
SUBSTITUTE HOUSE BILL 2201

State of Washington

68th Legislature

2024 Regular Session

By House Environment & Energy (originally sponsored by Representatives Doglio, Fitzgibbon, Berry, Ramel, Reeves, Duerr, Hackney, Reed, Goodman, and Pollet; by request of Department of Ecology)

READ FIRST TIME 01/29/24.

1 AN ACT Relating to facilitating linkage of Washington's carbon
2 market with the California-Quebec carbon market; amending RCW
3 70A.65.010, 70A.65.060, 70A.65.070, 70A.65.080, 70A.65.100,
4 70A.65.110, 70A.65.170, 70A.65.200, 70A.65.310, and 70A.15.2200;
5 adding a new section to chapter 70A.65 RCW; creating a new section;
6 prescribing penalties; and providing a contingent effective date.

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

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

10 The definitions in this section apply throughout this chapter
11 unless the context clearly requires otherwise.

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

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

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

1 (4) "Asset controlling supplier" means any entity that owns or
2 operates interconnected electricity generating facilities or serves
3 as an exclusive marketer for these facilities even though it does not
4 own them, and has been designated by the department and received a
5 department-published emissions factor for the wholesale electricity
6 procured from its system. The department shall use a methodology
7 consistent with the methodology used by an external greenhouse gas
8 emissions trading program that shares the regional electricity
9 transmission system. Electricity from an asset controlling supplier
10 is considered a specified source of electricity.

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

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

16 (7) "Auction purchase limit" means the limit on the number of
17 allowances one registered entity or a group of affiliated registered
18 entities may purchase from the share of allowances sold at an
19 auction.

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

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

28 (10) "Best available technology" means a technology or
29 technologies that will achieve the greatest reduction in greenhouse
30 gas emissions, taking into account the fuels, processes, and
31 equipment used by facilities to produce goods of comparable type,
32 quantity, and quality. Best available technology must be technically
33 feasible, commercially available, economically viable, not create
34 excessive environmental impacts, and be compliant with all applicable
35 laws while not changing the characteristics of the good being
36 manufactured.

37 (11) "Biomass" means nonfossilized and biodegradable organic
38 material originating from plants, animals, and microorganisms,
39 including products, by-products, residues, and waste from
40 agriculture, forestry, and related industries as well as the

1 nonfossilized and biodegradable organic fractions of municipal
2 wastewater and industrial waste, including gases and liquids
3 recovered from the decomposition of nonfossilized and biodegradable
4 organic material.

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

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

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

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

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

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

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

1 (19) "Compliance obligation" means the requirement to submit to
2 the department the number of compliance instruments equivalent to a
3 covered or opt-in entity's covered emissions during the compliance
4 period.

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

8 (21) "Cost burden" means the impact on rates or charges to
9 customers of electric utilities in Washington state for the
10 incremental cost of electricity service to serve load due to the
11 compliance cost for greenhouse gas emissions caused by the program.
12 Cost burden includes administrative costs from the utility's
13 participation in the program.

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

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

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

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

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

25 (27) "Electricity importer" means:

26 (a) For electricity that is scheduled with a NERC e-tag to a
27 final point of delivery into a balancing authority area located
28 entirely within the state of Washington, the electricity importer is
29 identified on the NERC e-tag as the purchasing-selling entity on the
30 last segment of the tag's physical path with the point of receipt
31 located outside the state of Washington and the point of delivery
32 located inside the state of Washington;

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

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

1 (d) For electricity provided as balancing energy in the state of
2 Washington, including balancing energy that is also inside a
3 balancing authority area that is not located entirely within the
4 state of Washington, the electricity importer may be defined by the
5 department by rule;

6 (e) For electricity from facilities allocated to serve retail
7 electricity customers of a multijurisdictional electric company, the
8 electricity importer is the multijurisdictional electric company;

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

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

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

29 ~~(h))~~ (i) For electricity from facilities allocated to a
30 consumer-owned utility inside the state of Washington from a
31 multijurisdictional consumer-owned utility, the electricity importer
32 is the consumer-owned utility inside the state of Washington; or

33 (j) For imported electricity not otherwise assigned an
34 electricity importer by this subsection, the electricity importer may
35 be defined by the department by rule.

36 (28) "Emissions containment reserve allowance" means a
37 conditional allowance that is withheld from sale at an auction by the
38 department or its agent to secure additional emissions reductions in
39 the event prices fall below the emissions containment reserve trigger
40 price.

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

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

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

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

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

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

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

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

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

27 (38) "First jurisdictional deliverer" means the owner or operator
28 of an electric generating facility in Washington or an electricity
29 importer.

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

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

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

37 (42) "Imported electricity" means electricity generated outside
38 the state of Washington with a final point of delivery within the
39 state.

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

3 (b) "Imported electricity" includes imports from linked
4 jurisdictions, but such imports shall be construed as having no
5 emissions.

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

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

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

22 (f) For a multijurisdictional consumer-owned utility, "imported
23 electricity" includes electricity from facilities that contribute to
24 a common system power pool that are allocated to a consumer-owned
25 utility inside the state of Washington pursuant to a methodology
26 approved by the governing board of the consumer-owned utility.

27 (43) "Leakage" means a reduction in emissions of greenhouse gases
28 within the state that is offset by a directly attributable increase
29 in greenhouse gas emissions outside the state and outside the
30 geography of another jurisdiction with a linkage agreement with
31 Washington.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (iii) Populations, including Native Americans or immigrant
37 populations, who may be exposed to environmental contaminants and
38 pollutants outside of the geographic area in which they reside based
39 on the populations' use of traditional or cultural foods and
40 practices, such as the use of resources, access to which is protected

1 under treaty rights in ceded areas, when those exposures in
2 conjunction with other exposures may result in disproportionately
3 greater risks, including risks of certain cancers or other adverse
4 health effects and outcomes.

5 (b) Overburdened communities identified by the department may
6 include the same communities as those identified by the department
7 through its process for identifying overburdened communities under
8 RCW 70A.02.010.

9 (55) "Person" has the same meaning as defined in RCW
10 70A.15.2200(5) (~~(h)~~) (g)(iii).

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

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

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

24 (59) "Program registry" means the data system in which covered
25 entities, opt-in entities, and general market participants are
26 registered and in which compliance instruments are recorded and
27 tracked.

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

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

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

38 (63) "Specified source of electricity" or "specified source"
39 means a facility, unit, or asset controlling supplier that is
40 permitted to be claimed as the source of electricity delivered. The

1 reporting entity must have either full or partial ownership in the
2 facility or a written power contract to procure electricity generated
3 by that facility or unit or from an asset controlling supplier at the
4 time of entry into the transaction to procure electricity.

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

7 (65) "Tribal lands" has the same meaning as defined in RCW
8 70A.02.010.

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

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

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

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

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

28 (2) The program must consist of:

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

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

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

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

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

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

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

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

11 (i) Providing monitoring and oversight of the sale and transfer
12 of allowances by the department;

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

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

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

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

35 (5) By December 1, 2027, and ~~((at least every four years~~
36 ~~thereafter))~~ by December 1st of each year that is one year after the
37 end of a compliance period, and in compliance with RCW 43.01.036, the
38 department must submit a report to the legislature that includes a
39 comprehensive review of the implementation of the program to date,
40 including but not limited to outcomes relative to the state's

1 emissions reduction limits, overburdened communities, covered
2 entities, and emissions-intensive, trade-exposed businesses. The
3 department must transmit the report to the environmental justice
4 council at the same time it is submitted to the legislature.

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

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

11 (1) (a) (i) The department shall commence the program by January 1,
12 2023, by determining an emissions baseline establishing the
13 proportionate share that the total greenhouse gas emissions of
14 covered entities for the first compliance period bears to the total
15 anthropogenic greenhouse gas emissions in the state during 2015
16 through 2019, based on data reported to the department under RCW
17 70A.15.2200 or provided as required by this chapter, as well as other
18 relevant data. By October 1, 2022, the department shall adopt annual
19 allowance budgets for the first compliance period of the program,
20 calendar years 2023 through 2026, to be distributed from January 1,
21 2023, through December 31, 2026.

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

29 (b) By October 1, 2026, the department shall add to its emissions
30 baseline by incorporating the proportionate share that the total
31 greenhouse gas emissions of new covered entities in the second
32 compliance period bear to the total anthropogenic greenhouse gas
33 emissions in the state during 2015 through 2019. In determining the
34 addition to the baseline, the department may exclude a year from the
35 determination if the department identifies that year to have been an
36 outlier due to a state of emergency. The department shall adopt
37 annual allowance budgets for the second compliance period of the
38 program(~~(, calendar years 2027 through 2030,~~) that will be

1 distributed (~~from January 1, 2027, through December 31, 2030~~)
2 during the second compliance period.

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

6 (2) The annual allowance budgets must be set to achieve the share
7 of reductions by covered entities necessary to achieve the 2030,
8 2040, and 2050 statewide emissions limits established in RCW
9 70A.45.020, based on data reported to the department under chapter
10 70A.15 RCW or provided as required by this chapter. Annual allowance
11 budgets must be set such that the use of offsets as compliance
12 instruments, consistent with RCW 70A.65.170, does not prevent the
13 achievement of the emissions limits established in RCW 70A.45.020. In
14 so setting annual allowance budgets, the department must reduce the
15 annual allowance budget relative to the limits in an amount
16 equivalent to offset use, or in accordance with a similar methodology
17 adopted by the department. The department must adopt annual allowance
18 budgets for the program on a calendar year basis that provide for
19 progressively equivalent reductions year over year. An allowance
20 distributed under the program, either directly by the department
21 under RCW 70A.65.110 through 70A.65.130 or through auctions under RCW
22 70A.65.100, does not expire and may be held or banked consistent with
23 RCW 70A.65.100(6) and 70A.65.150(1).

24 (3) The department must complete evaluations by December 31,
25 2027, and (~~by~~) December (~~31, 2035~~) 31st of the year following the
26 conclusion of the third compliance period, of the performance of the
27 program, including its performance in reducing greenhouse gases. If
28 the evaluation shows that adjustments to the annual allowance budgets
29 are necessary for covered entities to achieve their proportionate
30 share of the 2030 and 2040 emission reduction limits identified in
31 RCW 70A.45.020, as applicable, the department shall adjust the annual
32 allowance budgets accordingly. The department must complete
33 additional evaluations of the performance of the program by December
34 (~~31, 2040, and by December 31, 2045~~) 31st of the year following the
35 conclusion of the fifth and sixth compliance periods, and make any
36 necessary adjustments in the annual allowance budgets to ensure that
37 covered entities achieve their proportionate share of the 2050
38 emission reduction limit identified in RCW 70A.45.020. Nothing in
39 this subsection precludes the department from making additional
40 adjustments to annual allowance budgets as necessary to ensure

1 successful achievement of the proportionate emission reduction limits
2 by covered entities. The department shall determine and make public
3 the circumstances, metrics, and processes that would initiate the
4 public consideration of additional allowance budget adjustments to
5 ensure successful achievement of the proportionate emission reduction
6 limits.

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

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

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

23 (1) A person is a covered entity as of the beginning of the first
24 compliance period and all subsequent compliance periods if the person
25 reported emissions under RCW 70A.15.2200 for any calendar year from
26 2015 through 2019, or if additional data provided as required by this
27 chapter indicates that emissions for any calendar year from 2015
28 through 2019 equaled or exceeded any of the following thresholds, or
29 if the person is a first jurisdictional deliverer and imports
30 electricity into the state during the compliance period:

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

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

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

1 (A) For specified sources, the cumulative annual total of
2 emissions associated with the imported electricity (~~(, whether from~~
3 ~~specified or unspecified sources,~~) exceeds 25,000 metric tons of
4 carbon dioxide equivalent; or

5 (B) For unspecified sources, the cumulative annual total of
6 emissions associated with the imported electricity exceeds 0 metric
7 tons of carbon dioxide equivalent.

8 (ii) In consultation with any linked jurisdiction to the program
9 created by this chapter, by October 1, 2026, the department, in
10 consultation with the department of commerce and the utilities and
11 transportation commission, shall adopt by rule a methodology for
12 addressing imported electricity associated with a centralized
13 electricity market;

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

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

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

35 (iii) Where the person is an end-use customer in the state who
36 directly purchases natural gas from a person that is not a natural
37 gas company and has the natural gas delivered through an interstate
38 pipeline to a distribution system owned by the purchaser in amounts
39 that would result in exceeding 25,000 metric tons of carbon dioxide
40 equivalent emissions if fully combusted or oxidized, excluding the

1 amounts: (A) Supplied to covered entities under (a) through (d) of
2 this subsection; and (B) delivered to opt-in entities.

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

11 (3) A person is a covered entity (~~((beginning January 1, 2031))~~) as
12 of the beginning of the third compliance period, and all subsequent
13 compliance periods if the person reported emissions under RCW
14 70A.15.2200 or provided emissions data as required by this chapter
15 for (~~((any calendar year from))~~) 2027 (~~((through 2029))~~) or 2028, where
16 the person owns or operates a railroad company, as that term is
17 defined in RCW 81.04.010, and the railroad company's emissions equal
18 or exceed 25,000 metric tons of carbon dioxide equivalent.

19 (4) When a covered entity reports, during a compliance period,
20 emissions from a facility under RCW 70A.15.2200 that are below the
21 thresholds specified in subsection (1) or (2) of this section, the
22 covered entity continues to have a compliance obligation through the
23 current compliance period. When a covered entity reports emissions
24 below the threshold for each year during an entire compliance period,
25 or has ceased all processes at the facility requiring reporting under
26 RCW 70A.15.2200, the entity is no longer a covered entity as of the
27 beginning of the subsequent compliance period unless the department
28 provides notice at least 12 months before the end of the compliance
29 period that the facility's emissions were within 10 percent of the
30 threshold and that the person will continue to be designated as a
31 covered entity in order to ensure equity among all covered entities.
32 Whenever a covered entity ceases to be a covered entity, the
33 department shall notify the appropriate policy and fiscal committees
34 of the legislature of the name of the entity and the reason the
35 entity is no longer a covered entity.

36 (5) For types of emission sources described in subsection (1) of
37 this section that begin or modify operation after January 1, 2023,
38 and types of emission sources described in subsection (2) of this
39 section that begin or modify operation after 2027, coverage under the
40 program starts in the calendar year in which emissions from the

1 source exceed the applicable thresholds in subsection (1) or (2) of
2 this section, or upon formal notice from the department that the
3 source is expected to exceed the applicable emissions threshold,
4 whichever happens first. Sources meeting these conditions are
5 required to transfer their first allowances on the first transfer
6 deadline of the year following the year in which their emissions were
7 equal to or exceeded the emissions threshold.

8 (6) For emission sources described in subsection (1) of this
9 section that are in operation or otherwise active between 2015 and
10 2019 but were not required to report emissions for those years under
11 RCW 70A.15.2200 for the reporting periods between 2015 and 2019,
12 coverage under the program starts in the calendar year following the
13 year in which emissions from the source exceed the applicable
14 thresholds in subsection (1) of this section as reported pursuant to
15 RCW 70A.15.2200 or provided as required by this chapter, or upon
16 formal notice from the department that the source is expected to
17 exceed the applicable emissions threshold for the first year that
18 source is required to report emissions, whichever happens first.
19 Sources meeting these criteria are required to transfer their first
20 allowances on the first transfer deadline of the year following the
21 year in which their emissions, as reported under RCW 70A.15.2200 or
22 provided as required by this chapter, were equal to or exceeded the
23 emissions threshold.

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

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

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

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

33 (d) Carbon dioxide emissions from the combustion of biomass or
34 biofuels;

35 (e) (i) Motor vehicle fuel or special fuel that is used
36 exclusively for agricultural purposes by a farm fuel user. This
37 exemption is available only if a buyer of motor vehicle fuel or
38 special fuel provides the seller with an exemption certificate in a
39 form and manner prescribed by the department. For the purposes of

1 this subsection, "agricultural purposes" and "farm fuel user" have
2 the same meanings as provided in RCW 82.08.865.

3 (ii) The department must determine a method for expanding the
4 exemption provided under (e)(i) of this subsection to include fuels
5 used for the purpose of transporting agricultural products on public
6 highways. The department must maintain this expanded exemption for a
7 period of five years, in order to provide the agricultural sector
8 with a feasible transition period;

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

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

13 (8) The department shall not require multiple covered entities to
14 have a compliance obligation for the same emissions. The department
15 may by rule authorize refineries, fuel suppliers, facilities using
16 natural gas, and natural gas utilities to provide by agreement for
17 the assumption of the compliance obligation for fuel or natural gas
18 supplied and combusted in the state. The department must be notified
19 of such an agreement at least 12 months prior to the compliance
20 obligation period for which the agreement is applicable.

21 (9)(a) The legislature intends to promote a growing and
22 sustainable economy and to avoid leakage of emissions from
23 manufacturing to other locations. The legislature further intends to
24 see innovative new businesses locate and grow in Washington that
25 contribute to Washington's prosperity and environmental objectives.

26 (b) Consistent with the intent of the legislature to avoid the
27 leakage of emissions to other jurisdictions, in achieving the state's
28 greenhouse gas limits in RCW 70A.45.020, the state, including lead
29 agencies under chapter 43.21C RCW, shall pursue the limits in a
30 manner that recognizes that the siting and placement of new or
31 expanded best-in-class facilities with lower carbon emitting
32 processes is in the economic and environmental interests of the state
33 of Washington.

34 (c) In conducting a life-cycle analysis, if required, for new or
35 expanded facilities that require review under chapter 43.21C RCW, a
36 lead agency must evaluate and attribute any potential net cumulative
37 greenhouse gas emissions resulting from the project as compared to
38 other existing facilities or best available technology including
39 best-in-class facilities and emerging lower carbon processes that

1 supply the same product or end use. The department may adopt rules to
2 determine the appropriate threshold for applying this analysis.

3 (d) Covered emissions from an entity that is or will be a covered
4 entity under this chapter may not be the basis for denial of a permit
5 for a new or expanded facility. Covered emissions must be included in
6 the analysis undertaken pursuant to (c) of this subsection. Nothing
7 in this subsection requires a lead agency or a permitting agency to
8 approve or issue a permit to a permit applicant, including to a new
9 or expanded fossil fuel project.

10 (e) A lead agency under chapter 43.21C RCW or a permitting agency
11 shall allow a new or expanded facility that is a covered entity or
12 opt-in entity to satisfy a mitigation requirement for its covered
13 emissions under this chapter (~~(316, Laws of 2021)~~) and under any
14 greenhouse gas emission mitigation requirements for covered emissions
15 under chapter 43.21C RCW by submitting to the department the number
16 of compliance instruments equivalent to its covered emissions during
17 a compliance period.

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

20 (1) Except as provided in RCW 70A.65.110, 70A.65.120, and
21 70A.65.130, the department shall distribute allowances through
22 auctions as provided in this section and in rules adopted by the
23 department to implement these sections. An allowance is not a
24 property right.

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

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

1 (3) The department shall engage a qualified, independent
2 contractor to run the auctions. The department shall also engage a
3 qualified financial services administrator to hold the bid
4 guarantees, evaluate bid guarantees, and inform the department of the
5 value of bid guarantees once the bids are accepted.

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

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

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

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

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

32 (a) A covered entity or an opt-in entity may not buy more than
33 ~~((10))~~ 25 percent of the allowances offered during a single auction;

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

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

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

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

5 (7) (a) For fiscal year 2023, upon completion and verification of
6 the auction results, the financial services administrator shall
7 notify winning bidders and transfer the auction proceeds to the state
8 treasurer for deposit as follows: (i) \$127,341,000 must first be
9 deposited into the carbon emissions reduction account created in RCW
10 70A.65.240; and (ii) the remaining auction proceeds to the climate
11 investment account created in RCW 70A.65.250 and the air quality and
12 health disparities improvement account created in RCW 70A.65.280.

13 (b) For fiscal year 2024, upon completion and verification of the
14 auction results, the financial services administrator shall notify
15 winning bidders and transfer the auction proceeds to the state
16 treasurer for deposit as follows: (i) \$356,697,000 must first be
17 deposited into the carbon emissions reduction account created in RCW
18 70A.65.240, except during fiscal year 2024, the deposit as provided
19 in this subsection (7) (b) (i) may be prorated equally across each of
20 the auctions occurring in fiscal year 2024; and (ii) the remaining
21 auction proceeds to the climate investment account created in RCW
22 70A.65.250 and the air quality and health disparities improvement
23 account created in RCW 70A.65.280, which may be prorated equally
24 across each of the auctions occurring in fiscal year 2024.

25 (c) For fiscal year 2025, upon completion and verification of the
26 auction results, the financial services administrator shall notify
27 winning bidders and transfer the auction proceeds to the state
28 treasurer for deposit as follows: (i) \$366,558,000 must first be
29 deposited into the carbon emissions reduction account created in RCW
30 70A.65.240, except that during fiscal year 2025, the deposit as
31 provided in this subsection (7) (c) (i) may be prorated equally across
32 each of the auctions occurring in fiscal year 2025; and (ii) the
33 remaining auction proceeds to the climate investment account created
34 in RCW 70A.65.250 and the air quality and health disparities
35 improvement account created in RCW 70A.65.280, which may be prorated
36 equally across each of the auctions occurring in fiscal year 2025.

37 (d) For fiscal years 2026 through 2037, upon completion and
38 verification of the auction results, the financial services
39 administrator shall notify winning bidders and transfer the auction
40 proceeds to the state treasurer for deposit as follows: (i)

1 \$359,117,000 per year must first be deposited into the carbon
2 emissions reduction account created in RCW 70A.65.240; 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.

6 (e) The deposits into the carbon emissions reduction account
7 pursuant to (a) through (d) of this subsection must not exceed
8 \$5,200,000,000 over the first 16 fiscal years and any remaining
9 auction proceeds must be deposited into the climate investment
10 account created in RCW 70A.65.250 and the air quality and health
11 disparities improvement account created in RCW 70A.65.280.

12 (f) For fiscal year 2038 and each year thereafter, upon
13 completion and verification of the auction results, the financial
14 services administrator shall notify winning bidders and transfer the
15 auction proceeds to the state treasurer for deposit as follows: (i)
16 50 percent of the auction proceeds to the carbon emissions reduction
17 account created in RCW 70A.65.240; and (ii) the remaining auction
18 proceeds to the climate investment account created in RCW 70A.65.250
19 and the air quality and health disparities improvement account
20 created in RCW 70A.65.280.

21 (8) The department shall adopt by rule provisions to guard
22 against bidder collusion and minimize the potential for market
23 manipulation. A registered entity may not release or disclose any
24 bidding information including: Intent to participate or refrain from
25 participation; auction approval status; intent to bid; bidding
26 strategy; bid price or bid quantity; or information on the bid
27 guarantee provided to the financial services administrator. The
28 department may cancel or restrict a previously approved auction
29 participation application or reject a new application if the
30 department determines that a registered entity has:

31 (a) Provided false or misleading facts;

32 (b) Withheld material information that could influence a decision
33 by the department;

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

35 (d) Violated registration requirements; or

36 (e) Violated any of the rules regarding the conduct of the
37 auction.

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

1 (a) Bidding information as identified in subsection (8) of this
2 section;

3 (b) Information contained in the secure, online electronic
4 tracking system established by the department pursuant to RCW
5 70A.65.090(6);

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

9 (d) Financial, proprietary, and other market sensitive
10 information as determined by the department that is submitted to the
11 independent contractor or the financial services administrator
12 engaged by the department pursuant to subsection (3) of this section;
13 and

14 (e) Financial, proprietary, and other market sensitive
15 information as determined by the department that is submitted to a
16 jurisdiction with which the department has entered into a linkage
17 agreement pursuant to RCW 70A.65.210, and which is shared with the
18 department, the independent contractor, or the financial services
19 administrator pursuant to a linkage agreement.

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

26 (11) The department shall design allowance auctions so as to
27 allow, to the maximum extent practicable, linking with external
28 greenhouse gas emissions trading programs in other jurisdictions and
29 to facilitate the transfer of allowances when the state's program has
30 entered into a linkage agreement with other external greenhouse gas
31 emissions trading programs. The department may conduct auctions
32 jointly with linked jurisdictions.

33 (12) In setting the number of allowances offered at each auction,
34 the department shall consider the allowances in the marketplace due
35 to the marketing of allowances issued as required under RCW
36 70A.65.110, 70A.65.120, and 70A.65.130 in the department's
37 determination of the number of allowances to be offered at auction.
38 The department shall offer only such number of allowances at each
39 auction as will enhance the likelihood of achieving the goals of RCW
40 70A.45.020.

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

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

10 (a) Metals manufacturing, including iron and steel making,
11 ferroalloy and primary metals manufacturing, secondary aluminum
12 smelting and alloying, aluminum sheet, plate, and foil manufacturing,
13 and smelting, refining, and alloying of other nonferrous metals,
14 North American industry classification system codes beginning with
15 331;

16 (b) Paper manufacturing, including pulp mills, paper mills, and
17 paperboard milling, North American industry classification system
18 codes beginning with 322;

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

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

23 (e) Nonmetallic mineral manufacturing, including glass container
24 manufacturing, North American industry classification system codes
25 beginning with 327;

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

28 (g) Computer and electronic product manufacturing, including
29 semiconductor and related device manufacturing, North American
30 industry classification system codes beginning with 334;

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

33 (i) Cement manufacturing, North American industry classification
34 system code 327310;

35 (j) Petroleum refining, North American industry classification
36 system code 324110;

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

1 (l) Asphalt shingle and coating manufacturing from refined
2 petroleum, North American industry classification system code 324122;
3 and

4 (m) All other petroleum and coal products manufacturing from
5 refined petroleum, North American industry classification system code
6 324199.

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

24 (3) (a) For the (~~first compliance period beginning in January 1,~~
25 ~~2023~~) years 2023 through 2026, the annual allocation of no cost
26 allowances for direct distribution to a facility identified as
27 emissions-intensive and trade-exposed must be equal to the facility's
28 baseline carbon intensity established using data from 2015 through
29 2019, or other data as allowed under this section, multiplied by the
30 facility's actual production for each calendar year during the
31 compliance period. For facilities using the mass-based approach, the
32 allocation of no cost allowances shall be equal to the facility's
33 mass-based baseline using data from 2015 through 2019, or other data
34 as allowed under this section.

35 (b) For the (~~second compliance period, beginning in January,~~
36 ~~2027,~~) four years beginning January 2027 and in each subsequent
37 (~~compliance~~) four-year period, the annual allocation of no cost
38 allowances established in (a) of this subsection shall be adjusted
39 according to the benchmark reduction schedules established in (b) (ii)
40 and (iii) and (e) of this subsection multiplied by the facility's

1 actual production during the period. The department shall adjust the
2 no cost allocation of allowances and credits to an emissions-
3 intensive and trade-exposed facility to avoid duplication with any no
4 cost allowances transferred pursuant to RCW 70A.65.120 and
5 70A.65.130, if applicable.

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

11 (ii) If an emissions-intensive and trade-exposed facility is not
12 able to feasibly determine a carbon intensity benchmark based on its
13 unique circumstances, the entity may elect to use a mass-based
14 baseline that does not vary based on changes in production volumes.
15 The mass-based baseline must be based upon data from 2015 through
16 2019, unless the emissions-intensive, trade-exposed facility can
17 demonstrate that there have been abnormal periods of operation that
18 materially impacted the facility and the baseline period should be
19 expanded to include years prior to 2015. For ~~((each year during the~~
20 ~~first four-year compliance period that begins January 1, 2023))~~ the
21 years 2023 through 2026, these facilities must be awarded no cost
22 allowances equal to 100 percent of the facility's mass-based
23 baseline. For each year during the ~~((second four-year compliance~~
24 ~~period that begins January 1, 2027))~~ years 2027 through 2030, these
25 facilities must be awarded no cost allowances equal to 97 percent of
26 the facility's mass-based baseline. For each year during the ~~((third~~
27 ~~compliance period that begins January 1, 2031))~~ years 2031 through
28 2034, these facilities must be awarded no cost allowances equal to 94
29 percent of the facility's mass-based baseline. Except as provided in
30 (b)(iii) of this subsection, if a facility elects to use a mass-based
31 baseline, it may not later convert to a carbon intensity benchmark
32 during the ~~((first three compliance periods))~~ years 2023 through
33 2034.

34 (iii) A facility with a North American industry classification
35 system code beginning with 3364 that is utilizing a mass-based
36 baseline in (b)(ii) of this subsection must receive an additional no
37 cost allowance allocation under this section in order to accommodate
38 an increase in production that increases its emissions above the
39 baseline on a basis equivalent in principle to those awarded to
40 entities utilizing a carbon intensity benchmark pursuant to this

1 subsection (3)(b). The department shall establish methods to award,
2 for any annual period, additional no cost allowance allocations under
3 this section and, if appropriate based on projected production, to
4 achieve a similar ongoing result through the adjustment of the
5 facility's mass-based baseline. An eligible facility under this
6 subsection that has elected to use a mass-based baseline may not
7 convert to a carbon intensity benchmark until the next compliance
8 period.

9 (c)(i) By September 15, 2022, each emissions-intensive, trade-
10 exposed facility shall submit its carbon intensity baseline for the
11 first compliance period to the department. The carbon intensity
12 baseline for the first compliance period must use data from
13 2015-2019, unless the emissions-intensive, trade-exposed facility can
14 demonstrate that there have been abnormal periods of operation that
15 materially impacted the facility and the baseline period should be
16 expanded to include years prior to 2015.

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

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

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

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

34 (f) Prior to the beginning of ~~((either the second, third, or~~
35 ~~subsequent compliance))~~ 2027, 2031, or subsequent four-year periods,
36 the department may make an upward adjustment in the next
37 ~~((compliance))~~ four-year period's benchmark for an emissions-
38 intensive, trade-exposed facility based on the facility's
39 demonstration to the department that additional reductions in carbon
40 intensity or mass emissions are not technically or economically

1 feasible. The department may base the upward adjustment applicable to
2 an emissions-intensive, trade-exposed facility in the next
3 (~~compliance~~) four-year period on the facility's best available
4 technology analysis. The department shall by rule provide for
5 emissions-intensive, trade-exposed facilities to apply to the
6 department for an adjustment to the allocation for direct
7 distribution of no cost allowances based on its facility-specific
8 carbon intensity benchmark or mass emissions baseline. The department
9 shall make adjustments based on:

10 (i) A significant change in the emissions use or emissions
11 attributable to the manufacture of an individual good or goods in
12 this state by an emissions-intensive, trade-exposed facility based on
13 a finding by the department that an adjustment is necessary to
14 accommodate for changes in the manufacturing process that have a
15 material impact on emissions;

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

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

24 (4) (a) By December 1, 2026, the department shall provide a report
25 to the appropriate committees of the senate and house of
26 representatives that describes alternative methods for determining
27 the amount and a schedule of allowances to be provided to facilities
28 owned or operated by each covered entity designated as an emissions-
29 intensive, trade-exposed facility from January 1, 2035, through
30 January 1, 2050. The report must include a review of global best
31 practices in ensuring against emissions leakage and economic harm to
32 businesses in carbon pricing programs and describe alternative
33 methods of emissions performance benchmarking and mass-based
34 allocation of no cost allowances. At a minimum, the department must
35 evaluate benchmarks based on both carbon intensity and mass, as well
36 as the use of best available technology as a method for compliance.
37 In developing the report, the department shall form an advisory group
38 that includes representatives of the manufacturers listed in
39 subsection (1) of this section.

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

6 (5) If the actual emissions of an emissions-intensive, trade-
7 exposed facility exceed the facility's no cost allowances assigned
8 for that compliance period, it must acquire additional compliance
9 instruments such that the total compliance instruments transferred to
10 its compliance account consistent with this chapter (~~(316, Laws of~~
11 ~~2021)~~) equals emissions during the compliance period. An emissions-
12 intensive, trade-exposed facility must be allowed to bank unused
13 allowances, including for future sale and investment in best
14 available technology when economically feasible. The department shall
15 limit the use of offset credits for compliance by an emissions-
16 intensive, trade-exposed facility, such that the quantity of no cost
17 allowances plus the provision of offset credits does not exceed 100
18 percent of the facility's total compliance obligation over a
19 compliance period.

20 (6) The department must withhold or withdraw the relevant share
21 of allowances allocated to a covered entity under this section in the
22 event that the covered entity ceases production in the state and
23 becomes a closed facility. In the event an entity curtails all
24 production and becomes a curtailed facility, the allowances are
25 retained but cannot be traded, sold, or transferred and are still
26 subject to the emission reduction requirements specified in this
27 section. An owner or operator of a curtailed facility may transfer
28 the allowances to a new operator of the facility that will be
29 operated under the same North American industry classification system
30 codes. If the curtailed facility becomes a closed facility, then all
31 unused allowances will be transferred to the emissions containment
32 reserve. A curtailed facility is not eligible to receive free
33 allowances during a period of curtailment. Any allowances withheld or
34 withdrawn under this subsection must be transferred to the emissions
35 containment reserve.

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

39 (8) Rules adopted by the department under this section must
40 include protocols for allocating allowances at no cost to an eligible

1 facility built after July 25, 2021. The protocols must include
2 consideration of the products and criteria pollutants being produced
3 by the facility, as well as the local environmental and health
4 impacts associated with the facility. For a facility that is built on
5 tribal lands or is determined by the department to impact tribal
6 lands and resources, the protocols must be developed in consultation
7 with the affected tribal nations.

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

10 (1) The department shall adopt by rule the protocols for
11 establishing offset projects and (~~securing~~) generating offset
12 credits that may be used to meet a portion of a covered or opt-in
13 entity's compliance obligation under this chapter. The protocols
14 adopted by the department under this section must align with the
15 policies of the state established under RCW 70A.45.090 and
16 70A.45.100.

17 (2) Offset projects must:

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

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

22 (i) Are real, permanent, quantifiable, verifiable, and
23 enforceable; and

24 (ii) Are in addition to greenhouse gas emission reductions or
25 removals otherwise required by law and other greenhouse gas emission
26 reductions or removals that would otherwise occur; and

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

28 (3)(a) A total of no more than five percent of a covered or opt-
29 in entity's compliance obligation during the first compliance period
30 may be met by transferring offset credits, regardless of whether or
31 not the offset project is located on federally recognized tribal
32 land. During these years, at least 50 percent of a covered or opt-in
33 entity's compliance obligation satisfied by offset credits must be
34 sourced from offset projects that provide direct environmental
35 benefits in the state.

36 (b) A total of no more than four percent of a covered or opt-in
37 entity's compliance obligation during the second compliance period
38 may be met by transferring offset credits, regardless of whether or
39 not the offset project is located on federally recognized tribal

1 land. During these years, at least 75 percent of a covered or opt-in
2 entity's compliance obligation satisfied by offset credits must be
3 sourced from offset projects that provide direct environmental
4 benefits in the state. The department may reduce the 75 percent
5 requirement if it determines there is not sufficient offset supply in
6 the state to meet offset demand during the second compliance period.

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

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

16 (i) Contribute substantively to cumulative air pollution burden
17 in an overburdened community as determined by criteria established by
18 the department, in consultation with the environmental justice
19 council; or

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

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

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

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

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

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

1 (b) Encourage opportunities for the development of offset
2 projects in this state by adopting offset protocols that may include,
3 but need not be limited to, protocols that make use of aggregation or
4 other mechanisms to reduce transaction costs related to the
5 development of offset projects and that support the development of
6 carbon dioxide removal projects;

7 (c) Adopt a process for monitoring and invalidating offset
8 credits as necessary to ensure the credit reflects emission
9 reductions or removals that continue to meet the standards required
10 by subsection (1) of this section. If an offset credit is
11 invalidated, the covered or opt-in entity must, within six months of
12 the invalidation, transfer replacement credits or allowances to meet
13 its compliance obligation. Failure to transfer the required credits
14 or allowances is a violation subject to penalties as provided in RCW
15 70A.65.200; and

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

21 (5) Any offset credits used must:

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

25 (b) Have been issued for reporting periods wholly after July 25,
26 2021, or within two years prior to July 25, 2021; and

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

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

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

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

38 (1) All covered and opt-in entities are required to submit
39 compliance instruments in a timely manner to meet the entities'

1 compliance obligations and shall comply with all requirements for
2 monitoring, reporting, holding, and transferring emission allowances
3 and other provisions of this chapter.

4 (2) If a covered or opt-in entity does not submit sufficient
5 compliance instruments to meet its compliance obligation by the
6 specified transfer dates, a penalty of four allowances for every one
7 compliance instrument that is missing must be submitted to the
8 department within six months. When a covered entity or opt-in entity
9 reasonably believes that it will be unable to meet a compliance
10 obligation, the entity shall immediately notify the department. Upon
11 receiving notification, the department shall issue an order requiring
12 the entity to submit the penalty allowances.

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

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

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

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

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

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

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

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

8 (i) Provided in this chapter;

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

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

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

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

17 (i) Laws that regulate greenhouse gas emissions from stationary
18 sources, and the greenhouse gas emission reductions attributable to
19 each chapter, relative to a baseline in which this chapter and all
20 other state laws that regulate greenhouse gas emissions are presumed
21 to remain in effect; and

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

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

27 (i) Chapter 19.27A RCW;

28 (ii) Chapter 19.280 RCW;

29 (iii) Chapter 19.405 RCW;

30 (iv) Chapter 36.165 RCW;

31 (v) Chapter 43.21F RCW;

32 (vi) Chapter 70.30 RCW;

33 (vii) Chapter 70A.15 RCW;

34 (viii) Chapter 70A.45 RCW;

35 (ix) Chapter 70A.60 RCW;

36 (x) Chapter 70A.535 RCW;

37 (xi) Chapter 80.04 RCW;

38 (xii) Chapter 80.28 RCW;

39 (xiii) Chapter 80.70 RCW;

40 (xiv) Chapter 80.80 RCW; and

1 (xv) Chapter 81.88 RCW.

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

4 **Sec. 9.** RCW 70A.65.310 and 2022 c 181 s 2 are each amended to
5 read as follows:

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

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

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

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

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

23 (5) Upon receipt by the department of all compliance instruments
24 transferred by a covered entity or opt-in entity to meet its
25 compliance obligation, the department shall retire the allowances or
26 offset credits.

27 NEW SECTION. **Sec. 10.** A new section is added to chapter 70A.65
28 RCW to read as follows:

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

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

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

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

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

8 (4) If a federal power marketing administration registers as an
9 opt-in entity under this section, then beginning January 1st of the
10 calendar year in which the federal power marketing administration
11 would assume the compliance obligations associated with federally
12 marketed electricity in the state, a covered or opt-in entity must
13 not include in its covered emissions the emissions associated with
14 federally marketed electricity in the state for which the federal
15 power marketing administration has assumed the compliance obligation.

16 (5) After consulting with a federal power marketing
17 administration, the department must determine the appropriate
18 registration requirements for that federal power marketing
19 administration.

20 (6) (a) An electric utility may voluntarily elect to transfer all
21 or a designated number of the utility's allowances allocated at no
22 cost to a federal power marketing administration registered as an
23 opt-in entity under this section to be used for direct compliance. An
24 electric utility wishing to transfer allowances allocated at no cost
25 from the utility's holding account to a holding account of a federal
26 power marketing administration to be used for direct compliance may
27 submit a request to the department requesting the transfer and
28 providing the following information:

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

30 (ii) The holding account number of the federal power marketing
31 administration;

32 (iii) The number and vintage of no cost allowances to be
33 transferred; and

34 (iv) The relationship between the electric utility and the
35 federal power marketing administration.

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

37 (i) The electric utility has an agreement to purchase electricity
38 from the federal power marketing administration, or a power purchase
39 agreement, including a custom product contract, with the federal
40 power marketing administration; and

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

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

11 (b) An electric utility receiving an allocation of allowances at
12 no cost must inform the department by September 1st of each year of
13 the accounts into which the allocation or a portion of the allocation
14 is to be automatically distributed under this subsection. If an
15 electric utility fails to submit its distribution preference by
16 September 1st, the department must automatically place all directly
17 allocated allowances for the following calendar year into the
18 electric utility's holding account. Nothing in this subsection (7)(b)
19 precludes an electric utility from requesting a manual transfer of
20 allowances under subsection (6) of this section after September 1st
21 of each year.

22 **Sec. 11.** RCW 70A.15.2200 and 2022 c 181 s 9 are each amended to
23 read as follows:

24 (1) The board of any activated authority or the department, may
25 classify air contaminant sources, by ordinance, resolution, rule or
26 regulation, which in its judgment may cause or contribute to air
27 pollution, according to levels and types of emissions and other
28 characteristics which cause or contribute to air pollution, and may
29 require registration or reporting or both for any such class or
30 classes. Classifications made pursuant to this section may be for
31 application to the area of jurisdiction of such authority, or the
32 state as a whole or to any designated area within the jurisdiction,
33 and shall be made with special reference to effects on health,
34 economic and social factors, and physical effects on property.

35 (2) Except as provided in subsection (3) of this section, any
36 person operating or responsible for the operation of air contaminant
37 sources of any class for which the ordinances, resolutions, rules or
38 regulations of the department or board of the authority, require
39 registration or reporting shall register therewith and make reports

1 containing information as may be required by such department or board
2 concerning location, size and height of contaminant outlets,
3 processes employed, nature of the contaminant emission and such other
4 information as is relevant to air pollution and available or
5 reasonably capable of being assembled. In the case of emissions of
6 greenhouse gases as defined in RCW 70A.45.010 the department shall
7 adopt rules requiring reporting of those emissions. The department or
8 board may require that such registration or reporting be accompanied
9 by a fee, and may determine the amount of such fee for such class or
10 classes: PROVIDED, That the amount of the fee shall only be to
11 compensate for the costs of administering such registration or
12 reporting program which shall be defined as initial registration and
13 annual or other periodic reports from the source owner providing
14 information directly related to air pollution registration, on-site
15 inspections necessary to verify compliance with registration
16 requirements, data storage and retrieval systems necessary for
17 support of the registration program, emission inventory reports and
18 emission reduction credits computed from information provided by
19 sources pursuant to registration program requirements, staff review,
20 including engineering or other reliable analysis for accuracy and
21 currentness, of information provided by sources pursuant to
22 registration program requirements, clerical and other office support
23 provided in direct furtherance of the registration program, and
24 administrative support provided in directly carrying out the
25 registration program: PROVIDED FURTHER, That any such registration
26 made with either the board or the department shall preclude a further
27 registration and reporting with any other board or the department,
28 except that emissions of greenhouse gases as defined in RCW
29 70A.45.010 must be reported as required under subsection (5) of this
30 section.

31 All registration program and reporting fees collected by the
32 department shall be deposited in the air pollution control account.
33 All registration program fees collected by the local air authorities
34 shall be deposited in their respective treasuries.

35 (3) If a registration or report has been filed for a grain
36 warehouse or grain elevator as required under this section,
37 registration, reporting, or a registration program fee shall not,
38 after January 1, 1997, again be required under this section for the
39 warehouse or elevator unless the capacity of the warehouse or
40 elevator as listed as part of the license issued for the facility has

1 been increased since the date the registration or reporting was last
2 made. If the capacity of the warehouse or elevator listed as part of
3 the license is increased, any registration or reporting required for
4 the warehouse or elevator under this section must be made by the date
5 the warehouse or elevator receives grain from the first harvest
6 season that occurs after the increase in its capacity is listed in
7 the license.

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

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

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

17 (b) A "license" is a license issued by the department of
18 agriculture licensing a facility as a grain warehouse or grain
19 elevator under chapter 22.09 RCW or a license issued by the federal
20 government licensing a facility as a grain warehouse or grain
21 elevator for purposes similar to those of licensure for the facility
22 under chapter 22.09 RCW; and

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

24 (5)(a) The department shall adopt rules requiring persons to
25 report emissions of greenhouse gases as defined in RCW 70A.45.010
26 where those emissions from a single facility, or from (~~electricity~~
27 ~~or~~) fossil fuels sold in Washington by a single supplier or local
28 distribution company, meet or exceed 10,000 metric tons of carbon
29 dioxide equivalent annually. The department's rules may also require
30 electric power entities to report emissions of greenhouse gases from
31 all electricity that is purchased, sold, imported, exported, or
32 exchanged in Washington. The rules adopted by the department must
33 support implementation of the program created in RCW 70A.65.060. In
34 addition, the rules must require that:

35 (i) Emissions of greenhouse gases resulting from the combustion
36 of fossil fuels be reported separately from emissions of greenhouse
37 gases resulting from the combustion of biomass; and

38 (ii) Each annual report must include emissions data for the
39 preceding calendar year and must be submitted to the department by
40 March 31st of the year in which the report is due, except for an

1 electric power entity, which must submit its report by June 1st of
2 the year in which the report is due.

3 (b) (i) The department may by rule include additional gases to the
4 definition of "greenhouse gas" in RCW 70A.45.010 only if the gas has
5 been designated as a greenhouse gas by the United States congress, by
6 the United States environmental protection agency, or included in
7 external greenhouse gas emission trading programs with which
8 Washington has pursuant to RCW 70A.65.210. Prior to including
9 additional gases to the definition of "greenhouse gas" in RCW
10 70A.45.010, the department shall notify the appropriate committees of
11 the legislature.

12 (ii) The department may by rule exempt persons who are required
13 to report greenhouse gas emissions to the United States environmental
14 protection agency and who emit less than 10,000 metric tons carbon
15 dioxide equivalent annually.

16 (iii) The department must establish greenhouse gas emission
17 reporting methodologies for persons who are required to report under
18 this section. The department's reporting methodologies must be
19 designed to address the needs of ensuring accuracy of reported
20 emissions and maintaining consistency over time, and may, to the
21 extent practicable, be similar to reporting methodologies of
22 jurisdictions with which Washington has entered into a linkage
23 agreement.

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

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

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

32 ~~(B) Needed to ensure consistency with emissions reporting~~
33 ~~requirements for jurisdictions with which Washington has entered a~~
34 ~~linkage agreement.~~

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

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

1 ~~((e))~~ (d) The fee provisions in subsection (2) of this section
2 apply to reporting of emissions of greenhouse gases. Persons required
3 to report under (a) of this subsection who fail to report or pay the
4 fee required in subsection (2) of this section are subject to
5 enforcement penalties under this chapter. The department shall
6 enforce the reporting rule requirements. When a person that holds a
7 compliance obligation under RCW 70A.65.080 fails to submit an
8 emissions data report or fails to obtain a positive emissions data
9 verification statement in accordance with ~~((g))~~ (f)(ii) of this
10 subsection, the department may assign an emissions level for that
11 person.

12 ~~((f))~~ (e) The energy facility site evaluation council shall,
13 simultaneously with the department, adopt rules that impose
14 greenhouse gas reporting requirements in site certifications on
15 owners or operators of a facility permitted by the energy facility
16 site evaluation council. The greenhouse gas reporting requirements
17 imposed by the energy facility site evaluation council must be the
18 same as the greenhouse gas reporting requirements imposed by the
19 department. The department shall share any information reported to it
20 from facilities permitted by the energy facility site evaluation
21 council with the council, including notice of a facility that has
22 failed to report as required. The energy facility site evaluation
23 council shall contract with the department to monitor the reporting
24 requirements adopted under this section.

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

27 (ii) Verification requirements apply at a minimum to persons
28 required to report under (a) of this subsection with emissions that
29 equal or exceed 25,000 metric tons of carbon dioxide equivalent
30 emissions, including carbon dioxide from biomass-derived fuels, or to
31 persons who have a compliance obligation under RCW 70A.65.080 in any
32 year of the current compliance period. The department may adopt rules
33 to accept verification reports from another jurisdiction with a
34 linkage agreement pursuant to RCW 70A.65.180 in cases where the
35 department deems that the methods or procedures are substantively
36 similar.

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

39 (ii) For the purpose of this subsection (5), the term "supplier"
40 includes: (A) Suppliers that produce, import, or deliver, or any

1 combination of producing, importing, or delivering, a quantity of
2 fuel products in Washington that, if completely combusted, oxidized,
3 or used in other processes, would result in the release of greenhouse
4 gases in Washington equivalent to or higher than the threshold
5 established under (a) of this subsection; and (B) suppliers of carbon
6 dioxide that produce, import, or deliver a quantity of carbon dioxide
7 in Washington that, if released, would result in emissions equivalent
8 to or higher than the threshold established under (a) of this
9 subsection.

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

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

20 (v) For the purpose of this subsection (5), the term "electric
21 power entity" includes any of the following that supply electric
22 power in Washington with associated emissions of greenhouse gases
23 equal to or above the threshold established under (a) of this
24 subsection: (A) Electricity importers and exporters; (B) retail
25 providers, including multijurisdictional retail providers; and (C)
26 first jurisdictional deliverers, as defined in RCW 70A.65.010, not
27 otherwise included here.

28 NEW SECTION. **Sec. 12.** This act is not a conflicting measure
29 dealing with the same subject as Initiative Measure No. 2117 within
30 the meaning of Article II, section 1 of the state Constitution, but
31 if a court of competent jurisdiction enters a final judgment that is
32 no longer subject to appeal directing the secretary of state to place
33 this act on the 2024 ballot as a conflicting measure to Initiative
34 Measure No. 2117, this act is null and void and may not be placed on
35 the 2024 ballot.

36 NEW SECTION. **Sec. 13.** This act takes effect January 1, 2025,
37 only if Initiative Measure No. 2117 is not approved by a vote of the
38 people in the 2024 general election. If Initiative Measure No. 2117

1 is approved by a vote of the people in the 2024 general election,
2 this act is null and void.

--- **END** ---