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**HOUSE BILL 2201**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** Representatives Doglio, Fitzgibbon, Berry, Ramel, Reeves, Duerr, Hackney, Reed, Goodman, and Pollet; by request of Department of Ecology

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(20) "Compliance period" means the four-year period for which the compliance obligation is calculated for covered entities. If the department enters into a linkage agreement, the department must amend its rules to synchronize Washington's compliance periods with those of the linked jurisdiction or jurisdictions.

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

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

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

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

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

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

(27) "Electricity importer" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The program must consist of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The department must complete evaluations by December 31, 2027, and by December 31, 2035, of the performance of the program, including its performance in reducing greenhouse gases. If the evaluation shows that adjustments to the annual allowance budgets are necessary for covered entities to achieve their proportionate share of the 2030 and 2040 emission reduction limits identified in RCW 70A.45.020, as applicable, the department shall adjust the annual allowance budgets accordingly. The department must complete additional evaluations of the performance of the program by December 31, 2040, and by December 31, 2045, and make any necessary adjustments in the annual allowance budgets to ensure that covered entities achieve their proportionate share of the 2050 emission reduction limit identified in RCW 70A.45.020. Nothing in this subsection precludes the department from making additional adjustments to annual allowance budgets as necessary to ensure successful achievement of the proportionate emission reduction limits by covered entities. The department shall determine and make public the circumstances, metrics, and processes that would initiate the public consideration of additional allowance budget adjustments to ensure successful achievement of the proportionate emission reduction limits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Emissions from the combustion of aviation fuels;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Provided false or misleading facts;

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

(c) Violated any part of the auction rules;

(d) Violated registration requirements; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) By November 15, 2022, the department shall review and approve each emissions-intensive, trade-exposed facility's baseline carbon intensity for the first compliance period.

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

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

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

(f) Prior to the beginning of either the second, third, or subsequent compliance periods, the department may make an upward adjustment in the next compliance period's benchmark for an emissions-intensive, trade-exposed facility based on the facility's demonstration to the department that additional reductions in carbon intensity or mass emissions are not technically or economically feasible. The department may base the upward adjustment applicable to an emissions-intensive, trade-exposed facility in the next compliance period on the facility's best available technology analysis. The department shall by rule provide for emissions-intensive, trade-exposed facilities to apply to the department for an adjustment to the allocation for direct distribution of no cost allowances based on its facility-specific carbon intensity benchmark or mass emissions baseline. The department shall make adjustments based on:

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

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

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

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

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

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

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

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

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

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

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

(2) Offset projects must:

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

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

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

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

(c) Have been certified by a recognized registry.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Any offset credits used must:

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

(b) ((~~Have~~)) For offset credits issued by the department, have been issued for reporting periods wholly after July 25, 2021, or within two years prior to July 25, 2021, and be consistent with offset protocols adopted by the department; and

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

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

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

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

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

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

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

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

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

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

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

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

((~~(9)~~)) (8)(a) No city, town, county, township, or other subdivision or municipal corporation of the state may implement a charge or tax based exclusively upon the quantity of greenhouse gas emissions.

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

(i) Provided in this chapter;

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

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

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

((~~(10)~~)) (9)(a) By December 1, 2023, the office of financial management must submit a report to the appropriate committees of the legislature that summarizes two categories of state laws other than this chapter:

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

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

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

(i) Chapter 19.27A RCW;

(ii) Chapter 19.280 RCW;

(iii) Chapter 19.405 RCW;

(iv) Chapter 36.165 RCW;

(v) Chapter 43.21F RCW;

(vi) Chapter 70.30 RCW;

(vii) Chapter 70A.15 RCW;

(viii) Chapter 70A.45 RCW;

(ix) Chapter 70A.60 RCW;

(x) Chapter 70A.535 RCW;

(xi) Chapter 80.04 RCW;

(xii) Chapter 80.28 RCW;

(xiii) Chapter 80.70 RCW;

(xiv) Chapter 80.80 RCW; and

(xv) Chapter 81.88 RCW.

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

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

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

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

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

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

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

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

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

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

(2) Except as provided in subsection (3) of this section, any person operating or responsible for the operation of air contaminant sources of any class for which the ordinances, resolutions, rules or regulations of the department or board of the authority, require registration or reporting shall register therewith and make reports containing information as may be required by such department or board concerning location, size and height of contaminant outlets, processes employed, nature of the contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. In the case of emissions of greenhouse gases as defined in RCW 70A.45.010 the department shall adopt rules requiring reporting of those emissions. The department or board may require that such registration or reporting be accompanied by a fee, and may determine the amount of such fee for such class or classes: PROVIDED, That the amount of the fee shall only be to compensate for the costs of administering such registration or reporting program which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering or other reliable analysis for accuracy and currentness, of information provided by sources pursuant to registration program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program: PROVIDED FURTHER, That any such registration made with either the board or the department shall preclude a further registration and reporting with any other board or the department, except that emissions of greenhouse gases as defined in RCW 70A.45.010 must be reported as required under subsection (5) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

(iii) The department must establish greenhouse gas emission reporting methodologies for persons who are required to report under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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