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5126-S2.E AMH APP LIPS 151

By Representative Tharinger

**E2SSB 5126** - H COMM AMD TO APP COMM AMD (H-1610.1/21)

By Committee on Appropriations

1 On page 34, beginning on line 3 of the striking amendment,  
2 after "For" strike all material through "period" on page 39, line 5  
3 and insert "the first compliance period beginning in January 1,  
4 2023, the annual allocation of no cost allowances for direct  
5 distribution to a facility identified as emissions-intensive and  
6 trade-exposed must be equal to the facility's baseline carbon  
7 intensity established using data from 2015 through 2019, or other  
8 data as allowed under this section, multiplied by the facility's  
9 actual production for each calendar year during the compliance  
10 period. For facilities using the mass-based approach, the allocation  
11 of no cost allowances shall be equal to the facility's mass-based  
12 baseline using data from 2015 through 2019, or other data as allowed  
13 under this section.

14 (b) For the second compliance period, beginning in January,  
15 2027, and in each subsequent compliance period, the annual  
16 allocation of no cost allowances established in subsection (a) shall  
17 be adjusted according to the benchmark reduction schedules  
18 established in subsections (b)(ii) and (iii), and (e) of this  
19 subsection (3) multiplied by the facility's actual production during  
20 the period. The department shall adjust the no cost allocation of  
21 allowances and credits to an emissions-intensive and trade-exposed  
22 facility to avoid duplication with any no cost allowances  
23 transferred pursuant to sections 14 and 15 of this act, if applicable.

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

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

24 (iii) A facility with a North American industry classification  
25 system code beginning with 3364 that is utilizing a mass-based  
26 baseline in (b) (ii) of this subsection (3) must receive an  
27 additional no cost allowance allocation under this section in order  
28 to accommodate an increase in production that increases its  
29 emissions above the baseline on a basis equivalent in principle to  
30 those awarded to entities utilizing a carbon intensity benchmark  
31 pursuant to this subsection (3) (b). The department shall establish  
32 methods to award, for any annual period, additional no cost  
33 allowance allocations under this section and, if appropriate based  
34 on projected production, to achieve a similar ongoing result through

1 the adjustment of the facility's mass-based baseline. An eligible  
2 facility under this subsection that has elected to use a mass-based  
3 baseline may not convert to a carbon intensity benchmark until the  
4 next compliance period.

5 (c) (i) By September 15, 2022, each emissions-intensive, trade-  
6 exposed facility shall submit its carbon intensity baseline for the  
7 first compliance period to the department. The carbon intensity  
8 baseline for the first compliance period must use data from  
9 2015-2019, unless the emissions-intensive, trade-exposed facility  
10 can demonstrate that there have been abnormal periods of operation  
11 that materially impacted the facility and the baseline period should  
12 be expanded to include years prior to 2015.

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

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

20 (e) (i) For the second four-year compliance period that begins  
21 January 1, 2027, the second period benchmark for each emissions-  
22 intensive, trade-exposed facility is three percent below the first  
23 period baseline specified in subsections (a), (b) and (c) of this  
24 subsection (3).

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

29 (f) (i) Prior to the beginning of either the second, or third, or  
30 subsequent compliance periods, an emissions-intensive, trade-exposed  
31 facility may make an upward adjustment in the next compliance  
32 period's benchmark based on a demonstration to the department that  
33 additional reductions in carbon intensity or mass emissions are not  
34 technically or economically feasible. An emissions-intensive, trade-

1 exposed facility may base its upward adjustment in the next  
2 compliance period on the facility's best available technology  
3 analysis. The department shall by rule provide for emissions-  
4 intensive, trade-exposed facilities to apply to the department for  
5 an adjustment to the allocation for direct distribution of no cost  
6 allowances based on its facility-specific carbon intensity benchmark  
7 or mass emissions baseline. The department shall make adjustments  
8 based on:

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

15 (B) Significant changes to an emissions-intensive, trade-exposed  
16 facility's external competitive environment that result in a  
17 significant increase in leakage risk; or

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

23 (ii) For the purpose of this section, "best available  
24 technology" means a greenhouse gas emissions limitation determined  
25 by the department on a case-by-case basis taking into account the  
26 fuels, processes, equipment, and technology used by facilities to  
27 produce goods of comparable type, quantity, and quality, that will  
28 most effectively reduce those greenhouse gas emissions for which the  
29 source has a compliance obligation. Best available technology must  
30 be technically feasible, commercially available, economically  
31 viable, not create excessive environmental impacts, and be compliant  
32 with all applicable laws while not changing the characteristics of  
33 the good being manufactured.

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

17 (b) If the legislature does not adopt a compliance obligation  
18 for emissions-intensive, trade-exposed facilities by December 1,  
19 2027, those facilities must continue to receive allowances as  
20 provided in the third four-year compliance period that begins  
21 January 1, 2031.

22 (5) If the actual emissions of an emissions-intensive, trade-  
23 exposed facility exceed the facility's no cost allowances assigned  
24 for that compliance period, it must be allowed to bank all acquired  
25 allowances for future investment in best available technology when  
26 economically feasible. The department shall limit the use of offset  
27 credits for compliance by an emissions-intensive, trade-exposed  
28 facility, such that the quantity of no cost allowances plus the  
29 provision of offset credits does not exceed 100 percent of the  
30 facility's total compliance obligation over a compliance period.

31 (6) The department must withhold or withdraw the relevant share  
32 of allowances allocated to a covered entity under this section in  
33 the event that the covered entity ceases production in the state and  
34 becomes a closed facility. In the event an entity curtails all

1 production and becomes a curtailed facility, the allowances are  
2 retained but cannot be traded, sold, or transferred and are still  
3 subject to the emission reduction requirements specified in this  
4 section. An owner or operator of a curtailed facility may transfer  
5 the allowances to a new operator of the facility that will be  
6 operated under the same North American industry classification  
7 system codes. If the curtailed facility becomes a closed facility,  
8 then all unused allowances will be transferred to the emissions  
9 containment reserve. A curtailed facility is not eligible to receive  
10 free allowances during a period of curtailment. Any allowances  
11 withheld or withdrawn under this subsection must be transferred to  
12 the emissions containment reserve.

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

16 (8) Rules adopted by the department under this section must  
17 include protocols for allocating allowances at no cost to an  
18 eligible facility built after the effective date of this section.  
19 The protocols must include consideration of the products being  
20 produced by the facility, as well as the local environmental and  
21 health impacts associated with the facility"

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EFFECT: Amends provisions relating to the compliance obligations of emissions-intensive and trade-exposed industries (EITEs), including by:

(1) Specifying that for the first compliance period, the annual allocation to EITEs is equal to the facility's baseline carbon intensity established using data from 2015 through 2019;

(2) Specifying that beginning with the second compliance period beginning in 2027, the annual allocation of no cost allowances must be adjusted according to a benchmark reduction schedule, taking into account the facility's actual production levels;

(3) Requiring the baseline emissions for both the carbon intensity and the mass-based baseline compliance options to use data from 2015 through 2019, unless abnormal periods of operation materially

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impacted a facility, in which case the baseline should be expanded to include years prior to 2015;

(4) Eliminating the requirement that the Department of Ecology (Ecology) convene a work group of EITEs by 2022 that recommends procedures for calculating carbon intensity benchmarks;

5) Eliminating provisions addressing the compliance obligation of EITEs that begin on January 1, 2035;

(6) Moving up the deadline for Ecology to provide a report to the Legislature on alternative methods and allowance schedules for EITEs to be due by December 1, 2026, and specifies that the report must cover compliance obligations from 2035 through 2050;

(7) Specifying that if the Legislature does not adopt EITE compliance obligations for EITEs by December 1, 2027, EITEs must receive allowances for the third compliance period beginning in 2031;

(8) Requiring that EITEs be allowed to bank acquired allowances for future investment in best available technology when their emissions exceed no-cost allowance assignments; and

(9) Eliminating the Department of Commerce report to the Legislature in 2028 that reviews EITE compliance outcomes during the first compliance period.

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