
HOUSE BILL 1682

State of Washington

67th Legislature

2022 Regular Session

By Representatives Fitzgibbon, Ramel, Duerr, and Berry; by request of Department of Ecology

Prefiled 12/21/21.

1 AN ACT Relating to a compliance pathway specific to emissions-
2 intensive, trade-exposed businesses for achieving their proportionate
3 share of the state's emissions reduction limits through 2050; and
4 amending RCW 70A.65.110, 70A.65.230, and 70A.65.260.

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

6 **Sec. 1.** RCW 70A.65.110 and 2021 c 316 s 13 are each amended to
7 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 expanded to include years prior to 2015. For each year during the
2 first four-year compliance period that begins January 1, 2023, these
3 facilities must be awarded no cost allowances equal to 100 percent of
4 the facility's mass-based baseline. For each year during the second
5 four-year compliance period that begins January 1, 2027, these
6 facilities must be awarded no cost allowances equal to 97 percent of
7 the facility's mass-based baseline. For each year during the third
8 compliance period that begins January 1, 2031, these facilities must
9 be awarded no cost allowances equal to 94 percent of the facility's
10 mass-based baseline. For the year beginning January 1, 2035, these
11 facilities must be awarded no cost allowances equal to 88 percent of
12 the facility's mass-based baseline. For each year beginning January
13 1, 2036, until January 1, 2050, these facilities must be awarded no
14 cost allowances that must be six percent below the percentage of no
15 cost allowances awarded during the preceding year. Except as provided
16 in (b)(iii) of this subsection, if a facility elects to use a mass-
17 based baseline, it may not later convert to a carbon intensity
18 benchmark during the first three compliance periods.

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

34 (c)(i) By September 15, 2022, each emissions-intensive, trade-
35 exposed facility shall submit its carbon intensity baseline for the
36 first compliance period to the department. The carbon intensity
37 baseline for the first compliance period must use data from
38 2015-2019, unless the emissions-intensive, trade-exposed facility can
39 demonstrate that there have been abnormal periods of operation that

1 materially impacted the facility and the baseline period should be
2 expanded to include years prior to 2015.

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

6 (d) During the first four-year compliance period that begins
7 January 1, 2023, each emissions-intensive, trade-exposed facility
8 must record its facility-specific carbon intensity baseline based on
9 its actual production.

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

14 (ii) For the third four-year compliance period that begins
15 January 1, 2031, the third period benchmark for each emissions-
16 intensive, trade-exposed facility is three percent lower than the
17 second period benchmark.

18 (iii) For the year beginning January 1, 2035, the benchmark for
19 each emissions-intensive, trade-exposed facility is 88 percent of the
20 facility's carbon intensity baseline. For each year beginning January
21 1, 2036, until January 1, 2050, the benchmark for each emissions-
22 intensive, trade-exposed facility is six percent below the percentage
23 of no cost allowances awarded during the preceding year.

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

1 adjustment to the third or subsequent compliance periods only. The
2 department may grant an application to make an upward adjustment
3 based on a determination that the facility already employs best
4 available technology and other factors including, but not limited to:

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

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

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

19 (g) Any adjustment granted pursuant to (f) of this subsection may
20 not:

21 (i) Increase the annual allowance budget for the program under
22 RCW 70A.65.070 for any calendar year in the compliance period for
23 which the adjustment was granted or for any future calendar year;

24 (ii) Reduce the progressively equivalent reductions year over
25 year in the annual allowance budgets under RCW 70A.65.070; or

26 (iii) Prevent the achievement of the emissions limits established
27 in RCW 70A.45.020, as those limits apply to this chapter.

28 ~~(4) ((a) By December 1, 2026, the department shall provide a~~
29 ~~report to the appropriate committees of the senate and house of~~
30 ~~representatives that describes alternative methods for determining~~
31 ~~the amount and a schedule of allowances to be provided to facilities~~
32 ~~owned or operated by each covered entity designated as an emissions-~~
33 ~~intensive, trade-exposed facility from January 1, 2035, through~~
34 ~~January 1, 2050. The report must include a review of global best~~
35 ~~practices in ensuring against emissions leakage and economic harm to~~
36 ~~businesses in carbon pricing programs and describe alternative~~
37 ~~methods of emissions performance benchmarking and mass-based~~
38 ~~allocation of no cost allowances. At a minimum, the department must~~
39 ~~evaluate benchmarks based on both carbon intensity and mass, as well~~
40 ~~as the use of best available technology as a method for compliance.~~

1 ~~In developing the report, the department shall form an advisory group~~
2 ~~that includes representatives of the manufacturers listed in~~
3 ~~subsection (1) of this section.~~

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

8 ~~(5))~~ If the actual emissions of an emissions-intensive, trade-
9 exposed facility exceed the facility's no cost allowances assigned
10 for that compliance period, it must acquire additional compliance
11 instruments such that the total compliance instruments transferred to
12 its compliance account consistent with chapter 316, Laws of 2021
13 equals emissions during the compliance period. An emissions-
14 intensive, trade-exposed facility must be allowed to bank unused
15 allowances, including for future sale and investment in best
16 available technology when economically feasible. The department shall
17 limit the use of offset credits for compliance by an emissions-
18 intensive, trade-exposed facility, such that the quantity of no cost
19 allowances plus the provision of offset credits does not exceed 100
20 percent of the facility's total compliance obligation over a
21 compliance period.

22 ~~((+6))~~ (5) The department must withhold or withdraw the relevant
23 share of allowances allocated to a covered entity under this section
24 in the event that the covered entity ceases production in the state
25 and becomes a closed facility. In the event an entity curtails all
26 production and becomes a curtailed facility, the allowances are
27 retained but cannot be traded, sold, or transferred and are still
28 subject to the emission reduction requirements specified in this
29 section. An owner or operator of a curtailed facility may transfer
30 the allowances to a new operator of the facility that will be
31 operated under the same North American industry classification system
32 codes. If the curtailed facility becomes a closed facility, then all
33 unused allowances will be transferred to the emissions containment
34 reserve. A curtailed facility is not eligible to receive free
35 allowances during a period of curtailment. Any allowances withheld or
36 withdrawn under this subsection must be transferred to the emissions
37 containment reserve.

38 ~~((+7))~~ (6) An owner or operator of more than one facility
39 receiving no cost allowances under this section may transfer
40 allowances among the eligible facilities.

1 ~~((8))~~ (7) Rules adopted by the department under this section
2 must include protocols for allocating allowances at no cost to an
3 eligible facility built after July 25, 2021. The protocols must
4 include consideration of the products and criteria pollutants being
5 produced by the facility, as well as the local environmental and
6 health impacts associated with the facility. For a facility that is
7 built on tribal lands or is determined by the department to impact
8 tribal lands and resources, the protocols must be developed in
9 consultation with the affected tribal nations.

10 (8) The no cost allowance amounts in subsection (3)(b)(ii) of
11 this section concerning each year beginning January 1, 2035, until
12 January 1, 2050, and in subsection (3)(e)(iii) of this section, may
13 be modified by rule as adopted by the department if necessary to
14 ensure achievement of the proportionate share of statewide emissions
15 limits established in RCW 70A.45.020 or to provide for alignment with
16 other jurisdictions to which the state has linked.

17 **Sec. 2.** RCW 70A.65.230 and 2021 c 316 s 26 are each amended to
18 read as follows:

19 (1) It is the intent of the legislature that each year the total
20 investments made through the carbon emissions reduction account
21 created in RCW 70A.65.240, the climate commitment account created in
22 RCW 70A.65.260, the natural climate solutions account created in RCW
23 70A.65.270, and the air quality and health disparities improvement
24 account created in RCW 70A.65.280, achieve the following:

25 (a) A minimum of not less than 35 percent and a goal of 40
26 percent of total investments that provide direct and meaningful
27 benefits to vulnerable populations within the boundaries of
28 overburdened communities identified under chapter 314, Laws of 2021;
29 and

30 (b) In addition to the requirements of (a) of this subsection, a
31 minimum of not less than 10 percent of total investments that are
32 used for programs, activities, or projects formally supported by a
33 resolution of an Indian tribe, with priority given to otherwise
34 qualifying projects directly administered or proposed by an Indian
35 tribe. An investment that meets the requirements of both this
36 subsection (1)(b) and (a) of this subsection may count toward the
37 minimum percentage targets for both subsections.

38 (2) The expenditure of moneys under this chapter must be
39 consistent with applicable federal, state, and local laws, and treaty

1 rights including, but not limited to, prohibitions on uses of funds
2 imposed by the state Constitution.

3 (3) For the purposes of this section, "benefits" means
4 investments or activities that:

5 (a) Reduce vulnerable population characteristics, environmental
6 burdens, or associated risks that contribute significantly to the
7 cumulative impact designation of highly impacted communities;

8 (b) Meaningfully protect an overburdened community from, or
9 support community response to, the impacts of air pollution or
10 climate change; or

11 (c) Meet a community need identified by vulnerable members of the
12 community that is consistent with the intent of this chapter.

13 (4) The state must develop a process by which to evaluate the
14 impacts of the investments made under this chapter, work across state
15 agencies to develop and track priorities across the different
16 eligible funding categories, and work with the environmental justice
17 council pursuant to RCW 70A.65.040.

18 ~~((5) No expenditures may be made from the carbon emissions
19 reduction account created in RCW 70A.65.240, the climate investment
20 account created in RCW 70A.65.250, or the air quality and health
21 disparities improvement account created in RCW 70A.65.280 if, by
22 April 1, 2023, the legislature has not considered and enacted request
23 legislation brought forth by the department under RCW 70A.65.060 that
24 outlines a compliance pathway specific to emissions-intensive, trade-
25 exposed businesses for achieving their proportionate share of the
26 state's emissions reduction limits through 2050.))~~

27 **Sec. 3.** RCW 70A.65.260 and 2021 c 316 s 29 are each amended to
28 read as follows:

29 (1) The climate commitment account is created in the state
30 treasury. The account must receive moneys distributed to the account
31 from the climate investment account created in RCW 70A.65.250. Moneys
32 in the account may be spent only after appropriation. Projects,
33 activities, and programs eligible for funding from the account must
34 be physically located in Washington state and include, but are not
35 limited to, the following:

36 (a) Implementing the working families tax rebate in RCW
37 82.08.0206;

38 (b) Supplementing the growth management planning and
39 environmental review fund established in RCW 36.70A.490 for the

1 purpose of making grants or loans to local governments for the
2 purposes set forth in RCW 43.21C.240, 43.21C.031, 36.70A.500, and
3 36.70A.600, for costs associated with RCW 36.70A.610, and to cover
4 costs associated with the adoption of optional elements of
5 comprehensive plans consistent with RCW 43.21C.420;

6 (c) Programs, activities, or projects that reduce and mitigate
7 impacts from greenhouse gases and copollutants in overburdened
8 communities, including strengthening the air quality monitoring
9 network to measure, track, and better understand air pollution levels
10 and trends and to inform the analysis, monitoring, and pollution
11 reduction measures required in RCW 70A.65.020;

12 (d) Programs, activities, or projects that deploy renewable
13 energy resources, such as solar and wind power, and projects to
14 deploy distributed generation, energy storage, demand-side
15 technologies and strategies, and other grid modernization projects;

16 (e) Programs, activities, or projects that increase the energy
17 efficiency or reduce greenhouse gas emissions of industrial
18 facilities including, but not limited to, proposals to implement
19 combined heat and power, district energy, or on-site renewables, such
20 as solar and wind power, to upgrade the energy efficiency of existing
21 equipment, to reduce process emissions, and to switch to less
22 emissions intensive fuel sources;

23 (f) Programs, activities, or projects that achieve energy
24 efficiency or emissions reductions in the agricultural sector
25 including:

26 (i) Fertilizer management;

27 (ii) Soil management;

28 (iii) Bioenergy;

29 (iv) Biofuels;

30 (v) Grants, rebates, and other financial incentives for
31 agricultural harvesting equipment, heavy-duty trucks, agricultural
32 pump engines, tractors, and other equipment used in agricultural
33 operations;

34 (vi) Grants, loans, or any financial incentives to food
35 processors to implement projects that reduce greenhouse gas
36 emissions;

37 (vii) Renewable energy projects;

38 (viii) Farmworker housing weatherization programs;

39 (ix) Dairy digester research and development;

40 (x) Alternative manure management; and

1 (xi) Eligible fund uses under RCW 89.08.615;

2 (g) Programs, activities, or projects that increase energy
3 efficiency in new and existing buildings, or that promote low carbon
4 architecture, including use of newly emerging alternative building
5 materials that result in a lower carbon footprint in the built
6 environment over the life cycle of the building and component
7 building materials;

8 (h) Programs, activities, or projects that promote the
9 electrification and decarbonization of new and existing buildings,
10 including residential, commercial, and industrial buildings;

11 (i) Programs, activities, or projects that improve energy
12 efficiency, including district energy, and investments in market
13 transformation of high efficiency electric appliances and equipment
14 for space and water heating;

15 (j) Clean energy transition and assistance programs, activities,
16 or projects that assist affected workers or people with lower incomes
17 during the transition to a clean energy economy, or grow and expand
18 clean manufacturing capacity in communities across Washington state
19 including, but not limited to:

20 (i) Programs, activities, or projects that directly improve
21 energy affordability and reduce the energy burden of people with
22 lower incomes, as well as the higher transportation fuel burden of
23 rural residents, such as bill assistance, energy efficiency, and
24 weatherization programs;

25 (ii) Community renewable energy projects that allow qualifying
26 participants to own or receive the benefits of those projects at
27 reduced or no cost;

28 (iii) Programs, activities, or other worker-support projects for
29 bargaining unit and nonsupervisory fossil fuel workers who are
30 affected by the transition away from fossil fuels to a clean energy
31 economy. Worker support may include, but is not limited to: (A) Full
32 wage replacement, health benefits, and pension contributions for
33 every worker within five years of retirement; (B) full wage
34 replacement, health benefits, and pension contributions for every
35 worker with at least one year of service for each year of service up
36 to five years of service; (C) wage insurance for up to five years for
37 workers reemployed who have more than five years of service; (D) up
38 to two years of retraining costs, including tuition and related
39 costs, based on in-state community and technical college costs; (E)
40 peer counseling services during transition; (F) employment placement

1 services, prioritizing employment in the clean energy sector; and (G)
2 relocation expenses;

3 (iv) Direct investment in workforce development, via technical
4 education, community college, institutions of higher education,
5 apprenticeships, and other programs including, but not limited to:

6 (A) Initiatives to develop a forest health workforce established
7 under RCW 76.04.521; and

8 (B) Initiatives to develop new education programs, emerging
9 fields, or jobs pertaining to the clean energy economy;

10 (v) Transportation, municipal service delivery, and technology
11 investments that increase a community's capacity for clean
12 manufacturing, with an emphasis on communities in greatest need of
13 job creation and economic development and potential for commute
14 reduction;

15 (k) Programs, activities, or projects that reduce emissions from
16 landfills and waste-to-energy facilities through diversion of organic
17 materials, methane capture or conversion strategies, or other means;

18 (l) Carbon dioxide removal projects, programs, and activities;
19 (~~and~~)

20 (m) Activities to support efforts to mitigate and adapt to the
21 effects of climate change affecting Indian tribes, including capital
22 investments in support of the relocation of Indian tribes located in
23 areas at heightened risk due to anticipated sea level rise, flooding,
24 or other disturbances caused by climate change. The legislature
25 intends to dedicate at least \$50,000,000 per biennium from the
26 account for purposes of this subsection; and

27 (n) Programs, activities, or projects that reduce covered
28 emissions of facilities identified as emissions-intensive, trade-
29 exposed industries pursuant to RCW 70A.65.110.

30 (2) Moneys in the account may not be used for projects or
31 activities that would violate tribal treaty rights or result in
32 significant long-term damage to critical habitat or ecological
33 functions. Investments from this account must result in long-term
34 environmental benefits and increased resilience to the impacts of
35 climate change.

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