
SECOND SUBSTITUTE SENATE BILL 6058

State of Washington

68th Legislature

2024 Regular Session

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

READ FIRST TIME 02/05/24.

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 (69) "Electricity wheeled through Washington" means electricity
22 that is generated outside the state of Washington and delivered into
23 Washington with the final point of delivery outside Washington.

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

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

31 (2) The program must consist of:

32 (a) Annual allowance budgets that limit emissions from covered
33 entities, as provided in this section and RCW 70A.65.070 and
34 70A.65.080;

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

1 (c) Distribution of emission allowances, as provided in RCW
2 70A.65.100, and through the allowance price containment provisions
3 under RCW 70A.65.140 and 70A.65.150;

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

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

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

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

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

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

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

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

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

36 (4) During the 2022 regular legislative session, the department
37 must bring forth agency request legislation developed in consultation
38 with emissions-intensive, trade-exposed businesses, covered entities,
39 environmental advocates, and overburdened communities that outlines a
40 compliance pathway specific to emissions-intensive, trade-exposed

1 businesses for achieving their proportionate share of the state's
2 emissions reduction limits through 2050.

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

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

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

19 (1) (a) (i) The department shall commence the program by January 1,
20 2023, by determining an emissions baseline establishing the
21 proportionate share that the total greenhouse gas emissions of
22 covered entities for the first compliance period bears to the total
23 anthropogenic greenhouse gas emissions in the state during 2015
24 through 2019, based on data reported to the department under RCW
25 70A.15.2200 or provided as required by this chapter, as well as other
26 relevant data. By October 1, 2022, the department shall adopt annual
27 allowance budgets for the first compliance period of the program,
28 calendar years 2023 through 2026, to be distributed from January 1,
29 2023, through December 31, 2026.

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

37 (b) By October 1, 2026, the department shall add to its emissions
38 baseline by incorporating the proportionate share that the total
39 greenhouse gas emissions of new covered entities in the second

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

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

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

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

1 (~~31, 2040, and by December 31, 2045~~) 31st of the year following the
2 conclusion of the fifth and sixth compliance periods, and make any
3 necessary adjustments in the annual allowance budgets to ensure that
4 covered entities achieve their proportionate share of the 2050
5 emission reduction limit identified in RCW 70A.45.020. Nothing in
6 this subsection precludes the department from making additional
7 adjustments to annual allowance budgets as necessary to ensure
8 successful achievement of the proportionate emission reduction limits
9 by covered entities. The department shall determine and make public
10 the circumstances, metrics, and processes that would initiate the
11 public consideration of additional allowance budget adjustments to
12 ensure successful achievement of the proportionate emission reduction
13 limits.

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

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

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

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

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

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

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

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

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

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

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

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

36 (e) (i) Where the person supplies natural gas in amounts that
37 would result in exceeding 25,000 metric tons of carbon dioxide
38 equivalent emissions if fully combusted or oxidized, excluding the
39 amounts for fuel products that are produced or imported with a
40 documented final point of delivery outside of Washington and

1 combusted outside of Washington, and excluding the amounts: (A)
2 Supplied to covered entities under (a) through (d) of this
3 subsection; and (B) delivered to opt-in entities;

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

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

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

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

35 (4) When a covered entity reports, during a compliance period,
36 emissions from a facility under RCW 70A.15.2200 that are below the
37 thresholds specified in subsection (1) or (2) of this section, the
38 covered entity continues to have a compliance obligation through the
39 current compliance period. When a covered entity reports emissions
40 below the threshold for each year during an entire compliance period,

1 or has ceased all processes at the facility requiring reporting under
2 RCW 70A.15.2200, the entity is no longer a covered entity as of the
3 beginning of the subsequent compliance period unless the department
4 provides notice at least 12 months before the end of the compliance
5 period that the facility's emissions were within 10 percent of the
6 threshold and that the person will continue to be designated as a
7 covered entity in order to ensure equity among all covered entities.
8 Whenever a covered entity ceases to be a covered entity, the
9 department shall notify the appropriate policy and fiscal committees
10 of the legislature of the name of the entity and the reason the
11 entity is no longer a covered entity.

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

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

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

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

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

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

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

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

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

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

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

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

37 (9)(a) The legislature intends to promote a growing and
38 sustainable economy and to avoid leakage of emissions from
39 manufacturing to other locations. The legislature further intends to

1 see innovative new businesses locate and grow in Washington that
2 contribute to Washington's prosperity and environmental objectives.

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

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

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

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

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

36 (1) Except as provided in RCW 70A.65.110, 70A.65.120, and
37 70A.65.130, the department shall distribute allowances through
38 auctions as provided in this section and in rules adopted by the

1 department to implement these sections. An allowance is not a
2 property right.

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

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

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

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

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

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

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

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

10 (a) A covered entity or an opt-in entity may not buy more than
11 ~~((10))~~ 25 percent of the allowances offered during a single auction;

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

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

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

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

22 (7) (a) For fiscal year 2023, upon completion and verification of
23 the auction results, the financial services administrator shall
24 notify winning bidders and transfer the auction proceeds to the state
25 treasurer for deposit as follows: (i) \$127,341,000 must first be
26 deposited into the carbon emissions reduction account created in RCW
27 70A.65.240; and (ii) the remaining auction proceeds to the climate
28 investment account created in RCW 70A.65.250 and the air quality and
29 health disparities improvement account created in RCW 70A.65.280.

30 (b) For fiscal year 2024, upon completion and verification of the
31 auction results, the financial services administrator shall notify
32 winning bidders and transfer the auction proceeds to the state
33 treasurer for deposit as follows: (i) \$356,697,000 must first be
34 deposited into the carbon emissions reduction account created in RCW
35 70A.65.240, except during fiscal year 2024, the deposit as provided
36 in this subsection (7) (b) (i) may be prorated equally across each of
37 the auctions occurring in fiscal year 2024; and (ii) the remaining
38 auction proceeds to the climate investment account created in RCW
39 70A.65.250 and the air quality and health disparities improvement

1 account created in RCW 70A.65.280, which may be prorated equally
2 across each of the auctions occurring in fiscal year 2024.

3 (c) For fiscal year 2025, upon completion and verification of the
4 auction results, the financial services administrator shall notify
5 winning bidders and transfer the auction proceeds to the state
6 treasurer for deposit as follows: (i) \$366,558,000 must first be
7 deposited into the carbon emissions reduction account created in RCW
8 70A.65.240, except that during fiscal year 2025, the deposit as
9 provided in this subsection (7)(c)(i) may be prorated equally across
10 each of the auctions occurring in fiscal year 2025; and (ii) the
11 remaining auction proceeds to the climate investment account created
12 in RCW 70A.65.250 and the air quality and health disparities
13 improvement account created in RCW 70A.65.280, which may be prorated
14 equally across each of the auctions occurring in fiscal year 2025.

15 (d) For fiscal years 2026 through 2037, upon completion and
16 verification of the auction results, the financial services
17 administrator shall notify winning bidders and transfer the auction
18 proceeds to the state treasurer for deposit as follows: (i)
19 \$359,117,000 per year must first be deposited into the carbon
20 emissions reduction account created in RCW 70A.65.240; and (ii) the
21 remaining auction proceeds to the climate investment account created
22 in RCW 70A.65.250 and the air quality and health disparities
23 improvement account created in RCW 70A.65.280.

24 (e) The deposits into the carbon emissions reduction account
25 pursuant to (a) through (d) of this subsection must not exceed
26 \$5,200,000,000 over the first 16 fiscal years and any remaining
27 auction proceeds must be deposited into the climate investment
28 account created in RCW 70A.65.250 and the air quality and health
29 disparities improvement account created in RCW 70A.65.280.

30 (f) For fiscal year 2038 and each year thereafter, upon
31 completion and verification of the auction results, the financial
32 services administrator shall notify winning bidders and transfer the
33 auction proceeds to the state treasurer for deposit as follows: (i)
34 50 percent of the auction proceeds to the carbon emissions reduction
35 account created in RCW 70A.65.240; and (ii) the remaining auction
36 proceeds to the climate investment account created in RCW 70A.65.250
37 and the air quality and health disparities improvement account
38 created in RCW 70A.65.280.

39 (8) The department shall adopt by rule provisions to guard
40 against bidder collusion and minimize the potential for market

1 manipulation. A registered entity may not release or disclose any
2 bidding information including: Intent to participate or refrain from
3 participation; auction approval status; intent to bid; bidding
4 strategy; bid price or bid quantity; or information on the bid
5 guarantee provided to the financial services administrator. The
6 department may cancel or restrict a previously approved auction
7 participation application or reject a new application if the
8 department determines that a registered entity has:

9 (a) Provided false or misleading facts;

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

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

13 (d) Violated registration requirements; or

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

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

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

20 (b) Information contained in the secure, online electronic
21 tracking system established by the department pursuant to RCW
22 70A.65.090(6);

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

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

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

37 (10) Any cancellation or restriction approved by the department
38 under subsection (8) of this section may be permanent or for a
39 specified number of auctions and the cancellation or restriction
40 imposed is not exclusive and is in addition to the remedies that may

1 be available pursuant to chapter 19.86 RCW or other state or federal
2 laws, if applicable.

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

10 (12) In setting the number of allowances offered at each auction,
11 the department shall consider the allowances in the marketplace due
12 to the marketing of allowances issued as required under RCW
13 70A.65.110, 70A.65.120, and 70A.65.130 in the department's
14 determination of the number of allowances to be offered at auction.
15 The department shall offer only such number of allowances at each
16 auction as will enhance the likelihood of achieving the goals of RCW
17 70A.45.020.

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

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

27 (a) Metals manufacturing, including iron and steel making,
28 ferroalloy and primary metals manufacturing, secondary aluminum
29 smelting and alloying, aluminum sheet, plate, and foil manufacturing,
30 and smelting, refining, and alloying of other nonferrous metals,
31 North American industry classification system codes beginning with
32 331;

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

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

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

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

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

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

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

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

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

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

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

20 (m) All other petroleum and coal products manufacturing from
21 refined petroleum, North American industry classification system code
22 324199.

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

1 (3) (a) For the (~~first compliance period beginning in January 1,~~
2 ~~2023~~) years 2023 through 2026, the annual allocation of no cost
3 allowances for direct distribution to a facility identified as
4 emissions-intensive and trade-exposed must be equal to the facility's
5 baseline carbon intensity established using data from 2015 through
6 2019, or other data as allowed under this section, multiplied by the
7 facility's actual production for each calendar year during the
8 compliance period. For facilities using the mass-based approach, the
9 allocation of no cost allowances shall be equal to the facility's
10 mass-based baseline using data from 2015 through 2019, or other data
11 as allowed under this section.

12 (b) For the (~~second compliance period, beginning in January,~~
13 ~~2027,~~) four years beginning January 2027 and in each subsequent
14 (~~compliance~~) four-year period, the annual allocation of no cost
15 allowances established in (a) of this subsection shall be adjusted
16 according to the benchmark reduction schedules established in (b) (ii)
17 and (iii) and (e) of this subsection multiplied by the facility's
18 actual production during the period. The department shall adjust the
19 no cost allocation of allowances and credits to an emissions-
20 intensive and trade-exposed facility to avoid duplication with any no
21 cost allowances transferred pursuant to RCW 70A.65.120 and
22 70A.65.130, if applicable.

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

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

1 ~~period that begins January 1, 2027))~~ years 2027 through 2030, these
2 facilities must be awarded no cost allowances equal to 97 percent of
3 the facility's mass-based baseline. For each year during the (~~third~~
4 ~~compliance period that begins January 1, 2031))~~ years 2031 through
5 2034, these facilities must be awarded no cost allowances equal to 94
6 percent of the facility's mass-based baseline. Except as provided in
7 (b)(iii) of this subsection, if a facility elects to use a mass-based
8 baseline, it may not later convert to a carbon intensity benchmark
9 during the (~~first three compliance periods))~~ years 2023 through
10 2034.

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

26 (c)(i) By September 15, 2022, each emissions-intensive, trade-
27 exposed facility shall submit its carbon intensity baseline for the
28 first compliance period to the department. The carbon intensity
29 baseline for the first compliance period must use data from
30 2015-2019, unless the emissions-intensive, trade-exposed facility can
31 demonstrate that there have been abnormal periods of operation that
32 materially impacted the facility and the baseline period should be
33 expanded to include years prior to 2015.

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

38 (d) During the (~~first four-year compliance period that begins~~
39 ~~January 1, 2023))~~ years 2023 through 2026, each emissions-intensive,

1 trade-exposed facility must record its facility-specific carbon
2 intensity baseline based on its actual production.

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

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

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

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

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

37 (iii) Abnormal operating periods when an emissions-intensive,
38 trade-exposed facility's carbon intensity has been materially
39 affected so that these abnormal operating periods are either excluded

1 or otherwise considered in the establishment of the ((~~compliance~~
2 ~~period~~)) carbon intensity benchmarks.

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

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

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

38 (6) The department must withhold or withdraw the relevant share
39 of allowances allocated to a covered entity under this section in the
40 event that the covered entity ceases production in the state and

1 becomes a closed facility. In the event an entity curtails all
2 production and becomes a curtailed facility, the allowances are
3 retained but cannot be traded, sold, or transferred and are still
4 subject to the emission reduction requirements specified in this
5 section. An owner or operator of a curtailed facility may transfer
6 the allowances to a new operator of the facility that will be
7 operated under the same North American industry classification system
8 codes. If the curtailed facility becomes a closed facility, then all
9 unused allowances will be transferred to the emissions containment
10 reserve. A curtailed facility is not eligible to receive free
11 allowances during a period of curtailment. Any allowances withheld or
12 withdrawn under this subsection must be transferred to the emissions
13 containment reserve.

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

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

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

28 (1) The department shall adopt by rule the protocols for
29 establishing offset projects and (~~securing~~) generating offset
30 credits that may be used to meet a portion of a covered or opt-in
31 entity's compliance obligation under this chapter. The protocols
32 adopted by the department under this section must align with the
33 policies of the state established under RCW 70A.45.090 and
34 70A.45.100.

35 (2) Offset projects must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (c) Adopt a process for monitoring and invalidating offset
25 credits as necessary to ensure the credit reflects emission
26 reductions or removals that continue to meet the standards required
27 by subsection (1) of this section. If an offset credit is
28 invalidated, the covered or opt-in entity must, within six months of
29 the invalidation, transfer replacement credits or allowances to meet
30 its compliance obligation. Failure to transfer the required credits
31 or allowances is a violation subject to penalties as provided in RCW
32 70A.65.200; and

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

38 (5) Any offset credits used must:

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

4 (b) Have been issued for reporting periods wholly after July 25,
5 2021, or within two years prior to July 25, 2021; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (i) Provided in this chapter;

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

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

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

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

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

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

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

- 6 (i) Chapter 19.27A RCW;
- 7 (ii) Chapter 19.280 RCW;
- 8 (iii) Chapter 19.405 RCW;
- 9 (iv) Chapter 36.165 RCW;
- 10 (v) Chapter 43.21F RCW;
- 11 (vi) Chapter 70.30 RCW;
- 12 (vii) Chapter 70A.15 RCW;
- 13 (viii) Chapter 70A.45 RCW;
- 14 (ix) Chapter 70A.60 RCW;
- 15 (x) Chapter 70A.535 RCW;
- 16 (xi) Chapter 80.04 RCW;
- 17 (xii) Chapter 80.28 RCW;
- 18 (xiii) Chapter 80.70 RCW;
- 19 (xiv) Chapter 80.80 RCW; and
- 20 (xv) Chapter 81.88 RCW.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (4) If a federal power marketing administration registers as an
27 opt-in entity under this section, then beginning January 1st of the
28 calendar year in which the federal power marketing administration
29 would assume the compliance obligations associated with federally
30 marketed electricity in the state, a covered or opt-in entity must
31 not include in its covered emissions the emissions associated with
32 federally marketed electricity in the state for which the federal
33 power marketing administration has assumed the compliance obligation.

34 (5) After consulting with a federal power marketing
35 administration, the department must determine the appropriate
36 registration requirements for that federal power marketing
37 administration.

38 (6) (a) An electric utility may voluntarily elect to transfer all
39 or a designated number of the utility's allowances allocated at no

1 cost to a federal power marketing administration registered as an
2 opt-in entity under this section to be used for direct compliance. An
3 electric utility wishing to transfer allowances allocated at no cost
4 from the utility's holding account to a holding account of a federal
5 power marketing administration to be used for direct compliance may
6 submit a request to the department requesting the transfer and
7 providing the following information:

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

9 (ii) The holding account number of the federal power marketing
10 administration;

11 (iii) The number and vintage of no cost allowances to be
12 transferred; and

13 (iv) The relationship between the electric utility and the
14 federal power marketing administration.

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

16 (i) The electric utility has an agreement to purchase electricity
17 from the federal power marketing administration, or a power purchase
18 agreement, including a custom product contract, with the federal
19 power marketing administration; and

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

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

30 (b) An electric utility receiving an allocation of allowances at
31 no cost must inform the department by September 1st of each year of
32 the accounts into which the allocation or a portion of the allocation
33 is to be automatically distributed under this subsection. If an
34 electric utility fails to submit its distribution preference by
35 September 1st, the department must automatically place all directly
36 allocated allowances for the following calendar year into the
37 electric utility's holding account. Nothing in this subsection (7) (b)
38 precludes an electric utility from requesting a manual transfer of
39 allowances under subsection (6) of this section after September 1st
40 of each year.

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

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

14 (2) Except as provided in subsection (3) of this section, any
15 person operating or responsible for the operation of air contaminant
16 sources of any class for which the ordinances, resolutions, rules or
17 regulations of the department or board of the authority, require
18 registration or reporting shall register therewith and make reports
19 containing information as may be required by such department or board
20 concerning location, size and height of contaminant outlets,
21 processes employed, nature of the contaminant emission and such other
22 information as is relevant to air pollution and available or
23 reasonably capable of being assembled. In the case of emissions of
24 greenhouse gases as defined in RCW 70A.45.010 the department shall
25 adopt rules requiring reporting of those emissions. The department or
26 board may require that such registration or reporting be accompanied
27 by a fee, and may determine the amount of such fee for such class or
28 classes: PROVIDED, That the amount of the fee shall only be to
29 compensate for the costs of administering such registration or
30 reporting program which shall be defined as initial registration and
31 annual or other periodic reports from the source owner providing
32 information directly related to air pollution registration, on-site
33 inspections necessary to verify compliance with registration
34 requirements, data storage and retrieval systems necessary for
35 support of the registration program, emission inventory reports and
36 emission reduction credits computed from information provided by
37 sources pursuant to registration program requirements, staff review,
38 including engineering or other reliable analysis for accuracy and
39 currentness, of information provided by sources pursuant to
40 registration program requirements, clerical and other office support

1 provided in direct furtherance of the registration program, and
2 administrative support provided in directly carrying out the
3 registration program: PROVIDED FURTHER, That any such registration
4 made with either the board or the department shall preclude a further
5 registration and reporting with any other board or the department,
6 except that emissions of greenhouse gases as defined in RCW
7 70A.45.010 must be reported as required under subsection (5) of this
8 section.

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

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

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

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

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

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

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

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

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

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

21 (b)(i) The department may by rule include additional gases to the
22 definition of "greenhouse gas" in RCW 70A.45.010 only if the gas has
23 been designated as a greenhouse gas by the United States congress, by
24 the United States environmental protection agency, or included in
25 external greenhouse gas emission trading programs with which
26 Washington has pursuant to RCW 70A.65.210. Prior to including
27 additional gases to the definition of "greenhouse gas" in RCW
28 70A.45.010, the department shall notify the appropriate committees of
29 the legislature.

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

34 (iii) The department must establish greenhouse gas emission
35 reporting methodologies for persons who are required to report under
36 this section. The department's reporting methodologies must be
37 designed to address the needs of ensuring accuracy of reported
38 emissions and maintaining consistency over time, and may, to the
39 extent practicable, be similar to reporting methodologies of

1 jurisdictions with which Washington has entered into a linkage
2 agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 NEW SECTION. **Sec. 12.** This act is not a conflicting measure
7 dealing with the same subject as Initiative Measure No. 2117 within
8 the meaning of Article II, section 1 of the state Constitution, but
9 if a court of competent jurisdiction enters a final judgment that is
10 no longer subject to appeal directing the secretary of state to place
11 this act on the 2024 ballot as a conflicting measure to Initiative
12 Measure No. 2117, this act is null and void and may not be placed on
13 the 2024 ballot.

14 NEW SECTION. **Sec. 13.** This act takes effect January 1, 2025,
15 only if Initiative Measure No. 2117 is not approved by a vote of the
16 people in the 2024 general election. If Initiative Measure No. 2117
17 is approved by a vote of the people in the 2024 general election,
18 this act is null and void.

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