HB 2020-69
(LC 894)
4/17/19 (MAM/ps)

Requested by Senator BENTZ

PROPOSED AMENDMENTS TO
HOUSE BILL 2020

On page 11 of the printed bill, line 18, delete "section 18" and insert "sections 18 to 18d".

In line 25, delete "section 18 (6) and (7)" and insert "sections 18a (2) and 18c (6)".

On page 13, delete lines 5 through 45 and delete pages 14 and 15.

On page 16, delete lines 1 through 22 and insert:

"SECTION 18. As used in sections 18 to 18d of this 2019 Act:

"(1) 'Best available technology' means the technology that will most efficiently reduce the greenhouse gas emissions associated with the manufacture of a good, without changing the characteristics of the good being manufactured, that is technically feasible, commercially available, economically viable and compliant with all applicable laws.

"(2) 'EITE entity' means a covered entity or an opt-in entity that is engaged in the manufacture of goods through one or more emissions-intensive, trade-exposed processes, as further designated by the Carbon Policy Office pursuant to section 18a of this 2019 Act.

"SECTION 18a. Designation of covered entities and opt-in entities engaged in emissions-intensive, trade-exposed processes as EITE entities. (1) The Carbon Policy Office shall designate a covered entity or opt-in entity as an EITE entity, if the covered entity or opt-in entity is a person in control of an air contamination source and is engaged,

as of the operative date of this section, in the manufacture of goods through one or more of the following emissions-intensive, trade-exposed processes, as identified by industry group and code in the North American Industry Classification System:

"(a) Sawmills and Wood Preservation, code 3211.

"(b) Veneer, Plywood, and Engineered Wood Product Manufacturing, code 3212.

"(c) Cement and Concrete Product Manufacturing, code 3273.

"(d) Fruit and Vegetable Preserving and Specialty Food Manufacturing, code 3114.

"(e) Iron and Steel Mills and Ferroalloy Manufacturing, code 3311.

"(f) Basic Chemical Manufacturing, code 3251.

"(g) Plastics Product Manufacturing, code 3261.

"(h) Other Nonmetallic Mineral Product Manufacturing, code 3279.

"(i) Glass and Glass Product Manufacturing, code 3272.

"(j) Lime and Gypsum Product Manufacturing, code 3274.

"(k) Pulp, Paper, and Paperboard Mills, code 3221.

"(L) Semiconductor and Other Electronic Component Manufacturing, code 3344.

"(m) Foundries, code 3315.

"(2)(a) The Director of the Carbon Policy Office shall adopt by rule a process for designating as an EITE entity a covered entity or opt-in entity that:

"(A) Begins manufacturing a good or goods in this state after the operative date of this section through an emissions-intensive, trade-exposed process listed in subsection (1) of this section; or

"(B) Manufactures a good or goods through a process not listed in subsection (1) of this section that the director, by rule, identifies as an emissions-intensive, trade-exposed process.

"(b) The director shall hire or contract with a third-party organ-

ization to assist the office in gathering data and conducting analyses as necessary to assist the director in carrying out the process required by this subsection.

"(c) Rules adopted under this subsection may allow for the office to assign a good manufactured by a covered entity or opt-in entity designated as an EITE entity pursuant to this subsection a temporary benchmark, consistent with the processes for calculating benchmarks under section 18c of this 2019 Act, and to adjust the temporary benchmark after the close of the first compliance period for which the EITE entity must fulfill a compliance obligation.

"(3) A covered entity or opt-in entity that is a fossil fuel distribution and storage facility or infrastructure, or an electric generating unit, may not be designated as an EITE entity and may not receive allowances at no cost under section 18c of this 2019 Act.

"SECTION 18b. Leakage risk study. (1) No later than September 15, 2021, the Carbon Policy Office shall complete a study on the leakage risk of air contamination sources in this state that report annual verified anthropogenic greenhouse gas emissions under ORS 468A.280 of between 10,000 and 25,000 metric tons of carbon dioxide equivalent.

"(2) The purpose of the study shall be to evaluate the emissions intensiveness and trade exposure of the air contamination sources described in subsection (1) of this section and to aid the office in implementing the process for designation of EITE entities adopted by rule under section 18a (2) of this 2019 Act.

"(3) The office shall provide a report on the study to the Joint Committee on Climate Action in the manner provided in ORS 192.245.

"SECTION 18c. Direct distribution of allowances for EITE entities. (1) The annual allocation of allowances for direct distribution at no cost to an EITE entity shall be a number of allowances equal to the sum total of the annual good-specific emissions calculations for the

goods manufactured by the EITE entity, multiplied by 95 percent.

"(2) The annual good-specific emissions calculation for a good manufactured by an EITE entity shall be the product of:

"(a) The applicable benchmark for the good pursuant to subsection (3) or (4) of this section; and

"(b) The EITE entity's output of the good during the calendar year prior to the calendar year in which the annual allocation of allowances will be directly distributed.

"(3) For the calendar years beginning in 2021 and for each following year until and including 2026, the Carbon Policy Office shall calculate and apply a facility benchmark for each good manufactured in this state by each EITE entity by:

"(a) Calculating the three-year average of the total, expressed in metric tons of carbon dioxide equivalent, of anthropogenic greenhouse gas emissions attributable to manufacture of the good in this state each year by the EITE entity, using anthropogenic greenhouse gas emissions information from the three most recent years prior to 2021 for which verified anthropogenic greenhouse gas emissions information is available and verified by the office; and

"(b) Dividing the number calculated under paragraph (a) of this subsection by the three-year average of the total annual output of the good in this state by the EITE entity, using output data from the three most recent years prior to 2021.

"(4)(a) Beginning in 2027 and for each following year until and including 2050, the office shall apply a best available technology benchmark for each good manufactured in this state by each EITE entity. The office shall first adopt best available technology benchmarks for goods manufactured in this state by EITE entities no later than January 1, 2027, and shall update the best available technology benchmarks once every 12 years. Each best available technol-

ogy benchmark must represent the anthropogenic greenhouse gas emissions that would be attributable to manufacture of the good in this state by the EITE entity if the EITE entity were to use the best available technology as of the date that the benchmark was last updated.

"(b) In adopting the best available technology benchmark for a good manufactured by an EITE entity, the office may review and consider emissions intensity audit reports specific to the EITE entity and that are produced by qualified, independent third-party organizations.

"(c) An EITE entity may submit to the office, for consideration in adopting best available technology benchmarks, an emissions intensity audit report produced by a qualified, independent third-party organization. The audit report must:

"(A) Include an analysis of the current technologies, equipment and processes used to manufacture each good at the EITE entity's facility and the resulting emissions intensity per unit of output for each good manufactured by the EITE entity.

"(B) Include an analysis of the best available technology to produce the goods manufactured by the EITE entity and the resulting emissions intensity per unit of output for each good if best available technology were used at the EITE entity's facility. The analysis required by this subparagraph must take into consideration, to the greatest extent practical:

"(i) The fuels, processes, equipment and technology used by facilities in this state or in other jurisdictions to produce goods of comparable type, use or quality;

"(ii) Any barriers that would prevent adoption of the best available technology by the EITE entity's facility; and

"(iii) Any indirect energy or environmental impacts associated with a technology under consideration for best available technology.

"(C) Based on the analyses required under subparagraphs (A) and (B) of this paragraph, provide an estimate of the emissions intensity per unit of output to produce the same goods at the same facility if the facility used the best available technology.

"(5) In order to implement subsections (3) and (4) of this section, the Director of the Carbon Policy Office shall adopt by rule:

"(a) A means for attributing an EITE entity's anthropogenic greenhouse gas emissions to the manufacture of individual goods; and

"(b) Requirements for EITE entities to provide any pertinent records necessary for the office to verify the output data used to calculate benchmarks pursuant to this section.

"(6) The director shall adopt by rule a process for EITE entities to apply to the office for an adjustment to the allocation of allowances for direct distribution at no cost that the EITE entity may receive. The office may grant an adjustment only for a significant unanticipated change in the greenhouse gas emissions attributable to the manufacture of an individual good or goods in this state by the EITE entity, based on a finding by the office that the adjustment is necessary to accommodate changes to the manufacturing process that have a material impact on greenhouse gas emissions. Rules adopted under this subsection may provide for the director to contract with an external third-party expert to assist the office in making individual determinations on applications for adjustments.

"SECTION 18d. Benchmark report. No later than September 15, 2030, the Carbon Policy Office shall provide a report to the Joint Committee on Climate Action, in the manner provided in ORS 192.245, on the benchmarks established pursuant to section 18c of this 2019 Act. The report may include recommendations for legislation. The report shall assess:

"(1) The emissions intensity and trade exposure of covered entities

and opt-in entities that have been designated as EITE entities pursuant to section 18a of this 2019 Act;

"(2) The emissions reduction opportunities available to the covered entities and opt-in entities described in subsection (1) of this section; and

"(3) Whether the conclusions of the assessments required under subsections (1) and (2) of this section warrant an adjustment to the methods of calculating benchmarks developed pursuant to section 18c of this 2019 Act.".
