas emissions trading programs consistent with the requirements in
37 this chapter. A linkage agreement must cover the following:

38 (a) Provisions relating to regular, periodic auctions, including
39 requirements for eligibility for auction participation, the use of a

1 single auction provider to facilitate joint auctions, publication of
2 auction-related information, processes for auction participation,
3 purchase limits by auction participant type, bidding processes, dates
4 of auctions, and financial requirements;

5 (b) Provisions related to holding limits to ensure no entities in
6 any of the programs are disadvantaged relative to their counterparts
7 in the other jurisdictions;

8 (c) Other requirements, such as greenhouse gas reporting and
9 verification, offset protocols, criteria and process, and supervision
10 and enforcement, to prevent fraud, abuse, and market manipulation;

11 (d) Common program registry, electronic auction platform,
12 tracking systems for compliance instruments, and monitoring of
13 compliance instruments;

14 (e) Provisions to ensure coordinated administrative and technical
15 support;

16 (f) Provisions for public notice and participation; and

17 (g) Provisions to collectively resolve differences, amend the
18 agreements, and delink or otherwise withdraw from the agreements.

19 (3) Before entering into a linkage agreement under this section,
20 the department must evaluate and make a finding regarding whether the
21 aggregate number of unused allowances in a linked program would
22 reduce the stringency of Washington's program and the state's ability
23 to achieve its greenhouse gas emissions reduction limits. The
24 department must include in its evaluation a consideration of pre-2020
25 unused allowances that may exist in the program with which it is
26 proposing to link. Before entering into a linkage agreement, the
27 department must also establish a finding that the linking
28 jurisdiction and the linkage agreement meet certain criteria
29 identified under this subsection and conduct a public comment process
30 to obtain input and a review of the linkage agreement by relevant
31 stakeholders and other interested parties. The department must
32 consider input received from the public comment process before
33 finalizing a linkage agreement. In the event that the department
34 determines that a full linkage agreement is unlikely to meet the
35 criteria, it may enter into a linkage agreement with limitations,
36 including limits on the share of compliance that may be met with
37 allowances originating from linked jurisdictions and other
38 limitations deemed necessary by the department. A linkage agreement
39 approved by the department must:

1 (a) Achieve the purposes identified in subsection (1) of this
2 section;

3 (b) Ensure that the linking jurisdiction has provisions to ensure
4 the distribution of benefits from the program to vulnerable
5 populations and overburdened communities;

6 (c) Be determined by the department to not yield net adverse
7 impacts to either jurisdictions' highly impacted communities or
8 analogous communities in the aggregate, relative to the baseline
9 level of emissions; and

10 (d) Not adversely impact Washington's ability to achieve the
11 emission reduction limits established in RCW 70A.45.020.

12 (4) Before entering a linkage agreement, the department must post
13 and maintain on its website, and provide notification to the
14 appropriate policy and fiscal committees of the legislature, a
15 quarterly status update regarding any potential linkage agreement
16 that the department has determined to seek to enter into under this
17 section. The status report must include:

18 (a) An outline of the expected steps that the department expects
19 that it and linked jurisdictions will need to take prior to entering
20 into a linkage agreement, including the requirements of subsection
21 (3) of this section;

22 (b) Notation of any steps completed or initiated under (a) of
23 this subsection; and

24 (c) An estimate of the time frames of possible completion for any
25 steps identified under (a) of this subsection that have not yet been
26 completed.

27 (5) The state retains all legal and policymaking authority over
28 its program design and enforcement.

29 **Sec. 10.** RCW 70A.65.310 and 2022 c 181 s 2 are each amended to
30 read as follows:

31 (1) A covered or opt-in entity has a compliance obligation for
32 its emissions during each (~~four-year~~) compliance period, with the
33 first compliance period commencing January 1, 2023. The department
34 shall by rule require that covered or opt-in entities annually
35 transfer a percentage of compliance instruments, but must fully
36 satisfy their compliance obligation, for each compliance period.

37 (2) Compliance occurs through the transfer of the required
38 compliance instruments or price ceiling units, on or before the

1 transfer date, from the holding account to the compliance account of
2 the covered or opt-in entity as described in RCW 70A.65.080.

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

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

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

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

14 NEW SECTION. **Sec. 11.** A new section is added to chapter 70A.65
15 RCW to read as follows:

16 (1) A federal power marketing administration may elect to
17 voluntarily participate in the program by registering as an opt-in
18 entity pursuant to the requirements of this section.

19 (2) In registering as an opt-in entity under this section, a
20 federal power marketing administration may assume the compliance
21 obligations associated with either:

22 (a) All electricity marketed in the state by the federal power
23 marketing administration; or

24 (b) Only the electricity marketed by the federal power marketing
25 administration in the state through a centralized electricity market.

26 (3) A federal power marketing administration that voluntarily
27 elects to comply with the program must register with the department
28 as an opt-in entity at least 90 days prior to January 1st of the
29 calendar year in which the federal power marketing administration
30 would assume the compliance obligations associated with federally
31 marketed electricity in the state, in accordance with the
32 requirements of this section.

33 (4) If a federal power marketing administration registers as an
34 opt-in entity under this section, then beginning January 1st of the
35 calendar year in which the federal power marketing administration
36 would assume the compliance obligations associated with federally
37 marketed electricity in the state, a covered or opt-in entity must
38 not include in its covered emissions the emissions associated with

1 federally marketed electricity in the state for which the federal
2 power marketing administration has assumed the compliance obligation.

3 (5) After consulting with a federal power marketing
4 administration, the department must determine the appropriate
5 registration requirements for that federal power marketing
6 administration.

7 (6) (a) An electric utility may voluntarily elect to transfer all
8 or a designated number of the utility's allowances allocated at no
9 cost to a federal power marketing administration registered as an
10 opt-in entity under this section to be used for direct compliance. An
11 electric utility wishing to transfer allowances allocated at no cost
12 from the utility's holding account to a holding account of a federal
13 power marketing administration to be used for direct compliance may
14 submit a request to the department requesting the transfer and
15 providing the following information:

16 (i) The electric utility's holding account number;

17 (ii) The holding account number of the federal power marketing
18 administration;

19 (iii) The number and vintage of no cost allowances to be
20 transferred; and

21 (iv) The relationship between the electric utility and the
22 federal power marketing administration.

23 (b) The department may transfer the allowances only if:

24 (i) The electric utility has an agreement to purchase electricity
25 from the federal power marketing administration, or a power purchase
26 agreement, including a custom product contract, with the federal
27 power marketing administration; and

28 (ii) The transfer does not violate the federal power marketing
29 administration's holding limit.

30 (7) (a) In addition to the manual transfer request process
31 provided under subsection (6) of this section, the department must
32 also provide for an optional process by which an electric utility may
33 approve the automatic distribution of all or a designated number of
34 the utility's allowances allocated at no cost directly into a holding
35 account of a federal power marketing administration to be used for
36 direct compliance, without first being distributed to the utility's
37 holding account.

38 (b) An electric utility receiving an allocation of allowances at
39 no cost must inform the department by September 1st of each year of
40 the accounts into which the allocation or a portion of the allocation

1 is to be automatically distributed under this subsection. If an
2 electric utility fails to submit its distribution preference by
3 September 1st, the department must automatically place all directly
4 allocated allowances for the following calendar year into the
5 electric utility's holding account. Nothing in this subsection (7)(b)
6 precludes an electric utility from requesting a manual transfer of
7 allowances under subsection (6) of this section after September 1st
8 of each year.

9 **Sec. 12.** RCW 70A.15.2200 and 2022 c 181 s 9 are each amended to
10 read as follows:

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

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

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

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

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

35 This subsection does not apply to a grain warehouse or grain
36 elevator if the warehouse or elevator handles more than 10,000,000
37 bushels of grain annually.

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

39 (a) A "grain warehouse" or "grain elevator" is an establishment
40 classified in standard industrial classification (SIC) code 5153 for

1 wholesale trade for which a license is required and includes, but is
2 not limited to, such a licensed facility that also conducts cleaning
3 operations for grain;

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

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

11 (5)(a) The department shall adopt rules requiring persons to
12 report emissions of greenhouse gases as defined in RCW 70A.45.010
13 where those emissions from a single facility, or from ((~~electricity~~
14 ~~or~~) fossil fuels sold in Washington by a single supplier or local
15 distribution company, meet or exceed 10,000 metric tons of carbon
16 dioxide equivalent annually. The department's rules may also require
17 electric power entities to report emissions of greenhouse gases from
18 all electricity that is purchased, sold, imported, exported, or
19 exchanged in Washington. The rules adopted by the department must
20 support implementation of the program created in RCW 70A.65.060. In
21 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 10,000 metric tons carbon
2 dioxide equivalent annually.

3 (iii) The department must establish greenhouse gas emission
4 reporting methodologies for persons who are required to report under
5 this section. The department's reporting methodologies must be
6 designed to address the needs of ensuring accuracy of reported
7 emissions and maintaining consistency over time, and may, to the
8 extent practicable, be similar to reporting methodologies of
9 jurisdictions with which Washington has entered into a linkage
10 agreement.

11 (iv) The department must establish a methodology for persons who
12 are not required to report under this section to voluntarily report
13 their greenhouse gas emissions.

14 ~~(c) ((i) The department shall review and if necessary update its~~
15 ~~rules whenever:~~

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

19 ~~(B) Needed to ensure consistency with emissions reporting~~
20 ~~requirements for jurisdictions with which Washington has entered a~~
21 ~~linkage agreement.~~

22 ~~(ii) The department shall not amend its rules in a manner that~~
23 ~~conflicts with this section.~~

24 ~~(d))~~ The department shall share any reporting information
25 reported to it with the local air authority in which the person
26 reporting under the rules adopted by the department operates.

27 ~~((e))~~ (d) The fee provisions in subsection (2) of this section
28 apply to reporting of emissions of greenhouse gases. Persons required
29 to report under (a) of this subsection who fail to report or pay the
30 fee required in subsection (2) of this section are subject to
31 enforcement penalties under this chapter. The department shall
32 enforce the reporting rule requirements. When a person that holds a
33 compliance obligation under RCW 70A.65.080 fails to submit an
34 emissions data report or fails to obtain a positive emissions data
35 verification statement in accordance with ~~((g))~~ (f)(ii) of this
36 subsection, the department may assign an emissions level for that
37 person.

38 ~~((f))~~ (e) The energy facility site evaluation council shall,
39 simultaneously with the department, adopt rules that impose
40 greenhouse gas reporting requirements in site certifications on

1 owners or operators of a facility permitted by the energy facility
2 site evaluation council. The greenhouse gas reporting requirements
3 imposed by the energy facility site evaluation council must be the
4 same as the greenhouse gas reporting requirements imposed by the
5 department. The department shall share any information reported to it
6 from facilities permitted by the energy facility site evaluation
7 council with the council, including notice of a facility that has
8 failed to report as required. The energy facility site evaluation
9 council shall contract with the department to monitor the reporting
10 requirements adopted under this section.

11 ~~((g))~~ (f)(i) The department must establish by rule the methods
12 of verifying the accuracy of emissions reports.

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

23 ~~((h))~~ (g)(i) The definitions in RCW 70A.45.010 apply throughout
24 this subsection (5) unless the context clearly requires otherwise.

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

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

39 (iv) For the purpose of this subsection (5), the term "facility"
40 includes facilities that directly emit greenhouse gases in Washington

1 equivalent to the threshold established under (a) of this subsection
2 with at least one source category listed in the United States
3 environmental protection agency's mandatory greenhouse gas reporting
4 regulation, 40 C.F.R. Part 98 Subparts C through II and RR through
5 UU, as adopted on April 25, 2011.

6 (v) For the purpose of this subsection (5), the term "electric
7 power entity" includes any of the following that supply electric
8 power in Washington with associated emissions of greenhouse gases
9 equal to or above the threshold established under (a) of this
10 subsection: (A) Electricity importers and exporters; (B) retail
11 providers, including multijurisdictional retail providers; and (C)
12 first jurisdictional deliverers, as defined in RCW 70A.65.010, not
13 otherwise included here.

14 NEW SECTION. **Sec. 13.** This act is not a conflicting measure
15 dealing with the same subject as Initiative Measure No. 2117 within
16 the meaning of Article II, section 1 of the state Constitution, but
17 if a court of competent jurisdiction enters a final judgment that is
18 no longer subject to appeal directing the secretary of state to place
19 this act on the 2024 ballot as a conflicting measure to Initiative
20 Measure No. 2117, this act is null and void and may not be placed on
21 the 2024 ballot.

22 NEW SECTION. **Sec. 14.** This act takes effect January 1, 2025,
23 only if Initiative Measure No. 2117 is not approved by a vote of the
24 people in the 2024 general election. If Initiative Measure No. 2117
25 is approved by a vote of the people in the 2024 general election,
26 this act is null and void."

27 Correct the title.

EFFECT: (1) Specifies that electricity wheeled through Washington
on a single NERC e-tag, or wheeled into and out of Washington at a
common point or trading hub on the power system on separate e-tags
within the same hour is exempt from climate commitment act compliance
obligations.

(2) Requires the department of ecology to post and maintain on
its website, and to notify the appropriate committees of the
legislature, with a status update on the process towards completion
of a potential linkage agreement.

(3) Lowers the carbon intensity requirements for biofuels in
order to be exempt from cap and invest compliance obligations from 40
percent to 30 percent lower than comparable petroleum fuels, or to
standards adopted by the department of ecology by rule that are

consistent with the standards or definitions for biofuel of a linked jurisdiction, if such a standard or definitions requires lower life-cycle greenhouse gas emissions than Washington's standard of 30 percent lower than comparable petroleum fuels.

(4) Requires the department of ecology to consider forest practices rules where an offset project is located, or applicable best management practices that relate to forest management, in the development of offset credit project and offset credit use protocols.

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