
HOUSE BILL 2201

State of Washington

68th Legislature

2024 Regular Session

By Representatives Doglio and Fitzgibbon; by request of Department of Ecology

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 creating a new section; prescribing penalties; and providing a
6 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 for which the
6 compliance obligation is calculated for covered entities. If the
7 department enters into a linkage agreement, the department must amend
8 its rules to synchronize Washington's compliance periods with those
9 of the linked jurisdiction or jurisdictions.

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

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

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

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

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

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

27 (27) "Electricity importer" means:

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

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

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

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

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

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

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

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

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

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

39 (28) "Emissions containment reserve allowance" means a
40 conditional allowance that is withheld from sale at an auction by the

1 department or its agent to secure additional emissions reductions in
2 the event prices fall below the emissions containment reserve trigger
3 price.

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

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

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

12 (32) "Environmental harm" has the same meaning as defined in RCW
13 70A.02.010.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 to otherwise coordinate activities to facilitate operation of a joint
2 market.

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

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

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

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

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

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

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

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

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

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

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

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

38 (iii) Populations, including Native Americans or immigrant
39 populations, who may be exposed to environmental contaminants and
40 pollutants outside of the geographic area in which they reside based

1 on the populations' use of traditional or cultural foods and
2 practices, such as the use of resources, access to which is protected
3 under treaty rights in ceded areas, when those exposures in
4 conjunction with other exposures may result in disproportionately
5 greater risks, including risks of certain cancers or other adverse
6 health effects and outcomes.

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

11 (55) "Person" has the same meaning as defined in RCW
12 70A.15.2200(5) (~~(h)~~) (g)(iii).

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

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

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

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

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

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

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

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

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

10 (65) "Tribal lands" has the same meaning as defined in RCW
11 70A.02.010.

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

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

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

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.

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

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

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

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

17 (1)(a) The department shall commence the program by January 1,
18 2023, by determining an emissions baseline establishing the
19 proportionate share that the total greenhouse gas emissions of
20 covered entities for the first compliance period bears to the total
21 anthropogenic greenhouse gas emissions in the state during 2015
22 through 2019, based on data reported to the department under RCW
23 70A.15.2200 or provided as required by this chapter, as well as other
24 relevant data. By October 1, 2022, the department shall adopt annual
25 allowance budgets for the first compliance period of the program,
26 calendar years 2023 through 2026, to be distributed from January 1,
27 2023, through December 31, 2026.

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

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

3 (2) The annual allowance budgets must be set to achieve the share
4 of reductions by covered entities necessary to achieve the 2030,
5 2040, and 2050 statewide emissions limits established in RCW
6 70A.45.020, based on data reported to the department under chapter
7 70A.15 RCW or provided as required by this chapter. Annual allowance
8 budgets must be set such that the use of offsets as compliance
9 instruments, consistent with RCW 70A.65.170, does not prevent the
10 achievement of the emissions limits established in RCW 70A.45.020. In
11 so setting annual allowance budgets, the department must reduce the
12 annual allowance budget relative to the limits in an amount
13 equivalent to offset use, or in accordance with a similar methodology
14 adopted by the department. The department must adopt annual allowance
15 budgets for the program on a calendar year basis that provide for
16 progressively equivalent reductions year over year. An allowance
17 distributed under the program, either directly by the department
18 under RCW 70A.65.110 through 70A.65.130 or through auctions under RCW
19 70A.65.100, does not expire and may be held or banked consistent with
20 RCW 70A.65.100(6) and 70A.65.150(1).

21 (3) The department must complete evaluations by December 31,
22 2027, and by December 31, 2035, of the performance of the program,
23 including its performance in reducing greenhouse gases. If the
24 evaluation shows that adjustments to the annual allowance budgets are
25 necessary for covered entities to achieve their proportionate share
26 of the 2030 and 2040 emission reduction limits identified in RCW
27 70A.45.020, as applicable, the department shall adjust the annual
28 allowance budgets accordingly. The department must complete
29 additional evaluations of the performance of the program by December
30 31, 2040, and by December 31, 2045, and make any necessary
31 adjustments in the annual allowance budgets to ensure that covered
32 entities achieve their proportionate share of the 2050 emission
33 reduction limit identified in RCW 70A.45.020. Nothing in this
34 subsection precludes the department from making additional
35 adjustments to annual allowance budgets as necessary to ensure
36 successful achievement of the proportionate emission reduction limits
37 by covered entities. The department shall determine and make public
38 the circumstances, metrics, and processes that would initiate the
39 public consideration of additional allowance budget adjustments to

1 ensure successful achievement of the proportionate emission reduction
2 limits.

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

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

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

19 (1) A person is a covered entity as of the beginning of the first
20 compliance period and all subsequent compliance periods if the person
21 reported emissions under RCW 70A.15.2200 for any calendar year from
22 2015 through 2019, or if additional data provided as required by this
23 chapter indicates that emissions for any calendar year from 2015
24 through 2019 equaled or exceeded any of the following thresholds, or
25 if the person is a first jurisdictional deliverer and imports
26 electricity into the state during the compliance period:

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

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

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

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

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

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

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

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

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

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

39 (2) A person is a covered entity as of the beginning of the
40 second compliance period and all subsequent compliance periods if the

1 person reported emissions under RCW 70A.15.2200 or provided emissions
2 data as required by this chapter for any calendar year from 2023
3 through 2025, where the person owns or operates a waste to energy
4 facility utilized by a county and city solid waste management program
5 and the facility's emissions equal or exceed 25,000 metric tons of
6 carbon dioxide equivalent.

7 (3) A person is a covered entity (~~(beginning January 1, 2031)~~) as
8 of the beginning of the third compliance period, and all subsequent
9 compliance periods if the person reported emissions under RCW
10 70A.15.2200 or provided emissions data as required by this chapter
11 for any calendar year from 2027 through 2029, where the person owns
12 or operates a railroad company, as that term is defined in RCW
13 81.04.010, and the railroad company's emissions equal or exceed
14 25,000 metric tons of carbon dioxide equivalent.

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

32 (5) For types of emission sources described in subsection (1) of
33 this section that begin or modify operation after January 1, 2023,
34 and types of emission sources described in subsection (2) of this
35 section that begin or modify operation after 2027, coverage under the
36 program starts in the calendar year in which emissions from the
37 source exceed the applicable thresholds in subsection (1) or (2) of
38 this section, or upon formal notice from the department that the
39 source is expected to exceed the applicable emissions threshold,
40 whichever happens first. Sources meeting these conditions are

1 required to transfer their first allowances on the first transfer
2 deadline of the year following the year in which their emissions were
3 equal to or exceeded the emissions threshold.

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

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

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

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

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

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

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

38 (ii) The department must determine a method for expanding the
39 exemption provided under (e)(i) of this subsection to include fuels
40 used for the purpose of transporting agricultural products on public

1 highways. The department must maintain this expanded exemption for a
2 period of five years, in order to provide the agricultural sector
3 with a feasible transition period;

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

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

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

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

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

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

37 (d) Covered emissions from an entity that is or will be a covered
38 entity under this chapter may not be the basis for denial of a permit
39 for a new or expanded facility. Covered emissions must be included in
40 the analysis undertaken pursuant to (c) of this subsection. Nothing

1 in this subsection requires a lead agency or a permitting agency to
2 approve or issue a permit to a permit applicant, including to a new
3 or expanded fossil fuel project.

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

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

14 (1) Except as provided in RCW 70A.65.110, 70A.65.120, and
15 70A.65.130, the department shall distribute allowances through
16 auctions as provided in this section and in rules adopted by the
17 department to implement these sections. An allowance is not a
18 property right.

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

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

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

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

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

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

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

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

27 (a) A covered entity or an opt-in entity may not buy more than
28 ~~((10))~~ 25 percent of the allowances offered during a single auction;

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

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

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

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

39 (7) (a) For fiscal year 2023, upon completion and verification of
40 the auction results, the financial services administrator shall

1 notify winning bidders and transfer the auction proceeds to the state
2 treasurer for deposit as follows: (i) \$127,341,000 must first be
3 deposited into the carbon emissions reduction account created in RCW
4 70A.65.240; and (ii) the remaining auction proceeds to the climate
5 investment account created in RCW 70A.65.250 and the air quality and
6 health disparities improvement account created in RCW 70A.65.280.

7 (b) For fiscal year 2024, upon completion and verification of the
8 auction results, the financial services administrator shall notify
9 winning bidders and transfer the auction proceeds to the state
10 treasurer for deposit as follows: (i) \$356,697,000 must first be
11 deposited into the carbon emissions reduction account created in RCW
12 70A.65.240, except during fiscal year 2024, the deposit as provided
13 in this subsection (7)(b)(i) may be prorated equally across each of
14 the auctions occurring in fiscal year 2024; and (ii) the remaining
15 auction proceeds to the climate investment account created in RCW
16 70A.65.250 and the air quality and health disparities improvement
17 account created in RCW 70A.65.280, which may be prorated equally
18 across each of the auctions occurring in fiscal year 2024.

19 (c) For fiscal year 2025, upon completion and verification of the
20 auction results, the financial services administrator shall notify
21 winning bidders and transfer the auction proceeds to the state
22 treasurer for deposit as follows: (i) \$366,558,000 must first be
23 deposited into the carbon emissions reduction account created in RCW
24 70A.65.240, except that during fiscal year 2025, the deposit as
25 provided in this subsection (7)(c)(i) may be prorated equally across
26 each of the auctions occurring in fiscal year 2025; and (ii) the
27 remaining auction proceeds to the climate investment account created
28 in RCW 70A.65.250 and the air quality and health disparities
29 improvement account created in RCW 70A.65.280, which may be prorated
30 equally across each of the auctions occurring in fiscal year 2025.

31 (d) For fiscal years 2026 through 2037, upon completion and
32 verification of the auction results, the financial services
33 administrator shall notify winning bidders and transfer the auction
34 proceeds to the state treasurer for deposit as follows: (i)
35 \$359,117,000 per year must first be deposited into the carbon
36 emissions reduction account created in RCW 70A.65.240; and (ii) the
37 remaining auction proceeds to the climate investment account created
38 in RCW 70A.65.250 and the air quality and health disparities
39 improvement account created in RCW 70A.65.280.

1 (e) The deposits into the carbon emissions reduction account
2 pursuant to (a) through (d) of this subsection must not exceed
3 \$5,200,000,000 over the first 16 fiscal years and any remaining
4 auction proceeds must be deposited into the climate investment
5 account created in RCW 70A.65.250 and the air quality and health
6 disparities improvement account created in RCW 70A.65.280.

7 (f) For fiscal year 2038 and each year thereafter, upon
8 completion and verification of the auction results, the financial
9 services administrator shall notify winning bidders and transfer the
10 auction proceeds to the state treasurer for deposit as follows: (i)
11 50 percent of the auction proceeds to the carbon emissions reduction
12 account created in RCW 70A.65.240; and (ii) the remaining auction
13 proceeds to the climate investment account created in RCW 70A.65.250
14 and the air quality and health disparities improvement account
15 created in RCW 70A.65.280.

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

26 (a) Provided false or misleading facts;

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

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

30 (d) Violated registration requirements; or

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

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

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

37 (b) Information contained in the secure, online electronic
38 tracking system established by the department pursuant to RCW
39 70A.65.090(6);

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

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

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

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

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

28 (12) In setting the number of allowances offered at each auction,
29 the department shall consider the allowances in the marketplace due
30 to the marketing of allowances issued as required under RCW
31 70A.65.110, 70A.65.120, and 70A.65.130 in the department's
32 determination of the number of allowances to be offered at auction.
33 The department shall offer only such number of allowances at each
34 auction as will enhance the likelihood of achieving the goals of RCW
35 70A.45.020.

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

38 (1) Facilities owned or operated by a covered entity must receive
39 an allocation of allowances for the covered emissions at those

1 facilities under this subsection at no cost if the operations of the
2 facility are classified as emissions-intensive and trade-exposed, as
3 determined by being engaged in one or more of the processes described
4 by the following industry descriptions and codes in the North
5 American industry classification system:

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

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

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

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

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

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

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

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

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

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

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

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

38 (m) All other petroleum and coal products manufacturing from
39 refined petroleum, North American industry classification system code
40 324199.

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

18 (3)(a) For the first compliance period beginning in January 1,
19 2023, the annual allocation of no cost allowances for direct
20 distribution to a facility identified as emissions-intensive and
21 trade-exposed must be equal to the facility's baseline carbon
22 intensity established using data from 2015 through 2019, or other
23 data as allowed under this section, multiplied by the facility's
24 actual production for each calendar year during the compliance
25 period. For facilities using the mass-based approach, the allocation
26 of no cost allowances shall be equal to the facility's mass-based
27 baseline using data from 2015 through 2019, or other data as allowed
28 under this section.

29 (b) For the second compliance period, (~~beginning in January,~~
30 ~~2027,~~) and in each subsequent compliance period, the annual
31 allocation of no cost allowances established in (a) of this
32 subsection shall be adjusted according to the benchmark reduction
33 schedules established in (b)(ii) and (iii) and (e) of this subsection
34 multiplied by the facility's actual production during the period. The
35 department shall adjust the no cost allocation of allowances and
36 credits to an emissions-intensive and trade-exposed facility to avoid
37 duplication with any no cost allowances transferred pursuant to RCW
38 70A.65.120 and 70A.65.130, if applicable.

39 (i) For the purpose of this section, "carbon intensity" means the
40 amount of carbon dioxide equivalent emissions from a facility in

1 metric tons divided by the facility specific measure of production
2 including, but not limited to, units of product manufactured or sold,
3 over the same time interval.

4 (ii) If an emissions-intensive and trade-exposed facility is not
5 able to feasibly determine a carbon intensity benchmark based on its
6 unique circumstances, the entity may elect to use a mass-based
7 baseline that does not vary based on changes in production volumes.
8 The mass-based baseline must be based upon data from 2015 through
9 2019, unless the emissions-intensive, trade-exposed facility can
10 demonstrate that there have been abnormal periods of operation that
11 materially impacted the facility and the baseline period should be
12 expanded to include years prior to 2015. For each year during the
13 first (~~four-year~~) compliance period that begins January 1, 2023,
14 these facilities must be awarded no cost allowances equal to 100
15 percent of the facility's mass-based baseline. For each year during
16 the second (~~four-year~~) compliance period (~~that begins January 1,~~
17 ~~2027~~), these facilities must be awarded no cost allowances equal to
18 97 percent of the facility's mass-based baseline. For each year
19 during the third compliance period (~~that begins January 1, 2031~~),
20 these facilities must be awarded no cost allowances equal to 94
21 percent of the facility's mass-based baseline. Except as provided in
22 (b)(iii) of this subsection, if a facility elects to use a mass-based
23 baseline, it may not later convert to a carbon intensity benchmark
24 during the first three compliance periods.

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

1 (c)(i) By September 15, 2022, each emissions-intensive, trade-
2 exposed facility shall submit its carbon intensity baseline for the
3 first compliance period to the department. The carbon intensity
4 baseline for the first compliance period must use data from
5 2015-2019, unless the emissions-intensive, trade-exposed facility can
6 demonstrate that there have been abnormal periods of operation that
7 materially impacted the facility and the baseline period should be
8 expanded to include years prior to 2015.

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

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

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

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

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

39 (i) A significant change in the emissions use or emissions
40 attributable to the manufacture of an individual good or goods in

1 this state by an emissions-intensive, trade-exposed facility based on
2 a finding by the department that an adjustment is necessary to
3 accommodate for changes in the manufacturing process that have a
4 material impact on emissions;

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

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

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

29 (b) If the legislature does not adopt a compliance obligation for
30 emissions-intensive, trade-exposed facilities by December 1, 2027,
31 those facilities must continue to receive allowances as provided in
32 the third (~~four-year~~) compliance period (~~that begins January 1,~~
33 ~~2031~~)).

34 (5) If the actual emissions of an emissions-intensive, trade-
35 exposed facility exceed the facility's no cost allowances assigned
36 for that compliance period, it must acquire additional compliance
37 instruments such that the total compliance instruments transferred to
38 its compliance account consistent with chapter 316, Laws of 2021
39 equals emissions during the compliance period. An emissions-
40 intensive, trade-exposed facility must be allowed to bank unused

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

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

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

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

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

38 (1) The department shall adopt by rule the protocols for
39 establishing offset projects and (~~securing~~) generating offset

1 credits that may be used to meet a portion of a covered or opt-in
2 entity's compliance obligation under this chapter. The protocols
3 adopted by the department under this section must align with the
4 policies of the state established under RCW 70A.45.090 and
5 70A.45.100.

6 (2) Offset projects must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (c) Adopt a process for monitoring and invalidating offset
36 credits as necessary to ensure the credit reflects emission
37 reductions or removals that continue to meet the standards required
38 by subsection (1) of this section. If an offset credit is
39 invalidated, the covered or opt-in entity must, within six months of
40 the invalidation, transfer replacement credits or allowances to meet

1 its compliance obligation. Failure to transfer the required credits
2 or allowances is a violation subject to penalties as provided in RCW
3 70A.65.200; and

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

9 (5) Any offset credits used must:

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

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

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

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

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

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

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

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

1 receiving notification, the department shall issue an order requiring
2 the entity to submit the penalty allowances.

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

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

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

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

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

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

28 ~~((9))~~ (8)(a) No city, town, county, township, or other
29 subdivision or municipal corporation of the state may implement a
30 charge or tax based exclusively upon the quantity of greenhouse gas
31 emissions.

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

36 (i) Provided in this chapter;

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

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

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

3 ((~~(10)~~)) (9)(a) By December 1, 2023, the office of financial
4 management must submit a report to the appropriate committees of the
5 legislature that summarizes two categories of state laws other than
6 this chapter:

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

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

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

- 17 (i) Chapter 19.27A RCW;
- 18 (ii) Chapter 19.280 RCW;
- 19 (iii) Chapter 19.405 RCW;
- 20 (iv) Chapter 36.165 RCW;
- 21 (v) Chapter 43.21F RCW;
- 22 (vi) Chapter 70.30 RCW;
- 23 (vii) Chapter 70A.15 RCW;
- 24 (viii) Chapter 70A.45 RCW;
- 25 (ix) Chapter 70A.60 RCW;
- 26 (x) Chapter 70A.535 RCW;
- 27 (xi) Chapter 80.04 RCW;
- 28 (xii) Chapter 80.28 RCW;
- 29 (xiii) Chapter 80.70 RCW;
- 30 (xiv) Chapter 80.80 RCW; and
- 31 (xv) Chapter 81.88 RCW.

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

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

36 (1) A covered or opt-in entity has a compliance obligation for
37 its emissions during each ((~~four-year~~)) compliance period, with the
38 first compliance period commencing January 1, 2023. The department
39 shall by rule require that covered or opt-in entities annually

1 transfer a percentage of compliance instruments, but must fully
2 satisfy their compliance obligation, for each compliance period.

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

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

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

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

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

18 **Sec. 10.** RCW 70A.15.2200 and 2022 c 181 s 9 are each amended to
19 read as follows:

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

31 (2) Except as provided in subsection (3) of this section, any
32 person operating or responsible for the operation of air contaminant
33 sources of any class for which the ordinances, resolutions, rules or
34 regulations of the department or board of the authority, require
35 registration or reporting shall register therewith and make reports
36 containing information as may be required by such department or board
37 concerning location, size and height of contaminant outlets,
38 processes employed, nature of the contaminant emission and such other
39 information as is relevant to air pollution and available or

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

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

31 (3) If a registration or report has been filed for a grain
32 warehouse or grain elevator as required under this section,
33 registration, reporting, or a registration program fee shall not,
34 after January 1, 1997, again be required under this section for the
35 warehouse or elevator unless the capacity of the warehouse or
36 elevator as listed as part of the license issued for the facility has
37 been increased since the date the registration or reporting was last
38 made. If the capacity of the warehouse or elevator listed as part of
39 the license is increased, any registration or reporting required for
40 the warehouse or elevator under this section must be made by the date

1 the warehouse or elevator receives grain from the first harvest
2 season that occurs after the increase in its capacity is listed in
3 the license.

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

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

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

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

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

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

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

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

39 (b)(i) The department may by rule include additional gases to the
40 definition of "greenhouse gas" in RCW 70A.45.010 only if the gas has

1 been designated as a greenhouse gas by the United States congress, by
2 the United States environmental protection agency, or included in
3 external greenhouse gas emission trading programs with which
4 Washington has pursuant to RCW 70A.65.210. Prior to including
5 additional gases to the definition of "greenhouse gas" in RCW
6 70A.45.010, the department shall notify the appropriate committees of
7 the legislature.

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

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

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

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

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

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

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

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

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

1 subsection, the department may assign an emissions level for that
2 person.

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

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

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

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

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

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

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

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

19 NEW SECTION. **Sec. 11.** This act is not a conflicting measure
20 dealing with the same subject as Initiative Measure No. 2117 within
21 the meaning of Article II, section 1 of the state Constitution, but
22 if a court of competent jurisdiction enters a final judgment that is
23 no longer subject to appeal directing the secretary of state to place
24 this act on the 2024 ballot as a conflicting measure to Initiative
25 Measure No. 2117, this act is null and void and may not be placed on
26 the 2024 ballot.

27 NEW SECTION. **Sec. 12.** This act takes effect January 1, 2025,
28 only if Initiative Measure No. 2117 is not approved by a vote of the
29 people in the 2024 general election. If Initiative Measure No. 2117
30 is approved by a vote of the people in the 2024 general election,
31 this act is null and void.

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