
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: Z-0485.1/24 ROUGH DRAFT

ATTY/TYPIST: ML:eab

BRIEF DESCRIPTION: Facilitating linkage of Washington's carbon market with the California-Quebec carbon market.

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.65.080, 70A.65.100, 70A.65.140, 70A.65.150,
4 70A.65.160, 70A.65.170, 70A.65.200, 70A.65.300, and 70A.15.2200; and
5 prescribing penalties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (20) "Compliance period" means the four-year period for which the
6 compliance obligation is calculated for covered entities.

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

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

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

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

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

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

24 (27) "Electricity importer" means:

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

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

37 (c) For electricity that is imported to a designated scheduling
38 point in the state of Washington that is located inside a balancing
39 authority area that is not located entirely within the state of
40 Washington, and where the balancing area authority is not the same

1 entity serving retail load at that scheduling point, the electricity
2 importer is the purchasing-selling entity on the e-tag at the last
3 point on the physical path where the point of receipt is located
4 outside the state of Washington and the point of delivery is located
5 inside the state of Washington;

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

9 ~~((d))~~ (e) For electricity provided as balancing energy for a
10 resource located in the state of Washington that is also inside a
11 balancing authority area that is not located entirely within the
12 state of Washington, the electricity importer is the balancing area
13 authority providing that balancing energy unless that energy is
14 separately accounted for through other provisions in this subsection;

15 (f) For electricity from facilities allocated to serve retail
16 electricity customers of a multijurisdictional electric company, the
17 electricity importer is the multijurisdictional electric company;

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

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

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

38 ~~(h))~~ (j) For electricity from facilities allocated to a
39 consumer-owned utility inside the state of Washington from a

1 multijurisdictional consumer-owned utility, the electricity importer
2 is the consumer-owned utility inside the state of Washington; or

3 (k) For imported electricity not otherwise assigned an
4 electricity importer by this section, the electricity importer must
5 be defined by the department by rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (42) "Imported electricity" means electricity generated outside
9 the state of Washington with a final point of delivery within the
10 state.

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

13 (b) "Imported electricity" includes imports from linked
14 jurisdictions, but such imports shall be construed as having no
15 emissions.

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

19 (d) (~~"Imported electricity" does not~~) The department may by
20 rule include electricity imports of unspecified electricity that are
21 netted by exports of unspecified electricity to any jurisdiction not
22 covered by a linked program by the same entity within the same hour.

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

30 (f) For a multijurisdictional consumer-owned utility, "imported
31 electricity" includes electricity from facilities that contribute to
32 a common system power pool that are allocated to a consumer-owned
33 utility inside the state of Washington pursuant to a methodology
34 approved by the governing board of the consumer-owned utility.

35 (43) "Leakage" means a reduction in emissions of greenhouse gases
36 within the state that is offset by a directly attributable increase
37 in greenhouse gas emissions outside the state and outside the
38 geography of another jurisdiction with a linkage agreement with
39 Washington.

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

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

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

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

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

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

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

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

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

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

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

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

1 (i) Highly impacted communities as defined in RCW 19.405.020;
2 (ii) Communities located in census tracts that are fully or
3 partially on "Indian country" as defined in 18 U.S.C. Sec. 1151; and
4 (iii) Populations, including Native Americans or immigrant
5 populations, who may be exposed to environmental contaminants and
6 pollutants outside of the geographic area in which they reside based
7 on the populations' use of traditional or cultural foods and
8 practices, such as the use of resources, access to which is protected
9 under treaty rights in ceded areas, when those exposures in
10 conjunction with other exposures may result in disproportionately
11 greater risks, including risks of certain cancers or other adverse
12 health effects and outcomes.

13 (b) Overburdened communities identified by the department may
14 include the same communities as those identified by the department
15 through its process for identifying overburdened communities under
16 RCW 70A.02.010.

17 (55) "Person" has the same meaning as defined in RCW
18 70A.15.2200(5) (~~(h)~~) (g)(iii).

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

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

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

32 (59) "Program registry" means the data system in which covered
33 entities, opt-in entities, and general market participants are
34 registered and in which compliance instruments are recorded and
35 tracked.

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

39 (61) "Resilience" means the ability to prepare, mitigate and plan
40 for, withstand, recover from, and more successfully adapt to adverse

1 events and changing conditions, and reorganize in an equitable manner
2 that results in a new and better condition.

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

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

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

15 (65) "Tribal lands" has the same meaning as defined in RCW
16 70A.02.010.

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

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

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

29 **Sec. 2.** RCW 70A.65.080 and 2022 c 179 s 14 are each amended to
30 read as follows:

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

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

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

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

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

14 (B) For unspecified sources, is addressed by rule by the
15 department.

16 (ii) In consultation with any linked jurisdiction to the program
17 created by this chapter, by October 1, 2026, the department, in
18 consultation with the department of commerce and the utilities and
19 transportation commission, shall adopt by rule a methodology for
20 addressing imported electricity associated with a centralized
21 electricity market;

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

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

36 (ii) Where the person who is not a natural gas company and has a
37 tariff with a natural gas company to deliver to an end-use customer
38 in the state in amounts that would result in exceeding 25,000 metric
39 tons of carbon dioxide equivalent emissions if fully combusted or
40 oxidized, excluding the amounts: (A) Supplied to covered entities

1 under (a) through (d) of this subsection; and (B) the amounts
2 delivered to opt-in entities;

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

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

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

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

1 of the legislature of the name of the entity and the reason the
2 entity is no longer a covered entity.

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

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

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

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

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

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

1 (d) Carbon dioxide emissions from the combustion of biomass or
2 biofuels;

3 (e) (i) Motor vehicle fuel or special fuel that is used
4 exclusively for agricultural purposes by a farm fuel user. This
5 exemption is available only if a buyer of motor vehicle fuel or
6 special fuel provides the seller with an exemption certificate in a
7 form and manner prescribed by the department. For the purposes of
8 this subsection, "agricultural purposes" and "farm fuel user" have
9 the same meanings as provided in RCW 82.08.865.

10 (ii) The department must determine a method for expanding the
11 exemption provided under (e) (i) of this subsection to include fuels
12 used for the purpose of transporting agricultural products on public
13 highways. The department must maintain this expanded exemption for a
14 period of five years, in order to provide the agricultural sector
15 with a feasible transition period;

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

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

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

28 (9) (a) The legislature intends to promote a growing and
29 sustainable economy and to avoid leakage of emissions from
30 manufacturing to other locations. The legislature further intends to
31 see innovative new businesses locate and grow in Washington that
32 contribute to Washington's prosperity and environmental objectives.

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

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

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

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

24 **Sec. 3.** RCW 70A.65.100 and 2023 c 475 s 937 are each amended to
25 read as follows:

26 (1) Except as provided in RCW 70A.65.110, 70A.65.120, and
27 70A.65.130, the department shall distribute allowances through
28 auctions as provided in this section and in rules adopted by the
29 department to implement these sections. An allowance is not a
30 property right.

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

1 year's auctions to the environmental justice council on an annual
2 basis beginning in 2024.

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

7 (3) The department shall engage a qualified, independent
8 contractor to run the auctions. The department shall also engage a
9 qualified financial services administrator to hold the bid
10 guarantees, evaluate bid guarantees, and inform the department of the
11 value of bid guarantees once the bids are accepted.

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

16 (a) Registered entities intending to participate in an auction
17 must submit an application to participate at least 30 days prior to
18 the auction. The application must include the documentation required
19 for review and approval by the department. A registered entity is
20 eligible to participate only after receiving a notice of approval by
21 the department.

22 (b) Each registered entity that elects to participate in the
23 auction must have a different representative. Only a representative
24 with an approved auction account is authorized to access the auction
25 platform to submit an application or confirm the intent to bid for
26 the registered entity, submit bids on behalf of the registered entity
27 during the bidding window, or to download reports specific to the
28 auction.

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

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

38 (a) A covered entity or an opt-in entity may not buy more than
39 ((10)) 25 percent of the allowances offered during a single auction;

1 (b) A general market participant may not buy more than four
2 percent of the allowances offered during a single auction and may not
3 in aggregate own more than 10 percent of total allowances to be
4 issued in a calendar year;

5 (c) No registered entity may buy more than the entity's bid
6 guarantee; and

7 (d) No registered entity may buy allowances that would exceed the
8 entity's holding limit at the time of the auction.

9 (7) (a) For fiscal year 2023, upon completion and verification of
10 the auction results, the financial services administrator shall
11 notify winning bidders and transfer the auction proceeds to the state
12 treasurer for deposit as follows: (i) \$127,341,000 must first be
13 deposited into the carbon emissions reduction account created in RCW
14 70A.65.240; and (ii) the remaining auction proceeds to the climate
15 investment account created in RCW 70A.65.250 and the air quality and
16 health disparities improvement account created in RCW 70A.65.280.

17 (b) For fiscal year 2024, upon completion and verification of the
18 auction results, the financial services administrator shall notify
19 winning bidders and transfer the auction proceeds to the state
20 treasurer for deposit as follows: (i) \$356,697,000 must first be
21 deposited into the carbon emissions reduction account created in RCW
22 70A.65.240, except during fiscal year 2024, the deposit as provided
23 in this subsection (7) (b) (i) may be prorated equally across each of
24 the auctions occurring in fiscal year 2024; and (ii) the remaining
25 auction proceeds to the climate investment account created in RCW
26 70A.65.250 and the air quality and health disparities improvement
27 account created in RCW 70A.65.280, which may be prorated equally
28 across each of the auctions occurring in fiscal year 2024.

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

1 (d) For fiscal years 2026 through 2037, upon completion and
2 verification of the auction results, the financial services
3 administrator shall notify winning bidders and transfer the auction
4 proceeds to the state treasurer for deposit as follows: (i)
5 \$359,117,000 per year must first be deposited into the carbon
6 emissions reduction account created in RCW 70A.65.240; and (ii) the
7 remaining auction proceeds to the climate investment account created
8 in RCW 70A.65.250 and the air quality and health disparities
9 improvement account created in RCW 70A.65.280.

10 (e) The deposits into the carbon emissions reduction account
11 pursuant to (a) through (d) of this subsection must not exceed
12 \$5,200,000,000 over the first 16 fiscal years and any remaining
13 auction proceeds must be deposited into the climate investment
14 account created in RCW 70A.65.250 and the air quality and health
15 disparities improvement account created in RCW 70A.65.280.

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

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

35 (a) Provided false or misleading facts;

36 (b) Withheld material information that could influence a decision
37 by the department;

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

39 (d) Violated registration requirements; or

1 (e) Violated any of the rules regarding the conduct of the
2 auction.

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

5 (a) Bidding information as identified in subsection (8) of this
6 section;

7 (b) Information contained in the secure, online electronic
8 tracking system established by the department pursuant to RCW
9 70A.65.090(6);

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

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

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

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

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

37 (12) In setting the number of allowances offered at each auction,
38 the department shall consider the allowances in the marketplace due
39 to the marketing of allowances issued as required under RCW
40 70A.65.110, 70A.65.120, and 70A.65.130 in the department's

1 determination of the number of allowances to be offered at auction.
2 The department shall offer only such number of allowances at each
3 auction as will enhance the likelihood of achieving the goals of RCW
4 70A.45.020.

5 (13) The requirements or limitations set forth in this section do
6 not apply where the department determines that the requirements or
7 limitations would present an obstacle to Washington entering into a
8 linkage agreement with another jurisdiction pursuant to the
9 requirements of RCW 70A.65.210. Where the department makes such a
10 determination, the department may make changes to the cap and invest
11 program rules, chapter 173-446 WAC, through rule making to facilitate
12 Washington's ability to enter into a linkage agreement,
13 notwithstanding the otherwise applicable provisions of this section,
14 provided that the cap and invest program continues to meet the
15 requirements or limitations of RCW 70A.65.060, 70A.65.070, and
16 70A.65.080 and all other applicable sections of this act.

17 **Sec. 4.** RCW 70A.65.140 and 2022 c 181 s 11 are each amended to
18 read as follows:

19 (1) To help ensure that the price of allowances remains
20 sufficient to incentivize reductions in greenhouse gas emissions, the
21 department must establish an emissions containment reserve and set an
22 emissions containment reserve trigger price by rule. The price must
23 be set at a reasonable amount above the auction floor price and equal
24 to the level established in jurisdictions with which the department
25 has entered into a linkage agreement. If a jurisdiction with which
26 the department might enter into a linkage agreement has no emissions
27 containment trigger price, the department may suspend the trigger
28 price under this subsection. The purpose of withholding allowances in
29 the emissions containment reserve is to secure additional emissions
30 reductions.

31 (2) In the event that the emissions containment reserve trigger
32 price is met during an auction, the department must automatically
33 withhold allowances as needed. The department must convert and
34 transfer any allowances that have been withheld from auction into the
35 emissions containment reserve account.

36 (3) Emissions containment reserve allowances may only be withheld
37 from an auction if the demand for allowances would result in an
38 auction clearing price that is less than the emissions containment

1 reserve trigger price prior to the withholding from the auction of
2 any emissions containment reserve allowances.

3 (4) The department shall transfer allowances to the emissions
4 containment reserve in the following situations:

5 (a) No less than two percent of the total number of allowances
6 available from the allowance budgets for calendar years 2023 through
7 2026;

8 (b) When allowances are unsold in auctions under RCW 70A.65.100;

9 (c) When facilities curtail or close consistent with RCW
10 70A.65.110(6); or

11 (d) When facilities fall below the emissions threshold. The
12 amount of allowances withdrawn from the program budget must be
13 proportionate to the amount of emissions such a facility was
14 previously using.

15 (5)(a) Allowances must be distributed from the emissions
16 containment reserve by auction when new covered and opt-in entities
17 enter the program.

18 (b) Allowances equal to the greenhouse gas emissions resulting
19 from a new or expanded emissions-intensive, trade-exposed facility
20 with emissions in excess of 25,000 metric tons per year during the
21 first applicable compliance period will be provided to the facility
22 from the reserve created in this section and must be retired by the
23 facility. In subsequent compliance periods, the facility will be
24 subject to the regulatory cap and related requirements under this
25 chapter.

26 (6) The requirements or limitations set forth in this section do
27 not apply where the department determines that the requirements or
28 limitations would present an obstacle to Washington entering into a
29 linkage agreement with another jurisdiction pursuant to the
30 requirements of RCW 70A.65.210. Where the department makes such a
31 determination, the department may make changes to the cap and invest
32 program rules, chapter 173-446 WAC, through rule making to facilitate
33 Washington's ability to enter into a linkage agreement,
34 notwithstanding the otherwise applicable provisions of this section,
35 provided that the cap and invest program continues to meet the
36 requirements or limitations of RCW 70A.65.060, 70A.65.070, and
37 70A.65.080 and all other applicable sections of this act.

38 **Sec. 5.** RCW 70A.65.150 and 2022 c 181 s 6 are each amended to
39 read as follows:

1 (1) To help minimize allowance price volatility in the auction,
2 the department shall adopt by rule an auction floor price and a
3 schedule for the floor price to increase by a predetermined amount
4 every year. The department may not sell allowances at bids lower than
5 the auction floor price. The department's rules must specify holding
6 limits that determine the maximum number of allowances that may be
7 held for use or trade by a registered entity at any one time. The
8 department shall also establish a reserve auction floor price to
9 limit extraordinary prices and to determine when to offer allowances
10 through the allowance price containment reserve auctions authorized
11 under this section.

12 (2) For calendar years 2023 through 2026, the department must
13 place no less than two percent of the total number of allowances
14 available from the allowance budgets for those years in an allowance
15 price containment reserve. The reserve must be designed as a
16 mechanism to assist in containing compliance costs for covered and
17 opt-in entities in the event of unanticipated high costs for
18 compliance instruments.

19 (3) (a) The department shall adopt rules for holding auctions of
20 allowances from the price containment reserve when the settlement
21 prices in the preceding auction exceed the adopted reserve auction
22 floor price. The auction must be separate from auctions of other
23 allowances.

24 (b) Allowances must also be distributed from the allowance price
25 containment reserve by auction when new covered and opt-in entities
26 enter the program and allowances in the emissions containment reserve
27 under RCW 70A.65.140(5) are exhausted.

28 (4) Only covered and opt-in entities may participate in the
29 auction of allowances from the allowance price containment reserve.

30 (5) ~~((The))~~ Except as provided in (a) and (b) of this subsection,
31 the process for reserve auctions is the same as the process provided
32 in RCW 70A.65.100 and the proceeds from reserve auctions must be
33 treated the same.

34 (a) The department must transmit to the environmental justice
35 council established in RCW 70A.02.110 an auction notice at least 30
36 days prior to each reserve auction.

37 (b) Registered entities intending to participate in a reserve
38 auction must submit an application to participate in accordance with
39 the deadline adopted by the department by rule.

40 (6) The department shall by rule:

1 (a) Set the reserve auction floor price in advance of the reserve
2 auction. The department may choose to establish multiple price tiers
3 for the allowances from the reserve;

4 (b) Establish the requirements and schedule for the allowance
5 price containment reserve auctions; and

6 (c) Establish the amount of allowances to be placed in the
7 allowance price containment reserve after the first compliance period
8 ending in 2026.

9 (7) The requirements or limitations set forth in this section do
10 not apply where the department determines that the requirements or
11 limitations would present an obstacle to Washington entering into a
12 linkage agreement with another jurisdiction pursuant to the
13 requirements of RCW 70A.65.210. Where the department makes such a
14 determination, the department may make changes to the cap and invest
15 program rules, chapter 173-446 WAC, through rule making to facilitate
16 Washington's ability to enter into a linkage agreement,
17 notwithstanding the otherwise applicable provisions of this section,
18 provided that the cap and invest program continues to meet the
19 requirements or limitations of RCW 70A.65.060, 70A.65.070, and
20 70A.65.080 and all other applicable sections of this act.

21 **Sec. 6.** RCW 70A.65.160 and 2022 c 181 s 7 are each amended to
22 read as follows:

23 (1) The department shall establish a price ceiling to provide
24 cost protection for covered entities obligated to comply with this
25 chapter. The ceiling must be set at a level sufficient to facilitate
26 investments to achieve further emission reductions beyond those
27 enabled by the price ceiling, with the intent that investments
28 accelerate the state's achievement of greenhouse gas limits
29 established under RCW 70A.45.020. The price ceiling must increase
30 annually in proportion to the reserve auction floor price established
31 in RCW 70A.65.150(1).

32 (2) In the event that no allowances remain in the allowance price
33 containment reserve, the department must issue the number of price
34 ceiling units for sale sufficient to provide cost protection for
35 covered entities as established under subsection (1) of this section.
36 Purchases must be limited to entities that do not have sufficient
37 eligible compliance instruments in their holding and compliance
38 accounts for the current compliance period and these entities may
39 only purchase what they need to meet their compliance obligation for

1 the current compliance period. Price ceiling units may not be sold or
2 transferred and must be retired for compliance in the current
3 compliance period. A price ceiling unit is not a property right.

4 (3) The price ceiling unit emission reduction investment account
5 is created in the state treasury. All receipts from the sale of price
6 ceiling units must be deposited in the account. Moneys in the account
7 may only be spent after appropriation. Moneys in the account must be
8 expended to achieve emissions reductions on at least a metric ton for
9 metric ton basis that are real, permanent, quantifiable, verifiable,
10 enforceable by the state, and in addition to any greenhouse gas
11 emission reduction otherwise required by law or regulation and any
12 other greenhouse gas emission reduction that otherwise would occur.

13 (4) The requirements or limitations set forth in this section do
14 not apply where the department determines that the requirements or
15 limitations would present an obstacle to Washington entering into a
16 linkage agreement with another jurisdiction pursuant to the
17 requirements of RCW 70A.65.210. Where the department makes such a
18 determination, the department may make changes to the cap and invest
19 program rules, chapter 173-446 WAC, through rule making to facilitate
20 Washington's ability to enter into a linkage agreement,
21 notwithstanding the otherwise applicable provisions of this section,
22 provided that the cap and invest program continues to meet the
23 requirements or limitations of RCW 70A.65.060, 70A.65.070, and
24 70A.65.080 and all other applicable sections of this act.

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

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

34 (2) Offset projects must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (5) Any offset credits used must:

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

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

6 (c) Be consistent with subsection (2) of this section and offset
7 protocols adopted by the department.

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

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

13 (8) The requirements or limitations set forth in this section,
14 except for those in subsection (5)(a) of this section, do not apply
15 where the department determines that the requirements or limitations
16 would present an obstacle to Washington entering into a linkage
17 agreement with another jurisdiction pursuant to the requirements of
18 RCW 70A.65.210. Where the department makes such a determination, the
19 department may make changes to the cap and invest program rules,
20 chapter 173-446 WAC, through rule making to facilitate Washington's
21 ability to enter into a linkage agreement, notwithstanding the
22 otherwise applicable provisions of this section, provided that the
23 cap and invest program continues to the meet the requirements or
24 limitations of RCW 70A.65.060, 70A.65.070, and 70A.65.080 and all
25 other applicable sections of this act.

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

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

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

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

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

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

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

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

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

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

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

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

36 (i) Provided in this chapter;

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

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

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

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

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

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

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

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

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

34 **Sec. 9.** RCW 70A.65.300 and 2021 c 316 s 46 are each amended to
35 read as follows:

36 (1) The department shall prepare, post on the department website,
37 and submit to the appropriate committees of the legislature an annual
38 report that identifies all distributions of moneys from the accounts
39 created in RCW 70A.65.240 through 70A.65.280.

1 (2) The report must identify, at a minimum, the recipient of the
2 funding, the amount of the funding, the purpose of the funding, the
3 actual end result or use of the funding, whether the project that
4 received the funding produced any verifiable reduction in greenhouse
5 gas emissions or other long-term impact to emissions, and if so, the
6 quantity of reduced greenhouse gas emissions, the cost per carbon
7 dioxide equivalent metric ton of reduced greenhouse gas emissions,
8 and a comparison to other greenhouse gas emissions reduction projects
9 in order to facilitate the development of cost-benefit ratios for
10 greenhouse gas emissions reduction projects.

11 (3) The department shall require by rule that recipients of funds
12 from the accounts created in RCW 70A.65.240 through 70A.65.280 report
13 to the department, in a form and manner prescribed by the department,
14 the information required for the department to carry out the
15 department's duties established in this section.

16 (4) The department shall update its website with the information
17 described in subsection (2) of this section as appropriate but no
18 less frequently than once per calendar year.

19 (5) The department shall submit its report to the appropriate
20 committees of the legislature with the information described in
21 subsection (2) of this section no later than (~~September 30~~)
22 November 30th of each year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (ii) Each annual report must include emissions data for the
40 preceding calendar year and must be submitted to the department by

1 March 31st of the year in which the report is due, except for an
2 electric power entity, which must submit its report by June 1st of
3 the year in which the report is due.

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

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

17 (iii) The department must establish greenhouse gas emission
18 reporting methodologies for persons who are required to report under
19 this section.

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

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

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

28 ~~(B) Needed to ensure consistency with emissions reporting~~
29 ~~requirements for jurisdictions with which Washington has entered a~~
30 ~~linkage agreement.~~

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

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

36 ~~((e))~~ (d) The fee provisions in subsection (2) of this section
37 apply to reporting of emissions of greenhouse gases. Persons required
38 to report under (a) of this subsection who fail to report or pay the
39 fee required in subsection (2) of this section are subject to
40 enforcement penalties under this chapter. The department shall

1 enforce the reporting rule requirements. When a person that holds a
2 compliance obligation under RCW 70A.65.080 fails to submit an
3 emissions data report or fails to obtain a positive emissions data
4 verification statement in accordance with ~~((g))~~ (f)(ii) of this
5 subsection, the department may assign an emissions level for that
6 person.

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

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

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

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

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

1 dioxide that produce, import, or deliver a quantity of carbon dioxide
2 in Washington that, if released, would result in emissions equivalent
3 to or higher than the threshold established under (a) of this
4 subsection.

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

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

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

--- END ---