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**SECOND SUBSTITUTE HOUSE BILL 2201**

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**State of Washington**

**68th Legislature**

**2024 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Doglio, Fitzgibbon, Berry, Ramel, Reeves, Duerr, Hackney, Reed, Goodman, and Pollet; by request of Department of Ecology)

READ FIRST TIME 02/05/24.

1 AN ACT Relating to facilitating linkage of Washington's carbon  
2 market with the California-Quebec carbon market; amending RCW  
3 70A.65.010, 70A.65.060, 70A.65.070, 70A.65.080, 70A.65.100,  
4 70A.65.110, 70A.65.170, 70A.65.200, 70A.65.210, 70A.65.310, and  
5 70A.15.2200; adding a new section to chapter 70A.65 RCW; creating a  
6 new section; prescribing penalties; and providing a contingent  
7 effective date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (12) "Biomass-derived fuels," "biomass fuels," or "biofuels"  
10 means (~~((fuels derived from biomass that have at least 40 percent~~  
11 ~~lower greenhouse gas emissions based on a full life-cycle analysis~~  
12 ~~when compared to petroleum fuels for which biofuels are capable as~~  
13 ~~servng as a substitute)) whichever of the following fuels derived~~  
14 from biomass has lower associated life-cycle greenhouse gas  
15 emissions: (a) Fuels that have at least 20 percent lower greenhouse  
16 gas emissions based on a full life-cycle analysis when compared to  
17 petroleum fuels for which biofuels are capable as serving as a  
18 substitute; or (b) fuels that meet a standard adopted by the  
19 department by rule that align with the definition of biofuel, or  
20 other standards applicable to biofuel, established by a jurisdiction  
21 with which the department has entered into a linkage agreement.

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

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

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

35 (16) "Climate resilience" is the ongoing process of anticipating,  
36 preparing for, and adapting to changes in climate and minimizing  
37 negative impacts to our natural systems, infrastructure, and  
38 communities. For natural systems, increasing climate resilience  
39 involves restoring and increasing the health, function, and integrity  
40 of our ecosystems and improving their ability to absorb and recover

1 from climate-affected disturbances. For communities, increasing  
2 climate resilience means enhancing their ability to understand,  
3 prevent, adapt, and recover from climate impacts to people and  
4 infrastructure.

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

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

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

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

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

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

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

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

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

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

37 (27) "Electricity importer" means:

38 (a) For electricity that is scheduled with a NERC e-tag to a  
39 final point of delivery into a balancing authority area located  
40 entirely within the state of Washington, the electricity importer is

1 identified on the NERC e-tag as the purchasing-selling entity on the  
2 last segment of the tag's physical path with the point of receipt  
3 located outside the state of Washington and the point of delivery  
4 located inside the state of Washington;

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

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

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

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

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

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

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

1       ~~(h))~~ (i) For electricity from facilities allocated to a  
2 consumer-owned utility inside the state of Washington from a  
3 multijurisdictional consumer-owned utility, the electricity importer  
4 is the consumer-owned utility inside the state of Washington; or  
5       (j) For imported electricity not otherwise assigned an  
6 electricity importer by this subsection, the electricity importer may  
7 be defined by the department by rule.

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

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

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

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

21       (32) "Environmental harm" has the same meaning as defined in RCW  
22 70A.02.010.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

23 (55) "Person" has the same meaning as defined in RCW  
24 70A.15.2200(5) (~~(h)~~) (g)(iii).

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

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

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

38 (59) "Program registry" means the data system in which covered  
39 entities, opt-in entities, and general market participants are

1 registered and in which compliance instruments are recorded and  
2 tracked.

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

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

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

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

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

22 (65) "Tribal lands" has the same meaning as defined in RCW  
23 70A.02.010.

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

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

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

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

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

3       (1) In order to ensure that greenhouse gas emissions are reduced  
4 by covered entities consistent with the limits established in RCW  
5 70A.45.020, the department must implement a cap on greenhouse gas  
6 emissions from covered entities and a program to track, verify, and  
7 enforce compliance through the use of compliance instruments.

8       (2) The program must consist of:

9       (a) Annual allowance budgets that limit emissions from covered  
10 entities, as provided in this section and RCW 70A.65.070 and  
11 70A.65.080;

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

15       (c) Distribution of emission allowances, as provided in RCW  
16 70A.65.100, and through the allowance price containment provisions  
17 under RCW 70A.65.140 and 70A.65.150;

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

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

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

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

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

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

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

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

36       (3) The department shall consider opportunities to implement the  
37 program in a manner that allows linking the state's program with  
38 those of other jurisdictions. The department must evaluate whether  
39 such linkage will provide for a more cost-effective means for covered  
40 entities to meet their compliance obligations in Washington while

1 recognizing the special characteristics of the state's economy,  
2 communities, and industries. The department is authorized to enter  
3 into a linkage agreement with another jurisdiction after conducting  
4 an environmental justice assessment and after formal notice and  
5 opportunity for a public hearing, and when consistent with the  
6 requirements of RCW 70A.65.210. The department is authorized to  
7 withdraw from a linkage agreement and every linkage agreement must  
8 provide that the department reserves the right to withdraw from the  
9 agreement.

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

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

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

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

33 (1) (a) (i) The department shall commence the program by January 1,  
34 2023, by determining an emissions baseline establishing the  
35 proportionate share that the total greenhouse gas emissions of  
36 covered entities for the first compliance period bears to the total  
37 anthropogenic greenhouse gas emissions in the state during 2015  
38 through 2019, based on data reported to the department under RCW  
39 70A.15.2200 or provided as required by this chapter, as well as other

1 relevant data. By October 1, 2022, the department shall adopt annual  
2 allowance budgets for the first compliance period of the program,  
3 calendar years 2023 through 2026, to be distributed from January 1,  
4 2023, through December 31, 2026.

5 (ii) If the department enters into a linkage agreement, and the  
6 linked jurisdictions do not amend their rules to synchronize with  
7 Washington's compliance periods, the department must amend its rules  
8 to synchronize Washington's compliance periods with those of the  
9 linked jurisdiction or jurisdictions. The department may not by rule  
10 amend the length of the first compliance period to end on a date  
11 other than December 31, 2026.

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

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

27 (2) The annual allowance budgets must be set to achieve the share  
28 of reductions by covered entities necessary to achieve the 2030,  
29 2040, and 2050 statewide emissions limits established in RCW  
30 70A.45.020, based on data reported to the department under chapter  
31 70A.15 RCW or provided as required by this chapter. Annual allowance  
32 budgets must be set such that the use of offsets as compliance  
33 instruments, consistent with RCW 70A.65.170, does not prevent the  
34 achievement of the emissions limits established in RCW 70A.45.020. In  
35 so setting annual allowance budgets, the department must reduce the  
36 annual allowance budget relative to the limits in an amount  
37 equivalent to offset use, or in accordance with a similar methodology  
38 adopted by the department. The department must adopt annual allowance  
39 budgets for the program on a calendar year basis that provide for  
40 progressively equivalent reductions year over year. An allowance

1 distributed under the program, either directly by the department  
2 under RCW 70A.65.110 through 70A.65.130 or through auctions under RCW  
3 70A.65.100, does not expire and may be held or banked consistent with  
4 RCW 70A.65.100(6) and 70A.65.150(1).

5 (3) The department must complete evaluations by December 31,  
6 2027, and ~~((by))~~ December ~~((31, 2035))~~ 31st of the year following the  
7 conclusion of the third compliance period, of the performance of the  
8 program, including its performance in reducing greenhouse gases. If  
9 the evaluation shows that adjustments to the annual allowance budgets  
10 are necessary for covered entities to achieve their proportionate  
11 share of the 2030 and 2040 emission reduction limits identified in  
12 RCW 70A.45.020, as applicable, the department shall adjust the annual  
13 allowance budgets accordingly. The department must complete  
14 additional evaluations of the performance of the program by December  
15 ~~((31, 2040, and by December 31, 2045))~~ 31st of the year following the  
16 conclusion of the fifth and sixth compliance periods, and make any  
17 necessary adjustments in the annual allowance budgets to ensure that  
18 covered entities achieve their proportionate share of the 2050  
19 emission reduction limit identified in RCW 70A.45.020. Nothing in  
20 this subsection precludes the department from making additional  
21 adjustments to annual allowance budgets as necessary to ensure  
22 successful achievement of the proportionate emission reduction limits  
23 by covered entities. The department shall determine and make public  
24 the circumstances, metrics, and processes that would initiate the  
25 public consideration of additional allowance budget adjustments to  
26 ensure successful achievement of the proportionate emission reduction  
27 limits.

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

38 (5) The legislature intends to promote a growing and sustainable  
39 economy and to avoid leakage of emissions from manufacturing to other

1 jurisdictions. Therefore, the legislature finds that implementation  
2 of this section is contingent upon the enactment of RCW 70A.65.110.

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

5 (1) A person is a covered entity as of the beginning of the first  
6 compliance period and all subsequent compliance periods if the person  
7 reported emissions under RCW 70A.15.2200 for any calendar year from  
8 2015 through 2019, or if additional data provided as required by this  
9 chapter indicates that emissions for any calendar year from 2015  
10 through 2019 equaled or exceeded any of the following thresholds, or  
11 if the person is a first jurisdictional deliverer and imports  
12 electricity into the state during the compliance period:

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

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

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

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

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

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

36 (ii) In consultation with any linked jurisdiction to the program  
37 created by this chapter, by October 1, 2026, the department, in  
38 consultation with the department of commerce and the utilities and  
39 transportation commission, shall adopt by rule a methodology for

1 addressing imported electricity associated with a centralized  
2 electricity market;

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

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

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

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

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



1 (3) A person is a covered entity (~~(beginning January 1, 2031)~~) as  
2 of the beginning of the third compliance period, and all subsequent  
3 compliance periods if the person reported emissions under RCW  
4 70A.15.2200 or provided emissions data as required by this chapter  
5 for (~~(any calendar year from)~~) 2027 (~~(through 2029)~~) or 2028, where  
6 the person owns or operates a railroad company, as that term is  
7 defined in RCW 81.04.010, and the railroad company's emissions equal  
8 or exceed 25,000 metric tons of carbon dioxide equivalent.

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

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

38 (6) For emission sources described in subsection (1) of this  
39 section that are in operation or otherwise active between 2015 and  
40 2019 but were not required to report emissions for those years under

1 RCW 70A.15.2200 for the reporting periods between 2015 and 2019,  
2 coverage under the program starts in the calendar year following the  
3 year in which emissions from the source exceed the applicable  
4 thresholds in subsection (1) of this section as reported pursuant to  
5 RCW 70A.15.2200 or provided as required by this chapter, or upon  
6 formal notice from the department that the source is expected to  
7 exceed the applicable emissions threshold for the first year that  
8 source is required to report emissions, whichever happens first.  
9 Sources meeting these criteria are required to transfer their first  
10 allowances on the first transfer deadline of the year following the  
11 year in which their emissions, as reported under RCW 70A.15.2200 or  
12 provided as required by this chapter, were equal to or exceeded the  
13 emissions threshold.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (e) A lead agency under chapter 43.21C RCW or a permitting agency  
40 shall allow a new or expanded facility that is a covered entity or

1 opt-in entity to satisfy a mitigation requirement for its covered  
2 emissions under this chapter (~~(316, Laws of 2021)~~) and under any  
3 greenhouse gas emission mitigation requirements for covered emissions  
4 under chapter 43.21C RCW by submitting to the department the number  
5 of compliance instruments equivalent to its covered emissions during  
6 a compliance period.

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

9 (1) Except as provided in RCW 70A.65.110, 70A.65.120, and  
10 70A.65.130, the department shall distribute allowances through  
11 auctions as provided in this section and in rules adopted by the  
12 department to implement these sections. An allowance is not a  
13 property right.

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

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

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

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

38 (a) Registered entities intending to participate in an auction  
39 must submit an application to participate at least 30 days prior to

1 the auction. The application must include the documentation required  
2 for review and approval by the department. A registered entity is  
3 eligible to participate only after receiving a notice of approval by  
4 the department.

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

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

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

21 (a) A covered entity or an opt-in entity may not buy more than  
22 ~~((10))~~ 25 percent of the allowances offered during a single auction;

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

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

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

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

33 (7) (a) For fiscal year 2023, upon completion and verification of  
34 the auction results, the financial services administrator shall  
35 notify winning bidders and transfer the auction proceeds to the state  
36 treasurer for deposit as follows: (i) \$127,341,000 must first be  
37 deposited into the carbon emissions reduction account created in RCW  
38 70A.65.240; and (ii) the remaining auction proceeds to the climate  
39 investment account created in RCW 70A.65.250 and the air quality and  
40 health disparities improvement account created in RCW 70A.65.280.

1 (b) For fiscal year 2024, upon completion and verification of the  
2 auction results, the financial services administrator shall notify  
3 winning bidders and transfer the auction proceeds to the state  
4 treasurer for deposit as follows: (i) \$356,697,000 must first be  
5 deposited into the carbon emissions reduction account created in RCW  
6 70A.65.240, except during fiscal year 2024, the deposit as provided  
7 in this subsection (7)(b)(i) may be prorated equally across each of  
8 the auctions occurring in fiscal year 2024; and (ii) the remaining  
9 auction proceeds to the climate investment account created in RCW  
10 70A.65.250 and the air quality and health disparities improvement  
11 account created in RCW 70A.65.280, which may be prorated equally  
12 across each of the auctions occurring in fiscal year 2024.

13 (c) For fiscal year 2025, upon completion and verification of the  
14 auction results, the financial services administrator shall notify  
15 winning bidders and transfer the auction proceeds to the state  
16 treasurer for deposit as follows: (i) \$366,558,000 must first be  
17 deposited into the carbon emissions reduction account created in RCW  
18 70A.65.240, except that during fiscal year 2025, the deposit as  
19 provided in this subsection (7)(c)(i) may be prorated equally across  
20 each of the auctions occurring in fiscal year 2025; and (ii) the  
21 remaining auction proceeds to the climate investment account created  
22 in RCW 70A.65.250 and the air quality and health disparities  
23 improvement account created in RCW 70A.65.280, which may be prorated  
24 equally across each of the auctions occurring in fiscal year 2025.

25 (d) For fiscal years 2026 through 2037, upon completion and  
26 verification of the auction results, the financial services  
27 administrator shall notify winning bidders and transfer the auction  
28 proceeds to the state treasurer for deposit as follows: (i)  
29 \$359,117,000 per year must first be deposited into the carbon  
30 emissions reduction account created in RCW 70A.65.240; and (ii) the  
31 remaining auction proceeds to the climate investment account created  
32 in RCW 70A.65.250 and the air quality and health disparities  
33 improvement account created in RCW 70A.65.280.

34 (e) The deposits into the carbon emissions reduction account  
35 pursuant to (a) through (d) of this subsection must not exceed  
36 \$5,200,000,000 over the first 16 fiscal years and any remaining  
37 auction proceeds must be deposited into the climate investment  
38 account created in RCW 70A.65.250 and the air quality and health  
39 disparities improvement account created in RCW 70A.65.280.

1 (f) For fiscal year 2038 and each year thereafter, upon  
2 completion and verification of the auction results, the financial  
3 services administrator shall notify winning bidders and transfer the  
4 auction proceeds to the state treasurer for deposit as follows: (i)  
5 50 percent of the auction proceeds to the carbon emissions reduction  
6 account created in RCW 70A.65.240; and (ii) the remaining auction  
7 proceeds to the climate investment account created in RCW 70A.65.250  
8 and the air quality and health disparities improvement account  
9 created in RCW 70A.65.280.

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

20 (a) Provided false or misleading facts;

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

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

24 (d) Violated registration requirements; or

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

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

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

31 (b) Information contained in the secure, online electronic  
32 tracking system established by the department pursuant to RCW  
33 70A.65.090(6);

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

37 (d) Financial, proprietary, and other market sensitive  
38 information as determined by the department that is submitted to the  
39 independent contractor or the financial services administrator

1 engaged by the department pursuant to subsection (3) of this section;  
2 and

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

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

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

22 (12) In setting the number of allowances offered at each auction,  
23 the department shall consider the allowances in the marketplace due  
24 to the marketing of allowances issued as required under RCW  
25 70A.65.110, 70A.65.120, and 70A.65.130 in the department's  
26 determination of the number of allowances to be offered at auction.  
27 The department shall offer only such number of allowances at each  
28 auction as will enhance the likelihood of achieving the goals of RCW  
29 70A.45.020.

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

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



1 (a) Metals manufacturing, including iron and steel making,  
2 ferroalloy and primary metals manufacturing, secondary aluminum  
3 smelting and alloying, aluminum sheet, plate, and foil manufacturing,  
4 and smelting, refining, and alloying of other nonferrous metals,  
5 North American industry classification system codes beginning with  
6 331;

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

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

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

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

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

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

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

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

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

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

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

33 (m) All other petroleum and coal products manufacturing from  
34 refined petroleum, North American industry classification system code  
35 324199.

36 (2) By July 1, 2022, the department must adopt by rule objective  
37 criteria for both emissions' intensity and trade exposure for the  
38 purpose of identifying emissions-intensive, trade-exposed  
39 manufacturing businesses during the second compliance period of the  
40 program and subsequent compliance periods. A facility covered by

1 subsection (1)(a) through (m) of this section is considered an  
2 emissions-intensive, trade-exposed facility and is eligible for  
3 allocation of no cost allowances as described in this section. In  
4 addition, any covered party that is a manufacturing business that can  
5 demonstrate to the department that it meets the objective criteria  
6 adopted by rule is also eligible for treatment as emissions-  
7 intensive, trade-exposed and is eligible for allocation of no cost  
8 allowances as described in this section. In developing the objective  
9 criteria under this subsection, the department must consider the  
10 locations of facilities potentially identified as emissions-  
11 intensive, trade-exposed manufacturing businesses relative to  
12 overburdened communities.

13 (3)(a) For the (~~first compliance period beginning in January 1,~~  
14 ~~2023~~) years 2023 through 2026, the annual allocation of no cost  
15 allowances for direct distribution to a facility identified as  
16 emissions-intensive and trade-exposed must be equal to the facility's  
17 baseline carbon intensity established using data from 2015 through  
18 2019, or other data as allowed under this section, multiplied by the  
19 facility's actual production for each calendar year during the  
20 compliance period. For facilities using the mass-based approach, the  
21 allocation of no cost allowances shall be equal to the facility's  
22 mass-based baseline using data from 2015 through 2019, or other data  
23 as allowed under this section.

24 (b) For the (~~second compliance period, beginning in January,~~  
25 ~~2027,~~) four years beginning January 2027 and in each subsequent  
26 (~~compliance~~) four-year period, the annual allocation of no cost  
27 allowances established in (a) of this subsection shall be adjusted  
28 according to the benchmark reduction schedules established in (b)(ii)  
29 and (iii) and (e) of this subsection multiplied by the facility's  
30 actual production during the period. The department shall adjust the  
31 no cost allocation of allowances and credits to an emissions-  
32 intensive and trade-exposed facility to avoid duplication with any no  
33 cost allowances transferred pursuant to RCW 70A.65.120 and  
34 70A.65.130, if applicable.

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

1 (ii) If an emissions-intensive and trade-exposed facility is not  
2 able to feasibly determine a carbon intensity benchmark based on its  
3 unique circumstances, the entity may elect to use a mass-based  
4 baseline that does not vary based on changes in production volumes.  
5 The mass-based baseline must be based upon data from 2015 through  
6 2019, unless the emissions-intensive, trade-exposed facility can  
7 demonstrate that there have been abnormal periods of operation that  
8 materially impacted the facility and the baseline period should be  
9 expanded to include years prior to 2015. For (~~each year during the~~  
10 ~~first four-year compliance period that begins January 1, 2023~~)) the  
11 years 2023 through 2026, these facilities must be awarded no cost  
12 allowances equal to 100 percent of the facility's mass-based  
13 baseline. For each year during the (~~second four-year compliance~~  
14 ~~period that begins January 1, 2027~~)) years 2027 through 2030, these  
15 facilities must be awarded no cost allowances equal to 97 percent of  
16 the facility's mass-based baseline. For each year during the (~~third~~  
17 ~~compliance period that begins January 1, 2031~~)) years 2031 through  
18 2034, these facilities must be awarded no cost allowances equal to 94  
19 percent of the facility's mass-based baseline. Except as provided in  
20 (b)(iii) of this subsection, if a facility elects to use a mass-based  
21 baseline, it may not later convert to a carbon intensity benchmark  
22 during the (~~first three compliance periods~~)) years 2023 through  
23 2034.

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

39 (c)(i) By September 15, 2022, each emissions-intensive, trade-  
40 exposed facility shall submit its carbon intensity baseline for the

1 first compliance period to the department. The carbon intensity  
2 baseline for the first compliance period must use data from  
3 2015-2019, unless the emissions-intensive, trade-exposed facility can  
4 demonstrate that there have been abnormal periods of operation that  
5 materially impacted the facility and the baseline period should be  
6 expanded to include years prior to 2015.

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

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

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

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

24 (f) Prior to the beginning of ~~((either the second, third, or~~  
25 ~~subsequent compliance))~~ 2027, 2031, or subsequent four-year periods,  
26 the department may make an upward adjustment in the next  
27 ~~((compliance))~~ four-year period's benchmark for an emissions-  
28 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  
33 ~~((compliance))~~ four-year period on the facility's best available  
34 technology analysis. The department shall by rule provide for  
35 emissions-intensive, trade-exposed facilities to apply to the  
36 department for an adjustment to the allocation for direct  
37 distribution of no cost allowances based on its facility-specific  
38 carbon intensity benchmark or mass emissions baseline. The department  
39 shall make adjustments based on:

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

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

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

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

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

36 (5) If the actual emissions of an emissions-intensive, trade-  
37 exposed facility exceed the facility's no cost allowances assigned  
38 for that compliance period, it must acquire additional compliance  
39 instruments such that the total compliance instruments transferred to  
40 its compliance account consistent with this chapter ~~((316, Laws of~~

1 2021)) equals emissions during the compliance period. An emissions-  
2 intensive, trade-exposed facility must be allowed to bank unused  
3 allowances, including for future sale and investment in best  
4 available technology when economically feasible. The department shall  
5 limit the use of offset credits for compliance by an emissions-  
6 intensive, trade-exposed facility, such that the quantity of no cost  
7 allowances plus the provision of offset credits does not exceed 100  
8 percent of the facility's total compliance obligation over a  
9 compliance period.

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

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

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

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

1 (1) The department shall adopt by rule the protocols for  
2 establishing offset projects and (~~securing~~) generating offset  
3 credits that may be used to meet a portion of a covered or opt-in  
4 entity's compliance obligation under this chapter. The protocols  
5 adopted by the department under this section must align with the  
6 policies of the state established under RCW 70A.45.090 and  
7 70A.45.100.

8 (2) Offset projects must:

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

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

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

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

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

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

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

37 (c) The limits in (a) and (b) of this subsection may be modified  
38 by rule as adopted by the department when appropriate to ensure  
39 achievement of the proportionate share of statewide emissions limits

1 established in RCW 70A.45.020 and to provide for alignment with other  
2 jurisdictions to which the state has linked.

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

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

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

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

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

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

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

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

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

37 (c) Adopt a process for monitoring and invalidating offset  
38 credits as necessary to ensure the credit reflects emission  
39 reductions or removals that continue to meet the standards required  
40 by subsection (1) of this section. If an offset credit is



1 invalidated, the covered or opt-in entity must, within six months of  
2 the invalidation, transfer replacement credits or allowances to meet  
3 its compliance obligation. Failure to transfer the required credits  
4 or allowances is a violation subject to penalties as provided in RCW  
5 70A.65.200; and

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

11 (5) Any offset credits used must:

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

15 (b) Have been issued for reporting periods wholly after July 25,  
16 2021, or within two years prior to July 25, 2021; 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 Washington or 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~~) Until the department enters into a linkage agreement  
21 or until the end of the first compliance period, whichever is sooner,  
22 the department may reduce the amount of the penalty by adjusting the  
23 monetary amount or the number of penalty allowances described in  
24 subsections (2) and (3) of this section.

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

29 (9)(a) No city, town, county, township, or other subdivision or  
30 municipal corporation of the state may implement a charge or tax  
31 based exclusively upon the quantity of greenhouse gas 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)(a) By December 1, 2023, the office of financial management  
4 must submit a report to the appropriate committees of the legislature  
5 that summarizes two categories of state laws other than this chapter:

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

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

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

16 (i) Chapter 19.27A RCW;

17 (ii) Chapter 19.280 RCW;

18 (iii) Chapter 19.405 RCW;

19 (iv) Chapter 36.165 RCW;

20 (v) Chapter 43.21F RCW;

21 (vi) Chapter 70.30 RCW;

22 (vii) Chapter 70A.15 RCW;

23 (viii) Chapter 70A.45 RCW;

24 (ix) Chapter 70A.60 RCW;

25 (x) Chapter 70A.535 RCW;

26 (xi) Chapter 80.04 RCW;

27 (xii) Chapter 80.28 RCW;

28 (xiii) Chapter 80.70 RCW;

29 (xiv) Chapter 80.80 RCW; and

30 (xv) Chapter 81.88 RCW.

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

33 **Sec. 9.** RCW 70A.65.210 and 2021 c 316 s 24 are each amended to  
34 read as follows:

35 (1) Subject to making the findings and conducting the public  
36 comment process described in subsection (3) of this section, the  
37 department shall seek to enter into linkage agreements with other  
38 jurisdictions with external greenhouse gas emissions trading programs  
39 in order to:

1 (a) Allow for the mutual use and recognition of compliance  
2 instruments issued by Washington and other linked jurisdictions;

3 (b) Broaden the greenhouse gas emission reduction opportunities  
4 to reduce the costs of compliance on covered entities and consumers;

5 (c) Enable allowance auctions to be held jointly and provide for  
6 the use of a unified tracking system for compliance instruments;

7 (d) Enhance market security;

8 (e) Reduce program administration costs; and

9 (f) Provide consistent requirements for covered entities whose  
10 operations span jurisdictional boundaries.

11 (2) The director of the department is authorized to execute  
12 linkage agreements with other jurisdictions with external greenhouse  
13 gas emissions trading programs consistent with the requirements in  
14 this chapter. A linkage agreement must cover the following:

15 (a) Provisions relating to regular, periodic auctions, including  
16 requirements for eligibility for auction participation, the use of a  
17 single auction provider to facilitate joint auctions, publication of  
18 auction-related information, processes for auction participation,  
19 purchase limits by auction participant type, bidding processes, dates  
20 of auctions, and financial requirements;

21 (b) Provisions related to holding limits to ensure no entities in  
22 any of the programs are disadvantaged relative to their counterparts  
23 in the other jurisdictions;

24 (c) Other requirements, such as greenhouse gas reporting and  
25 verification, offset protocols, criteria and process, and supervision  
26 and enforcement, to prevent fraud, abuse, and market manipulation;

27 (d) Common program registry, electronic auction platform,  
28 tracking systems for compliance instruments, and monitoring of  
29 compliance instruments;

30 (e) Provisions to ensure coordinated administrative and technical  
31 support;

32 (f) Provisions for public notice and participation; and

33 (g) Provisions to collectively resolve differences, amend the  
34 agreements, and delink or otherwise withdraw from the agreements.

35 (3) Before entering into a linkage agreement under this section,  
36 the department must evaluate and make a finding regarding whether the  
37 aggregate number of unused allowances in a linked program would  
38 reduce the stringency of Washington's program and the state's ability  
39 to achieve its greenhouse gas emissions reduction limits. The  
40 department must include in its evaluation a consideration of pre-2020

1 unused allowances that may exist in the program with which it is  
2 proposing to link. Before entering into a linkage agreement, the  
3 department must also establish a finding that the linking  
4 jurisdiction and the linkage agreement meet certain criteria  
5 identified under this subsection and conduct a public comment process  
6 to obtain input and a review of the linkage agreement by relevant  
7 stakeholders and other interested parties. The department must  
8 consider input received from the public comment process before  
9 finalizing a linkage agreement. In the event that the department  
10 determines that a full linkage agreement is unlikely to meet the  
11 criteria, it may enter into a linkage agreement with limitations,  
12 including limits on the share of compliance that may be met with  
13 allowances originating from linked jurisdictions and other  
14 limitations deemed necessary by the department. A linkage agreement  
15 approved by the department must:

16 (a) Achieve the purposes identified in subsection (1) of this  
17 section;

18 (b) Ensure that the linking jurisdiction has provisions to ensure  
19 the distribution of benefits from the program to vulnerable  
20 populations and overburdened communities;

21 (c) Be determined by the department to not yield net adverse  
22 impacts to either jurisdictions' highly impacted communities or  
23 analogous communities in the aggregate, relative to the baseline  
24 level of emissions; and

25 (d) Not adversely impact Washington's ability to achieve the  
26 emission reduction limits established in RCW 70A.45.020.

27 (4) Before entering a linkage agreement, the department must post  
28 and maintain on its website, and provide notification to the  
29 appropriate policy and fiscal committees of the legislature, a  
30 quarterly status update regarding any potential linkage agreement  
31 that the department has determined to seek to enter into under this  
32 section. The status report must include:

33 (a) An outline of the expected steps that the department expects  
34 that it and linked jurisdictions will need to take prior to entering  
35 into a linkage agreement, including the requirements of subsection  
36 (3) of this section;

37 (b) Notation of any steps completed or initiated under (a) of  
38 this subsection; and

1        (c) An estimate of the time frames of possible completion for any  
2 steps identified under (a) of this subsection that have not yet been  
3 completed.

4        (5) The state retains all legal and policymaking authority over  
5 its program design and enforcement.

6        **Sec. 10.** RCW 70A.65.310 and 2022 c 181 s 2 are each amended to  
7 read as follows:

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

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

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

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

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

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

29        NEW SECTION. **Sec. 11.** A new section is added to chapter 70A.65  
30 RCW to read as follows:

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

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

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

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

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

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

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

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

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

32 (ii) The holding account number of the federal power marketing  
33 administration;

34 (iii) The number and vintage of no cost allowances to be  
35 transferred; and

36 (iv) The relationship between the electric utility and the  
37 federal power marketing administration.

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

39 (i) The electric utility has an agreement to purchase electricity  
40 from the federal power marketing administration, or a power purchase

1 agreement, including a custom product contract, with the federal  
2 power marketing administration; and

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

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

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

24 **Sec. 12.** RCW 70A.15.2200 and 2022 c 181 s 9 are each amended to  
25 read as follows:

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

37 (2) Except as provided in subsection (3) of this section, any  
38 person operating or responsible for the operation of air contaminant  
39 sources of any class for which the ordinances, resolutions, rules or



1 regulations of the department or board of the authority, require  
2 registration or reporting shall register therewith and make reports  
3 containing information as may be required by such department or board  
4 concerning location, size and height of contaminant outlets,  
5 processes employed, nature of the contaminant emission and such other  
6 information as is relevant to air pollution and available or  
7 reasonably capable of being assembled. In the case of emissions of  
8 greenhouse gases as defined in RCW 70A.45.010 the department shall  
9 adopt rules requiring reporting of those emissions. The department or  
10 board may require that such registration or reporting be accompanied  
11 by a fee, and may determine the amount of such fee for such class or  
12 classes: PROVIDED, That the amount of the fee shall only be to  
13 compensate for the costs of administering such registration or  
14 reporting program which shall be defined as initial registration and  
15 annual or other periodic reports from the source owner providing  
16 information directly related to air pollution registration, on-site  
17 inspections necessary to verify compliance with registration  
18 requirements, data storage and retrieval systems necessary for  
19 support of the registration program, emission inventory reports and  
20 emission reduction credits computed from information provided by  
21 sources pursuant to registration program requirements, staff review,  
22 including engineering or other reliable analysis for accuracy and  
23 currentness, of information provided by sources pursuant to  
24 registration program requirements, clerical and other office support  
25 provided in direct furtherance of the registration program, and  
26 administrative support provided in directly carrying out the  
27 registration program: PROVIDED FURTHER, That any such registration  
28 made with either the board or the department shall preclude a further  
29 registration and reporting with any other board or the department,  
30 except that emissions of greenhouse gases as defined in RCW  
31 70A.45.010 must be reported as required under subsection (5) of this  
32 section.

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

37 (3) If a registration or report has been filed for a grain  
38 warehouse or grain elevator as required under this section,  
39 registration, reporting, or a registration program fee shall not,  
40 after January 1, 1997, again be required under this section for the

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

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

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

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

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

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

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

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

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

6 (b) (i) The department may by rule include additional gases to the  
7 definition of "greenhouse gas" in RCW 70A.45.010 only if the gas has  
8 been designated as a greenhouse gas by the United States congress, by  
9 the United States environmental protection agency, or included in  
10 external greenhouse gas emission trading programs with which  
11 Washington has pursuant to RCW 70A.65.210. Prior to including  
12 additional gases to the definition of "greenhouse gas" in RCW  
13 70A.45.010, the department shall notify the appropriate committees of  
14 the legislature.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32       NEW SECTION.     **Sec. 13.** This act is not a conflicting measure  
33 dealing with the same subject as Initiative Measure No. 2117 within  
34 the meaning of Article II, section 1 of the state Constitution, but  
35 if a court of competent jurisdiction enters a final judgment that is  
36 no longer subject to appeal directing the secretary of state to place  
37 this act on the 2024 ballot as a conflicting measure to Initiative  
38 Measure No. 2117, this act is null and void and may not be placed on  
39 the 2024 ballot.

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

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