
HOUSE BILL 2537

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By Representatives Doglio, Fitzgibbon, Berry, Parshley, Pollet, Ramel, and Scott

Read first time 01/16/26. Referred to Committee on Environment & Energy.

1 AN ACT Relating to emissions from emissions-intensive, trade-
2 exposed facilities under the climate commitment act; and amending RCW
3 70A.65.110.

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

5 **Sec. 1.** RCW 70A.65.110 and 2024 c 352 s 6 are each amended to
6 read as follows:

7 (1) Facilities owned or operated by a covered entity must receive
8 an allocation of allowances for the covered emissions at those
9 facilities under this subsection at no cost if the operations of the
10 facility are classified as emissions-intensive and trade-exposed, as
11 determined by being engaged in one or more of the processes described
12 by the following industry descriptions and codes in the North
13 American industry classification system as those classifications
14 existed on January 1, 2026:

15 (a) Metals manufacturing, including iron and steel making,
16 ferroalloy and primary metals manufacturing, secondary aluminum
17 smelting and alloying, aluminum sheet, plate, and foil manufacturing,
18 and smelting, refining, and alloying of other nonferrous metals,
19 North American industry classification system codes beginning with
20 331;

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

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

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

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

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

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

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

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

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

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

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

27 (m) All other petroleum and coal products manufacturing from
28 refined petroleum, North American industry classification system code
29 324199.

30 (2) By July 1, 2022, the department must adopt by rule objective
31 criteria for both emissions' intensity and trade exposure for the
32 purpose of identifying emissions-intensive, trade-exposed
33 (~~manufacturing businesses~~) facilities during the second compliance
34 period of the program and subsequent compliance periods. A
35 manufacturing facility covered by subsection (1)(a) through (m) of
36 this section is considered an emissions-intensive, trade-exposed
37 facility and is eligible for allocation of no cost allowances as
38 described in this section. In addition, any covered party that (~~is a~~
39 ~~manufacturing business~~) owns or operates a manufacturing facility
40 that can demonstrate to the department that it meets the objective

1 criteria adopted by rule is also eligible for treatment as emissions-
2 intensive, trade-exposed and is eligible for allocation of no cost
3 allowances as described in this section. In developing the objective
4 criteria under this subsection, the department must consider the
5 locations of facilities potentially identified as emissions-
6 intensive, trade-exposed (~~manufacturing—businesses~~) facilities
7 relative to overburdened communities.

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

18 (b) For the four years beginning January 2027 and in each
19 subsequent four-year period, the annual allocation of no cost
20 allowances established in (a) of this subsection shall be adjusted
21 according to the benchmark reduction schedules established in (b) (ii)
22 and (iii) and (e) of this subsection multiplied by the facility's
23 actual production during the period, except as provided in subsection
24 (9) of this section. The department shall adjust the no cost
25 allocation of allowances and credits to an emissions-intensive and
26 trade-exposed facility to avoid duplication with any no cost
27 allowances transferred pursuant to RCW 70A.65.120 and 70A.65.130, if
28 applicable.

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

34 (ii) If an emissions-intensive and trade-exposed facility is not
35 able to feasibly determine a carbon intensity benchmark based on its
36 unique circumstances, the entity may elect to use a mass-based
37 baseline that does not vary based on changes in production volumes.
38 The mass-based baseline must be based upon data from 2015 through
39 2019, unless the emissions-intensive, trade-exposed facility can
40 demonstrate that there have been abnormal periods of operation that

1 materially impacted the facility and the baseline period should be
2 expanded to include years prior to 2015. For the years 2023 through
3 2026, these facilities must be awarded no cost allowances equal to
4 100 percent of the facility's mass-based baseline. For each year
5 during the years 2027 through 2030, these facilities must be awarded
6 no cost allowances equal to 97 percent of the facility's mass-based
7 baseline, except as provided in subsection (9) of this section. For
8 each year during the years 2031 through 2034, these facilities must
9 be awarded no cost allowances equal to 94 percent of the facility's
10 mass-based baseline, except as provided in subsection (9) of this
11 section. Except as provided in (b)(iii) of this subsection, if a
12 facility elects to use a mass-based baseline, it may not later
13 convert to a carbon intensity benchmark during the years 2023 through
14 2034.

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

30 (c)(i) By September 15, 2022, each emissions-intensive, trade-
31 exposed facility shall submit its carbon intensity baseline for the
32 first compliance period to the department. The carbon intensity
33 baseline for the first compliance period must use data from
34 2015-2019, unless the emissions-intensive, trade-exposed facility can
35 demonstrate that there have been abnormal periods of operation that
36 materially impacted the facility and the baseline period should be
37 expanded to include years prior to 2015.

38 (ii) By November 15, 2022, the department shall review and
39 approve each emissions-intensive, trade-exposed facility's baseline
40 carbon intensity for the years 2023 through 2026.

1 (d) During the years 2023 through 2026, each emissions-intensive,
2 trade-exposed facility must record its facility-specific carbon
3 intensity baseline based on its actual production.

4 (e)(i) For the 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 years 2031 through 2034, the third period benchmark
9 for each emissions-intensive, trade-exposed facility is three percent
10 lower than the years 2027 through 2030.

11 (f) Prior to the beginning of 2027, 2031, or subsequent four-year
12 periods, the department may make an upward adjustment in the next
13 four-year period's benchmark for an emissions-intensive, trade-
14 exposed facility based on the facility's demonstration to the
15 department that additional reductions in carbon intensity or mass
16 emissions are not technically or economically feasible. The
17 department may base the upward adjustment applicable to an emissions-
18 intensive, trade-exposed facility in the next four-year period on the
19 facility's best available technology analysis, and may consider
20 information submitted to the department under subsection (9) of this
21 section. The department shall by rule provide for an emissions-
22 intensive, trade-exposed (~~facilities~~) facility to apply to the
23 department for an upward adjustment to the allocation for direct
24 distribution of no cost allowances based on its facility-specific
25 carbon intensity benchmark or mass emissions baseline. The department
26 shall make adjustments based on:

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

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

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

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

19 (b)) Recommendations in the report due December 1, 2026, must
20 identify:

21 (i) A proposed method for making annual reductions to emissions-
22 intensive, trade-exposed facility allowance allocation that would
23 ensure total no-cost allowances allocated to emissions-intensive,
24 trade-exposed facilities align with the annual allowance budgets
25 established by the department under RCW 70A.65.070 and are consistent
26 with the emissions limits established in RCW 70A.45.020, including
27 the percentage reductions in emissions-intensive, trade-exposed
28 facility allowance allocation that would be applied each year from
29 January 1, 2035, through January 1, 2050;

30 (ii) Proposed criteria and methods for the department to make
31 adjustments to allowances allocated at no cost to emissions-
32 intensive, trade-exposed facilities to address significant changes in
33 leakage risk and to achieve the purposes of the greenhouse gas
34 emissions cap and invest program established under this chapter
35 including, but not limited to, the achievement of emissions limits
36 established in RCW 70A.45.020;

37 (iii) The proposed design of an allowance allocation policy or
38 method that would require a portion of the allowances provided at no
39 cost to emissions-intensive, trade-exposed facilities to be consigned
40 to auction and for the proceeds to be invested in projects or

1 programs for reducing greenhouse gas emissions at emissions-
2 intensive, trade-exposed facilities, including the percentage of
3 allowances to be consigned to auction and proposed criteria and
4 methods for the distribution and use of consigned funds at emissions-
5 intensive, trade-exposed facilities;

6 (iv) Additional state policies or strategies that may be
7 necessary to support the reduction of emissions and decarbonization
8 of emissions-intensive, trade-exposed facilities in support of the
9 achievement of emissions limits established in RCW 70A.45.020;

10 (v) Provisions of this chapter or other state laws that need to
11 be amended to implement the recommendations developed by the
12 department under this subsection (4) (a);

13 (b) In developing these recommendations, the department must
14 consider input received from representatives of the facilities listed
15 in subsection (1) of this section, covered entities, environmental
16 advocates, overburdened communities, tribes, subject matter experts,
17 and the public, and should consider:

18 (i) Anticipated demand for allowances from emissions-intensive,
19 trade-exposed facilities and other covered entities through 2050;

20 (ii) Potential for deployment of technologies and strategies for
21 reducing emissions at emissions-intensive, trade-exposed facilities
22 through 2050 and other facility-specific or industry-specific
23 factors;

24 (iii) Potential impacts of implementing the recommendations on
25 overburdened communities and vulnerable populations; and

26 (iv) Interactions with other state policies and programs designed
27 to reduce greenhouse gas emissions and achieve statewide emissions
28 limits established in RCW 70A.45.020;

29 (c) If the legislature does not adopt a ((compliance obligation
30 ~~for~~)) schedule of allowances to be provided to facilities owned or
31 operated by each covered entity designated as emissions-intensive,
32 trade-exposed facilities from January 1, 2035, through January 1,
33 2050, by December 1, 2027, those facilities must continue to receive
34 allowances as provided in the years 2031 through 2034 until a
35 schedule is adopted.

36 (5) If the actual emissions of an emissions-intensive, trade-
37 exposed facility exceed the facility's no cost allowances assigned
38 for that compliance period, it must acquire additional compliance
39 instruments such that the total compliance instruments transferred to
40 its compliance account consistent with this chapter equals emissions

1 during the compliance period. An emissions-intensive, trade-exposed
2 facility must be allowed to bank unused allowances, including for
3 future sale and investment in best available technology when
4 economically feasible. The department shall limit the use of offset
5 credits for compliance by an emissions-intensive, trade-exposed
6 facility, such that the quantity of no cost allowances plus the
7 provision of offset credits does not exceed 100 percent of the
8 facility's total compliance obligation over a compliance period.

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

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

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

37 (9) (a) The purpose of the reporting and planning requirements of
38 this subsection (9) is to establish a framework under which
39 greenhouse gas emission reductions will begin to be achieved at each
40 emissions-intensive, trade-exposed facility. It is not, however, the

1 intent of the legislature that the reporting and planning framework
2 established in this section necessarily be fully implemented as a
3 prerequisite to the legislature taking additional action addressing
4 the allocation of no-cost allowances to emissions-intensive, trade-
5 exposed facilities. The legislature intends, using the provisions of
6 this subsection (9) as a starting point, to begin to establish a
7 framework that will:

8 (i) Achieve emission reductions by emissions-intensive, trade-
9 exposed facilities in a manner compatible with the overall allowance
10 budgets established under this chapter and the statewide emission
11 limits of chapter 70A.45 RCW;

12 (ii) Provide appropriate financial incentives for early actions
13 by owners and operators of emissions-intensive, trade-exposed
14 facilities; and

15 (iii) Consider such actions when the department considers grant
16 applications or awards other funds deriving from revenues under this
17 chapter.

18 (b) To receive no-cost allowances associated with greenhouse gas
19 emissions after January 1, 2027, the owner or operator of an
20 emissions-intensive, trade-exposed facility must be in compliance
21 with this subsection (9). The owner or operator of an emissions-
22 intensive, trade-exposed facility must provide the following to the
23 department:

24 (i) By March 31, 2028, and every two years thereafter,
25 information about the greenhouse gas emissions of each emissions-
26 intensive facility and, to the extent determined to be feasible for
27 the facility by the department, each unit within each facility,
28 including:

29 (A) The products, and volumes of such products, produced by the
30 facility;

31 (B) A qualitative description of the sources of emissions from
32 the facility;

33 (C) A detailed analysis, supported by data, of the portion and
34 percentage of the facility's emissions attributable to:

35 (I) Emissions associated with fossil fuel combustion for purposes
36 of producing low-temperature heat;

37 (II) Emissions associated with fossil fuel combustion for
38 purposes of producing medium-temperature heat;

39 (III) Emissions associated with fossil fuel combustion for
40 purposes of producing high-temperature heat;

1 (IV) Emissions associated with industrial processes at the
2 facility involving chemical or physical transformations other than
3 fuel combustion;

4 (V) Emissions associated with fossil fuel combustion for purposes
5 of on-site electrical generation;

6 (VI) Emissions associated with the consumption of electricity at
7 the facility for electricity that was not generated on-site at the
8 facility; and

9 (VII) Other information adopted by the department by rule, or
10 amended types of information specified in (b)(i)(C)(I) through (VI)
11 of this subsection;

12 (ii) By March 31, 2028, and every four years thereafter, a plan,
13 following methods established by the department, that includes an
14 assessment of potentially technically feasible or emerging technology
15 options to reduce covered emissions from the facility. The plan must
16 include all greenhouse gas emission reduction measures that have the
17 potential to result in greater than de minimis greenhouse gas
18 emission reductions, be informed by a best available technology
19 assessment, consider the opportunities associated with different
20 temperature categories specified in (b)(i)(C) of this subsection (9),
21 and be verified by an independent third party, and, at a minimum,
22 include:

23 (A) The technical aspects of each option, including whether
24 covered emission reductions or direct facility biomass emission
25 reductions from the option would result from an increase in energy
26 efficiency, the substitution of a fuel or energy source, or other
27 changes to facility processes, chemistries, or material inputs;

28 (B) A description of the expected greenhouse gas emission
29 reductions that would be achieved by each option;

30 (C) A budget and estimated timeline to implement each option, if
31 the owner or operator of the facility were to choose to move forward
32 with the option;

33 (D) Identification of options that would be complementary with
34 other options included in the plan, and identification of options
35 that could not be carried out in conjunction with other options;

36 (E) If applicable, a summary of any greenhouse gas emission
37 reductions or greenhouse gas emission intensity reductions achieved
38 through the implementation of options previously identified in a plan
39 submitted under this section; and

1 (F) A plain language summary of proposed greenhouse gas emission
2 reduction plans for the upcoming four-year period and to be achieved
3 by 2050, and how existing and emerging technologies and copollutants
4 were and will be considered in greenhouse gas emission reduction
5 planning;

6 (iii) A description and data, submitted at the same time and
7 covering the same time period as the report specified in (b)(i) of
8 this subsection, documenting that the owner or operator of the
9 facility has achieved tangible progress towards implementing best
10 practices for energy efficiency, as determined by the department, at
11 the facility.

12 (c) The provisions of RCW 70A.65.200(5) apply to the requirements
13 of this subsection (9).

14 (d)(i) The owner or operator of an emissions-intensive, trade-
15 exposed facility that submits information to the department under (b)
16 of this subsection must structure each submission to include two
17 self-contained parts:

18 (A) A report that contains no information that the owner or
19 operator wishes to keep confidential; and

20 (B) A report that contains information that the owner or operator
21 requests be made available only for the confidential use of the
22 department, the director of the department, or the appropriate
23 division of the department.

24 (ii) The director shall give consideration to a request by the
25 owner or operator of an emissions-intensive, trade-exposed facility
26 under (d)(i)(B) of this subsection, and if this action is not
27 detrimental to the public interest and is otherwise within accord
28 with the policies and purposes of chapter 43.21A RCW, the director of
29 the department must grant the request for the information to remain
30 confidential as authorized in RCW 43.21A.160. Under the procedures
31 established under RCW 43.21A.160, the director of the department must
32 keep confidential any records furnished by a manufacturer under this
33 chapter that relate to proprietary manufacturing processes.

34 (10) For purposes of subsection (9) of this section, the
35 following temperature ranges apply, unless alternative temperature
36 ranges are adopted by the department by rule:

37 (a) "Low-temperature heat" means temperatures of up to 130
38 degrees celsius;

39 (b) "Medium-temperature heat" means at least 130 degrees celsius
40 and up to 400 degrees celsius; and

1 (c) "High-temperature heat" means at least 400 degrees celsius or
2 greater.

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