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**SUBSTITUTE SENATE BILL 6058**

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**State of Washington**

**68th Legislature**

**2024 Regular Session**

**By** Senate Environment, Energy & Technology (originally sponsored by Senators Nguyen, Hunt, Kuderer, Lias, Mullet, Pedersen, Saldaña, Shewmake, and Stanford; by request of Department of Ecology)

READ FIRST TIME 01/29/24.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (27) "Electricity importer" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (2) The program must consist of:

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (5) By December 1, 2027, and ~~((at least every four years~~  
39 ~~thereafter))~~ by December 1st of each year that is one year after the  
40 end of a compliance period, and in compliance with RCW 43.01.036, the

1 department must submit a report to the legislature that includes a  
2 comprehensive review of the implementation of the program to date,  
3 including but not limited to outcomes relative to the state's  
4 emissions reduction limits, overburdened communities, covered  
5 entities, and emissions-intensive, trade-exposed businesses. The  
6 department must transmit the report to the environmental justice  
7 council at the same time it is submitted to the legislature.

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

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

14 (1) (a) (i) The department shall commence the program by January 1,  
15 2023, by determining an emissions baseline establishing the  
16 proportionate share that the total greenhouse gas emissions of  
17 covered entities for the first compliance period bears to the total  
18 anthropogenic greenhouse gas emissions in the state during 2015  
19 through 2019, based on data reported to the department under RCW  
20 70A.15.2200 or provided as required by this chapter, as well as other  
21 relevant data. By October 1, 2022, the department shall adopt annual  
22 allowance budgets for the first compliance period of the program,  
23 calendar years 2023 through 2026, to be distributed from January 1,  
24 2023, through December 31, 2026.

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

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

1 annual allowance budgets for the second compliance period of the  
2 program(~~(, calendar years 2027 through 2030,)~~) that will be  
3 distributed (~~(from January 1, 2027, through December 31, 2030)~~)  
4 during the second compliance period.

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

8 (2) The annual allowance budgets must be set to achieve the share  
9 of reductions by covered entities necessary to achieve the 2030,  
10 2040, and 2050 statewide emissions limits established in RCW  
11 70A.45.020, based on data reported to the department under chapter  
12 70A.15 RCW or provided as required by this chapter. Annual allowance  
13 budgets must be set such that the use of offsets as compliance  
14 instruments, consistent with RCW 70A.65.170, does not prevent the  
15 achievement of the emissions limits established in RCW 70A.45.020. In  
16 so setting annual allowance budgets, the department must reduce the  
17 annual allowance budget relative to the limits in an amount  
18 equivalent to offset use, or in accordance with a similar methodology  
19 adopted by the department. The department must adopt annual allowance  
20 budgets for the program on a calendar year basis that provide for  
21 progressively equivalent reductions year over year. An allowance  
22 distributed under the program, either directly by the department  
23 under RCW 70A.65.110 through 70A.65.130 or through auctions under RCW  
24 70A.65.100, does not expire and may be held or banked consistent with  
25 RCW 70A.65.100(6) and 70A.65.150(1).

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

1 this subsection precludes the department from making additional  
2 adjustments to annual allowance budgets as necessary to ensure  
3 successful achievement of the proportionate emission reduction limits  
4 by covered entities. The department shall determine and make public  
5 the circumstances, metrics, and processes that would initiate the  
6 public consideration of additional allowance budget adjustments to  
7 ensure successful achievement of the proportionate emission reduction  
8 limits.

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (iii) Where the person is an end-use customer in the state who  
38 directly purchases natural gas from a person that is not a natural  
39 gas company and has the natural gas delivered through an interstate  
40 pipeline to a distribution system owned by the purchaser in amounts

1 that would result in exceeding 25,000 metric tons of carbon dioxide  
2 equivalent emissions if fully combusted or oxidized, excluding the  
3 amounts: (A) Supplied to covered entities under (a) through (d) of  
4 this subsection; and (B) delivered to opt-in entities.

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

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

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

38 (5) For types of emission sources described in subsection (1) of  
39 this section that begin or modify operation after January 1, 2023,  
40 and types of emission sources described in subsection (2) of this

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

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

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

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

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

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

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

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

1 form and manner prescribed by the department. For the purposes of  
2 this subsection, "agricultural purposes" and "farm fuel user" have  
3 the same meanings as provided in RCW 82.08.865.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 \$359,117,000 per year must first be deposited into the carbon  
2 emissions reduction account created in RCW 70A.65.240; and (ii) the  
3 remaining auction proceeds to the climate investment account created  
4 in RCW 70A.65.250 and the air quality and health disparities  
5 improvement account created in RCW 70A.65.280.

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

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

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

31 (a) Provided false or misleading facts;

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

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

35 (d) Violated registration requirements; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (2) Offset projects must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (5) Any offset credits used must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (i) Provided in this chapter;

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

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

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

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

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

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

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

27 (i) Chapter 19.27A RCW;

28 (ii) Chapter 19.280 RCW;

29 (iii) Chapter 19.405 RCW;

30 (iv) Chapter 36.165 RCW;

31 (v) Chapter 43.21F RCW;

32 (vi) Chapter 70.30 RCW;

33 (vii) Chapter 70A.15 RCW;

34 (viii) Chapter 70A.45 RCW;

35 (ix) Chapter 70A.60 RCW;

36 (x) Chapter 70A.535 RCW;

37 (xi) Chapter 80.04 RCW;

38 (xii) Chapter 80.28 RCW;

39 (xiii) Chapter 80.70 RCW;

40 (xiv) Chapter 80.80 RCW; and

1 (xv) Chapter 81.88 RCW.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

--- **END** ---