

Title 70A

ENVIRONMENTAL HEALTH AND SAFETY

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Chapter 70A.01 RCW GENERAL PROVISIONS

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- 70A.01.010 Statutory changes technical in nature.
- 70A.01.020 Rules remain valid—Agencies encouraged to update rules.

70A.01.010 Statutory changes technical in nature. Chapter 20, Laws of 2020 is intended to make technical amendments to certain codified statutes that involve environmental and public health. Any statutory changes made by chapter 20, Laws of 2020 should be interpreted as technical in nature and not interpreted to have any substantive, policy implications. [2020 c 20 § 101.]

70A.01.020 Rules remain valid—Agencies encouraged to update rules. (1) A rule adopted under authority provided in a chapter that is recodified under chapter 20, Laws of 2020 remains valid and is not affected by the recodification in chapter 20, Laws of 2020.

(2) State agencies, local air authorities, local boards of health, and other local governments that have adopted rules that rely upon or otherwise reference an authority provided in a chapter that is recodified by chapter 20, Laws of 2020 are encouraged to update affected rules to reflect new statutory references compelled by the recodification by July 1, 2025. [2020 c 20 § 102.]

Chapter 70A.02 RCW ENVIRONMENTAL JUSTICE

Sections

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70A.02.005 Purpose. (1) The purpose of this chapter is to reduce environmental and health disparities in Washington state and improve the health of all Washington state residents. This chapter implements the recommendations of the environmental justice task force established in section 221(48), chapter 415, Laws of 2019 entitled "Report to the Washington state governor and legislature, *Environmental Justice Task Force: Recommendations for Prioritizing EJ in Washington State Government* (October 2020)."

(2) As conveyed in the task force report, Washington state studies and national studies found that people of color and low-income people continue to be disproportionately exposed to environmental harms in their communities. As a result, there is a higher risk of adverse health outcomes for those communities. This risk is amplified when overlaid on communities with preexisting social and economic barriers and environmental risks, and creates cumulative environmental health impacts, which chapter 314, Laws of 2021 seeks to prevent and mitigate.

This chapter also seeks to reduce exposure to environmental hazards within Indian country, as defined in 18 U.S.C. Sec. 1151, due to off-reservation activities within the state,

and to improve state practices to reduce contamination of traditional foods wherever they occur. Exposure to such hazards can result in generational health and ecological problems, particularly on small reservations where it is impossible to move away from a hazard.

(3) Accordingly, the state has a compelling interest in preventing and addressing such environmental health disparities in the administration of ongoing and new environmental programs, including allocation of funds, and in administering these programs so as to remedy the effects of past disparate treatment of overburdened communities and vulnerable populations.

(4) The task force provided recommendations to state agencies for measurable goals and model policies to reduce environmental health inequities in Washington, equitable practices for meaningful community involvement, and how to use the environmental health disparities map to identify and promote the equitable distribution of environmental benefits to overburdened communities. In order for all communities in Washington state to be healthy and thriving, state government should aim to concentrate government actions to benefit communities that currently have the greatest environmental and health burdens. [2021 c 314 § 1.]

Conflict with federal requirements—2021 c 314: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2021 c 314 § 27.]

70A.02.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Council" means the environmental justice council established in RCW 70A.02.110.

(2) "Covered agency" means the departments of ecology, health, natural resources, commerce, agriculture, and transportation, the Puget Sound partnership, and any agency that opts to assume all of the obligations of chapter 314, Laws of 2021 pursuant to RCW 70A.02.030.

(3) "Cumulative environmental health impact" means the combined, multiple environmental impacts and health impacts on a vulnerable population or overburdened community.

(4) "Environmental benefits" means activities that:

(a) Prevent or reduce existing environmental harms or associated risks that contribute significantly to cumulative environmental health impacts;

(b) Prevent or mitigate impacts to overburdened communities or vulnerable populations from, or support community response to, the impacts of environmental harm; or

(c) Meet a community need formally identified to a covered agency by an overburdened community or vulnerable population that is consistent with the intent of this chapter.

(5) "Environmental harm" means the individual or cumulative environmental health impacts and risks to communities caused by historic, current, or projected:

(a) Exposure to pollution, conventional or toxic pollutants, environmental hazards, or other contamination in the air, water, and land;

(b) Adverse environmental effects, including exposure to contamination, hazardous substances, or pollution that increase the risk of adverse environmental health outcomes or create vulnerabilities to the impacts of climate change;

(c) Loss or impairment of ecosystem functions or traditional food resources or loss of access to gather cultural resources or harvest traditional foods; or

(d) Health and economic impacts from climate change.

(6) "Environmental health disparities map" means the data and information developed pursuant to RCW 43.70.815.

(7) "Environmental impacts" means environmental benefits or environmental harms, or the combination of environmental benefits and harms, resulting or expected to result from a proposed action.

(8) "Environmental justice" means the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, rules, and policies. Environmental justice includes addressing disproportionate environmental and health impacts in all laws, rules, and policies with environmental impacts by prioritizing vulnerable populations and overburdened communities, the equitable distribution of resources and benefits, and eliminating harm.

(9) "Equitable distribution" means a fair and just, but not necessarily equal, allocation intended to mitigate disparities in benefits and burdens that are based on current conditions, including existing legacy and cumulative impacts, that are informed by cumulative environmental health impact analysis.

(10) "Evidence-based" means a process that is conducted by a systematic review of available data based on a well-established and widely used hierarchy of data in current use by other state and national programs, selected by the departments of ecology and health. The environmental justice council may provide input on the development of the process.

(11) "Overburdened community" means a geographic area where vulnerable populations face combined, multiple environmental harms and health impacts, and includes, but is not limited to, highly impacted communities as defined in RCW 19.405.020.

(12) "Significant agency action" means the following actions as identified at the beginning of a covered agency's consideration of the significant agency action or at the time when an environmental justice assessment would normally be initiated in conjunction with an agency action:

(a) The development and adoption of significant legislative rules as defined in RCW 34.05.328;

(b) The development and adoption of any new grant or loan program that a covered agency is explicitly authorized or required by statute to carry out;

(c) A capital project, grant, or loan award by a covered agency of at least \$12,000,000 or a transportation project, grant, or loan by a covered agency of at least \$15,000,000;

(d) The submission of agency request legislation to the office of the governor or the office of financial management for approval; and

(e) Any other agency actions deemed significant by a covered agency consistent with RCW 70A.02.060.

(13) "Tribal lands" has the same meaning as "Indian country" as provided in 18 U.S.C. Sec. 1151, and also

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includes sacred sites, traditional cultural properties, burial grounds, and other tribal sites protected by federal or state law.

(14)(a) "Vulnerable populations" means population groups that are more likely to be at higher risk for poor health outcomes in response to environmental harms, due to: (i) Adverse socioeconomic factors, such as unemployment, high housing and transportation costs relative to income, limited access to nutritious food and adequate health care, linguistic isolation, and other factors that negatively affect health outcomes and increase vulnerability to the effects of environmental harms; and (ii) sensitivity factors, such as low birth weight and higher rates of hospitalization.

(b) "Vulnerable populations" includes, but is not limited to:

(i) Racial or ethnic minorities;

(ii) Low-income populations;

(iii) Populations disproportionately impacted by environmental harms; and

(iv) Populations of workers experiencing environmental harms. [2021 c 314 § 2.]

Conflict with federal requirements—2021 c 314: See note following RCW 70A.02.005.

70A.02.020 Environmental justice obligations for all agencies. Covered agencies are required to comply with all provisions of this chapter. All other state agencies should strive to apply the laws of the state of Washington, and the rules and policies of the agency, in accordance with the policies of this chapter including, to the extent feasible, incorporating the principles of environmental justice assessment processes set forth in RCW 70A.02.060 into agency decisions. [2021 c 314 § 3.]

Conflict with federal requirements—2021 c 314: See note following RCW 70A.02.005.

70A.02.030 Authority of other agencies to opt in to environmental justice obligations. (1) Any state agency, as the term "agency" is defined in RCW 34.05.010, including the governor's office and the office of the attorney general but excluding local governmental entities, may opt in to assume all of the substantive and procedural requirements of covered agencies under chapter 70A.02 RCW at any time by notifying the council established in RCW 70A.02.110.

(2) An agency that opts in to assume all of the substantive and procedural requirements of chapter 70A.02 RCW is not subject to the deadlines or timelines established in RCW 70A.02.040, 70A.02.050, 70A.02.060, 70A.02.080, and 70A.02.110. [2021 c 314 § 11.]

Conflict with federal requirements—2021 c 314: See note following RCW 70A.02.005.

70A.02.040 Incorporating environmental justice into agency strategic plans. (1) By January 1, 2023, each covered agency shall include an environmental justice implementation plan within its strategic plan. A covered agency may additionally incorporate an environmental justice implementation plan into other significant agency planning documents. The plan must describe how the covered agency plans to apply the principles of environmental justice to the

agency's activities and must guide the agency in its implementation of its obligations under this chapter.

(2) In its environmental justice implementation plan, each covered agency must include:

(a) Agency-specific goals and actions to reduce environmental and health disparities and for otherwise achieving environmental justice in the agency's programs;

(b) Metrics to track and measure accomplishments of the agency goals and actions;

(c) Methods to embed equitable community engagement with, and equitable participation from, members of the public, into agency practices for soliciting and receiving public comment;

(d) Strategies to ensure compliance with existing federal and state laws and policies relating to environmental justice, including Title VI of the civil rights act of 1964, 42 U.S.C. Sec. 2000d-2000d-4, Title IX of the Education Amendments of 1972, 20 U.S.C. Sec. 1681-1683, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Sec. 794, and the age discrimination act of 1975, 42 U.S.C. Sec. 6101-6107;

(e) The plan for community engagement required under RCW 70A.02.050; and

(f) Specific plans and timelines for incorporating environmental justice considerations into agency activities as required under this chapter.

(3) In developing and updating its plan, each covered agency must consider any guidance developed by the council pursuant to RCW 70A.02.110. [2021 c 314 § 12.]

Conflict with federal requirements—2021 c 314: See note following RCW 70A.02.005.

70A.02.050 Equitable community engagement and public participation. (1) By July 1, 2022, each covered agency must create and adopt a community engagement plan that describes how it will engage with overburdened communities and vulnerable populations as it evaluates new and existing activities and programs. This plan must describe how the agency plans to facilitate equitable participation and support meaningful and direct involvement of vulnerable populations and overburdened communities. The plan must include:

(a) How the covered agency will identify and prioritize overburdened communities for purposes of this chapter;

(b) Best practices for outreach and communication to overcome barriers to engagement with overburdened communities and vulnerable populations;

(c) Use of special screening tools that integrate environmental, demographic, and health disparities data, such as the environmental health disparities map, to evaluate and understand the nature and needs of the people who the agency expects to be impacted by significant agency actions under RCW 70A.02.060 and processes under RCW 70A.02.080 to overcome barriers to participation;

(d) Processes that facilitate and support the inclusion of members of communities affected by agency decision making including, to the extent legal and practicable, but not limited to, child care and reimbursement for travel and other expenses; and

(e) Methods for outreach and communication with those who face barriers, language or otherwise, to participation.

(2) Covered agencies must regularly review their compliance with existing laws and policies that guide community engagement and must comply with the following:

(a) Title VI of the civil rights act, prohibiting discrimination based on race, color, or national origin and requiring meaningful access to people with limited English proficiency, and disability;

(b) Executive Order 05-03, requiring plain talk when communicating with the public; and

(c) Guidance related to Executive Order 13166, requiring meaningful access to agency programs and services for people with limited English proficiency.

(3) In developing and updating its plan, each covered agency must consider any guidance developed by the council pursuant to RCW 70A.02.110.

(4) A covered agency may coordinate with the office of equity to identify policy and system barriers to meaningful engagement with communities as conducted by the office under RCW 43.06D.040(1)(b). [2021 c 314 § 13.]

Conflict with federal requirements—2021 c 314: See note following RCW 70A.02.005.

70A.02.060 Environmental justice assessment. (1)(a) When considering a significant agency action initiated after July 1, 2023, a covered agency must conduct an environmental justice assessment in accordance with this section to inform and support the agency's consideration of overburdened communities and vulnerable populations when making decisions and to assist the agency with the equitable distribution of environmental benefits, the reduction of environmental harms, and the identification and reduction of environmental and health disparities.

(b) A covered agency must aspire to complete the environmental justice assessment for a significant agency action without delaying the completion of the underlying agency action.

(2)(a) Consistent with RCW 70A.02.010(12)(e), for the purpose of preparing environmental justice assessments, a covered agency may deem actions significant that are additional to the significant agency actions identified in RCW 70A.02.010(12) (a) through (d), in iterative consultation with the council and interagency work group established under RCW 70A.02.110. By July 1, 2025, each covered agency must consider their agency's activities and identify and begin applying environmental justice assessments to any actions that the agency identifies as significant that are in addition to the significant agency actions identified in RCW 70A.02.010(12) (a) through (d). Significant agency actions designated by a covered agency under this subsection must be actions that may cause environmental harm or may affect the equitable distribution of environmental benefits to an overburdened community or a vulnerable population.

(b) In the identification of significant agency actions, covered agencies shall consider guidance issued by the council established in RCW 70A.02.110. Each covered agency must periodically review and update its identified types of significant agency actions for which an environmental justice assessment is required under this section, and the relevant factors to the agency's environmental justice assessments that result from the unique mission, authorities, and priorities of the agency.

(3) By July 1, 2023, and periodically thereafter, after an opportunity for public comment on its determinations, each covered agency must:

(a) Publish on its website the types of agency actions that the agency has determined are significant agency actions that require an environmental justice assessment under this section, including any significant agency actions identified under subsection (2)(a) of this section;

(b) Provide notification of the determination of the types of significant agency actions in the Washington State Register; and

(c) Prepare an environmental justice assessment when considering a listed action, after publication of the list of any additional significant agency actions identified under (a) of this subsection.

(4) The environmental justice assessment obligation of a covered agency for a significant agency action under this section is satisfied by the completion by the covered agency of a checklist developed by the covered agency that functions akin to the environmental checklist developed by the department of ecology pursuant to chapter 43.21C RCW, and that directs the covered agency to at a minimum:

(a) Consider guidance prepared by the council under RCW 70A.02.110 relating to best practices on environmental justice assessments and when and how to use cumulative environmental health impact analysis;

(b) Where applicable, use cumulative environmental health impact analysis, such as the environmental health disparities map or other data that considers the effects of a proposed action on overburdened communities and vulnerable populations;

(c) Identify overburdened communities and vulnerable populations who are expected to be affected by the proposed action and the potential environmental and health impacts;

(d) Pursuant to the consultation process in RCW 70A.02.100, identify if the proposed action is expected to have any local or regional impacts to federally reserved tribal rights and resources including, but not limited to, those protected by treaty, executive order, or federal law;

(e) Summarize community input and describe how the covered agency can further involve overburdened communities, vulnerable populations, affected tribes, and indigenous populations in development of the proposed action; and

(f) Describe options for the agency to reduce, mitigate, or eliminate identified probable impacts on overburdened communities and vulnerable populations, or provide a justification for not reducing, mitigating, or eliminating identified probable impacts.

(5)(a) To obtain information for the purposes of assessments, a covered agency must solicit feedback from members of overburdened communities and vulnerable populations to assist in the accurate assessment of the potential impact of the action and in developing the means to reduce or eliminate the impact on overburdened communities and vulnerable populations.

(b) A covered agency may include items in the checklist required under subsection (4) of this section that are not specified in subsection (4) of this section.

(c) The completion of an environmental justice checklist under subsection (4) of this section is not required to be a comprehensive or an exhaustive examination of all potential

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impacts of a significant agency action and does not require a covered agency to conduct novel quantitative or economic analysis of the proposed significant agency action.

(6) Based on the environmental justice assessment, each covered agency must seek, to the extent legal and feasible and consistent with the underlying statute being implemented, to reduce or eliminate the environmental harms and maximize the environmental benefits created by the significant agency action on overburdened communities and vulnerable populations. Consistent with agency authority, mission, and statutory responsibilities, the covered agency must consider each of the following methods for reducing environmental harms or equitably distributing environmental benefits:

(a) Eliminating the disparate impact of environmental harms on overburdened communities and vulnerable populations;

(b) Reducing cumulative environmental health impacts on overburdened communities or vulnerable populations;

(c) Preventing the action from adding to the cumulative environmental health impacts on overburdened communities or vulnerable populations;

(d) Providing equitable participation and meaningful engagement of vulnerable populations and overburdened communities in the development of the significant agency action;

(e) Prioritizing equitable distribution of resources and benefits to overburdened communities;

(f) Promoting positive workforce and job outcomes for overburdened communities;

(g) Meeting community needs identified by the affected overburdened community;

(h) Modifying substantive regulatory or policy requirements; and

(i) Any other mitigation techniques, including those suggested by the council, the office of equity, or representatives of overburdened communities and vulnerable populations.

(7) If the covered agency determines it does not have the ability or authority to avoid or reduce any estimated environmental harm of the significant agency action on overburdened communities and vulnerable populations or address the distribution of environmental and health benefits, the agency must provide a clear explanation of why it has made that determination and provide notice of that explanation to members of the public who participated in the process for the significant agency action or the process for the environmental justice assessment and who provided contact information to the agency.

(8) In developing a process for conducting environmental justice assessments, each covered agency must consider any guidance developed by the council pursuant to RCW 70A.02.110.

(9) The issuance of forest practices permits under chapter 76.09 RCW or sale of timber from state lands and state forestlands as defined in RCW 79.02.010 do not require an environmental justice assessment under this section. [2021 c 314 § 14.]

Conflict with federal requirements—2021 c 314: See note following RCW 70A.02.005.

70A.02.070 Obligation of a covered agency—Does not trigger chapter 43.21C RCW requirements. The obligation of a covered agency to conduct an environmental justice assessment pursuant to RCW 70A.02.060 for significant agency actions does not, by itself, trigger requirements in chapter 43.21C RCW. [2021 c 314 § 15.]

Conflict with federal requirements—2021 c 314: See note following RCW 70A.02.005.

70A.02.080 Environmental justice obligations of agencies relating to budgets and funding. (1) With consideration of the guidelines issued by the council in RCW 70A.02.110, and in iterative consultation with the council, each covered agency must incorporate environmental justice principles into its decision processes for budget development, making expenditures, and granting or withholding environmental benefits. Through the incorporation of environmental justice principles into its decision processes, including by conducting environmental justice assessments where required under RCW 70A.02.060, each covered agency, to the extent allowed by law and consistent with legislative appropriations, must equitably distribute funding and expenditures related to programs that address or may cause environmental harms or provide environmental benefits towards overburdened communities and vulnerable populations.

(2) Beginning on or before July 1, 2023, each covered agency must, where practicable, take the following actions when making expenditure decisions or developing budget requests to the office of financial management and the legislature for programs that address or may cause environmental harms or provide environmental benefits:

(a) Focus applicable expenditures on creating environmental benefits that are experienced by overburdened communities and vulnerable populations, including reducing or eliminating environmental harms, creating community and population resilience, and improving the quality of life of overburdened communities and vulnerable populations;

(b) Create opportunities for overburdened communities and vulnerable populations to meaningfully participate in agency expenditure decisions;

(c) Clearly articulate environmental justice goals and performance metrics to communicate the basis for agency expenditures;

(d) Consider a broad scope of grants and contracting opportunities that effectuate environmental justice principles, including:

(i) Community grants to monitor pollution;

(ii) Grants focused on building capacity and providing training for community scientists and other staff;

(iii) Making technical assistance available for communities that may be new to receiving agency grant funding; and

(iv) Education and work readiness youth programs focused on infrastructure or utility-related internships to develop career paths and leadership skills for youth; and

(e) Establish a goal of directing 40 percent of grants and expenditures that create environmental benefits to vulnerable populations and overburdened communities.

(3) A covered agency may adopt rules or guidelines for criteria and procedures applicable to incorporating environmental justice principles in expenditure decisions, granting or withholding benefits, and processes for budget development.

(4) In incorporating environmental justice principles into its decision processes for budget development, making expenditures, and granting or withholding benefits, each covered agency must consider any guidance developed by the council pursuant to RCW 70A.02.110.

(5) A covered agency may not take actions or make expenditures under this section that are inconsistent with or conflict with other statutes or with conditions or limitations on the agency's appropriations.

(6) If a covered agency, due to the breadth of its programs and funding opportunities, determines it is not practicable to take the actions listed in subsection (2) of this section for all applicable expenditure decisions and budget requests developed, the covered agency is encouraged to prioritize taking the actions listed in subsection (2) of this section for those budget requests and expenditure decisions that are primarily directed at addressing environmental impacts. By July 1, 2023, each covered agency must publish on its website the types of decision processes for budget development, making expenditures, and granting or withholding environmental benefits for which the agency will take the actions listed in subsection (2) of this section. [2021 c 314 § 16.]

Conflict with federal requirements—2021 c 314: See note following RCW 70A.02.005.

70A.02.090 Reporting requirements. (1) By September 1st of each year, each covered agency must annually update the council on the development and implementation of environmental justice in agency strategic plans pursuant to RCW 70A.02.040, budgeting and funding criteria for making budgeting and funding decisions pursuant to RCW 70A.02.080, and community engagement plans pursuant to RCW 70A.02.050.

(2)(a) Beginning in 2024, as part of each covered agency's annual update to the council under subsection (1) of this section, each covered agency must include updates on the agency's implementation status with respect to the environmental justice assessments under RCW 70A.02.060.

(b) By September 1st of each year beginning in 2024, each covered agency must publish or update a dashboard report, in a uniform dashboard format on the office of financial management's website, describing the agency's progress on:

(i) Incorporating environmental justice in its strategic plan;

(ii) The obligations of agencies relating to budgets and funding under RCW 70A.02.080; and

(iii) Its environmental justice assessments of proposed significant agency actions, including logistical metrics related to covered agency completion of environmental justice assessments.

(3) Each covered agency must file a notice with the office of financial management of significant agency actions for which the agency is initiating an environmental justice assessment under RCW 70A.02.060. The office of financial management must prepare a list of all filings received from covered agencies each week and must post the list on its website and make it available to any interested parties. The list of filings must include a brief description of the significant agency action and the methods for providing public comment

for agency consideration as part of the environmental justice assessment.

(4) Each covered agency must identify overburdened communities, as required by RCW 70A.02.050, in such a way that the performance effectiveness of the duties created by this chapter can be measured, including the effectiveness of environmental justice assessments required by RCW 70A.02.060. Each covered agency may identify and prioritize overburdened communities as needed to accomplish the purposes of this chapter. [2021 c 314 § 17.]

Conflict with federal requirements—2021 c 314: See note following RCW 70A.02.005.

70A.02.100 Tribal consultation. (1) Covered agencies shall develop a consultation framework in coordination with tribal governments that includes best practices, protocols for communication, and collaboration with federally recognized tribes. Consistent with this framework, covered agencies must offer consultation with federally recognized Indian tribes on:

(a) The inclusion or updating of an environmental justice implementation plan within the covered agency's strategic plan required under RCW 70A.02.040;

(b) The creation and adoption or updating of a community engagement plan required under RCW 70A.02.050; and

(c) Significant agency actions under RCW 70A.02.060 that affect federally recognized Indian tribes' rights and interests in their tribal lands.

(2) The department of health must offer consultation with federally recognized Indian tribes on the development of the environmental health disparities map under RCW 43.70.815.

(3) The consultation under subsections (1) and (2) of this section must be independent of any public participation process required by state law, or by a state agency, and regardless of whether the agency receives a request for consultation from an Indian tribe.

(4) Nothing in this chapter is intended to direct, authorize, or encourage covered agencies to collect, maintain, or provide data related to sacred sites, traditional cultural properties, burial grounds, and other tribal sites protected by federal or state law. [2021 c 314 § 18.]

Conflict with federal requirements—2021 c 314: See note following RCW 70A.02.005.

70A.02.110 Environmental justice council. (1) The environmental justice council is established to advise covered agencies on incorporating environmental justice into agency activities.

(2) The council consists of 14 members, except as provided in RCW 70A.65.040(3), appointed by the governor. The councilmembers must be persons who are well-informed regarding and committed to the principles of environmental justice and who, to the greatest extent practicable, represent diversity in race, ethnicity, age, and gender, urban and rural areas, and different regions of the state. The members of the council shall elect two members to serve as cochairs for two-year terms. The council must include:

(a) Seven community representatives, including one youth representative, the nominations of which are based upon applied and demonstrated work and focus on environ-

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mental justice or a related field, such as racial or economic justice, and accountability to vulnerable populations and overburdened communities;

(i) The youth representative must be between the ages of 18 and 25 at the time of appointment;

(ii) The youth representative serves a two-year term. All other community representatives serve four-year terms, with six representatives initially being appointed to four-year terms and five being initially appointed to two-year terms, after which they will be appointed to four-year terms;

(b) Two members representing tribal communities, one from eastern Washington and one from western Washington, appointed by the governor, plus two tribal members as specified in RCW 70A.65.040. The governor shall solicit and consider nominees from each of the federally recognized tribes in Washington state. The governor shall collaborate with federally recognized tribes on the selection of tribal representatives. The tribal representatives serve four-year terms. One representative must be initially appointed for a four-year term. The other representative must be initially appointed for a two-year term, after which, that representative must be appointed for a four-year term;

(c) Two representatives who are environmental justice practitioners or academics to serve as environmental justice experts, the nominations of which are based upon applied and demonstrated work and focus on environmental justice;

(d)(i) One representative of a business that is regulated by a covered agency and whose ordinary business conditions are significantly affected by the actions of at least one other covered agency; and

(ii) One representative who is a member or officer of a union representing workers in the building and construction trades; and

(e) One representative at large, the nomination of which is based upon applied and demonstrated work and focus on environmental justice.

(3) Covered agencies shall serve as nonvoting, ex officio liaisons to the council. Each covered agency must identify an executive team level staff person to participate on behalf of the agency.

(4) Nongovernmental members of the council must be compensated and reimbursed in accordance with RCW 43.03.050, 43.03.060, and 43.03.220.

(5) The department of health must:

(a) Hire a manager who is responsible for overseeing all staffing and administrative duties in support of the council; and

(b) Provide all administrative and staff support for the council.

(6) In collaboration with the office of equity, the office of financial management, the council, and covered agencies, the department of health must:

(a) Establish standards for the collection, analysis, and reporting of disaggregated data as it pertains to tracking population level outcomes of communities;

(b) Create statewide and agency-specific process and outcome measures to show performance:

(i) Using outcome-based methodology to determine the effectiveness of agency programs and services on reducing environmental disparities; and

(ii) Taking into consideration community feedback from the council on whether the performance measures established accurately measure the effectiveness of covered agency programs and services in the communities served; and

(c) Create an online performance dashboard to publish performance measures and outcomes as referenced in RCW 70A.02.090 for the state and each covered agency.

(7) The department of health must coordinate with the consolidated technology services agency to address cybersecurity and data protection for all data collected by the department.

(8)(a) With input and assistance from the council, the department of health must establish an interagency work group to assist covered agencies in incorporating environmental justice into agency decision making. The work group must include staff from each covered agency directed to implement environmental justice provisions under this chapter and may include members from the council. The department of health shall provide assistance to the interagency work group by:

(i) Facilitating information sharing among covered agencies on environmental justice issues and between agencies and the council;

(ii) Developing and providing assessment tools for covered agencies to use in the development and evaluation of agency programs, services, policies, and budgets;

(iii) Providing technical assistance and compiling and creating resources for covered agencies to use; and

(iv) Training covered agency staff on effectively using data and tools for environmental justice assessments.

(b) The duties of the interagency work group include:

(i) Providing technical assistance to support agency compliance with the implementation of environmental justice into their strategic plans, environmental justice obligations for budgeting and funding criteria and decisions, environmental justice assessments, and community engagement plans;

(ii) Assisting the council in developing a suggested schedule and timeline for sequencing the types of: (A) Funding and expenditure decisions subject to rules; and (B) criteria incorporating environmental justice principles;

(iii) Identifying other policies, priorities, and projects for the council's review and guidance development;

(iv) Identifying goals and metrics that the council may use to assess agency performance in meeting the requirements of chapter 314, Laws of 2021 for purposes of communicating progress to the public, the governor, and the legislature; and

(v) Developing the guidance under subsection (9)(c) of this section in coordination with the council.

(9) The council has the following powers and duties:

(a) To provide a forum for the public to:

(i) Provide written or oral testimony on their environmental justice concerns;

(ii) Assist the council in understanding environmental justice priorities across the state in order to develop council recommendations to agencies for issues to prioritize; and

(iii) Identify which agencies to contact with their specific environmental justice concerns and questions;

(b)(i) The council shall work in an iterative fashion with the interagency work group to develop guidance for environ-

mental justice implementation into covered agency strategic plans pursuant to RCW 70A.02.040, environmental justice assessments pursuant to RCW 70A.02.060, budgeting and funding criteria for making budgeting and funding decisions pursuant to RCW 70A.02.080, and community engagement plans pursuant to RCW 70A.02.050;

(ii) The council and interagency work group shall regularly update its guidance;

(c) In consultation with the interagency work group, the council:

(i) Shall provide guidance to covered agencies on developing environmental justice assessments pursuant to RCW 70A.02.060 for significant agency actions;

(ii) Shall make recommendations to covered agencies on which agency actions may cause environmental harm or may affect the equitable distribution of environmental benefits to an overburdened community or a vulnerable population and therefore should be considered significant agency actions that require an environmental justice assessment under RCW 70A.02.060;

(iii) Shall make recommendations to covered agencies:

(A) On the identification and prioritization of overburdened communities under this chapter; and

(B) Related to the use by covered agencies of the environmental and health disparities map in agency efforts to identify and prioritize overburdened communities;

(iv) May make recommendations to a covered agency on the timing and sequencing of a covered agencies' efforts to implement RCW 70A.02.040 through 70A.02.080; and

(v) May make recommendations to the governor and the legislature regarding ways to improve agency compliance with the requirements of this chapter;

(d) By December 1, 2023, and biennially thereafter, and with consideration of the information shared on September 1st each year in covered agencies' annual updates to the council required under RCW 70A.02.090, the council must:

(i) Evaluate the progress of each agency in applying council guidance, and update guidance as needed; and

(ii) Communicate each covered agency's progress to the public, the governor, and the legislature. This communication is not required to be a report and may take the form of a presentation or other format that communicates the progress of the state and its agencies in meeting the state's environmental justice goals in compliance with chapter 314, Laws of 2021, and summarizing the work of the council pursuant to (a) through (d) of this subsection, and subsection (11) of this section; and

(e) To fulfill the responsibilities established for the council in RCW 70A.65.040.

(10) By November 30, 2023, and in compliance with RCW 43.01.036, the council must submit a report to the governor and the appropriate committees of the house of representatives and the senate on:

(a) The council's recommendations to covered agencies on the identification of significant agency actions requiring an environmental justice assessment under subsection (9)(c)(ii) of this section;

(b) The summary of covered agency progress reports provided to the council under RCW 70A.02.090(1), including the status of agency plans for performing environmental justice assessments required by RCW 70A.02.060; and

(c) Guidance for environmental justice implementation into covered agency strategic plans, environmental justice assessments, budgeting and funding criteria, and community engagement plans under subsection (9)(c)(i) of this section.

(11) The council may:

(a) Review incorporation of environmental justice implementation plans into covered agency strategic plans pursuant to RCW 70A.02.040, environmental justice assessments pursuant to RCW 70A.02.060, budgeting and funding criteria for making budgeting and funding decisions pursuant to RCW 70A.02.080, and community engagement plans pursuant to RCW 70A.02.050;

(b) Make recommendations for amendments to this chapter or other legislation to promote and achieve the environmental justice goals of the state;

(c) Review existing laws and make recommendations for amendments that will further environmental justice;

(d) Recommend to specific agencies that they create environmental justice-focused, agency-requested legislation;

(e) Provide requested assistance to state agencies other than covered agencies that wish to incorporate environmental justice principles into agency activities; and

(f) Recommend funding strategies and allocations to build capacity in vulnerable populations and overburdened communities to address environmental justice.

(12) The role of the council is purely advisory and council decisions are not binding on an agency, individual, or organization.

(13) The department of health must convene the first meeting of the council by January 1, 2022.

(14) All council meetings are subject to the open public meetings requirements of chapter 42.30 RCW and a public comment period must be provided at every meeting of the council. [2022 c 181 § 15; 2021 c 314 § 20.]

Conflict with federal requirements—2021 c 314: See note following RCW 70A.02.005.

70A.02.120 Legal obligations. (1) Nothing in chapter 314, Laws of 2021 prevents state agencies that are not covered agencies from adopting environmental justice policies and processes consistent with chapter 314, Laws of 2021.

(2) The head of a covered agency may, on a case-by-case basis, exempt a significant agency action or decision process from the requirements of RCW 70A.02.060 and 70A.02.080 upon determining that:

(a) Any delay in the significant agency action poses a potentially significant threat to human health or the environment, or is likely to cause serious harm to the public interest;

(b) An assessment would delay a significant agency decision concerning the assessment, collection, or administration of any tax, tax program, debt, revenue, receipt, a regulated entity's financial filings, or insurance rate or form filing;

(c) The requirements of RCW 70A.02.060 and 70A.02.080 are in conflict with:

(i) Federal law or federal program requirements;

(ii) The requirements for eligibility of employers in this state for federal unemployment tax credits; or

(iii) Constitutional limitations or fiduciary obligations, including those applicable to the management of state lands and state forestlands as defined in RCW 79.02.010.

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(3) A covered agency may not, for the purposes of implementing any of its responsibilities under this chapter, contract with an entity that employs a lobbyist registered under RCW 42.17A.600 that is lobbying on behalf of that entity. [2021 c 314 § 21.]

Conflict with federal requirements—2021 c 314: See note following RCW 70A.02.005.

70A.02.130 Appeals. (1) Except as specified in subsection (2) of this section, the actions and duties set forth in chapter 314, Laws of 2021 are not subject to appeal.

(2)(a) Only the following agency actions undertaken pursuant to chapter 314, Laws of 2021 are subject to appeal:

(i) Decisions related to the designation of significant agency actions pursuant to RCW 70A.02.060(3)(a); and

(ii) Environmental justice assessments prepared pursuant to RCW 70A.02.060, only for environmental justice assessments for which there is an associated agency action that is appealable.

(b) Appeals of environmental justice assessments allowed under (a)(ii) of this subsection must be of the environmental justice assessment together with the accompanying agency action, as defined in RCW 34.05.010.

(3) Nothing in chapter 314, Laws of 2021 may be construed to create a new private right of action, other than as described in this section, on the part of any individual, entity, or agency against any state agency.

(4) Nothing in chapter 314, Laws of 2021 may be construed to expand, contract, or otherwise modify any rights of appeal, or procedures for appeal, under other laws other than the availability of the appeal process described in this section. [2021 c 314 § 22.]

Conflict with federal requirements—2021 c 314: See note following RCW 70A.02.005.

Chapter 70A.05 RCW

INTEGRATED CLIMATE CHANGE RESPONSE STRATEGY

Sections

70A.05.010	Development of strategy—Central clearinghouse—Collaboration.
70A.05.020	Requirements of strategy—Initial climate change response strategy.
70A.05.030	Assistance with developing strategy.
70A.05.040	Incorporation of adaptation plans of action by state agencies.
70A.05.900	Findings—2009 c 519.

70A.05.010 Development of strategy—Central clearinghouse—Collaboration. (1) The departments of ecology, agriculture, *community, trade, and economic development, fish and wildlife, natural resources, and transportation shall develop an integrated climate change response strategy to better enable state and local agencies, public and private businesses, nongovernmental organizations, and individuals to prepare for, address, and adapt to the impacts of climate change. The integrated climate change response strategy should be developed, where feasible and consistent with the direction of the strategy, in collaboration with local government agencies with climate change preparation and adaptation plans.

(2) The department of ecology shall serve as a central clearinghouse for relevant scientific and technical informa-

tion about the impacts of climate change on Washington's ecology, economy, and society, as well as serve as a central convener for the development of vital programs and necessary policies to help the state adapt to a rapidly changing climate.

(3) The department of ecology shall consult and collaborate with the departments of fish and wildlife, agriculture, *community, trade, and economic development, natural resources, and transportation in developing an integrated climate change response strategy and plans of action to prepare for and adapt to climate change impacts. [2009 c 519 § 10. Formerly RCW 43.21M.010.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

70A.05.020 Requirements of strategy—Initial climate change response strategy. (1) The integrated climate change response strategy should address the impact of and adaptation to climate change, as well as the regional capacity to undertake actions, existing ecosystem and resource management concerns, and health and economic risks. In addition, the departments of ecology, agriculture, *community, trade, and economic development, fish and wildlife, natural resources, and transportation should include a range of scenarios for the purposes of planning in order to assess project vulnerability and, to the extent feasible, reduce expected risks and increase resiliency to the impacts of climate change.

(2)(a) By December 1, 2011, the department of ecology shall compile an initial climate change response strategy, including information and data from the departments of fish and wildlife, agriculture, *community, trade, and economic development, natural resources, and transportation that: Summarizes the best known science on climate change impacts to Washington; assesses Washington's vulnerability to the identified climate change impacts; prioritizes solutions that can be implemented within and across state agencies; and identifies recommended funding mechanisms and technical and other essential resources for implementing solutions.

(b) The initial strategy must include:

(i) Efforts to identify priority planning areas for action, based on vulnerability and risk assessments;

(ii) Barriers challenging state and local governments to take action, such as laws, policies, regulations, rules, and procedures that require revision to adequately address adaptation to climate change;

(iii) Opportunities to integrate climate science and projected impacts into planning and decision making; and

(iv) Methods to increase public awareness of climate change, its projected impacts on the community, and to build support for meaningful adaptation policies and strategies. [2009 c 519 § 11. Formerly RCW 43.21M.020.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

70A.05.030 Assistance with developing strategy. The departments of ecology, agriculture, *community, trade, and economic development, fish and wildlife, natural resources, and transportation may consult with qualified nonpartisan experts from the scientific community as needed to assist with developing an integrated climate change response strategy. The qualified nonpartisan experts from the scientific

community may assist the department of ecology on the following components:

(1) Identifying the timing and extent of impacts from climate change;

(2) Assessing the effects of climate variability and change in the context of multiple interacting stressors or impacts;

(3) Developing forecasting models;

(4) Determining the resilience of the environment, natural systems, communities, and organizations to deal with potential or actual impacts of climate change and the vulnerability to which a natural or social system is susceptible to sustaining damage from climate change impacts; and

(5) Identifying other issues, as determined by the department of ecology, necessary to develop policies and actions for the integrated climate change response strategy. [2009 c 519 § 12. Formerly RCW 43.21M.030.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

70A.05.040 Incorporation of adaptation plans of action by state agencies. State agencies shall strive to incorporate adaptation plans of action as priority activities when planning or designing agency policies and programs. Agencies shall consider: The integrated climate change response strategy when designing, planning, and funding infrastructure projects; and incorporating natural resource adaptation actions and alternative energy sources when designing and planning infrastructure projects. [2009 c 519 § 13. Formerly RCW 43.21M.040.]

70A.05.900 Findings—2009 c 519. The legislature finds that in chapter 14, Laws of 2008, the legislature established greenhouse gas emission reduction limits for Washington state, including a reduction of overall emissions by 2020 to emission levels in 1990, a reduction by 2035 to levels twenty-five percent below 1990 levels, and by 2050 a further reduction below 1990 levels. Based upon estimated 2006 emission levels in Washington, this will require a reduction from present emission levels of over twenty-five percent in the next eleven years. The legislature further finds that state government activities are a significant source of emissions, and that state government should meet targets for reducing emissions from its buildings, vehicles, and all operations that demonstrate that these reductions are achievable, cost-effective, and will help to promote innovative energy efficiency technologies and practices. [2009 c 519 § 1. Formerly RCW 43.21M.900.]

Chapter 70A.10 RCW WEATHER MODIFICATION

Sections

70A.10.010	Definitions.
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70A.10.040	Hearing procedure.
70A.10.050	Acceptance of gifts, donations, etc.
70A.10.060	License and permit required.
70A.10.070	Exemptions.
70A.10.080	Licenses—Requirements, duration, renewal, fees.
70A.10.090	Permits—Requirements—Hearing as to issuance.

- 70A.10.100 Separate permit for each operation—Filing and publishing notice of intention—Activities restricted by permit and notice.
- 70A.10.110 Notice of intention—Contents.
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- 70A.10.130 Financial responsibility.
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- 70A.10.150 Records and reports—Open to public examination.
- 70A.10.160 Revocation, suspension, modification of license or permit.
- 70A.10.170 Liability of state denied—Legal rights of private persons not affected.
- 70A.10.180 Penalty.
- 70A.10.190 Legislative declaration.
- 70A.10.200 Program of emergency cloud seeding authorized.
- 70A.10.210 Exemption of licensee from certain requirements.
- 70A.10.900 Effective date—1973 c 64.

70A.10.010 Definitions. As used in this chapter, unless the context requires otherwise:

- (1) "Department" means the department of ecology;
- (2) "Operation" means the performance of weather modification and control activities pursuant to a single contract entered into for the purpose of producing or attempting to produce, a certain modifying effect within one geographical area over one continuing time interval not exceeding one year; or, in case the performance of weather modification and control activities is to be undertaken individually or jointly by a person or persons to be benefited and not undertaken pursuant to a contract, "operation" means the performance of weather modification and control activities entered into for the purpose of producing, or attempting to produce, a certain modifying effect within one geographical area over one continuing time interval not exceeding one year;
- (3) "Research and development" means theoretical analysis exploration and experimentation, and the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes;
- (4) "Weather modification and control" means changing or controlling, or attempting to change or control, by artificial methods, the natural development of any or all atmospheric cloud forms or precipitation forms which occur in the troposphere. [1973 c 64 § 1; 1965 c 8 § 43.37.010. Prior: 1957 c 245 § 1. Formerly RCW 43.37.010.]

70A.10.020 Powers and duties. In the performance of its functions the department may, in addition to any other acts authorized by law:

- (1) Establish advisory committees to advise with and make recommendations to the department concerning legislation, policies, administration, research, and other matters;
- (2) Establish by regulation or order such standards and instructions to govern the carrying out of research or projects in weather modification and control as the department may deem necessary or desirable to minimize danger to health or property; and make such rules and regulations as are necessary in the performance of its powers and duties;
- (3) Make such studies, investigations, obtain such information, and hold such hearings as the department may deem necessary or proper to assist it in exercising its authority or in the administration or enforcement of this chapter or any regulations or orders issued thereunder;

(4) Appoint and fix the compensation of such personnel, including specialists and consultants, as are necessary to perform its duties and functions;

(5) Acquire, in the manner provided by law, such materials, equipment, and facilities as are necessary to perform its duties and functions;

(6) Cooperate with public or private agencies in the performance of the department's functions or duties and in furtherance of the purposes of this chapter;

(7) Represent the state in any and all matters pertaining to plans, procedures, or negotiations for interstate compacts relating to weather modification and control. [1973 c 64 § 2; 1965 c 8 § 43.37.030. Prior: 1957 c 245 § 3. Formerly RCW 43.37.030.]

70A.10.030 Promotion of research and development activities—Contracts and agreements. The department shall exercise its powers in such manner as to promote the continued conduct of research and development activities in the fields specified below by private or public institutions or persons and to assist in the acquisition of an expanding fund of theoretical and practical knowledge in such fields. To this end the department may conduct, and make arrangements, including contracts and agreements, for the conduct of, research and development activities relating to:

- (1) The theory and development of methods of weather modification and control, including processes, materials, and devices related thereto;
- (2) Utilization of weather modification and control for agricultural, industrial, commercial, and other purposes;
- (3) The protection of life and property during research and operational activities. [1973 c 64 § 3; 1965 c 8 § 43.37.040. Prior: 1957 c 245 § 4. Formerly RCW 43.37.040.]

70A.10.040 Hearing procedure. In the case of hearings pursuant to RCW 70A.10.160 the department shall, and in other cases may, cause a record of the proceedings to be taken and filed with the department, together with its findings and conclusions. For any hearing, the director of the department or a representative designated by him or her is authorized to administer oaths and affirmations, examine witnesses, and issue, in the name of the department, notice of the hearing or subpoenas requiring any person to appear and testify, or to appear and produce documents, or both, at any designated place. [2020 c 20 § 1044; 2009 c 549 § 5113; 1973 c 64 § 4; 1965 c 8 § 43.37.050. Prior: 1957 c 245 § 5. Formerly RCW 43.37.050.]

70A.10.050 Acceptance of gifts, donations, etc. (1) The department may, subject to any limitations otherwise imposed by law, receive and accept for and in the name of the state any funds which may be offered or become available from federal grants or appropriations, private gifts, donations, or bequests, or any other source, and may expend such funds, subject to any limitations otherwise provided by law, for the encouragement of research and development by a state, public, or private agency, either by direct grant, by contract or other cooperative means.

(2) All license and permit fees paid to the department shall be deposited in the state general fund. [1973 c 64 § 5;

1965 c 8 § 43.37.060. Prior: 1957 c 245 § 6. Formerly RCW 43.37.060.]

70A.10.060 License and permit required. Except as provided in RCW 70A.10.070, no person shall engage in activities for weather modification and control except under and in accordance with a license and a permit issued by the department authorizing such activities. [2020 c 20 § 1045; 1973 c 64 § 6; 1965 c 8 § 43.37.080. Prior: 1957 c 245 § 8. Formerly RCW 43.37.080.]

70A.10.070 Exemptions. The department, to the extent it deems practical, shall provide by regulation for exempting from license, permit, and liability requirements, (1) research and development and experiments by state and federal agencies, institutions of higher learning, and bona fide nonprofit research organizations; (2) laboratory research and experiments; (3) activities of an emergent character for protection against fire, frost, sleet, or fog; and (4) activities normally engaged in for purposes other than those of inducing, increasing, decreasing, or preventing precipitation or hail. [1973 c 64 § 7; 1965 c 8 § 43.37.090. Prior: 1957 c 245 § 9. Formerly RCW 43.37.090.]

70A.10.080 Licenses—Requirements, duration, renewal, fees. (1) Licenses to engage in activities for weather modification and control shall be issued to applicants therefor who pay the license fee required and who demonstrate competence in the field of meteorology to the satisfaction of the department, reasonably necessary to engage in activities for weather modification and control. If the applicant is an organization, these requirements must be met by the individual or individuals who will be in control and in charge of the operation for the applicant.

(2) The department shall issue licenses in accordance with such procedures and subject to such conditions as it may by regulation establish to effectuate the provisions of this chapter. Each license shall be issued for a period to expire at the end of the calendar year in which it is issued and, if the licensee possesses the qualifications necessary for the issuance of a new license, shall upon application be renewed at the expiration of such period. A license shall be issued or renewed only upon the payment to the department of one hundred dollars for the license or renewal thereof. [1973 c 64 § 8; 1965 c 8 § 43.37.100. Prior: 1957 c 245 § 10. Formerly RCW 43.37.100.]

70A.10.090 Permits—Requirements—Hearing as to issuance. The department shall issue permits in accordance with such procedures and subject to such conditions as it may by regulation establish to effectuate the provisions of this chapter only:

- (1) If the applicant is licensed pursuant to this chapter;
- (2) If a sufficient notice of intention is published and proof of publication is filed as required by RCW 70A.10.120;
- (3) If the applicant furnishes proof of financial responsibility, as provided in RCW 70A.10.130, in an amount to be determined by the department but not to exceed twenty thousand dollars;
- (4) If the fee for a permit is paid as required by RCW 70A.10.140;

(5) If the weather modification and control activities to be conducted under authority of the permit are determined by the department to be for the general welfare and public good;

(6) If the department has held an open public hearing in Olympia as to such issuance. [2020 c 20 § 1046; 1973 c 64 § 9; 1965 c 8 § 43.37.110. Prior: 1961 c 154 § 2; 1957 c 245 § 11. Formerly RCW 43.37.110.]

70A.10.100 Separate permit for each operation—Filing and publishing notice of intention—Activities restricted by permit and notice. A separate permit shall be issued for each operation. Prior to undertaking any weather modification and control activities the licensee shall file with the department and also cause to be published a notice of intention. The licensee, if a permit is issued, shall confine his or her activities for the permitted operation within the time and area limits set forth in the notice of intention, unless modified by the department; and his or her activities shall also conform to any conditions imposed by the department upon the issuance of the permit or to the terms of the permit as modified after issuance. [2009 c 549 § 5114; 1973 c 64 § 10; 1965 c 8 § 43.37.120. Prior: 1961 c 154 § 3; 1957 c 245 § 12. Formerly RCW 43.37.120.]

70A.10.110 Notice of intention—Contents. The notice of intention shall set forth at least all the following:

- (1) The name and address of the licensee;
- (2) The nature and object of the intended operation and the person or organization on whose behalf it is to be conducted;
- (3) The area in which and the approximate time during which the operation will be conducted;
- (4) The area which is intended to be affected by the operation;
- (5) The materials and methods to be used in conducting the operation. [1965 c 8 § 43.37.130. Prior: 1957 c 245 § 13. Formerly RCW 43.37.130.]

70A.10.120 Notice of intention—Publication. (1) The applicant shall cause the notice of intention, or that portion thereof including the items specified in RCW 70A.10.110, to be published at least once a week for three consecutive weeks in a legal newspaper having a general circulation and published within any county in which the operation is to be conducted and in which the affected area is located, or, if the operation is to be conducted in more than one county or if the affected area is located in more than one county or is located in a county other than the one in which the operation is to be conducted, then in a legal newspaper having a general circulation and published within each of such counties. In case there is no legal newspaper published within the appropriate county, publication shall be made in a legal newspaper having a general circulation within the county;

(2) Proof of publication, made in the manner provided by law, shall be filed by the licensee with the department within fifteen days from the date of the last publication of the notice. [2020 c 20 § 1047; 1973 c 64 § 11; 1965 c 8 § 43.37.140. Prior: 1961 c 154 § 4; 1957 c 245 § 14. Formerly RCW 43.37.140.]

70A.10.130 Financial responsibility. Proof of financial responsibility may be furnished by an applicant by his or her showing, to the satisfaction of the department, his or her ability to respond in damages for liability which might reasonably be attached to or result from his or her weather modification and control activities in connection with the operation for which he or she seeks a permit. [2009 c 549 § 5115; 1973 c 64 § 12; 1965 c 8 § 43.37.150. Prior: 1957 c 245 § 15. Formerly RCW 43.37.150.]

70A.10.140 Fees—Sanctions for failure to pay. The fee to be paid by each applicant for a permit shall be equivalent to one and one-half percent of the estimated cost of such operation, the estimated cost to be computed by the department from the evidence available to it. The fee is due and payable to the department as of the date of the issuance of the permit; however, if the applicant is able to give to the department satisfactory security for the payment of the balance, he or she may be permitted to commence the operation, and a permit may be issued therefor, upon the payment of not less than fifty percent of the fee. The balance due shall be paid within three months from the date of the termination of the operation as prescribed in the permit. Failure to pay a permit fee as required shall be grounds for suspension or revocation of the license of the delinquent permit holder and grounds for refusal to renew his or her license or to issue any further permits to such person. [2009 c 549 § 5116; 1973 c 64 § 13; 1965 c 8 § 43.37.160. Prior: 1957 c 245 § 16. Formerly RCW 43.37.160.]

70A.10.150 Records and reports—Open to public examination. (1) Every licensee shall keep and maintain a record of all operations conducted by him or her pursuant to his or her license and each permit, showing the method employed, the type of equipment used, materials and amounts thereof used, the times and places of operation of the equipment, the name and post office address of each individual participating or assisting in the operation other than the licensee, and such other general information as may be required by the department and shall report the same to the department at the time and in the manner required.

(2) The department shall require written reports in such manner as it provides but not inconsistent with the provisions of this chapter, covering each operation for which a permit is issued. Further, the department shall require written reports from such organizations as are exempted from license, permit, and liability requirements as provided in RCW 70A.10.070.

(3) The reports and records in the custody of the department shall be open for public examination. [2020 c 20 § 1048; 2009 c 549 § 5117; 1973 c 64 § 14; 1965 c 8 § 43.37.170. Prior: 1957 c 245 § 17. Formerly RCW 43.37.170.]

70A.10.160 Revocation, suspension, modification of license or permit. (1) The department may suspend or revoke any license or permit issued if it appears that the licensee no longer possesses the qualifications necessary for the issuance of a new license or permit. The department may suspend or revoke any license or permit if it appears that the licensee has violated any of the provisions of this chapter.

(2022 Ed.)

Such suspension or revocation shall occur only after notice to the licensee and a reasonable opportunity granted such licensee to be heard respecting the grounds of the proposed suspension or revocation. The department may refuse to renew the license of, or to issue another permit to, any applicant who has failed to comply with any provision of this chapter.

(2) The department may modify the terms of a permit after issuance thereof if the licensee is first given notice and a reasonable opportunity for a hearing respecting the grounds for the proposed modification and if it appears to the department that it is necessary for the protection of the health or the property of any person to make the modification proposed. [1973 c 64 § 15; 1965 c 8 § 43.37.180. Prior: 1957 c 245 § 18. Formerly RCW 43.37.180.]

70A.10.170 Liability of state denied—Legal rights of private persons not affected. Nothing in this chapter shall be construed to impose or accept any liability or responsibility on the part of the state, the department, or any state officials or employees for any weather modification and control activities of any private person or group, nor to affect in any way any contractual, tortious, or other legal rights, duties, or liabilities between any private persons or groups. [1973 c 64 § 16; 1965 c 8 § 43.37.190. Prior: 1957 c 245 § 19. Formerly RCW 43.37.190.]

70A.10.180 Penalty. Any person violating any of the provisions of this chapter or any lawful regulation or order issued pursuant thereto, shall be guilty of a misdemeanor; and a continuing violation is punishable as a separate offense for each day during which it occurs. [1965 c 8 § 43.37.200. Prior: 1957 c 245 § 20. Formerly RCW 43.37.200.]

70A.10.190 Legislative declaration. The legislature finds and declares that when prolonged lack of precipitation or shortages of water supply in the state cause severe hardships affecting the health, safety, and welfare of the people of the state, a program to increase precipitation is occasionally needed for the generation of hydroelectric power, for domestic purposes, and to alleviate hardships created by the threat of forest fires and shortages of water for agriculture. Cloud seeding has been demonstrated to be such a program of weather modification with increasing scientific certainty. [1981 c 278 § 1. Formerly RCW 43.37.210.]

70A.10.200 Program of emergency cloud seeding authorized. The director of ecology may establish by rule under chapter 34.05 RCW a program of emergency cloud seeding. The director may include in these rules standards and guidelines for determining the situations which warrant cloud seeding and the means to be used for cloud seeding. [1981 c 278 § 2. Formerly RCW 43.37.215.]

Actions during state of emergency exempt from chapter 43.21C RCW: RCW 43.21C.210.

70A.10.210 Exemption of licensee from certain requirements. Upon a proclamation of a state of emergency, related to a lack of precipitation or a shortage of water supply, by the governor under RCW 43.06.210, the department shall exempt a licensee from the requirements of RCW

70A.10.090 (2) and (6) and 70A.10.120. [2020 c 20 § 1049; 1981 c 278 § 3. Formerly RCW 43.37.220.]

Actions during state of emergency exempt from chapter 43.21C RCW: RCW 43.21C.210.

70A.10.900 Effective date—1973 c 64. The effective date of this 1973 amendatory act shall be July 1, 1973. [1973 c 64 § 18. Formerly RCW 43.37.910.]

Chapter 70A.15 RCW WASHINGTON CLEAN AIR ACT

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Tax exemptions and credits for air pollution control facilities: Chapter 82.34 RCW.

Washington clean indoor air act: Chapter 70.160 RCW.

70A.15.1005 Declaration of public policies and purpose. It is declared to be the public policy to preserve, protect, and enhance the air quality for current and future generations. Air is an essential resource that must be protected from harmful levels of pollution. Improving air quality is a matter of statewide concern and is in the public interest. It is the intent of this chapter to secure and maintain levels of air quality that protect human health and safety, including the most sensitive members of the population, to comply with the requirements of the federal clean air act, to prevent injury to plant, animal life, and property, to foster the comfort and convenience of Washington's inhabitants, to promote the economic and social development of the state, and to facilitate the enjoyment of the natural attractions of the state.

It is further the intent of this chapter to protect the public welfare, to preserve visibility, to protect scenic, aesthetic, historic, and cultural values, and to prevent air pollution problems that interfere with the enjoyment of life, property, or natural attractions.

Because of the extent of the air pollution problem the legislature finds it necessary to return areas with poor air quality to levels adequate to protect health and the environment as expeditiously as possible but no later than December 31, 1995. Further, it is the intent of this chapter to prevent any areas of the state with acceptable air quality from reaching air contaminant levels that are not protective of human health and the environment.

The legislature recognizes that air pollution control projects may affect other environmental media. In selecting air pollution control strategies state and local agencies shall support those strategies that lessen the negative environmental impact of the project on all environmental media, including air, water, and land.

The legislature further recognizes that energy efficiency and energy conservation can help to reduce air pollution and shall therefore be considered when making decisions on air pollution control strategies and projects.

It is the policy of the state that the costs of protecting the air resource and operating state and local air pollution control programs shall be shared as equitably as possible among all sources whose emissions cause air pollution.

It is also declared as public policy that regional air pollution control programs are to be encouraged and supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

To these ends it is the purpose of this chapter to safeguard the public interest through an intensive, progressive, and coordinated statewide program of air pollution prevention and control, to provide for an appropriate distribution of responsibilities, and to encourage coordination and cooperation between the state, regional, and local units of government, to improve cooperation between state and federal government, public and private organizations, and the concerned individual, as well as to provide for the use of all known, available, and reasonable methods to reduce, prevent, and control air pollution.

The legislature recognizes that the problems and effects of air pollution cross political boundaries, are frequently regional or interjurisdictional in nature, and are dependent upon the existence of human activity in areas having common topography and weather conditions conducive to the buildup of air contaminants. In addition, the legislature recognizes that air pollution levels are aggravated and compounded by increased population, and its consequences. These changes often result in increasingly serious problems for the public and the environment.

The legislature further recognizes that air emissions from thousands of small individual sources are major contributors to air pollution in many regions of the state. As the population of a region grows, small sources may contribute an increasing proportion of that region's total air emissions. It is declared to be the policy of the state to achieve significant reductions in emissions from those small sources whose aggregate emissions constitute a significant contribution to air pollution in a particular region.

It is the intent of the legislature that air pollution goals be incorporated in the missions and actions of state agencies. [1991 c 199 § 102; 1973 1st ex.s. c 193 § 1; 1969 ex.s. c 168 § 1; 1967 c 238 § 1. Formerly RCW 70.94.011.]

Finding—1991 c 199: "The legislature finds that ambient air pollution is the most serious environmental threat in Washington state. Air pollution causes significant harm to human health; damages the environment, including trees, crops, and animals; causes deterioration of equipment and materials; contributes to water pollution; and degrades the quality of life.

Over three million residents of Washington state live where air pollution levels are considered unhealthful. Of all toxic chemicals released into the environment more than half enter our breathing air. Citizens of Washington state spend hundreds of millions of dollars annually to offset health, environmental, and material damage caused by air pollution. The legislature considers such air pollution levels, costs, and damages to be unacceptable.

It is the intent of this act that the implementation of programs and regulations to control air pollution shall be the primary responsibility of the department of ecology and local air pollution control authorities." [1991 c 199 § 101.]

Additional notes found at www.leg.wa.gov

70A.15.1010 Air pollution control account—Air operating permit account. (1) The air pollution control account is established in the state treasury. All receipts collected by or on behalf of the department from RCW

70A.15.2200(2), and receipts from nonpermit program sources under RCW 70A.15.2210(1) and 70A.15.2230(7), and all receipts from RCW 70A.15.5090, 70A.15.5120, and 70A.540.120 shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only to develop and implement the provisions of this chapter, chapters 70A.25 and 70A.540 RCW, and RCW 70A.60.060. Moneys collected under RCW 70A.540.120 may only be used to implement chapter 70A.540 RCW.

(2) The amounts collected and allocated in accordance with this section shall be expended upon appropriation except as otherwise provided in this section and in accordance with the following limitations:

Portions of moneys received by the department of ecology from the air pollution control account shall be distributed by the department to local authorities based on:

(a) The level and extent of air quality problems within such authority's jurisdiction;

(b) The costs associated with implementing air pollution regulatory programs by such authority; and

(c) The amount of funding available to such authority from other sources, whether state, federal, or local, that could be used to implement such programs.

(3) The air operating permit account is created in the custody of the state treasurer. All receipts collected by or on behalf of the department from permit program sources under RCW 70A.15.2210(1), 70A.15.2260, 70A.15.2270, and 70A.15.2230(7) shall be deposited into the account. Expenditures from the account may be used only for the activities described in RCW 70A.15.2210(1), 70A.15.2260, 70A.15.2270, and 70A.15.2230(7). Moneys in the account may be spent only after appropriation. [2022 c 16; 2021 c 315 § 13; 2020 c 20 § 1080; 2019 c 284 § 6; 1998 c 321 § 33 (Referendum Bill No. 49, approved November 3, 1998); 1993 c 252 § 1; 1991 c 199 § 228. Formerly RCW 70.94.015.]

Finding—Intent—2019 c 284: See note following RCW 70A.60.060.

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Finding—1991 c 199: See note following RCW 70A.15.1005.

Additional notes found at www.leg.wa.gov

70A.15.1030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof.

(2) "Air pollution" is presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interfere with enjoyment of life and property. For the purpose of this chapter, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW.

(3) "Air quality standard" means an established concentration, exposure time, and frequency of occurrence of an air contaminant or multiple contaminants in the ambient air which shall not be exceeded.

(4) "Ambient air" means the surrounding outside air.

(5) "Authority" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(6) "Best available control technology" (BACT) means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation under this chapter emitted from or that results from any new or modified stationary source, that the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such a source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such a pollutant. In no event shall application of "best available control technology" result in emissions of any pollutants that will exceed the emissions allowed by any applicable standard under 40 C.F.R. Part 60 and Part 61, as they exist on July 25, 1993, or their later enactments as adopted by reference by the director by rule. Emissions from any source utilizing clean fuels, or any other means, to comply with this subsection shall not be allowed to increase above levels that would have been required under the definition of BACT as it existed prior to enactment of the federal clean air act amendments of 1990.

(7) "Best available retrofit technology" (BART) means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant that is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility that might reasonably be anticipated to result from the use of the technology.

(8) "Board" means the board of directors of an authority.

(9) "Control officer" means the air pollution control officer of any authority.

(10) "Department" or "ecology" means the department of ecology.

(11) "Emission" means a release of air contaminants into the ambient air.

(12) "Emission standard" and "emission limitation" mean a requirement established under the federal clean air act or this chapter that limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice, or operational standard adopted under the federal clean air act or this chapter.

(13) "Fine particulate" means particulates with a diameter of two and one-half microns and smaller.

(14) "Lowest achievable emission rate" (LAER) means for any source that rate of emissions that reflects:

(a) The most stringent emission limitation that is contained in the implementation plan of any state for such class

or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation that is achieved in practice by such class or category of source, whichever is more stringent.

In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source performance standards.

(15) "Modification" means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted. The term modification shall be construed consistent with the definition of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

(16) "Multicounty authority" means an authority which consists of two or more counties.

(17) "New source" means (a) the construction or modification of a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted, and (b) any other project that constitutes a new source under the federal clean air act.

(18) "Permit program source" means a source required to apply for or to maintain an operating permit under RCW 70A.15.2260.

(19) "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision of the state, municipality, or governmental agency.

(20) "Reasonably available control technology" (RACT) means the lowest emission limit that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for a source or source category shall be adopted only after notice and opportunity for comment are afforded.

(21) "Silvicultural burning" means burning of wood fiber on forestland consistent with the provisions of RCW 70A.15.5120.

(22) "Source" means all of the emissions units including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person, or persons under common control, whose activities are ancillary to the production of a single product or functionally related group of products.

(23) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air contaminant.

(24) "Trigger level" means the ambient level of fine particulates, measured in micrograms per cubic meter, that must be detected prior to initiating a first or second stage of impaired air quality under RCW 70A.15.3580. [2020 c 20 §

1081; 2005 c 197 § 2; 1993 c 252 § 2; 1991 c 199 § 103; 1987 c 109 § 33; 1979 c 141 § 119; 1969 ex.s. c 168 § 2; 1967 ex.s. c 61 § 1; 1967 c 238 § 2; 1957 c 232 § 3. Formerly RCW 70.94.030.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70A.15.1040 Environmental excellence program agreements—Effect on chapter. Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 21. Formerly RCW 70.94.033.]

Purpose—1997 c 381: See RCW 43.21K.005.

70A.15.1050 Technical assistance program for regulated community. The department shall establish a technical assistance unit within its air quality program, consistent with the federal clean air act, to provide the regulated community, especially small businesses with:

- (1) Information on air pollution laws, rules, compliance methods, and technologies;
- (2) Information on air pollution prevention methods and technologies, and prevention of accidental releases;
- (3) Assistance in obtaining permits and developing emission reduction plans;
- (4) Information on the health and environmental effects of air pollution.

No representatives of the department designated as part of the technical assistance unit created in this section may have any enforcement authority. Staff of the technical assistance unit who provide on-site consultation at an industrial or commercial facility and who observe violations of air quality rules shall immediately inform the owner or operator of the facility of such violations. On-site consultation visits shall not be regarded as an inspection or investigation and no notices or citations may be issued or civil penalties assessed during such a visit. However, violations shall be reported to the appropriate enforcement agency and the facility owner or operator shall be notified that the violations will be reported. No enforcement action shall be taken by the enforcement agency for violations reported by technical assistance unit staff unless and until the facility owner or operator has been provided reasonable time to correct the violation. Violations that place any person in imminent danger of death or substantial bodily harm or cause physical damage to the property of another in an amount exceeding one thousand dollars may result in immediate enforcement action by the appropriate enforcement agency. [1991 c 199 § 308. Formerly RCW 70.94.035.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.1060 Transportation activities—"Conformity" determination requirements. In areas subject to a state implementation plan, no state agency, metropolitan planning organization, or local government shall approve or fund a transportation plan, program, or project within or that affects a nonattainment area unless a determination has been

made that the plan, program, or project conforms with the state implementation plan for air quality as required by the federal clean air act.

Conformity determination shall be made by the state or local government or metropolitan planning organization administering or developing the plan, program, or project.

No later than eighteen months after May 15, 1991, the director of the department of ecology and the secretary of transportation, in consultation with other state, regional, and local agencies as appropriate, shall adopt by rule criteria and guidance for demonstrating and assuring conformity of plans, programs, and projects that are wholly or partially federally funded.

A project with a scope that is limited to preservation or maintenance, or both, shall be exempted from a conformity determination requirement. [1991 c 199 § 219. Formerly RCW 70.94.037.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.1070 Causing or permitting air pollution unlawful—Exception. Except where specified in a variance permit, as provided in RCW 70A.15.2310, it shall be unlawful for any person to cause air pollution or permit it to be caused in violation of this chapter, or of any ordinance, resolution, rule or regulation validly promulgated hereunder. [2020 c 20 § 1082; 1980 c 175 § 2; 1967 c 238 § 3; 1957 c 232 § 4. Formerly RCW 70.94.040.]

70A.15.1080 Exception—Burning wood at historic structure. Except as otherwise provided in this section, any building or structure listed on the national register of historic sites, structures, or buildings established pursuant to 80 Stat. 915, 16 U.S.C. Sec. 470a, or on the state register established pursuant to RCW 27.34.220, shall be permitted to burn wood as it would have when it was a functioning facility as an authorized exception to the provisions of this chapter. Such burning of wood shall not be exempted from the provisions of RCW 70A.15.6000 through 70A.15.6040. [2020 c 20 § 1083; 1991 c 199 § 506; 1983 c 3 § 175; 1977 ex.s. c 38 § 1. Formerly RCW 70.94.041.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.1090 Policy to cooperate with federal government. It is declared to be the policy of the state of Washington through the department of ecology to cooperate with the federal government in order to insure the coordination of the provisions of the federal and state clean air acts, and the department is authorized and directed to implement and enforce the provisions of this chapter in carrying out this policy as follows:

- (1) To accept and administer grants from the federal government for carrying out the provisions of this chapter.
- (2) To take all action necessary to secure to the state the benefits of the federal clean air act. [1987 c 109 § 49; 1969 ex.s. c 168 § 45. Formerly RCW 70.94.510.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70A.15.1100 Issuance of enforceable order—Overburdened communities. The department or a local authority must issue an enforceable order under this chapter,

consistent with RCW 70A.65.020(2) (b) and (c), to all permitted or registered sources operating in overburdened communities when, consistent with RCW 70A.65.020(2)(a), the department determines that criteria pollutants are not being reduced in an overburdened community and the department or local air authority adopts stricter air quality standards, emissions standards, or emissions limitations on criteria pollutants. [2021 c 316 § 35.]

Short title—2021 c 316: See RCW 70A.65.900.

70A.15.1500 Air pollution control authorities created—Activated authorities, composition, meetings—Delineation of air pollution regions, considerations. (1) In each county of the state there is hereby created an air pollution control authority, which shall bear the name of the county within which it is located. The boundaries of each authority shall be coextensive with the boundaries of the county within which it is located. An authority shall include all incorporated and unincorporated areas of the county within which it is located.

(2) Except as provided in RCW 70A.15.2580, all authorities which are presently activated authorities shall carry out the duties and exercise the powers provided in this chapter. Those activated authorities which encompass contiguous counties are declared to be and directed to function as a multicounty authority.

(3) All other air pollution control authorities are hereby designated as inactive authorities.

(4) The boards of those authorities designated as activated authorities by this chapter shall be comprised of such individuals as is provided in RCW 70A.15.2000. [2020 c 20 § 1084; 1995 c 135 § 5. Prior: 1991 c 363 § 143; 1991 c 199 § 701; 1991 c 125 § 1; prior: 1987 c 505 § 60; 1987 c 109 § 34; 1979 c 141 § 120; 1967 c 238 § 4. Formerly RCW 70.94.053.]

Intent—1995 c 135: See note following RCW 29A.08.760.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Finding—1991 c 199: See note following RCW 70A.15.1005.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70A.15.1510 Air pollution control authority may be activated by counties, when. The legislative authority of any county may activate an air pollution control authority following a public hearing on its own motion, or upon a filing of a petition signed by one hundred property owners within the county. If the county legislative authority determines as a result of the public hearing that:

(1) Air pollution exists or is likely to occur; and

(2) The city or town ordinances, or county resolutions, or their enforcement, are inadequate to prevent or control air pollution,

it may by resolution activate an air pollution control authority or combine with a contiguous county or counties to form a multicounty air pollution control authority. [1995 c 135 § 6. Prior: 1991 c 363 § 144; 1991 c 199 § 702; 1967 c 238 § 5. Formerly RCW 70.94.055.]

Intent—1995 c 135: See note following RCW 29A.08.760.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

(2022 Ed.)

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.1520 Multicounty authority may be formed by contiguous counties—Name. The boards of county commissioners of two or more contiguous counties may, by joint resolution, combine to form a multicounty air pollution control authority. Boundaries of such authority shall be coextensive with the boundaries of the counties forming the authority.

The name of the multicounty authority shall bear the names of the counties making up such multicounty authority or a name adopted by the board of such multicounty authority. [1967 c 238 § 6. Formerly RCW 70.94.057.]

70A.15.1530 Merger of active and inactive authorities to form multicounty or regional authority—Procedure. The respective boards of county commissioners of two or more contiguous counties may merge any combination of their several inactive or activated authorities to form one activated multicounty authority. Upon a determination that the purposes of this chapter will be served by such merger, each board of county commissioners may adopt the resolution providing for such merger. Such resolution shall become effective only when a similar resolution is adopted by the other contiguous county or counties comprising the proposed authority. The boundaries of such authority shall be coextensive with the boundaries of the counties within which it is located. [1969 ex.s. c 168 § 3; 1967 c 238 § 11. Formerly RCW 70.94.068.]

70A.15.1540 Merger of active and inactive authorities to form multicounty or regional authority—Reorganization of board of directors—Rules and regulations. Whenever there occurs a merger of an inactive authority with an activated authority or authorities, or of two activated authorities to form a multicounty authority, the board of directors shall be reorganized as provided in RCW 70A.15.2000, 70A.15.2010, and 70A.15.2020.

In the case of the merger of two or more activated authorities the rules and regulations of each authority shall continue in effect and shall be enforced within the jurisdiction of each until such time as the board of directors adopts rules and regulations applicable to the newly formed multicounty authority.

In the case of the merger of an inactive authority with an activated authority or authorities, upon approval of such merger by the board or boards of county commissioners of the county or counties comprising the existing activated authority or authorities, the rules and regulations of the activated authority or authorities shall remain in effect until superseded by the rules and regulations of the multicounty authority as provided in RCW 70A.15.2540. [2020 c 20 § 1085; 1969 ex.s. c 168 § 4; 1967 c 238 § 12. Formerly RCW 70.94.069.]

70A.15.1550 Resolutions activating authorities—Contents—Filings—Effective date of operation. The resolution or resolutions activating an air pollution authority shall specify the name of the authority and participating political bodies; the authority's principal place of business; the territory included within it; and the effective date upon which

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such authority shall begin to transact business and exercise its powers. In addition, such resolution or resolutions may specify the amount of money to be contributed annually by each political subdivision, or a method of dividing expenses of the air pollution control program. Upon the adoption of a resolution or resolutions calling for the activation of an authority or the merger of an inactive or activated authority or several activated authorities to form a multicounty authority, the governing body of each shall cause a certified copy of each such ordinance or resolution to be filed in the office of the secretary of state of the state of Washington. From and after the date of filing with the secretary of state a certified copy of each such resolution, or resolutions, or the date specified in such resolution or resolutions, whichever is later, the authority may begin to function and may exercise its powers.

Any authority activated by the provisions of this chapter shall cause a certified copy of all information required by this section to be filed in the office of the secretary of state of the state of Washington. [1969 ex.s. c 168 § 5; 1967 c 238 § 13; 1957 c 232 § 7. Formerly RCW 70.94.070.]

70A.15.1560 Powers and duties of authorities. An activated authority shall be deemed a municipal corporation; have right to perpetual succession; adopt and use a seal; may sue and be sued in the name of the authority in all courts and in all proceedings; and, may receive, account for, and disburse funds, employ personnel, and acquire or dispose of any interest in real or personal property within or without the authority in the furtherance of its purposes. [1969 ex.s. c 168 § 6; 1967 c 238 § 14. Formerly RCW 70.94.081.]

70A.15.1570 Cost-reimbursement agreements. (1) An authority may enter into a written cost-reimbursement agreement with a permit applicant or project proponent to recover from the applicant or proponent the reasonable costs incurred by the authority in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental review, application review, technical studies, and permit processing.

(2) The cost-reimbursement agreement shall identify the tasks and costs for work to be conducted under the agreement. The agreement must include a schedule that states:

- (a) The estimated number of weeks for initial review of the permit application;
- (b) The estimated number of revision cycles;
- (c) The estimated number of weeks for review of subsequent revision submittals;
- (d) The estimated number of billable hours of employee time;
- (e) The rate per hour; and
- (f) A date for revision of the agreement if necessary.

(3) The written cost-reimbursement agreement shall be negotiated with the permit applicant or project proponent. Under the provisions of a cost-reimbursement agreement, funds from the applicant or proponent shall be used by the air pollution control authority to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The air pollution control authority may also use funds provided under a cost-reimbursement agreement to hire temporary employees, to assign current

staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit. The air pollution control authority shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The air pollution control authority shall make an estimate of the number of permanent staff hours to process the permits, and shall contract with consultants or hire temporary employees to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments.

(4) The cost-reimbursement agreement must not negatively impact the processing of other permit applications. In order to maintain permit processing capacity, the agency may hire outside consultants, temporary employees, or make internal administrative changes. Consultants or temporary employees hired as part of a cost-reimbursement agreement or to maintain agency capacity are hired as agents of the state not of the permit applicant. The provisions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement. Members of the air pollution control authority's board of directors shall be considered as state officers, and employees of the air pollution control authority shall be considered as state employees, for the sole purpose of applying the restrictions of chapter 42.52 RCW to this section. [2009 c 97 § 12; 2007 c 94 § 14; 2003 c 70 § 5; 2000 c 251 § 6. Formerly RCW 70.94.085.]

Intent—Captions not law—Effective date—2000 c 251: See notes following RCW 43.21A.690.

70A.15.1580 Excess tax levy authorized—Election, procedure, expense. An activated authority shall have the power to levy additional taxes in excess of the constitutional and/or statutory tax limitations for any of the authorized purposes of such activated authority, not in excess of twenty-five cents per thousand dollars of assessed value a year when authorized so to do by the electors of such authority by a three-fifths majority of those voting on the proposition at a special election, to be held in the year in which the levy is made, in the manner set forth in Article VII, section 2 (a) of the Constitution of this state, as amended by Amendment 59 and as thereafter amended. Nothing herein shall be construed to prevent holding the foregoing special election at the same time as that fixed for a general election. The expense of all special elections held pursuant to this section shall be paid by the authority. [1973 1st ex.s. c 195 § 84; 1969 ex.s. c 168 § 7; 1967 c 238 § 15. Formerly RCW 70.94.091.]

Additional notes found at www.leg.wa.gov

70A.15.1590 Air pollution control authority—Fiscal year—Adoption of budget—Contents. Notwithstanding the provisions of RCW 1.16.030, the budget year of each activated authority shall be the fiscal year beginning July 1st and ending on the following June 30th. On or before the fourth Monday in June of each year, each activated authority shall adopt a budget for the following fiscal year. The acti-

vated authority budget shall contain adequate funding and provide for staff sufficient to carry out the provisions of all applicable ordinances, resolutions, and local regulations related to the reduction, prevention, and control of air pollution. The legislature acknowledges the need for the state to provide reasonable funding to local authorities to carry out the requirements of this chapter. The budget shall contain an estimate of all revenues to be collected during the following budget year, including any surplus funds remaining unexpended from the preceding year. The remaining funds required to meet budget expenditures, if any, shall be designated as "supplemental income" and shall be obtained from the component cities, towns, and counties in the manner provided in this chapter. The affirmative vote of three-fourths of all members of the board shall be required to authorize emergency expenditures. [1991 c 199 § 703; 1975 1st ex.s. c 106 § 1; 1969 ex.s. c 168 § 8; 1967 c 238 § 16. Formerly RCW 70.94.092.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.1600 Methods for determining proportion of supplemental income to be paid by component cities, towns and counties—Payment. (1) Each component city or town shall pay such proportion of the supplemental income to the authority as determined by either one of the following prescribed methods or by a combination of fifty percent of one and fifty percent of the other as provided in subsection (1)(c) of this section:

(a) Each component city or town shall pay such proportion of the supplemental income as the assessed valuation of property within its limits bears to the total assessed valuation of taxable property within the activated authority.

(b) Each component city or town shall pay such proportion of the supplemental income as the total population of such city or town bears to the total population of the activated authority. The population of the city or town shall be determined by the most recent census, estimate or survey by the federal bureau of census or any state board or commission authorized to make such a census, estimate or survey.

(c) A combination of the methods prescribed in (a) and (b) of this subsection: PROVIDED, That such combination shall be of fifty percent of the method prescribed in (a) of this subsection and fifty percent of the method prescribed in (b) of this subsection.

(2) Each component county shall pay such proportion of such supplemental income to the authority as determined by either one of the following prescribed methods or by a combination of fifty percent of one and fifty percent of the other as prescribed in subsection (2)(c) of this section:

(a) Each component county shall pay such proportion of such supplemental income as the assessed valuation of the property within the unincorporated area of such county lying within the activated authority bears to the total assessed valuation of taxable property within the activated authority.

(b) Each component county shall pay such proportion of the supplemental income as the total population of the unincorporated area of such county bears to the total population of the activated authority. The population of the county shall be determined by the most recent census, estimate or survey by the federal bureau of census or any state board or commission authorized to make such a census, estimate or survey.

(c) A combination of the methods prescribed in (a) and (b) of this subsection: PROVIDED, That such combination shall be of fifty percent of the method prescribed in (a) of this subsection and fifty percent of the method prescribed in (b) of this subsection.

(3) In making such determination of the assessed valuation of property in the component cities, towns and counties, the board shall use the last available assessed valuations. The board shall certify to each component city, town and county, prior to the fourth Monday in June of each year, the share of the supplemental income to be paid by such component city, town or county for the next calendar year. The latter shall then include such amount in its budget for the ensuing calendar year, and during such year shall pay to the activated authority, in equal quarterly installments, the amount of its supplemental share. [1969 ex.s. c 168 § 9; 1967 c 238 § 17. Formerly RCW 70.94.093.]

70A.15.1610 Designation of authority treasurer and auditor—Duties. The treasurer of each component city, town, or county shall create a separate fund into which shall be paid all money collected from taxes or from any other available sources, levied by or obtained for the activated authority on property or on any other available sources in such city, town, or county. The collected money shall be forwarded quarterly by the treasurer of each such city, town, or county to the treasurer of the county designated by the board as the treasurer for the authority. The treasurer of the county designated to serve as treasurer of the authority shall establish and maintain funds as authorized by the board.

Money shall be disbursed from funds collected under this section upon warrants drawn by either the authority or the auditor of the county designated by the board as the auditor for the authority, as authorized by the board.

If an authority chooses to use a county auditor for the disbursement of funds, the respective county shall be reimbursed by the board for services rendered by the auditor of the respective county in connection with the disbursement of funds under this section. [2007 c 164 § 1; 1969 ex.s. c 168 § 10; 1967 c 238 § 18. Formerly RCW 70.94.094.]

70A.15.1620 Assessed valuation of taxable property, certification by county assessors. It shall be the duty of the assessor of each component county to certify annually to the board the aggregate assessed valuation of all taxable property in all incorporated and unincorporated areas situated in any activated authority as the same appears from the last assessment roll of his or her county. [2012 c 117 § 405; 1969 ex.s. c 168 § 11; 1967 c 238 § 19. Formerly RCW 70.94.095.]

70A.15.1630 Authorization to borrow money. An activated authority shall have the power when authorized by a majority of all members of the board to borrow money from any component city, town or county and such cities, towns and counties are hereby authorized to make such loans or advances on such terms as may be mutually agreed upon by the board and the legislative bodies of any such component city, town or county to provide funds to carry out the purposes of the activated authority. [1969 ex.s. c 168 § 12; 1967 c 238 § 20. Formerly RCW 70.94.096.]

70A.15.1640 Special air pollution studies—Contracts for conduct of. In addition to paying its share of the supplemental income of the activated authority, each component city, town, or county shall have the power to contract with such authority and expend funds for the conduct of special studies, investigations, plans, research, advice, or consultation relating to air pollution and its causes, effects, prevention, abatement, and control as such may affect any area within the boundaries of the component city, town, or county, and which could not be performed by the authority with funds otherwise available to it. Any component city, town or county which contracts for the conduct of such special air pollution studies, investigations, plans, research, advice or consultation with any entity other than the activated authority shall require that such an entity consult with the activated authority. [1975 1st ex.s. c 106 § 2. Formerly RCW 70.94.097.]

70A.15.2000 Air pollution control authority—Board of directors—Composition—Term. (1) The governing body of each authority shall be known as the board of directors.

(2)(a) In the case of an authority comprised of one county, with a population of less than four hundred thousand people, the board shall be comprised of two appointees of the city selection committee, at least one of whom shall represent the city having the most population in the county, and two representatives to be designated by the board of county commissioners.

(b) In the case of an authority comprised of one county, with a population of equal to or greater than four hundred thousand people, the board shall be comprised of three appointees of cities, one each from the two cities with the most population in the county and one appointee of the city selection committee representing the other cities, and one representative to be designated by the board of county commissioners.

(c) In the case of an authority comprised of two, three, four, or five counties, the board shall be comprised of one appointee from each county, who shall represent the city having the most population in such county, to be designated by the mayor and city council of such city, and one representative from each county to be designated by the board of county commissioners of each county making up the authority.

(d) In the case of an authority comprised of six or more counties, the board shall be comprised of one representative from each county to be designated by the board of county commissioners of each county making up the authority, and three appointees, one each from the three largest cities within the local authority's jurisdiction to be appointed by the mayor and city council of such city.

(3) If the board of an authority otherwise would consist of an even number, the members selected as above provided shall agree upon and elect an additional member who shall be:

(a) In the case of an authority comprised of one county with a population of equal to or greater than four hundred thousand people, a citizen residing in the county who demonstrates significant professional experience in the field of public health, air quality protection, or meteorology; or

(b) In the case of an authority comprised of one county, with a population less than four hundred thousand people, or of more than one county, either a member of the governing body of one of the towns, cities or counties comprising the authority, or a private citizen residing in the authority.

(4) The terms of office of board members shall be four years.

(5) If an appointee is unable to complete his or her term as a board member, the vacancy for that office must be filled by the same method as the original appointment, except for the appointment by the city selection committee, which must use the method in RCW 70A.15.2020(1) for replacements. The person appointed as a replacement will serve the remainder of the term for that office.

(6) Wherever a member of a board has a potential conflict of interest in an action before the board, the member shall declare to the board the nature of the potential conflict prior to participating in the action review. The board shall, if the potential conflict of interest, in the judgment of a majority of the board, may prevent the member from a fair and objective review of the case, remove the member from participation in the action. [2020 c 20 § 1086; 2009 c 254 § 1; 2006 c 227 § 1; 1991 c 199 § 704; 1989 c 150 § 1; 1969 ex.s. c 168 § 13; 1967 c 238 § 21; 1957 c 232 § 10. Formerly RCW 70.94.100.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.2010 City selection committees. There shall be a separate and distinct city selection committee for each county making up an authority. The membership of such committee shall consist of the mayor of each incorporated city and town within such county, except that the mayors of the cities, with the most population in a county, having already designated appointees to the board of an air pollution control authority comprised of a single county shall not be members of the committee. A majority of the members of each city selection committee shall constitute a quorum. [2006 c 227 § 2; 1967 c 238 § 22; 1963 c 27 § 1; 1957 c 232 § 11. Formerly RCW 70.94.110.]

70A.15.2020 City selection committees—Meetings, notice, recording officer—Alternative mail balloting—Notice. (1) The city selection committee of each county which is included within an authority shall meet within one month after the activation of such authority for the purpose of making its initial appointments to the board of such authority and thereafter whenever necessary for the purpose of making succeeding appointments. All meetings shall be held upon at least two weeks written notice to each member of the city selection committee of each county and he or she shall give such notice upon request of any member of such committee. A similar notice shall be given to the general public by a publication of such notice in a newspaper of general circulation in such authority. The authority shall act as recording officer, maintain its records, and give appropriate notice of its proceedings and actions.

(2) As an alternative to meeting in accordance with subsection (1) of this section, the authority may administer the appointment process through the mail.

(a) At least four months prior to the expiration of the term of office, the authority must mail a request to each of the

members of the city selection committee seeking nominations to the office. The members of the selection committee shall return the nomination to the authority at its official address within fourteen days.

(b) If an unexpected vacancy occurs, the authority must, within thirty days after becoming aware of the vacancy, mail a request to each of the members of the city selection committee seeking nominations to the office. The members of the city selection committee shall return the nomination to the authority at its official address within fourteen days after the request was made.

(c) Within five business days of the close of the nomination period, the authority will mail ballots by certified mail to each of the members of the city selection committee, specifying the date by which to return the completed ballot which is the last day of the third month prior to the expiration of the term of office. Each mayor who chooses to participate in the balloting shall mark the choice for appointment, sign the ballot, and return the ballot to the authority. Each completed ballot shall be date-stamped upon receipt by the mayor or staff of the mayor of the city or town. The timely return of completed ballots by a majority of the members of each city selection committee constitutes a quorum and the common choice by a majority of the quorum constitutes a valid appointment.

(3) At least two weeks' written notice must be given by the authority to each member of the city selection committee prior to the nomination process. A similar notice shall be given to the general public by publication in a newspaper of general circulation in the authority. A single notice is sufficient for both the nomination process and the balloting process. [2017 c 37 § 6; 2012 c 117 § 406; 2009 c 254 § 2; 1995 c 261 § 2; 1969 ex.s. c 168 § 14; 1967 c 238 § 23; 1957 c 232 § 12. Formerly RCW 70.94.120.]

70A.15.2030 Air pollution control authority—Board of directors—Powers, quorum, officers, compensation.

The board shall exercise all powers of the authority except as otherwise provided. The board shall conduct its first meeting within thirty days after all of its members have been appointed or designated as provided in RCW 70A.15.2000. The board shall meet at least ten times per year. All meetings shall be publicly announced prior to their occurrence. All meetings shall be open to the public. A majority of the board shall constitute a quorum for the transaction of business and shall be necessary for any action taken by the board. The board shall elect from its members a chair and such other officers as may be necessary. Any member of the board may designate a regular alternate to serve on the board in his or her place with the same authority as the member when he or she is unable to attend. In no event may a regular alternate serve as the permanent chair. Each member of the board, or his or her representative, shall receive from the authority compensation consistent with such authority's rates (but not to exceed one thousand dollars per year) for time spent in the performance of duties under this chapter, plus the actual and necessary expenses incurred by the member in such performance. The board may appoint a control officer, and any other personnel, and shall determine their salaries, and pay same, together with any other proper indebtedness, from authority funds. [2020 c 20 § 1087; 1998 c 342 § 1; 1991 c 199 § 705;

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1969 ex.s. c 168 § 15; 1967 c 238 § 24; 1957 c 232 § 13. Formerly RCW 70.94.130.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.2040 Air pollution control authority—Powers and duties of activated authority. The board of any activated authority in addition to any other powers vested in them by law, shall have power to:

(1) Adopt, amend and repeal its own rules and regulations, implementing this chapter and consistent with it, after consideration at a public hearing held in accordance with chapter 42.30 RCW. Rules and regulations shall also be adopted in accordance with the notice and adoption procedures set forth in RCW 34.05.320, those provisions of RCW 34.05.325 that are not in conflict with chapter 42.30 RCW, and with the procedures of RCW 34.05.340, *34.05.355 through 34.05.380, and with chapter 34.08 RCW, except that rules shall not be published in the Washington Administrative Code. Judicial review of rules adopted by an authority shall be in accordance with Part V of chapter 34.05 RCW. An air pollution control authority shall not be deemed to be a state agency.

(2) Hold hearings relating to any aspect of or matter in the administration of this chapter not prohibited by the provisions of chapter 62, Laws of 1970 ex. sess. and in connection therewith issue subpoenas to compel the attendance of witnesses and the production of evidence, administer oaths and take the testimony of any person under oath.

(3) Issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings subject to the rights of appeal as provided in chapter 62, Laws of 1970 ex. sess.

(4) Require access to records, books, files and other information specific to the control, recovery or release of air contaminants into the atmosphere.

(5) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise.

(6) Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution within its jurisdiction.

(7) Encourage voluntary cooperation by persons or affected groups to achieve the purposes of this chapter.

(8) Encourage and conduct studies, investigation and research relating to air pollution and its causes, effects, prevention, abatement and control.

(9) Collect and disseminate information and conduct educational and training programs relating to air pollution.

(10) Advise, consult, cooperate and contract with agencies and departments and the educational institutions of the state, other political subdivisions, industries, other states, interstate or interlocal agencies, and the United States government, and with interested persons or groups.

(11) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problems which may be related to the source, device or system. Nothing in any such consultation shall be construed to relieve any person from compliance with this chapter, ordi-

nances, resolutions, rules and regulations in force pursuant thereto, or any other provision of law.

(12) Accept, receive, disburse and administer grants or other funds or gifts from any source, including public and private agencies and the United States government for the purpose of carrying out any of the functions of this chapter. [1991 c 199 § 706; 1970 ex.s. c 62 § 56; 1969 ex.s. c 168 § 16; 1967 c 238 § 25. Formerly RCW 70.94.141.]

*Reviser's note: RCW 34.05.355 was repealed by 1995 c 403 § 305.

Finding—1991 c 199: See note following RCW 70A.15.1005.

Additional notes found at www.leg.wa.gov

70A.15.2050 Subpoena powers—Witnesses, expenses and mileage—Rules and regulations. In connection with the subpoena powers given in RCW 70A.15.2040(2):

(1) In any hearing held under RCW 70A.15.2310 and 70A.15.2530, the board or the department, and their authorized agents:

(a) Shall issue a subpoena upon the request of any party and, to the extent required by rule or regulation, upon a statement or showing of general relevance and reasonable scope of the evidence sought;

(b) May issue a subpoena upon their own motion.

(2) The subpoena powers given in RCW 70A.15.2040(2) shall be statewide in effect.

(3) Witnesses appearing under the compulsion of a subpoena in a hearing before the board or the department shall be paid the same fees and mileage that are provided for witnesses in the courts of this state. Such fees and mileage, and the cost of duplicating records required to be produced by subpoena issued upon the motion of the board or department, shall be paid by the board or department. Such fees and mileage, and the cost of producing records required to be produced by subpoena issued upon the request of a party, shall be paid by that party.

(4) If an individual fails to obey the subpoena, or obeys the subpoena but refuses to testify when required concerning any matter under examination or investigation or the subject of the hearing, the board or department shall file its written report thereof and proof of service of its subpoena, in any court of competent jurisdiction in the county where the examination, hearing, or investigation is being conducted. Thereupon, the court shall forthwith cause the individual to be brought before it and, upon being satisfied that the subpoena is within the jurisdiction of the board or department and otherwise in accordance with law, shall punish him or her as if the failure or refusal related to a subpoena from or testimony in that court.

(5) The department may make such rules and regulations as to the issuance of its own subpoenas as are not inconsistent with the provisions of this chapter. [2020 c 20 § 1088; 2012 c 117 § 407; 1987 c 109 § 35; 1969 ex.s. c 168 § 17; 1967 c 238 § 26. Formerly RCW 70.94.142.]

Purpose—Short title—Construction—Rules—Severability—Cap-tions—1987 c 109: See notes following RCW 43.21B.001.

70A.15.2060 Federal aid. Any authority exercising the powers and duties prescribed in this chapter may make application for, receive, administer, and expend any federal aid, under federal legislation from any agency of the federal government, for the prevention and control of air pollution or the

development and administration of programs related to air pollution control and prevention, as permitted by RCW 70A.15.2040(12): PROVIDED, That any such application shall be submitted to and approved by the department. The department shall adopt rules and regulations establishing standards for such approval and shall approve any such application, if it is consistent with this chapter, and any other applicable requirements of law. [2020 c 20 § 1089; 1987 c 109 § 36; 1969 ex.s. c 168 § 18; 1967 c 238 § 27. Formerly RCW 70.94.143.]

Purpose—Short title—Construction—Rules—Severability—Cap-tions—1987 c 109: See notes following RCW 43.21B.001.

70A.15.2200 Classification of air contaminant sources—Registration—Fee—Registration program defined—Adoption of rules requiring persons to report emissions of greenhouse gases. (1) The board of any activated authority or the department, may classify air contaminant sources, by ordinance, resolution, rule or regulation, which in its judgment may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which cause or contribute to air pollution, and may require registration or reporting or both for any such class or classes. Classifications made pursuant to this section may be for application to the area of jurisdiction of such authority, or the state as a whole or to any designated area within the jurisdiction, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

(2) Except as provided in subsection (3) of this section, any person operating or responsible for the operation of air contaminant sources of any class for which the ordinances, resolutions, rules or regulations of the department or board of the authority, require registration or reporting shall register therewith and make reports containing information as may be required by such department or board concerning location, size and height of contaminant outlets, processes employed, nature of the contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. In the case of emissions of greenhouse gases as defined in RCW 70A.45.010 the department shall adopt rules requiring reporting of those emissions. The department or board may require that such registration or reporting be accompanied by a fee, and may determine the amount of such fee for such class or classes: PROVIDED, That the amount of the fee shall only be to compensate for the costs of administering such registration or reporting program which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering or other reliable analysis for accuracy and currentness, of information provided by sources pursuant to registration program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration pro-

gram: PROVIDED FURTHER, That any such registration made with either the board or the department shall preclude a further registration and reporting with any other board or the department, except that emissions of greenhouse gases as defined in RCW 70A.45.010 must be reported as required under subsection (5) of this section.

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

(3) If a registration or report has been filed for a grain warehouse or grain elevator as required under this section, registration, reporting, or a registration program fee shall not, after January 1, 1997, again be required under this section for the warehouse or elevator unless the capacity of the warehouse or elevator as listed as part of the license issued for the facility has been increased since the date the registration or reporting was last made. If the capacity of the warehouse or elevator listed as part of the license is increased, any registration or reporting required for the warehouse or elevator under this section must be made by the date the warehouse or elevator receives grain from the first harvest season that occurs after the increase in its capacity is listed in the license.

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

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

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

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

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

(5)(a) The department shall adopt rules requiring persons to report emissions of greenhouse gases as defined in RCW 70A.45.010 where those emissions from a single facility, or from electricity or fossil fuels sold in Washington by a single supplier or local distribution company, meet or exceed 10,000 metric tons of carbon dioxide equivalent annually. The rules adopted by the department must support implementation of the program created in RCW 70A.65.060. In addition, the rules must require that:

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

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

(b)(i) The department may by rule include additional gases to the definition of "greenhouse gas" in RCW 70A.45.010 only if the gas has been designated as a greenhouse gas by the United States congress, by the United States

environmental protection agency, or included in external greenhouse gas emission trading programs with which Washington has pursuant to RCW 70A.65.210. Prior to including additional gases to the definition of "greenhouse gas" in RCW 70A.45.010, the department shall notify the appropriate committees of the legislature.

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

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

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

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

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

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

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

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

(f) The energy facility site evaluation council shall, simultaneously with the department, adopt rules that impose greenhouse gas reporting requirements in site certifications on owners or operators of a facility permitted by the energy facility site evaluation council. The greenhouse gas reporting requirements imposed by the energy facility site evaluation council must be the same as the greenhouse gas reporting requirements imposed by the department. The department shall share any information reported to it from facilities permitted by the energy facility site evaluation council with the council, including notice of a facility that has failed to report as required. The energy facility site evaluation council shall contract with the department to monitor the reporting requirements adopted under this section.

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

(ii) Verification requirements apply at a minimum to persons required to report under (a) of this subsection with emissions that equal or exceed 25,000 metric tons of carbon dioxide equivalent emissions, including carbon dioxide from biomass-derived fuels, or to persons who have a compliance obligation under RCW 70A.65.080 in any year of the current compliance period. The department may adopt rules to accept

verification reports from another jurisdiction with a linkage agreement pursuant to RCW 70A.65.180 in cases where the department deems that the methods or procedures are substantively similar.

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

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

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

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

(v) For the purpose of this subsection (5), the term "electric power entity" includes any of the following that supply electric power in Washington with associated emissions of greenhouse gases equal to or above the threshold established under (a) of this subsection: (A) Electricity importers and exporters; (B) retail providers, including multijurisdictional retail providers; and (C) first jurisdictional deliverers, as defined in RCW 70A.65.010, not otherwise included here. [2022 c 181 § 9; 2021 c 316 § 33; 2020 c 20 § 1090; 2010 c 146 § 2; 2008 c 14 § 5; 2005 c 138 § 1; 1997 c 410 § 1; 1993 c 252 § 3; 1987 c 109 § 37; 1984 c 88 § 2; 1969 ex.s. c 168 § 19; 1967 c 238 § 28. Formerly RCW 70.94.151.]

Short title—2021 c 316: See RCW 70A.65.900.

Findings—Intent—Scope of chapter 14, Laws of 2008—2008 c 14: See RCW 70A.45.005 and 70A.45.900.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70A.15.2210 Notice may be required of construction of proposed new contaminant source—Submission of plans—Approval, disapproval—Emission control—"De minimis new sources" defined. (1) The department of ecology or board of any authority may require notice of the establishment of any proposed new sources except single-family and duplex dwellings or de minimis new sources as defined in rules adopted under subsection (11) of this section. The department of ecology or board may require such notice to be accompanied by a fee and determine the amount of such fee: PROVIDED, That the amount of the fee may not exceed the cost of reviewing the plans, specifications, and other information and administering such notice: PROVIDED FUR-

THER, That any such notice given or notice of construction application submitted to either the board or to the department of ecology shall preclude a further submittal of a duplicate application to any board or to the department of ecology.

(2) The department shall, after opportunity for public review and comment, adopt rules that establish a workload-driven process for determination and review of the fee covering the direct and indirect costs of processing a notice of construction application and a methodology for tracking revenues and expenditures. All new source fees collected by the delegated local air authorities from sources shall be deposited in the dedicated accounts of their respective treasuries. All new source fees collected by the department from sources shall be deposited in the air pollution control account.

(3) Within thirty days of receipt of a notice of construction application, the department of ecology or board may require, as a condition precedent to the establishment of the new source or sources covered thereby, the submission of plans, specifications, and such other information as it deems necessary to determine whether the proposed new source will be in accord with applicable rules and regulations in force under this chapter. If on the basis of plans, specifications, or other information required under this section the department of ecology or board determines that the proposed new source will not be in accord with this chapter or the applicable ordinances, resolutions, rules, and regulations adopted under this chapter, it shall issue an order denying permission to establish the new source. If on the basis of plans, specifications, or other information required under this section, the department of ecology or board determines that the proposed new source will be in accord with this chapter, and the applicable rules and regulations adopted under this chapter, it shall issue an order of approval for the establishment of the new source or sources, which order may provide such conditions as are reasonably necessary to assure the maintenance of compliance with this chapter and the applicable rules and regulations adopted under this chapter. Every order of approval under this chapter must be reviewed prior to issuance by a professional engineer or staff under the supervision of a professional engineer in the employ of the department of ecology or board.

(4) The determination required under subsection (3) of this section shall include a determination of whether the operation of the new air contaminant source at the location proposed will cause any ambient air quality standard to be exceeded.

(5) New source review of a modification shall be limited to the emission unit or units proposed to be modified and the air contaminants whose emissions would increase as a result of the modification.

(6) Nothing in this section shall be construed to authorize the department of ecology or board to require the use of emission control equipment or other equipment, machinery, or devices of any particular type, from any particular supplier, or produced by any particular manufacturer.

(7) Any features, machines, and devices constituting parts of or called for by plans, specifications, or other information submitted pursuant to subsection (1) or (3) of this section shall be maintained and operate in good working order.

(8) The absence of an ordinance, resolution, rule, or regulation, or the failure to issue an order pursuant to this section

shall not relieve any person from his or her obligation to comply with applicable emission control requirements or with any other provision of law.

(9) Within thirty days of receipt of a notice of construction application the department of ecology or board shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within sixty days of receipt of a complete application the department or board shall either (a) issue a final decision on the application, or (b) for those projects subject to public notice, initiate notice and comment on a proposed decision, followed as promptly as possible by a final decision. A person seeking approval to construct or modify a source that requires an operating permit may elect to integrate review of the operating permit application or amendment required by RCW 70A.15.2260 and the notice of construction application required by this section. A notice of construction application designated for integrated review shall be processed in accordance with operating permit program procedures and deadlines.

(10) A notice of construction approval required under subsection (3) of this section shall include a determination that the new source will achieve best available control technology. If more stringent controls are required under federal law, the notice of construction shall include a determination that the new source will achieve the more stringent federal requirements. Nothing in this subsection is intended to diminish other state authorities under this chapter.

(11) No person is required to submit a notice of construction or receive approval for a new source that is deemed by the department of ecology or board to have de minimis impact on air quality. The department of ecology shall adopt and periodically update rules identifying categories of de minimis new sources. The department of ecology may identify de minimis new sources by category, size, or emission thresholds.

(12) For purposes of this section, "de minimis new sources" means new sources with trivial levels of emissions that do not pose a threat to human health or the environment. [2020 c 20 § 1091. Prior: 1996 c 67 § 1; 1996 c 29 § 1; 1993 c 252 § 4; 1991 c 199 § 302; 1973 1st ex.s. c 193 § 2; 1969 ex.s. c 168 § 20; 1967 c 238 § 29. Formerly RCW 70.94.152.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

Use of emission credits to be consistent with new source review program: RCW 70A.15.6230.

70A.15.2220 Existing stationary source—Replacement or substantial alteration of emission control technology. Any person proposing to replace or substantially alter the emission control technology installed on an existing stationary source emission unit shall file a notice of construction application with the jurisdictional permitting authority. For projects not otherwise reviewable under RCW 70A.15.2210, the permitting authority may (1) require that the owner or operator employ reasonably available control technology for the affected emission unit and (2) may prescribe reasonable operation and maintenance conditions for the control equipment. Within thirty days of receipt of an application for notice of construction under this section the permitting authority shall either notify the applicant in writing that the

application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within thirty days of receipt of a complete application the permitting authority shall either issue an order of approval or a proposed RACT determination for the proposed project. Construction shall not commence on a project subject to review under this section until the permitting authority issues a final order of approval. However, any notice of construction application filed under this section shall be deemed to be approved without conditions if the permitting authority takes no action within thirty days of receipt of a complete application for a notice of construction. [2020 c 20 § 1092; 1991 c 199 § 303. Formerly RCW 70.94.153.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.2230 RACT requirements. (1) RACT as defined in RCW 70A.15.1030 is required for existing sources except as otherwise provided in RCW 70A.15.3000(9).

(2) RACT for each source category containing three or more sources shall be determined by rule except as provided in subsection (3) of this section.

(3) Source-specific RACT determinations may be performed under any of the following circumstances:

- (a) As authorized by RCW 70A.15.2220;
- (b) When required by the federal clean air act;
- (c) For sources in source categories containing fewer than three sources;
- (d) When an air quality problem, for which the source is a contributor, justifies a source-specific RACT determination prior to development of a categorical RACT rule; or
- (e) When a source-specific RACT determination is needed to address either specific air quality problems for which the source is a significant contributor or source-specific economic concerns.

(4) By January 1, 1994, ecology shall develop a list of sources and source categories requiring RACT review and a schedule for conducting that review. Ecology shall review the list and schedule within six months of receiving the initial operating permit applications and at least once every five years thereafter. In developing the list to determine the schedule of RACT review, ecology shall consider emission reductions achievable through the use of new available technologies and the impacts of those incremental reductions on air quality, the remaining useful life of previously installed control equipment, the impact of the source or source category on air quality, the number of years since the last BACT, RACT, or LAER determination for that source and other relevant factors. Prior to finalizing the list and schedule, ecology shall consult with local air authorities, the regulated community, environmental groups, and other interested individuals and organizations. The department and local authorities shall revise RACT requirements, as needed, based on the review conducted under this subsection.

(5) In determining RACT, ecology and local authorities shall utilize the factors set forth in RCW 70A.15.1030 and shall consider RACT determinations and guidance made by the federal environmental protection agency, other states and local authorities for similar sources, and other relevant factors. In establishing or revising RACT requirements, ecology and local authorities shall address, where practicable, all air

contaminants deemed to be of concern for that source or source category.

(6) Emission standards and other requirements contained in rules or regulatory orders in effect at the time of operating permit issuance or renewal shall be considered RACT for purposes of permit issuance or renewal. RACT determinations under subsections (2) and (3) of this section shall be incorporated into operating permits as provided in RCW 70A.15.2260 and rules implementing that section.

(7) The department and local air authorities are authorized to assess and collect a fee to cover the costs of developing, establishing, or reviewing categorical or case-by-case RACT requirements. The fee shall apply to determinations of RACT requirements as defined under this section and RCW 70A.15.3000(9). The amount of the fee may not exceed the direct and indirect costs of establishing the requirement for the particular source or the pro rata portion of the direct and indirect costs of establishing the requirement for the relevant source category. The department shall, after opportunity for public review and comment, adopt rules that establish a workload-driven process for determination and review of the fee covering the direct and indirect costs of its RACT determinations and a methodology for tracking revenues and expenditures. All such RACT determination fees collected by the delegated local air authorities from sources shall be deposited in the dedicated accounts of their respective treasuries. All such RACT fees collected by the department from sources shall be deposited in the air pollution control account. [2020 c 20 § 1093; 1996 c 29 § 2; 1993 c 252 § 8. Formerly RCW 70.94.154.]

70A.15.2240 Control of emissions—Bubble concept—Schedules of compliance. (1) As used in subsection (3) of this section, the term "bubble" means an air pollution control system which permits aggregate measurements of allowable emissions, for a single category of pollutant, for emissions points from a specified emissions-generating facility or facilities. Individual point source emissions levels from such specified facility or facilities may be modified provided that the aggregate limit for the specified sources is not exceeded.

(2) Whenever any regulation relating to emission standards or other requirements for the control of emissions is adopted which provides for compliance with such standards or requirements no later than a specified time after the date of adoption of the regulation, the appropriate activated air pollution control authority or, if there be none, the department of ecology shall, by permit or regulatory order, issue to air contaminant sources subject to the standards or requirements, schedules of compliance setting forth timetables for the achievement of compliance as expeditiously as practicable, but in no case later than the time specified in the regulation. Interim dates in such schedules for the completion of steps of progress toward compliance shall be as enforceable as the final date for full compliance therein.

(3) Wherever requirements necessary for the attainment of air quality standards or, where such standards are not exceeded, for the maintenance of air quality can be achieved through the use of a control program involving the bubble concept, such program may be authorized by a regulatory order or orders or permit issued to the air contaminant source

or sources involved. Such order or permit shall only be authorized after the control program involving the bubble concept is accepted by [the] United States environmental protection agency as part of an approved state implementation plan. Any such order or permit provision shall restrict total emissions within the bubble to no more than would otherwise be allowed in the aggregate for all emitting processes covered. The orders or permits provided for by this subsection shall be issued by the department or the authority with jurisdiction. If the bubble involves interjurisdictional approval, concurrence in the total program must be secured from each regulatory entity concerned. [1991 c 199 § 305; 1981 c 224 § 1; 1973 1st ex.s. c 193 § 3. Formerly RCW 70.94.155.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

Use of emission credits to be consistent with bubble program: RCW 70A.15.6230.

70A.15.2250 Preemption of uniform building and fire codes. The department and local air pollution control authorities shall preempt the application of chapter 9 of the uniform building code and article 80 of the uniform fire code by other state agencies and local governments for the purposes of controlling outdoor air pollution from industrial and commercial sources, except where authorized by chapter 199, Laws of 1991. Actions by other state agencies and local governments under article 80 of the uniform fire code to take immediate action in response to an emission that presents a physical hazard or imminent health hazard are not preempted. [1991 c 199 § 315. Formerly RCW 70.94.157.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.2260 Operating permits for air contaminant sources—Generally—Fees, report to legislature. The department of ecology, or board of an authority, shall require renewable permits for the operation of air contaminant sources subject to the following conditions and limitations:

(1) Permits shall be issued for a term of five years. A permit may be modified or amended during its term at the request of the permittee, or for any reason allowed by the federal clean air act. The rules adopted pursuant to subsection (2) of this section shall include rules for permit amendments and modifications. The terms and conditions of a permit shall remain in effect after the permit itself expires if the permittee submits a timely and complete application for permit renewal.

(2)(a) Rules establishing the elements for a statewide operating permit program and the process for permit application and renewal consistent with federal requirements shall be established by the department by January 1, 1993. The rules shall provide that every proposed permit must be reviewed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority. The permit program established by these rules shall be administered by the department and delegated local air authorities. Rules developed under this subsection shall not preclude a delegated local air authority from including in a permit its own more stringent emission standards and operating restrictions.

(b) The board of any local air pollution control authority may apply to the department of ecology for a delegation order authorizing the local authority to administer the operating

permit program for sources under that authority's jurisdiction. The department shall, by order, approve such delegation, if the department finds that the local authority has the technical and financial resources, to discharge the responsibilities of a permitting authority under the federal clean air act. A delegation request shall include adequate information about the local authority's resources to enable the department to make the findings required by this subsection. However, any delegation order issued under this subsection shall take effect ninety days after the environmental protection agency authorizes the local authority to issue operating permits under the federal clean air act.

(c) Except for the authority granted the energy facility site evaluation council to issue permits for the new construction, reconstruction, or enlargement or operation of new energy facilities under chapter 80.50 RCW, the department may exercise the authority, as delegated by the environmental protection agency, to administer Title IV of the federal clean air act as amended and to delegate such administration to local authorities as applicable pursuant to (b) of this subsection.

(3) In establishing technical standards, defined in RCW 70A.15.1030, the permitting authority shall consider and, if found to be appropriate, give credit for waste reduction within the process.

(4) Operating permits shall apply to all sources (a) where required by the federal clean air act, and (b) for any source that may cause or contribute to air pollution in such quantity as to create a threat to the public health or welfare. Subsection (b) of this subsection is not intended to apply to small businesses except when both of the following limitations are satisfied: (i) The source is in an area exceeding or threatening to exceed federal or state air quality standards; and (ii) the department provides a reasonable justification that requiring a source to have a permit is necessary to meet a federal or state air quality standard, or to prevent exceeding a standard in an area threatening to exceed the standard. For purposes of this subsection "areas threatening to exceed air quality standards" shall mean areas projected by the department to exceed such standards within five years. Prior to identifying threatened areas the department shall hold a public hearing or hearings within the proposed areas.

(5) Sources operated by government agencies are not exempt under this section.

(6) Within one hundred eighty days after the United States environmental protection agency approves the state operating permit program, a person required to have a permit shall submit to the permitting authority a compliance plan and permit application, signed by a responsible official, certifying the accuracy of the information submitted. Until permits are issued, existing sources shall be allowed to operate under presently applicable standards and conditions provided that such sources submit complete and timely permit applications.

(7) All draft permits shall be subject to public notice and comment. The rules adopted pursuant to subsection (2) of this section shall specify procedures for public notice and comment. Such procedures shall provide the permitting agency with an opportunity to respond to comments received from interested parties prior to the time that the proposed permit is submitted to the environmental protection agency for review

pursuant to section 505(a) of the federal clean air act. In the event that the environmental protection agency objects to a proposed permit pursuant to section 505(b) of the federal clean air act, the permitting authority shall not issue the permit, unless the permittee consents to the changes required by the environmental protection agency.

(8) The procedures contained in chapter 43.21B RCW shall apply to permit appeals. The pollution control hearings board may stay the effectiveness of any permit issued under this section during the pendency of an appeal filed by the permittee, if the permittee demonstrates that compliance with the permit during the pendency of the appeal would require significant expenditures that would not be necessary in the event that the permittee prevailed on the merits of the appeal.

(9) After the effective date of any permit program promulgated under this section, it shall be unlawful for any person to: (a) Operate a permitted source in violation of any requirement of a permit issued under this section; or (b) fail to submit a permit application at the time required by rules adopted under subsection (2) of this section.

(10) Each air operating permit shall state the origin of and specific legal authority for each requirement included therein. Every requirement in an operating permit shall be based upon the most stringent of the following requirements:

(a) The federal clean air act and rules implementing that act, including provision of the approved state implementation plan;

(b) This chapter and rules adopted thereunder;

(c) In permits issued by a local air pollution control authority, the requirements of any order or regulation adopted by that authority;

(d) Chapter 70A.388 RCW and rules adopted thereunder; and

(e) Chapter 80.50 RCW and rules adopted thereunder.

(11) Consistent with the provisions of the federal clean air act, the permitting authority may issue general permits covering categories of permitted sources, and temporary permits authorizing emissions from similar operations at multiple temporary locations.

(12) Permit program sources within the territorial jurisdiction of an authority delegated the operating permit program shall file their permit applications with that authority, except that permit applications for sources regulated on a statewide basis pursuant to RCW 70A.15.3080 shall be filed with the department. Permit program sources outside the territorial jurisdiction of a delegated authority shall file their applications with the department. Permit program sources subject to chapter 80.50 RCW shall, irrespective of their location, file their applications with the energy facility site evaluation council.

(13) When issuing operating permits to coal-fired electric generating plants, the permitting authority shall establish requirements consistent with Title IV of the federal clean air act.

(14)(a) The department and the local air authorities are authorized to assess and to collect, and each source emitting one hundred tons or more per year of a regulated pollutant shall pay an interim assessment to fund the development of the operating permit program during fiscal year 1994.

(b) The department shall conduct a workload analysis and prepare an operating permit program development bud-

get for fiscal year 1994. The department shall allocate among all sources emitting one hundred tons or more per year of a regulated pollutant during calendar year 1992 the costs identified in its program development budget according to a three-tiered model, with each of the three tiers being equally weighted, based upon:

- (i) The number of sources;
- (ii) The complexity of sources; and
- (iii) The size of sources, as measured by the quantity of each regulated pollutant emitted by the source.

(c) Each local authority and the department shall collect from sources under their respective jurisdictions the interim fee determined by the department and shall remit the fee to the department.

(d) Each local authority may, in addition, allocate its fiscal year 1994 operating permit program development costs among the sources under its jurisdiction emitting one hundred tons or more per year of a regulated pollutant during calendar year 1992 and may collect an interim fee from these sources. A fee assessed pursuant to this subsection (14)(d) shall be collected at the same time as the fee assessed pursuant to (c) of this subsection.

(e) The fees assessed to a source under this subsection shall be limited to the first seven thousand five hundred tons for each regulated pollutant per year.

(15)(a) The department shall determine the persons liable for the fee imposed by subsection (14) of this section, compute the fee, and provide by November 1, 1993, the identity of the fee payer with the computation of the fee to each local authority and to the department of revenue for collection. The department of revenue shall collect the fee computed by the department from the fee payers under the jurisdiction of the department. The administrative, collection, and penalty provisions of chapter 82.32 RCW shall apply to the collection of the fee by the department of revenue. The department shall provide technical assistance to the department of revenue for decisions made by the department of revenue pursuant to RCW 82.32.160 and 82.32.170. All interim fees collected by the department of revenue on behalf of the department and all interim fees collected by local authorities on behalf of the department shall be deposited in the air operating permit account. The interim fees collected by the local air authorities to cover their permit program development costs under subsection (14)(d) of this section shall be deposited in the dedicated accounts of their respective treasuries.

(b) All fees identified in this section shall be due and payable on March 1, 1994, except that the local air pollution control authorities may adopt by rule an earlier date on which fees are to be due and payable. The section 5, chapter 252, Laws of 1993 amendments to RCW 70A.15.2260 do not have the effect of terminating, or in any way modifying, any liability, civil or criminal, incurred pursuant to the provisions of RCW 70A.15.2260 (15) and (17) as they existed prior to July 25, 1993.

(16) For sources or source categories not required to obtain permits under subsection (4) of this section, the department or local authority may establish by rule control technology requirements. If control technology rule revisions are made by the department or local authority under this subsection, the department or local authority shall consider the remaining useful life of control equipment previously

installed on existing sources before requiring technology changes. The department or any local air authority may issue a general permit, as authorized under the federal clean air act, for such sources.

(17) Emissions of greenhouse gases as defined in RCW 70A.45.010 must be reported as required by RCW 70A.15.2200. The reporting provisions of RCW 70A.15.2200 shall not apply to any other emissions from any permit program source after the effective date of United States environmental protection agency approval of the state operating permit program. [2020 c 20 § 1094; 2008 c 14 § 6; 1993 c 252 § 5; 1991 c 199 § 301. Formerly RCW 70.94.161.]

Findings—Intent—Scope of chapter 14, Laws of 2008—2008 c 14: See RCW 70A.45.005 and 70A.45.900.

Finding—1991 c 199: See note following RCW 70A.15.1005.
Air operating permit account: RCW 70A.15.1010.

70A.15.2270 Annual fees from operating permit program source to cover cost of program. (1) The department and delegated local air authorities are authorized to determine, assess, and collect, and each permit program source shall pay, annual fees sufficient to cover the direct and indirect costs of implementing a state operating permit program approved by the United States environmental protection agency under the federal clean air act. However, a source that receives its operating permit from the United States environmental protection agency shall not be considered a permit program source so long as the environmental protection agency continues to act as the permitting authority for that source. Each permitting authority shall develop by rule a fee schedule allocating among its permit program sources the costs of the operating permit program, and may, by rule, establish a payment schedule whereby periodic installments of the annual fee are due and payable more frequently. All operating permit program fees collected by the department shall be deposited in the air operating permit account. All operating permit program fees collected by the delegated local air authorities shall be deposited in their respective air operating permit accounts or other accounts dedicated exclusively to support of the operating permit program. The fees assessed under this subsection shall first be due not less than forty-five days after the United States environmental protection agency delegates to the department the authority to administer the operating permit program and then annually thereafter.

The department shall establish, by rule, procedures for administrative appeals to the department regarding the fee assessed pursuant to this subsection.

(2) The fee schedule developed by each permitting authority shall fully cover and not exceed both its permit administration costs and the permitting authority's share of statewide program development and oversight costs.

(a) Permit administration costs are those incurred by each permitting authority, including the department, in administering and enforcing the operating permit program with respect to sources under its jurisdiction. Costs associated with the following activities are fee eligible as these activities relate to the operating permit program and to the sources permitted by a permitting authority, including, where applicable, sources subject to a general permit:

(i) Preapplication assistance and review of an application and proposed compliance plan for a permit, permit revision, or renewal;

(ii) Source inspections, testing, and other data-gathering activities necessary for the development of a permit, permit revision, or renewal;

(iii) Acting on an application for a permit, permit revision, or renewal, including the costs of developing an applicable requirement as part of the processing of a permit, permit revision, or renewal, preparing a draft permit and fact sheet, and preparing a final permit, but excluding the costs of developing BACT, LAER, BART, or RACT requirements for criteria and toxic air pollutants;

(iv) Notifying and soliciting, reviewing and responding to comment from the public and contiguous states and tribes, conducting public hearings regarding the issuance of a draft permit and other costs of providing information to the public regarding operating permits and the permit issuance process;

(v) Modeling necessary to establish permit limits or to determine compliance with permit limits;

(vi) Reviewing compliance certifications and emissions reports and conducting related compilation and reporting activities;

(vii) Conducting compliance inspections, complaint investigations, and other activities necessary to ensure that a source is complying with permit conditions;

(viii) Administrative enforcement activities and penalty assessment, excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;

(ix) The share attributable to permitted sources of the development and maintenance of emissions inventories;

(x) The share attributable to permitted sources of ambient air quality monitoring and associated recording and reporting activities;

(xi) Training for permit administration and enforcement;

(xii) Fee determination, assessment, and collection, including the costs of necessary administrative dispute resolution and penalty collection;

(xiii) Required fiscal audits, periodic performance audits, and reporting activities;

(xiv) Tracking of time, revenues and expenditures, and accounting activities;

(xv) Administering the permit program including the costs of clerical support, supervision, and management;

(xvi) Provision of assistance to small businesses under the jurisdiction of the permitting authority as required under section 507 of the federal clean air act; and

(xvii) Other activities required by operating permit regulations issued by the United States environmental protection agency under the federal clean air act.

(b) Development and oversight costs are those incurred by the department in developing and administering the state operating permit program, and in overseeing the administration of the program by the delegated local permitting authorities. Costs associated with the following activities are fee eligible as these activities relate to the operating permit program:

(i) Review and determinations necessary for delegation of authority to administer and enforce a permit program to a

local air authority under RCW 70A.15.2260(2) and 70A.15.6240;

(ii) Conducting fiscal audits and periodic performance audits of delegated local authorities, and other oversight functions required by the operating permit program;

(iii) Administrative enforcement actions taken by the department on behalf of a permitting authority, including those actions taken by the department under RCW 70A.15.6050, but excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;

(iv) Determination and assessment with respect to each permitting authority of the fees covering its share of the costs of development and oversight;

(v) Training and assistance for permit program administration and oversight, including training and assistance regarding technical, administrative, and data management issues;

(vi) Development of generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;

(vii) State codification of federal rules or standards for inclusion in operating permits;

(viii) Preparation of delegation package and other activities associated with submittal of the state permit program to the United States environmental protection agency for approval, including ongoing coordination activities;

(ix) General administration and coordination of the state permit program, related support activities, and other agency indirect costs, including necessary data management and quality assurance;

(x) Required fiscal audits and periodic performance audits of the department, and reporting activities;

(xi) Tracking of time, revenues and expenditures, and accounting activities;

(xii) Public education and outreach related to the operating permit program, including the maintenance of a permit register;

(xiii) The share attributable to permitted sources of compiling and maintaining emissions inventories;

(xiv) The share attributable to permitted sources of ambient air quality monitoring, related technical support, and associated recording activities;

(xv) The share attributable to permitted sources of modeling activities;

(xvi) Provision of assistance to small business as required under section 507 of the federal clean air act as it exists on July 25, 1993, or its later enactment as adopted by reference by the director by rule;

(xvii) Provision of services by the department of revenue and the office of the state attorney general and other state agencies in support of permit program administration;

(xviii) A one-time revision to the state implementation plan to make those administrative changes necessary to ensure coordination of the state implementation plan and the operating permit program; and

(xix) Other activities required by operating permit regulations issued by the United States environmental protection agency under the federal clean air act.

(3) The responsibility for operating permit fee determination, assessment, and collection is to be shared by the department and delegated local air authorities as follows:

(a) Each permitting authority, including the department, acting in its capacity as a permitting authority, shall develop a fee schedule and mechanism for collecting fees from the permit program sources under its jurisdiction; the fees collected by each authority shall be sufficient to cover its costs of permit administration and its share of the department's costs of development and oversight. Each delegated local authority shall remit to the department its share of the department's development and oversight costs.

(b) Only those local air authorities to whom the department has delegated the authority to administer the program pursuant to RCW 70A.15.2260(2) (b) and (c) and 70A.15.6240 shall have the authority to administer and collect operating permit fees. The department shall retain the authority to administer and collect such fees with respect to the sources within the jurisdiction of a local air authority until the effective date of program delegation to that air authority.

(c) The department shall allocate its development and oversight costs among all permitting authorities, including the department, in proportion to the number of permit program sources under the jurisdiction of each authority, except that extraordinary costs or other costs readily attributable to a specific permitting authority may be assessed that authority. For purposes of this subsection, all sources covered by a single general permit shall be treated as one source.

(4) The department and each delegated local air authority shall adopt by rule a general permit fee schedule for sources under their respective jurisdictions after such time as the department adopts provisions for general permit issuance. Within ninety days of the time that the department adopts a general permit fee schedule, the department shall report to the relevant standing committees of the legislature regarding the general permit fee schedules adopted by the department and by the delegated local air authorities. The permit administration costs of each general permit shall be allocated equitably among only those sources subject to that general permit. The share of development and oversight costs attributable to each general permit shall be determined pursuant to subsection (3)(c) of this section.

(5) The fee schedule developed by the department shall allocate among the sources for whom the department acts as a permitting authority, other than sources subject to a general permit, those portions of the department's permit administration costs and the department's share of the development and oversight costs which the department does not plan to recover under its general permit fee schedule or schedules as follows:

(a) The department shall allocate its permit administration costs and its share of the development and oversight costs not recovered through general permit fees according to a three-tiered model based upon:

(i) The number of permit program sources under its jurisdiction;

(ii) The complexity of permit program sources under its jurisdiction; and

(iii) The size of permit program sources under its jurisdiction, as measured by the quantity of each regulated pollutant emitted by the source.

(b) Each of the three tiers shall be equally weighted.

(c) The department may, in addition, allocate activities-based costs readily attributable to a specific source to that source under RCW 70A.15.2210(1) and 70A.15.2230(7).

The quantity of each regulated pollutant emitted by a source shall be determined based on the annual emissions during the most recent calendar year for which data is available.

(6) The department shall, after opportunity for public review and comment, adopt rules that establish a process for development and review of its operating permit program fee schedule, a methodology for tracking program revenues and expenditures, and, for both the department and the delegated local air authorities, a system of fiscal audits, reports, and periodic performance audits.

(a) The fee schedule development and review process shall include the following:

(i) The department shall conduct a biennial workload analysis. The department shall provide the opportunity for public review of and comment on the workload analysis. The department shall review and update its workload analysis during each biennial budget cycle, taking into account information gathered by tracking previous revenues, time, and expenditures and other information obtained through fiscal audits and performance audits.

(ii) The department shall prepare a biennial budget based upon the resource requirements identified in the workload analysis for that biennium. In preparing the budget, the department shall take into account the projected operating permit account balance at the start of the biennium. The department shall provide the opportunity for public review of and comment on the proposed budget. The department shall review and update its budget each biennium.

(iii) The department shall develop a fee schedule allocating the department's permit administration costs and its share of the development and oversight costs among the department's permit program sources using the methodology described in subsection (5) of this section. The department shall provide the opportunity for public review of and comment on the allocation methodology and fee schedule. The department shall provide procedures for administrative resolution of disputes regarding the source data on which allocation determinations are based; these procedures shall be designed such that resolution occurs prior to the completion of the allocation process. The department shall review and update its fee schedule annually.

(b) The methodology for tracking revenues and expenditures shall include the following:

(i) The department shall develop a system for tracking revenues and expenditures that provides the maximum practicable information. At a minimum, revenues from fees collected under the operating permit program shall be tracked on a source-specific basis and time and expenditures required to administer the program shall be tracked on the basis of source categories and functional categories. Each general permit will be treated as a separate source category for tracking and accounting purposes.

(ii) The department shall use the information obtained from tracking revenues, time, and expenditures to modify the workload analysis required in subsection (6)(a) of this section.

(iii) The information obtained from tracking revenues, time, and expenditures shall not provide a basis for challenge to the amount of an individual source's fee.

(c) The system of fiscal audits, reports, and periodic performance audits shall include the following:

(i) The department and the delegated local air authorities shall periodically report information about the air operating permit program on the department's website.

(ii) The department shall arrange for fiscal audits and routine performance audits and for periodic intensive performance audits of each permitting authority and of the department.

(7) Each local air authority requesting delegation shall, after opportunity for public review and comment, publish regulations which establish a process for development and review of its operating permit program fee schedule, and a methodology for tracking its revenues and expenditures. These regulations shall be submitted to the department for review and approval as part of the local authority's delegation request.

(8) As used in this section and in RCW 70A.15.2260(14), "regulated pollutant" shall have the same meaning as defined in section 502(b) of the federal clean air act as it exists on July 25, 1993, or its later enactment as adopted by reference by the director by rule.

(9) Fee structures as authorized under this section shall remain in effect until such time as the legislature authorizes an alternative structure following receipt of the report required by this subsection. [2020 c 20 § 1095; 2014 c 76 § 5; 1998 c 245 § 129; 1993 c 252 § 6. Formerly RCW 70.94.162.]

70A.15.2280 Source categories not required to have a permit—Recommendations. The department shall prepare recommendations to reduce air emissions for source categories not generally required to have a permit under RCW 70A.15.2260. Such recommendations shall not require any action by the owner or operator of a source and shall be consistent with rules adopted under chapter 70A.214 RCW. The recommendations shall include but not be limited to: Process changes, product substitution, equipment modifications, hazardous substance use reduction, recycling, and energy efficiency. [2020 c 20 § 1096; 1991 c 199 § 304. Formerly RCW 70.94.163.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.2290 Gasoline vapor recovery devices—Limitation on requiring. (1) A gasoline vapor recovery device that captures vapors during vehicle fueling may only be required at a service station, or any other gasoline dispensing facility supplying fuel to the general public, in any of the following circumstances:

(a) The facility sells in excess of six hundred thousand gallons of gasoline per year and is located in a county, any part of which is designated as nonattainment for ozone under the federal clean air act, 42 U.S.C. Sec. 7407; or

(b) The facility sells in excess of six hundred thousand gallons of gasoline per year and is located in a county where a maintenance plan has been adopted by a local air pollution control authority or the department of ecology that includes gasoline vapor recovery devices as a control strategy; or

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(c) From March 30, 1996, until December 31, 1998, in any facility that sells in excess of one million two hundred thousand gallons of gasoline per year and is located in an ozone-contributing county. For purposes of this section, an ozone-contributing county means a county in which the emissions have contributed to the formation of ozone in any county where violations of federal ozone standards have been measured, and includes: Cowlitz, Island, Kitsap, Lewis, Skagit, Thurston, Wahkiakum, and Whatcom counties; or

(d) After December 31, 1998, in any facility that sells in excess of eight hundred forty thousand gallons of gasoline per year and is located in any county, no part of which is designated as nonattainment for ozone under the federal clean air act, 42 U.S.C. Sec. 7407, provided that the department of ecology determines by December 31, 1997, that the use of gasoline vapor control devices in the county is important to achieving or maintaining attainment status in any other county.

(2) This section does not preclude the department of ecology or any local air pollution authority from requiring a gasoline vapor recovery device that captures vapors during vehicle refueling as part of the regulation of sources as provided in RCW 70A.15.2210, 70A.15.3000, or 70A.15.2040 or where required under 42 U.S.C. Sec. 7412. [2020 c 20 § 1097; 1996 c 294 § 1. Formerly RCW 70.94.165.]

Additional notes found at www.leg.wa.gov

70A.15.2300 Air pollution control authority control officer. Any activated authority which has adopted an ordinance, resolution, or valid rules and regulations as provided herein for the control and prevention of air pollution shall appoint a full time control officer, whose sole responsibility shall be to observe and enforce the provisions of this chapter and all orders, ordinances, resolutions, or rules and regulations of such activated authority pertaining to the control and prevention of air pollution. [1991 c 199 § 707; 1969 ex.s. c 168 § 21; 1967 c 238 § 30; 1957 c 232 § 17. Formerly RCW 70.94.170.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.2310 Variances—Application for—Considerations—Limitations—Renewals—Review. (1) Any person who owns or is in control of any plant, building, structure, establishment, process or equipment may apply to the department of ecology or appropriate local authority board for a variance from rules or regulations governing the quality, nature, duration or extent of discharges of air contaminants. The application shall be accompanied by such information and data as the department of ecology or board may require. The department of ecology or board may grant such variance, provided that variances to state rules shall require the department's approval prior to being issued by a local authority board. The total time period for a variance and renewal of such variance shall not exceed one year. Variances may be issued by either the department or a local board but only after public hearing or due notice, if the department or board finds that:

(a) The emissions occurring or proposed to occur do not endanger public health or safety or the environment; and

(b) Compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(2) No variance shall be granted pursuant to this section until the department of ecology or board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

(3) Any variance or renewal thereof shall be granted within the requirements of subsection (1) of this section and under conditions consistent with the reasons therefor, and within the following limitations:

(a) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measures that the department of ecology or board may prescribe.

(b) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will require the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the department of ecology or board is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

(c) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in (a) and (b) of this subsection, it shall be for not more than one year.

(4) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the department of ecology or board on account of the variance, no renewal thereof shall be granted unless following a public hearing on the complaint on due notice the department or board finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the department of ecology or board shall give public notice of such application in accordance with rules of the department of ecology or board.

(5) A variance or renewal shall not be a right of the applicant or holder thereof but shall be granted at the discretion of the department of ecology or board. However, any applicant adversely affected by the denial or the terms and conditions of the granting of an application for a variance or renewal of a variance by the department of ecology or board may obtain judicial review thereof under the provisions of chapter 34.05 RCW as now or hereafter amended.

(6) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of RCW 70A.15.6000 through 70A.15.6040 to any person or his or her property.

(7) An application for a variance, or for the renewal thereof, submitted to the department of ecology or board pur-

suant to this section shall be approved or disapproved by the department or board within sixty-five days of receipt unless the applicant and the department of ecology or board agree to a continuance.

(8) Variances approved under this section shall not be included in orders or permits provided for in RCW 70A.15.2260 or 70A.15.2210 until such time as the variance has been accepted by the United States environmental protection agency as part of an approved state implementation plan. [2020 c 20 § 1098; 1991 c 199 § 306; 1983 c 3 § 176; 1974 ex.s. c 59 § 1; 1969 ex.s. c 168 § 22; 1967 c 238 § 31. Formerly RCW 70.94.181.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.2500 Investigation of conditions by control officer or department—Entering private, public property. For the purpose of investigating conditions specific to the control, recovery or release of air contaminants into the atmosphere, a control officer, the department, or their duly authorized representatives, shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing two families or less. No person shall refuse entry or access to any control officer, the department, or their duly authorized representatives, who requests entry for the purpose of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection. [1987 c 109 § 38; 1979 c 141 § 121; 1967 c 238 § 32; 1957 c 232 § 20. Formerly RCW 70.94.200.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70A.15.2510 Confidentiality of records and information. Whenever any records or other information, other than ambient air quality data or emission data, furnished to or obtained by the department of ecology or the board of any authority under this chapter, relate to processes or production unique to the owner or operator, or is likely to affect adversely the competitive position of such owner or operator if released to the public or to a competitor, and the owner or operator of such processes or production so certifies, such records or information shall be only for the confidential use of the department of ecology or board. Nothing herein shall be construed to prevent the use of records or information by the department of ecology or board in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere: PROVIDED, That such analyses or summaries do not reveal any information otherwise confidential under the provisions of this section: PROVIDED FURTHER, That emission data furnished to or obtained by the department of ecology or board shall be correlated with applicable emission limitations and other control measures and shall be available for public inspection during normal business hours at offices of the department of ecology or board. [1991 c 199 § 307; 1973 1st ex.s. c 193 § 4; 1969 ex.s. c 168 § 23; 1967 c 238 § 33. Formerly RCW 70.94.205.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.2520 Enforcement actions by air authority—Notice to violators. At least thirty days prior to the commencement of any formal enforcement action under RCW

70A.15.3150 or 70A.15.3160 a local air authority shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or the rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order directing that necessary corrective action be taken within a reasonable time. In lieu of an order, the board or the control officer may require that the alleged violator or violators appear before the board for a hearing. Every notice of violation shall offer to the alleged violator an opportunity to meet with the local air authority prior to the commencement of enforcement action. [2020 c 20 § 1099; 1991 c 199 § 309; 1974 ex.s. c 69 § 4; 1970 ex.s. c 62 § 57; 1969 ex.s. c 168 § 24; 1967 c 238 § 34. Formerly RCW 70.94.211.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

Additional notes found at www.leg.wa.gov

70A.15.2530 Order final unless appealed to pollution control hearings board. Any order issued by the board or by the control officer, shall become final unless such order is appealed to the hearings board as provided in chapter 43.21B RCW. [1970 ex.s. c 62 § 58; 1969 ex.s. c 168 § 25; 1967 c 238 § 35. Formerly RCW 70.94.221.]

Additional notes found at www.leg.wa.gov

70A.15.2540 Rules of authority supersede local rules, regulations, etc.—Exceptions. The rules and regulations hereafter adopted by an authority under the provisions of this chapter shall supersede the existing rules, regulations, resolutions and ordinances of any of the component bodies included within said authority in all matters relating to the control and enforcement of air pollution as contemplated by this chapter: PROVIDED, HOWEVER, That existing rules, regulations, resolutions and ordinances shall remain in effect until such rules, regulations, resolutions and ordinances are superseded as provided in this section: PROVIDED FURTHER, That nothing herein shall be construed to supersede any local county, or city ordinance or resolution, or any provision of the statutory or common law pertaining to nuisance; nor to affect any aspect of employer-employee relationship relating to conditions in a place of work, including without limitation, statutes, rules or regulations governing industrial health and safety standards or performance standards incorporated in zoning ordinances or resolutions of the component bodies where such standards relating to air pollution control or air quality containing requirements not less stringent than those of the authority. [1969 ex.s. c 168 § 28; 1967 c 238 § 38; 1957 c 232 § 23. Formerly RCW 70.94.230.]

70A.15.2550 Air pollution control authority—Dissolution of prior districts—Continuation of rules and regulations until superseded. Upon the date that an authority begins to exercise its powers and functions, all rules and regulations in force on such date shall remain in effect until superseded by the rules and regulations of the authority as provided in RCW 70A.15.2540. [2020 c 20 § 1100; 1991 c 199 § 708; 1969 ex.s. c 168 § 29; 1967 c 238 § 39. Formerly RCW 70.94.231.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

(2022 Ed.)

70A.15.2560 Air pollution control advisory council.

The board of any authority may appoint an air pollution control advisory council to advise and consult with such board, and the control officer in effectuating the purposes of this chapter. The council shall consist of at least five appointed members who are residents of the authority and who are preferably skilled and experienced in the field of air pollution control, chemistry, meteorology, public health, or a related field, at least one of whom shall serve as a representative of industry and one of whom shall serve as a representative of the environmental community. The chair of the board of any such authority shall serve as ex officio member of the council and be its chair. Each member of the council shall receive from the authority per diem and travel expenses in an amount not to exceed that provided for the state board in this chapter (but not to exceed one thousand dollars per year) for each full day spent in the performance of his or her duties under this chapter. [1991 c 199 § 709; 1969 ex.s. c 168 § 30; 1967 c 238 § 41; 1957 c 232 § 24. Formerly RCW 70.94.240.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.2570 Dissolution of authority—Deactivation of authority.

An air pollution control authority may be deactivated prior to the term provided in the original or subsequent agreement by the county or counties comprising such authority upon the adoption by the board, following a hearing held upon ten days notice, to said counties, of a resolution for dissolution or deactivation and upon the approval by the legislative authority of each county comprising the authority. In such event, the board shall proceed to wind up the affairs of the authority and pay all indebtedness thereof. Any surplus of funds shall be paid over to the counties comprising the authority in proportion to their last contribution. Upon the completion of the process of closing the affairs of the authority, the board shall by resolution entered in its minutes declare the authority deactivated and a certified copy of such resolution shall be filed with the secretary of state and the authority shall be deemed inactive. [1979 ex.s. c 30 § 12; 1969 ex.s. c 168 § 31; 1967 c 238 § 43; 1957 c 232 § 26. Formerly RCW 70.94.260.]

70A.15.2580 Withdrawal from multicounty authority.

(1) Any county that is part of a multicounty authority, pursuant to RCW 70A.15.1500, may withdraw from the multicounty authority after January 1, 1992, if the county wishes to provide for air quality protection and regulation by an alternate air quality authority. A withdrawing county shall:

- (a) Create its own single county authority;
- (b) Join another existing multicounty authority with which its boundaries are contiguous;
- (c) Join with one or more contiguous inactive authorities to operate as a new multicounty authority; or
- (d) Become an inactive authority and subject to regulation by the department of ecology.

(2) In order to withdraw from an existing multicounty authority, a county shall make arrangements, by interlocal agreement, for division of assets and liabilities and the appropriate release of any and all interest in assets of the multicounty authority.

(3) In order to effectuate any of the alternate arrangements in subsection (1) of this section, the procedures of this

chapter to create an air pollution control authority shall be met and the actions must be taken at least six months prior to the effective date of withdrawal. The rules of the original multicounty authority shall continue in force for the withdrawing county until such time as all conditions to create an air pollution control authority have been met.

(4) At the effective date of a county's withdrawal, the remaining counties shall reorganize and reconstitute the legislative authority pursuant to this chapter. The air pollution control regulations of the existing multicounty authority shall remain in force and effect after the reorganization.

(5) If a county elects to withdraw from an existing multicounty authority, the air pollution control regulations shall remain in effect for the withdrawing county until suspended by the adoption of rules, regulations, or ordinances adopted under one of the alternatives of subsection (1) of this section. A county shall initiate proceedings to adopt such rules, regulations, or ordinances on or before the effective date of the county's withdrawal. [2020 c 20 § 1101; 1991 c 125 § 2. Formerly RCW 70.94.262.]

70A.15.2590 Certain generators fueled by biogas produced by an anaerobic digester—Extended compliance period for permit provisions related to the emissions limit for sulfur—Technical assistance. (1) A generator operating at an electric generating project with an installed generator capacity of at least seven hundred fifty kilowatts but not exceeding one thousand kilowatts, that is in operation on June 7, 2012, and began operating after 2008, and that is located on agricultural lands of long-term commercial significance pursuant to chapter 36.70A RCW, is granted an extended compliance period for permit provisions related to the emissions limit for sulfur established by the department or a local air authority until December 31, 2016, if it is fueled by biogas that is produced by an anaerobic digester that qualifies for the solid waste permitting exemption specified in RCW 70A.205.290.

(2) A generator that meets the requirements in subsection (1) of this section may not be located in a federally designated nonattainment or maintenance area.

(3) Upon request, the department or a local air authority must provide technical assistance to a generator meeting the requirements in subsection (1) of this section to assist the generator in reducing its emissions in order to meet the requirements in this chapter.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Anaerobic digester" means a vessel that processes organic material into biogas and digestate using microorganisms in a decomposition process within a closed, oxygen-free container.

(b) "Generator" means an internal combustion engine that converts biogas into electricity, and includes any backup combustion device to burn biogas when an engine is idled for maintenance. [2020 c 20 § 1102; 2012 c 238 § 1. Formerly RCW 70.94.302.]

70A.15.3000 Powers and duties of department. (1) The department shall have all the powers as provided in RCW 70A.15.2040.

(2) The department, in addition to any other powers vested in it by law after consideration at a public hearing held in accordance with chapters 42.30 and 34.05 RCW shall:

(a) Adopt rules establishing air quality objectives and air quality standards;

(b) Adopt emission standards which shall constitute minimum emission standards throughout the state. An authority may enact more stringent emission standards, except for emission performance standards for new woodstoves and opacity levels for residential solid fuel burning devices which shall be statewide, but in no event may less stringent standards be enacted by an authority without the prior approval of the department after public hearing and due notice to interested parties;

(c) Adopt by rule air quality standards and emission standards for the control or prohibition of emissions to the outdoor atmosphere of radionuclides, dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof. Such requirements may be based upon a system of classification by types of emissions or types of sources of emissions, or combinations thereof, which it determines most feasible for the purposes of this chapter. However, an industry, or the air pollution control authority having jurisdiction, can choose, subject to the submittal of appropriate data that the industry has quantified, to have any limit on the opacity of emissions from a source whose emission standard is stated in terms of a weight of particulate per unit volume of air (e.g., grains per dry standard cubic foot) be based on the applicable particulate emission standard for that source, such that any violation of the opacity limit accurately indicates a violation of the applicable particulate emission standard. Any alternative opacity limit provided by this section that would result in increasing air contaminants emissions in any nonattainment area shall only be granted if equal or greater emission reductions are provided for by the same source obtaining the revised opacity limit. A reasonable fee may be assessed to the industry to which the alternate opacity standard would apply. The fee shall cover only those costs to the air pollution control authority which are directly related to the determination on the acceptability of the alternate opacity standard, including testing, oversight and review of data.

(3) The air quality standards and emission standards may be for the state as a whole or may vary from area to area or source to source, except that emission performance standards for new woodstoves and opacity levels for residential solid fuel burning devices shall be statewide, as may be appropriate to facilitate the accomplishment of the objectives of this chapter and to take necessary or desirable account of varying local conditions of population concentration, the existence of actual or reasonably foreseeable air pollution, topographic and meteorologic conditions and other pertinent variables.

(4) The department is directed to cooperate with the appropriate agencies of the United States or other states or any interstate agencies or international agencies with respect to the control of air pollution and air contamination, or for the formulation for the submission to the legislature of interstate air pollution control compacts or agreements.

(5) The department is directed to conduct or cause to be conducted a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and

movements of air contaminants and conduct or cause to be conducted a program to determine the quantity of emissions to the atmosphere.

(6) The department shall enforce the air quality standards and emission standards throughout the state except where a local authority is enforcing the state regulations or its own regulations which are more stringent than those of the state.

(7) The department shall encourage local units of government to handle air pollution problems within their respective jurisdictions; and, on a cooperative basis provide technical and consultative assistance therefor.

(8) The department shall have the power to require the addition to or deletion of a county or counties from an existing authority in order to carry out the purposes of this chapter. No such addition or deletion shall be made without the concurrence of any existing authority involved. Such action shall only be taken after a public hearing held pursuant to the provisions of chapter 34.05 RCW.

(9) The department shall establish rules requiring sources or source categories to apply reasonable and available control methods. Such rules shall apply to those sources or source categories that individually or collectively contribute the majority of statewide air emissions of each regulated pollutant. The department shall review, and if necessary, update its rules every five years to ensure consistency with current reasonable and available control methods. The department shall have adopted rules required under this subsection for all sources by July 1, 1996.

For the purposes of this section, "reasonable and available control methods" shall include but not be limited to, changes in technology, processes, or other control strategies. [2020 c 20 § 1103; 1991 c 199 § 710; 1988 c 106 § 1. Prior: 1987 c 405 § 13; 1987 c 109 § 39; 1985 c 372 § 4; 1969 ex.s. c 168 § 34; 1967 c 238 § 46. Formerly RCW 70.94.331.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Additional notes found at www.leg.wa.gov

70A.15.3010 Enforcement actions by department—Notice to violators. At least thirty days prior to the commencement of any formal enforcement action under RCW 70A.15.3150 and 70A.15.3160, the department of ecology shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or the rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the department may require that the alleged violator or violators appear before it for the purpose of providing the department information pertaining to the violation or the charges complained of. Every notice of violation shall offer to the alleged violator an opportunity to meet with the department prior to the commencement of enforcement action. [2020 c 20 § 1104; 1991 c 199 § 711; 1987 c 109 § 18; 1967 c 238 § 47. Formerly RCW 70.94.332.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

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70A.15.3020 Hazardous substance remedial actions—Procedural requirements not applicable. The procedural requirements of this chapter shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70A.305 RCW, or to the department of ecology when it conducts a remedial action under chapter 70A.305 RCW. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70A.305 RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70A.305.090. [2020 c 20 § 1105; 1994 c 257 § 15. Formerly RCW 70.94.335.]

Additional notes found at www.leg.wa.gov

70A.15.3030 Contracts, agreements for use of personnel by department—Reimbursement—Merit system regulations waived. The department is authorized to contract for or otherwise agree to the use of personnel of municipal corporations or other agencies or private persons; and the department is further authorized to reimburse such municipal corporations or agencies for the employment of such personnel. Merit system regulations or standards for the employment of personnel may be waived for personnel hired under contract as provided for in this section. The department shall provide, within available appropriations, for the scientific, technical, legal, administrative, and other necessary services and facilities for performing the functions under this chapter. [1987 c 109 § 40; 1979 c 141 § 122; 1967 c 238 § 45; 1961 c 188 § 6. Formerly RCW 70.94.350.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70A.15.3040 Powers and rights of governmental units and persons are not limited by act or recommendations. No provision of this chapter or any recommendation of the state board or of any local or regional air pollution program is a limitation:

(1) On the power of any city, town or county to declare, prohibit and abate nuisances.

(2) On the power of the secretary of social and health services to provide for the protection of the public health under any authority presently vested in that office or which may be hereafter prescribed by law.

(3) On the power of a state agency in the enforcement, or administration of any provision of law which it is specifically permitted or required to enforce or administer.

(4) On the right of any person to maintain at any time any appropriate action for relief against any air pollution. [1979 c 141 § 123; 1967 c 238 § 59; 1961 c 188 § 8. Formerly RCW 70.94.370.]

70A.15.3050 Emission control requirements. (1) Every activated authority operating an air pollution control program shall have requirements for the control of emissions which are no less stringent than those adopted by the department of ecology for the geographic area in which such air pollution control program is located. Less stringent requirements than compelled by this section may be included in a local or regional air pollution control program only after

approval by the department of ecology following demonstration to the satisfaction of the department of ecology that the proposed requirements are consistent with the purposes of this chapter: PROVIDED, That such approval shall be preceded by public hearing, of which notice has been given in accordance with chapter 42.30 RCW. The department of ecology, upon receiving evidence that conditions have changed or that additional information is relevant to a decision with respect to the requirements for emission control, may, after public hearing on due notice, withdraw any approval previously given to a less stringent local or regional requirement.

[(2)] Nothing in this chapter shall be construed to prevent a local or regional air pollution control authority from adopting and enforcing more stringent emission control requirements than those adopted by the department of ecology and applicable within the jurisdiction of the local or regional air pollution control authority, except that the emission performance standards for new woodstoves and the opacity levels for residential solid fuel burning devices shall be statewide. [1987 c 405 § 14; 1979 ex.s. c 30 § 13; 1969 ex.s. c 168 § 36; 1967 c 238 § 50. Formerly RCW 70.94.380.]

Additional notes found at www.leg.wa.gov

70A.15.3060 State financial aid—Application for—Requirements. (1) Any authority may apply to the department for state financial aid. The department shall annually establish the amount of state funds available for the local authorities taking into consideration available federal and state funds. The establishment of funding amounts shall be consistent with federal requirements and local maintenance of effort necessary to carry out the provisions of this chapter. Any such aid shall be expended from the general fund or from other appropriations as the legislature may provide for this purpose: PROVIDED, That federal funds shall be utilized to the maximum unless otherwise approved by the department: PROVIDED FURTHER, That the amount of state funds provided to local authorities during the previous year shall not be reduced without a public notice or public hearing held by the department if requested by the affected local authority, unless such changes are the direct result of a reduction in the available federal funds for air pollution control programs.

(2) Before any such application is approved and financial aid is given or approved by the department, the authority shall demonstrate to the satisfaction of the department that it is fulfilling the requirements of this chapter. If the department has not adopted ambient air quality standards and objectives as permitted by RCW 70A.15.3000, the authority shall demonstrate to the satisfaction of the department that it is acting in good faith and doing all that is possible and reasonable to control and prevent air pollution within its jurisdictional boundaries and to carry out the purposes of this chapter.

(3) The department shall adopt rules requiring the submission of such information by each authority including the submission of its proposed budget and a description of its program in support of the application for state financial aid as necessary to enable the department to determine the need for state aid. [2020 c 20 § 1106; 1991 c 199 § 712; 1987 c 109 § 41; 1969 ex.s. c 168 § 37; 1967 c 238 § 51. Formerly RCW 70.94.385.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70A.15.3070 Hearing upon activation of authority—Finding—Assumption of jurisdiction by department—Expenses. The department may, at any time and on its own motion, hold a hearing to determine if the activation of an authority is necessary for the prevention, abatement, and control of air pollution which exists or is likely to exist in any area of the state. Notice of such hearing shall be conducted in accordance with chapter 42.30 RCW and chapter 34.05 RCW. If at such hearing the department finds that air pollution exists or is likely to occur in a particular area, and that the purposes of this chapter and the public interest will be best served by the activation of an authority it shall designate the boundaries of such area and set forth in a report to the appropriate county or counties recommendations for the activation of an authority: PROVIDED, That if at such hearing the department determines that the activation of an authority is not practical or feasible for the reason that a local or regional air pollution control program cannot be successfully established or operated due to unusual circumstances and conditions, but that the control and/or prevention of air pollution is necessary for the purposes of this chapter and the public interest, it may assume jurisdiction and so declare by order. Such order shall designate the geographic area in which, and the effective date upon which, the department will exercise jurisdiction for the control and/or prevention of air pollution. The department shall exercise its powers and duties in the same manner as if it had assumed authority under RCW 70A.15.3110.

All expenses incurred by the department in the control and prevention of air pollution in any county pursuant to the provisions of RCW 70A.15.3070 and 70A.15.3110 shall constitute a claim against such county. The department shall certify the expenses to the auditor of the county, who promptly shall issue his or her warrant on the county treasurer payable out of the current expense fund of the county. In the event that the amount in the current expense fund of the county is not adequate to meet the expenses incurred by the department, the department shall certify to the state treasurer that it has a prior claim on any money in the "liquor excise tax fund" that is to be apportioned to that county by the state treasurer as provided in RCW 82.08.170. In the event that the amount in the "liquor excise tax fund" that is to be apportioned to that county by the state treasurer is not adequate to meet the expenses incurred by the department, the department shall certify to the state treasurer that they have a prior claim on any excess funds from the liquor revolving fund that are to be distributed to that county as provided in RCW 66.08.190 through *66.08.220. All moneys that are collected as provided in this section shall be placed in the general fund in the account of the office of air programs of the department. [2020 c 20 § 1107; 2012 c 117 § 408; 1987 c 109 § 42; 1969 ex.s. c 168 § 38; 1967 c 238 § 52. Formerly RCW 70.94.390.]

***Reviser's note:** RCW 66.08.220 was repealed by 2012 c 2 § 215 (Initiative Measure No. 1183).

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70A.15.3080 Air contaminant sources—Regulation by department; authorities may be more stringent—Hearing—Standards. If the department finds, after public hearing upon due notice to all interested parties, that the emissions from a particular type or class of air contaminant source should be regulated on a statewide basis in the public interest and for the protection of the welfare of the citizens of the state, it may adopt and enforce rules to control and/or prevent the emission of air contaminants from such source. An authority may, after public hearing and a finding by the board of a need for more stringent rules than those adopted by the department under this section, propose the adoption of such rules by the department for the control of emissions from the particular type or class of air contaminant source within the geographical area of the authority. The department shall hold a public hearing and shall adopt the proposed rules within the area of the requesting authority, unless it finds that the proposed rules are inconsistent with the rules adopted by the department under this section. When such standards are adopted by the department it shall delegate solely to the requesting authority all powers necessary for their enforcement at the request of the authority. If after public hearing the department finds that the regulation on a statewide basis of a particular type or class of air contaminant source is no longer required for the public interest and the protection of the welfare of the citizens of the state, the department may relinquish exclusive jurisdiction over such source. [1991 c 199 § 713; 1987 c 109 § 43; 1969 ex.s. c 168 § 39; 1967 c 238 § 53. Formerly RCW 70.94.395.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70A.15.3090 Order activating authority—Filing—Hearing—Amendment of order. If, at the end of ninety days after the department issues a report as provided for in RCW 70A.15.3070, to appropriate county or counties recommending the activation of an authority such county or counties have not performed those actions recommended by the department, and the department is still of the opinion that the activation of an authority is necessary for the prevention, abatement and control of air pollution which exists or is likely to exist, then the department may, at its discretion, issue an order activating an authority. Such order, a certified copy of which shall be filed with the secretary of state, shall specify the participating county or counties and the effective date by which the authority shall begin to function and exercise its powers. Any authority activated by order of the department shall choose the members of its board as provided in RCW 70A.15.2000 and begin to function in the same manner as if it had been activated by resolutions of the county or counties included within its boundaries. The department may, upon due notice to all interested parties, conduct a hearing in accordance with chapter 42.30 RCW and chapter 34.05 RCW within six months after the order was issued to review such order and to ascertain if such order is being carried out in good faith. At such time the department may amend any such order issued if it is determined by the department that such order is being carried out in bad faith or the department may take the appropriate action as is provided in RCW

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70A.15.3110. [2020 c 20 § 1108; 1987 c 109 § 44; 1969 ex.s. c 168 § 40; 1967 c 238 § 54. Formerly RCW 70.94.400.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70A.15.3100 Air pollution control authority—Review by department of program. At any time after an authority has been activated for no less than one year, the department may, on its own motion, conduct a hearing held in accordance with chapters 42.30 and 34.05 RCW, to determine whether or not the air pollution prevention and control program of such authority is being carried out in good faith and is as effective as possible. If at such hearing the department finds that such authority is not carrying out its air pollution control or prevention program in good faith, is not doing all that is possible and reasonable to control and/or prevent air pollution within the geographical area over which it has jurisdiction, or is not carrying out the provisions of this chapter, it shall set forth in a report or order to the appropriate authority: (1) Its recommendations as to how air pollution prevention and/or control might be more effectively accomplished; and (2) guidelines which will assist the authority in carrying out the recommendations of the department. [1991 c 199 § 714; 1987 c 109 § 45; 1969 ex.s. c 168 § 41; 1967 c 238 § 55. Formerly RCW 70.94.405.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70A.15.3110 Air pollution control authority—Assumption of control by department. (1) If, after thirty days from the time that the department issues a report or order to an authority under RCW 70A.15.3090 and 70A.15.3100, such authority has not taken action which indicates that it is attempting in good faith to implement the recommendations or actions of the department as set forth in the report or order, the department may, by order, declare as null and void any or all ordinances, resolutions, rules or regulations of such authority relating to the control and/or prevention of air pollution, and at such time the department shall become the sole body with authority to make and enforce rules and regulations for the control and/or prevention of air pollution within the geographical area of such authority. If this occurs, the department may assume all those powers which are given to it by law to effectuate the purposes of this chapter. The department may, by order, continue in effect and enforce provisions of the ordinances, resolutions, or rules of such authority which are not less stringent than those requirements which the department may have found applicable to the area under RCW 70A.15.3000, until such time as the department adopts its own rules. Any rules promulgated by the department shall be subject to the provisions of chapter 34.05 RCW. Any enforcement actions shall be subject to RCW 43.21B.300 or 43.21B.310.

(2) No provision of this chapter is intended to prohibit any authority from reestablishing its air pollution control program which meets with the approval of the department and which complies with the purposes of this chapter and with applicable rules and orders of the department.

(3) Nothing in this chapter shall prevent the department from withdrawing the exercise of its jurisdiction over an

authority upon its own motion if the department has found at a hearing held in accordance with chapters 42.30 and 34.05 RCW, that the air pollution prevention and control program of such authority will be carried out in good faith, that such program will do all that is possible and reasonable to control and/or prevent air pollution within the geographical area over which it has jurisdiction, and that the program complies with the provisions of this chapter. Upon the withdrawal of the department, the department shall prescribe certain recommendations as to how air pollution prevention and/or control is to be effectively accomplished and guidelines which will assist the authority in carrying out the recommendations of the department. [2020 c 20 § 1109; 1991 c 199 § 715; 1987 c 109 § 46; 1969 ex.s. c 168 § 42; 1967 c 238 § 56. Formerly RCW 70.94.410.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70A.15.3120 State departments and agencies to cooperate with department and authorities. It is declared to be the intent of the legislature of the state of Washington that any state department or agency having jurisdiction over any building, installation, other property, or other activity creating or likely to create significant air pollution shall cooperate with the department and with air pollution control agencies in preventing and/or controlling the pollution of the air in any area insofar as the discharge of air contaminants from or by such building, installation, other property, or activity may cause or contribute to pollution of the air in such area. Such state department or agency shall comply with the provisions of this chapter and with any ordinance, resolution, rule or regulation issued hereunder in the same manner as any other person subject to such laws or rules. [1991 c 199 § 716; 1987 c 109 § 47; 1969 ex.s. c 168 § 44; 1967 c 238 § 58. Formerly RCW 70.94.420.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70A.15.3130 Department of health powers regarding radionuclides—Energy facility site evaluation council authority over permit program sources. (1) The department of health shall have all the enforcement powers as provided in RCW 70A.15.3010, 70A.15.3140, 70A.15.3150, 70A.15.3160 (1) through (7), and 70A.15.3170 with respect to emissions of radionuclides. This section does not preclude the department of ecology from exercising its authority under this chapter.

(2) Permits for energy facilities subject to chapter 80.50 RCW shall be issued by the energy facility site evaluation council. However, the permits become effective only if the governor approves an application for certification and executes a certification agreement under chapter 80.50 RCW. The council shall have all powers necessary to administer an operating permits program pertaining to such facilities, consistent with applicable air quality standards established by the department or local air pollution control authorities, or both, and to obtain the approval of the United States environmental protection agency. The council's powers include, but are not limited to, all of the enforcement powers provided in RCW

70A.15.3010, 70A.15.3140, 70A.15.3150, 70A.15.3160 (1) through (7), and 70A.15.3170 with respect to permit program sources required to obtain certification from the council under chapter 80.50 RCW. To the extent not covered under RCW 80.50.071, the council may collect fees as granted to delegated local air authorities under RCW 70A.15.2210, 70A.15.2260 (14) and (15), 70A.15.2270, and 70A.15.2230(7) with respect to permit program sources required to obtain certification from the council under chapter 80.50 RCW. The council and the department shall each establish procedures that provide maximum coordination and avoid duplication between the two agencies in carrying out the requirements of this chapter. [2020 c 20 § 1110; 1993 c 252 § 7. Formerly RCW 70.94.422.]

70A.15.3140 Restraining orders—Injunctions. Notwithstanding the existence or use of any other remedy, whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any rule, regulation or order issued thereunder, the governing body or board or the department, after notice to such person and an opportunity to comply, may petition the superior court of the county wherein the violation is alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order. [1987 c 109 § 48; 1967 c 238 § 60. Formerly RCW 70.94.425.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70A.15.3150 Penalties (as amended by 2021 c 315). (1) Any person who knowingly violates any of the provisions of this chapter or (~~chapter 70A.25 RCW, RCW 70A.45.080~~) chapters 70A.25 and 70A.60 RCW, or any ordinance, resolution, or regulation in force pursuant thereto is guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for up to three hundred sixty-four days, or by both for each separate violation.

(2) Any person who negligently releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm is guilty of a gross misdemeanor and shall, upon conviction, be punished by a fine of not more than ten thousand dollars, or by imprisonment for up to three hundred sixty-four days, or both.

(3) Any person who knowingly releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that he or she thereby places another person in imminent danger of death or substantial bodily harm, is guilty of a class C felony and shall, upon conviction, be punished by a fine of not less than fifty thousand dollars, or by imprisonment for not more than five years, or both.

(4) Any person who knowingly fails to disclose a potential conflict of interest under RCW 70A.15.2000 is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five thousand dollars. [2021 c 315 § 15; 2020 c 20 § 1111; 2019 c 284 § 4; 2011 c 96 § 49; 2003 c 53 § 355; 1991 c 199 § 310; 1984 c 255 § 1; 1973 1st ex.s. c 176 § 1; 1967 c 238 § 61. Formerly RCW 70.94.430.]

70A.15.3150 Penalties (as amended by 2021 c 317). (1) Any person who knowingly violates any of the provisions of this chapter (~~(or)~~), chapter 70A.25 or 70A.535 RCW, RCW 70A.45.080, or any ordinance, resolution, or regulation in force pursuant thereto is guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for up to three hundred sixty-four days, or by both for each separate violation.

(2) Any person who negligently releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other

than in compliance with the terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm is guilty of a gross misdemeanor and shall, upon conviction, be punished by a fine of not more than ten thousand dollars, or by imprisonment for up to three hundred sixty-four days, or both.

(3) Any person who knowingly releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that he or she thereby places another person in imminent danger of death or substantial bodily harm, is guilty of a class C felony and shall, upon conviction, be punished by a fine of not less than fifty thousand dollars, or by imprisonment for not more than five years, or both.

(4) Any person who knowingly fails to disclose a potential conflict of interest under RCW 70A.15.2000 is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five thousand dollars. [2021 c 317 § 24; 2020 c 20 § 1111; 2019 c 284 § 4; 2011 c 96 § 49; 2003 c 53 § 355; 1991 c 199 § 310; 1984 c 255 § 1; 1973 1st ex.s. c 176 § 1; 1967 c 238 § 61. Formerly RCW 70.94.430.]

Reviser's note: RCW 70A.15.3150 was amended twice during the 2021 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Severability—2021 c 317: See note following RCW 70A.535.005.

Finding—Intent—2019 c 284: See note following RCW 70A.60.060.

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.3160 Civil penalties—Excusable excess emissions. (1)(a) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, and in addition to or as an alternate to any other penalty provided by law, any person who violates any of the provisions of this chapter, chapter 70A.25, 70A.60, 70A.450, 70A.535, or 70A.540 RCW, RCW 76.04.205, or any of the rules in force under such chapters or section may incur a civil penalty in an amount not to exceed ten thousand dollars per day for each violation. Each such violation shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance shall be a separate and distinct violation. Enforcement actions related to violations of RCW 76.04.205 must be consistent with the provisions of RCW 76.04.205.

(b) Any person who fails to take action as specified by an order issued pursuant to this chapter shall be liable for a civil penalty of not more than ten thousand dollars for each day of continued noncompliance.

(2)(a) Penalties incurred but not paid shall accrue interest, beginning on the ninety-first day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the thirty-first day following final resolution of the appeal.

(b) The maximum penalty amounts established in this section may be increased annually to account for inflation as determined by the state office of the economic and revenue forecast council.

(3) Each act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. The penalties provided in this section shall be imposed pursuant to RCW 43.21B.300.

(4)(a) Except as provided in (b) of this subsection, all penalties recovered under this section by the department or

the department of natural resources shall be paid into the state treasury and credited to the air pollution control account established in RCW 70A.15.1010 or, if recovered by the authority, shall be paid into the treasury of the authority and credited to its funds. If a prior penalty for the same violation has been paid to a local authority, the penalty imposed by the department under subsection (1) of this section shall be reduced by the amount of the payment.

(b) All penalties recovered for violations of chapter 70A.60 RCW must be paid into the state treasury and credited to the refrigerant emission management account created in RCW 70A.60.050.

(5) To secure the penalty incurred under this section, the state or the authority shall have a lien on any vessel used or operated in violation of this chapter which shall be enforced as provided in RCW 60.36.050.

(6) Public or private entities that are recipients or potential recipients of department grants, whether for air quality related activities or not, may have such grants rescinded or withheld by the department for failure to comply with provisions of this chapter.

(7) In addition to other penalties provided by this chapter, persons knowingly underreporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than ninety days late with such payments may be subject to a penalty equal to three times the amount of the original fee owed.

(8) The department shall develop rules for excusing excess emissions from enforcement action if such excess emissions are unavoidable. The rules shall specify the criteria and procedures for the department and local air authorities to determine whether a period of excess emissions is excusable in accordance with the state implementation plan. [2022 c 179 § 15. Prior: 2021 c 317 § 25; 2021 c 315 § 16; 2021 c 132 § 1; 2020 c 20 § 1112; 2019 c 284 § 5; 2013 c 51 § 6; 1995 c 403 § 630; 1991 c 199 § 311; 1990 c 157 § 1; 1987 c 109 § 19; 1984 c 255 § 2; 1973 1st ex.s. c 176 § 2; 1969 ex.s. c 168 § 53. Formerly RCW 70.94.431.]

Severability—2021 c 317: See note following RCW 70A.535.005.

Finding—Intent—2019 c 284: See note following RCW 70A.60.060.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Finding—1991 c 199: See note following RCW 70A.15.1005.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70A.15.3170 Additional means for enforcement of chapter. As an additional means of enforcing this chapter, the governing body or board may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter or of any ordinance, resolution, rule or regulation adopted pursuant hereto, from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall specify a time limit during which such discontinuance is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter or the ordinances, resolutions, rules or regulations, or order issued pursuant thereto, which make the alleged act or practice unlawful for the purpose of securing any injunction or other relief from the superior court as pro-

vided in RCW 70A.15.3140. [2020 c 20 § 1113; 1967 c 238 § 62. Formerly RCW 70.94.435.]

70A.15.3180 Short title. This chapter may be known and cited as the "Washington Clean Air Act". [1967 c 238 § 63. Formerly RCW 70.94.440.]

Additional notes found at www.leg.wa.gov

70A.15.3500 Woodstoves—Policy. In the interest of the public health and welfare and in keeping with the objectives of RCW 70A.15.1005, the legislature declares it to be the public policy of the state to control, reduce, and prevent air pollution caused by woodstove emissions. It is the state's policy to reduce woodstove emissions by encouraging the department of ecology to continue efforts to educate the public about the effects of woodstove emissions, other heating alternatives, and the desirability of achieving better emission performance and heating efficiency from woodstoves. The legislature further declares that: (1) The purchase of certified woodstoves will not solve the problem of pollution caused by woodstove emissions; and (2) the reduction of air pollution caused by woodstove emissions will only occur when woodstove users adopt proper methods of wood burning. [2020 c 20 § 1114; 1987 c 405 § 1. Formerly RCW 70.94.450.]

Additional notes found at www.leg.wa.gov

70A.15.3510 Woodstoves—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 70A.15.3510 through 70A.15.3620:

(1) "Authority" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(2) "Department" means the department of ecology.

(3) "Fireplace" means: (a) Any permanently installed masonry fireplace; or (b) any factory-built metal solid fuel burning device designed to be used with an open combustion chamber and without features to control the air to fuel ratio.

(4) "New woodstove" means: (a) A woodstove that is sold at retail, bargained, exchanged, or given away for the first time by the manufacturer, the manufacturer's dealer or agency, or a retailer; and (b) has not been so used to have become what is commonly known as "secondhand" within the ordinary meaning of that term.

(5) "Opacity" means the degree to which an object seen through a plume is obscured, stated as a percentage. The methods approved by the department in accordance with RCW 70A.15.3000 shall be used to establish opacity for the purposes of this chapter.

(6) "Solid fuel burning device" means any device for burning wood, coal, or any other nongaseous and nonliquid fuel, including a woodstove and fireplace.

(7) "Woodstove" means a solid fuel burning device other than a fireplace not meeting the requirements of RCW 70A.15.3530, including any fireplace insert, woodstove, wood burning heater, wood stick boiler, coal-fired furnace, coal stove, or similar device burning any solid fuel used for aesthetic or space-heating purposes in a private residence or commercial establishment, which has a heat input less than one million British thermal units per hour. The term "wood-

stove" does not include wood cook stoves. [2020 c 20 § 1115; 1987 c 405 § 2. Formerly RCW 70.94.453.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Additional notes found at www.leg.wa.gov

70A.15.3520 Residential and commercial construction—Burning and heating device standards. After January 1, 1992, no used solid fuel burning device shall be installed in new or existing buildings unless such device is either Oregon department of environmental quality phase II or United States environmental protection agency certified or a pellet stove either certified or exempt from certification by the United States environmental protection agency.

(1) By July 1, 1992, the state building code council shall adopt rules requiring an adequate source of heat other than woodstoves in all new and substantially remodeled residential and commercial construction. This rule shall apply (a) to areas designated by a county to be an urban growth area under chapter 36.70A RCW; and (b) to areas designated by the environmental protection agency as being in nonattainment for particulate matter.

(2) For purposes of this section, "substantially remodeled" means any alteration or restoration of a building exceeding sixty percent of the appraised value of such building within a twelve-month period. [1991 c 199 § 503. Formerly RCW 70.94.455.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.3530 Solid fuel burning devices—Emission performance standards. The department of ecology shall establish by rule under chapter 34.05 RCW:

(1) Statewide emission performance standards for new solid fuel burning devices. Notwithstanding any other provision of this chapter which allows an authority to adopt more stringent emission standards, no authority shall adopt any emission standard for new solid fuel burning devices other than the statewide standard adopted by the department under this section.

(a) After January 1, 1995, no solid fuel burning device shall be offered for sale in this state to residents of this state that does not meet the following particulate air contaminant emission standards under the test methodology of the United States environmental protection agency in effect on January 1, 1991, or an equivalent standard under any test methodology adopted by the United States environmental protection agency subsequent to such date: (i) Two and one-half grams per hour for catalytic woodstoves; and (ii) four and one-half grams per hour for all other solid fuel burning devices. For purposes of this subsection, "equivalent" shall mean the emissions limits specified in this subsection multiplied by a statistically reliable conversion factor determined by the department that compares the difference between the emission test methodology established by the United States environmental protection agency prior to May 15, 1991, with the test methodology adopted subsequently by the agency. Subsection (a) of this subsection does not apply to fireplaces.

(b) After January 1, 1997, no fireplace, except masonry fireplaces, shall be offered for sale unless such fireplace meets the 1990 United States environmental protection agency standards for woodstoves or equivalent standard that

may be established by the state building code council by rule. Prior to January 1, 1997, the state building code council shall establish by rule a methodology for the testing of factory-built fireplaces. The methodology shall be designed to achieve a particulate air emission standard equivalent to the 1990 United States environmental protection agency standard for woodstoves. In developing the rules, the council shall include on the technical advisory committee at least one representative from the masonry fireplace builders and at least one representative of the factory-built fireplace manufacturers.

(c) Prior to January 1, 1997, the state building code council shall establish by rule design standards for the construction of new masonry fireplaces in Washington state. In developing the rules, the council shall include on the technical advisory committee at least one representative from the masonry fireplace builders and at least one representative of the factory-built fireplace manufacturers. It shall be the goal of the council to develop design standards that generally achieve reductions in particulate air contaminant emissions commensurate with the reductions being achieved by factory-built fireplaces at the time the standard is established.

(d) Actions of the department and local air pollution control authorities under this section shall preempt actions of other state agencies and local governments for the purposes of controlling air pollution from solid fuel burning devices, except where authorized by chapter 199, Laws of 1991.

(e) Subsection (1)(a) of this section shall not apply to fireplaces.

(f) Notwithstanding (a) of this subsection, the department is authorized to adopt, by rule, emission standards adopted by the United States environmental protection agency for new woodstoves sold at retail. For solid fuel burning devices for which the United States environmental protection agency has not established emission standards, the department may exempt or establish, by rule, statewide standards including emission levels and test procedures for such devices and such emission levels and test procedures shall be equivalent to emission levels per pound per hour burned for other new woodstoves and fireplaces regulated under this subsection.

(2) A program to:

(a) Determine whether a new solid fuel burning device complies with the statewide emission performance standards established in subsection (1) of this section; and

(b) Approve the sale of devices that comply with the statewide emission performance standards. [1995 c 205 § 3; 1991 c 199 § 501; 1987 c 405 § 4. Formerly RCW 70.94.457.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

Additional notes found at www.leg.wa.gov

70A.15.3540 Sale of unapproved woodstoves—Prohibited. After July 1, 1988, no person shall sell, offer to sell, or knowingly advertise to sell a new woodstove in this state to a resident of this state unless the woodstove has been approved by the department under the program established under RCW 70A.15.3530. [2020 c 20 § 1116; 1995 c 205 § 4; 1987 c 405 § 7. Formerly RCW 70.94.460.]

Additional notes found at www.leg.wa.gov

(2022 Ed.)

70A.15.3550 Sale of unapproved woodstoves—Penalty. After July 1, 1988, any person who sells, offers to sell, or knowingly advertises to sell a new woodstove in this state in violation of RCW 70A.15.3540 shall be subject to the penalties and enforcement actions under this chapter. [2020 c 20 § 1117; 1987 c 405 § 8. Formerly RCW 70.94.463.]

Additional notes found at www.leg.wa.gov

70A.15.3560 Sale of unapproved woodstoves—Application of law to advertising media. Nothing in RCW 70A.15.3540 or 70A.15.3550 shall apply to a radio station, television station, publisher, printer, or distributor of a newspaper, magazine, billboard, or other advertising medium that accepts advertising in good faith and without knowledge of its violation of RCW 70A.15.3510 through 70A.15.3620. [2020 c 20 § 1118; 1987 c 405 § 12. Formerly RCW 70.94.467.]

Additional notes found at www.leg.wa.gov

70A.15.3570 Residential solid fuel burning devices—Opacity levels—Enforcement and public education. (1) The department shall establish, by rule under chapter 34.05 RCW, (a) a statewide opacity level of twenty percent for residential solid fuel burning devices for the purpose of enforcement on a complaint basis and (b) a statewide opacity of ten percent for purposes of public education.

(2) Notwithstanding any other provision of this chapter which may allow an authority to adopt a more stringent opacity level, no authority shall adopt or enforce an opacity level for solid fuel burning devices other than established in this section.

(3) Actions of the department and local air pollution control authorities under this section shall preempt actions of other state agencies and local governments for the purposes of controlling air pollution from solid fuel burning devices, except where authorized by chapter 199, Laws of 1991. [1991 c 199 § 502; 1987 c 405 § 5. Formerly RCW 70.94.470.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

Additional notes found at www.leg.wa.gov

70A.15.3580 Limitations on burning wood for heat—First and second stage burn bans—Report on second stage burn ban—Exceptions—Emergency situations. (1) Any person in a residence or commercial establishment which has an adequate source of heat without burning wood shall:

(a) Not burn wood in any solid fuel burning device whenever the department has determined under RCW 70A.15.6010 that any air pollution episode exists in that area;

(b) Not burn wood in any solid fuel burning device except those which are either Oregon department of environmental quality phase II or United States environmental protection agency certified or certified by the department under RCW 70A.15.3530(1) or a pellet stove either certified or issued an exemption by the United States environmental protection agency in accordance with Title 40, Part 60 of the Code of Federal Regulations, in the geographical area and for the period of time that a first stage of impaired air quality has been determined, by the department or any authority, for that area.

(i) A first stage of impaired air quality is reached when forecasted meteorological conditions are predicted to cause fine particulate levels to exceed thirty-five micrograms per cubic meter, measured on a twenty-four hour average, within forty-eight hours, except for areas of fine particulate nonattainment or areas at risk for fine particulate nonattainment;

(ii) A first stage burn ban for impaired air quality may be called for a county containing fine particulate nonattainment areas or areas at risk for fine particulate nonattainment, and when feasible only for the necessary portions of the county, when forecasted meteorological conditions are predicted to cause fine particulate levels to reach or exceed thirty micrograms per cubic meter, measured on a twenty-four hour average, within seventy-two hours; and

(c)(i) Not burn wood in any solid fuel burning device in a geographical area and for the period of time that a second stage of impaired air quality has been determined by the department or any authority, for that area. A second stage of impaired air quality is reached when a first stage of impaired air quality has been in force and has not been sufficient to reduce the increasing fine particulate pollution trend, fine particulates are at an ambient level of twenty-five micrograms per cubic meter measured on a twenty-four hour average, and forecasted meteorological conditions are not expected to allow levels of fine particulates to decline below twenty-five micrograms per cubic meter for a period of twenty-four hours or more from the time that the fine particulates are measured at the trigger level.

(ii) A second stage burn ban may be called without calling a first stage burn ban only when all of the following occur and shall require the department or the local air pollution control authority calling a second stage burn ban under this subsection to comply with the requirements of subsection (3) of this section:

(A) Fine particulate levels have reached or exceeded twenty-five micrograms per cubic meter, measured on a twenty-four hour average;

(B) Meteorological conditions have caused fine particulate levels to rise rapidly;

(C) Meteorological conditions are predicted to cause fine particulate levels to exceed the thirty-five micrograms per cubic meter, measured on a twenty-four hour average, within twenty-four hours; and

(D) Meteorological conditions are highly likely to prevent sufficient dispersion of fine particulate.

(iii) In fine particulate nonattainment areas or areas at risk for fine particulate nonattainment, a second stage burn ban may be called for the county containing the nonattainment area or areas at risk for nonattainment, and when feasible only for the necessary portions of the county, without calling a first stage burn ban only when (c)(ii)(A), (B), and (D) of this subsection have been met and meteorological conditions are predicted to cause fine particulate levels to reach or exceed thirty micrograms per cubic meter, measured on a twenty-four hour average, within twenty-four hours.

(2) Actions of the department and local air pollution control authorities under this section shall preempt actions of other state agencies and local governments for the purposes of controlling air pollution from solid fuel burning devices, except where authorized by chapter 199, Laws of 1991.

(3)(a) The department or any local air pollution control authority that has called a second stage burn ban under the authority of subsection (1)(c)(ii) of this section shall, within ninety days, prepare a written report describing:

(i) The meteorological conditions that resulted in their calling the second stage burn ban;

(ii) Whether the agency could have taken actions to avoid calling a second stage burn ban without calling a first stage burn ban; and

(iii) Any changes the department or authority is making to its procedures of calling first stage and second stage burn bans to avoid calling a second stage burn ban without first calling a first stage burn ban.

(b) After consulting with affected parties, the department shall prescribe the format of such a report and may also require additional information be included in the report. All reports shall be sent to the department and the department shall keep the reports on file for not less than five years and available for public inspection and copying in accordance with RCW 42.56.090.

(4) For the purposes of chapter 219, Laws of 2012, an area at risk for nonattainment means an area where the three-year average of the annual ninety-eighth percentile of twenty-four hour fine particulate values is greater than twenty-nine micrograms per cubic meter, based on the years 2008 through 2010 monitoring data.

(5)(a) Nothing in this section restricts a person from installing or repairing a certified solid fuel burning device approved by the department under the program established under RCW 70A.15.3530 in a residence or commercial establishment or from replacing a solid fuel burning device with a certified solid fuel burning device. Nothing in this section restricts a person from burning wood in a solid fuel burning device, regardless of whether a burn ban has been called, if there is an emergency power outage. In addition, for the duration of an emergency power outage, nothing restricts the use of a solid fuel burning device or the temporary installation, repair, or replacement of a solid fuel burning device to prevent the loss of life, health, or business.

(b) For the purposes of this subsection, an emergency power outage includes:

(i) Any natural or human-caused event beyond the control of a person that leaves the person's residence or commercial establishment temporarily without an adequate source of heat other than the solid fuel burning device; or

(ii) A natural or human-caused event for which the governor declares an emergency in an area under chapter 43.06 RCW, including a public disorder, disaster, or energy emergency under RCW 43.06.010(12). [2020 c 20 § 1119; 2016 c 187 § 1; 2012 c 219 § 1; 2008 c 40 § 1; 2007 c 339 § 1; 2005 c 197 § 1; 1998 c 342 § 8; 1995 c 205 § 1; 1991 c 199 § 504; 1990 c 128 § 2; 1987 c 405 § 6. Formerly RCW 70.94.473.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

Additional notes found at www.leg.wa.gov

70A.15.3590 Liability of condominium owners' association or resident association. A condominium owners' association or an association formed by residents of a multiple-family dwelling are not liable for violations of RCW 70A.15.3580 by a resident of a condominium or multiple-family dwelling. The associations shall cooperate with local

air pollution control authorities to acquaint residents with the provisions of this section. [2020 c 20 § 1120; 1990 c 157 § 2. Formerly RCW 70.94.475.]

70A.15.3600 Limitations on use of solid fuel burning devices. (1) Unless allowed by rule under chapter 34.05 RCW, a person shall not cause or allow any of the following materials to be burned in any residential solid fuel burning device:

- (a) Garbage;
- (b) Treated wood;
- (c) Plastics;
- (d) Rubber products;
- (e) Animals;
- (f) Asphaltic products;
- (g) Waste petroleum products;
- (h) Paints; or
- (i) Any substance, other than properly seasoned fuel wood, which normally emits dense smoke or obnoxious odors.

(2) To achieve and maintain attainment in areas of nonattainment for fine particulates in accordance with section 172 of the federal clean air act, a local air pollution control authority or the department may, after meeting requirements in subsection (3) of this section, prohibit the use of solid fuel burning devices, except:

(a) Fireplaces as defined in RCW 70A.15.3510(3), except if needed to meet federal requirements as a contingency measure in a state implementation plan for a fine particulate nonattainment area;

(b) Woodstoves meeting the standards set forth in RCW 70A.15.3580(1)(b); or

(c) Pellet stoves.

(3) Prior to prohibiting the use of solid fuel burning devices under subsection (2) of this section, the department or the local air pollution control authority must:

(a) Seek input from any city, county, or jurisdictional health department affected by the proposal to prohibit the use of solid fuel burning devices; and

(b) Make written findings that:

(i) The area is designated as an area of nonattainment for fine particulate matter by the United States environmental protection agency, or is in maintenance status under that designation;

(ii) Emissions from solid fuel burning devices in the area are a major contributing factor for violating the national ambient air quality standard for fine particulates; and

(iii) The area has an adequately funded program to assist low-income households to secure an adequate source of heat, which may include woodstoves meeting the requirements of RCW 70A.15.3510(7).

(4) If and only if the nonattainment area is within the jurisdiction of the department and the legislative authority of a city or county within the area of nonattainment formally expresses concerns with the department's written findings, then the department must publish on the department's website the reasons for prohibiting the use of solid fuel burning devices under subsection (2) of this section that includes a response to the concerns expressed by the city or county legislative authority.

(2022 Ed.)

(5) When a local air pollution control authority or the department prohibits the use of solid fuel burning devices as authorized by this section, the cities, counties, and jurisdictional health departments serving the area shall cooperate with the department or local air pollution control authority as the department or the local air pollution control authority implements the prohibition. The responsibility for actual enforcement of the prohibition shall reside solely with the department or the local air pollution control authority. A city, county, or jurisdictional health department serving a fine particulate nonattainment area may agree to assist with enforcement activities.

(6) A prohibition issued by a local air pollution control authority or the department under this section shall not apply to:

(a) A person in a residence or commercial establishment that does not have an adequate source of heat without burning wood; or

(b) A person with a shop or garage that is detached from the main residence or commercial establishment that does not have an adequate source of heat in the detached shop or garage without burning wood.

(7) On June 7, 2012, and prior to January 1, 2015, the local air pollution control authority or the department shall, within available resources, provide assistance to households using solid fuel burning devices to reduce the emissions from those devices or change out to a lower emission device. Prior to the effective date of a prohibition, as defined in this section, on the use of uncertified stoves, the department or local air pollution control authority shall provide public education in the nonattainment area regarding how households can reduce their emissions through cleaner burning practices, the importance of respecting burn bans, and the opportunities for assistance in obtaining a cleaner device. If the area is designated as a nonattainment area as of January 1, 2015, or if required by the United States environmental protection agency, the local air pollution control authority or the department may prohibit the use of uncertified devices.

(8) As used in this section:

(a) "Jurisdictional health department" means a city, county, city-county, or district public health department.

(b) "Prohibit the use" or "prohibition" may include requiring disclosure of an uncertified device, removal, or rendering inoperable, as may be approved by rule by a local air pollution control authority or the department. The effective date of such a rule may not be prior to January 1, 2015. However, except as provided in RCW 64.06.020 relating to the seller disclosure of wood burning appliances, any such prohibition may not include imposing separate time of sale obligations on the seller or buyer of real estate as part of a real estate transaction. [2020 c 20 § 1121; 2012 c 219 § 2; 2009 c 282 § 1; 1995 c 205 § 2; 1990 c 128 § 3; 1987 c 405 § 9. Formerly RCW 70.94.477.]

Additional notes found at www.leg.wa.gov

70A.15.3610 Woodstove education program. (1) The department of ecology shall establish a program to educate woodstove dealers and the public about:

(a) The effects of woodstove emissions on health and air quality;

(b) Methods of achieving better efficiency and emission performance from woodstoves;

(c) Woodstoves that have been approved by the department;

(d) The benefits of replacing inefficient woodstoves with stoves approved under RCW 70A.15.3530.

(2) Persons selling new woodstoves shall distribute and verbally explain educational materials describing when a stove can and cannot be legally used to customers purchasing new woodstoves. [2020 c 20 § 1122; 1990 c 128 § 6; 1987 c 405 § 3. Formerly RCW 70.94.480.]

Additional notes found at www.leg.wa.gov

70A.15.3620 Woodstove education and enforcement account created—Fee imposed on solid fuel burning device sales. (1) The woodstove education and enforcement account is hereby created in the state treasury. Money placed in the account shall include all money received under subsection (2) of this section and any other money appropriated by the legislature. Money in the account shall be spent for the purposes of the woodstove education program established under RCW 70A.15.3610 and for enforcement of the woodstove program, and shall be subject to legislative appropriation. However, during the 2003-05 fiscal biennium, the legislature may transfer from the woodstove education and enforcement account to the air pollution control account such amounts as specified in the omnibus operating budget bill.

(2) The department of ecology, with the advice of the advisory committee, shall set a flat fee of thirty dollars, on the retail sale, as defined in RCW 82.04.050, of each solid fuel burning device after January 1, 1992. The fee shall be imposed upon the consumer and shall not be subject to the retail sales tax provisions of chapters 82.08 and 82.12 RCW. The fee may be adjusted annually above thirty dollars to account for inflation as determined by the state office of the economic and revenue forecast council. The fee shall be collected by the department of revenue in conjunction with the retail sales tax under chapter 82.08 RCW. If the seller fails to collect the fee herein imposed or fails to remit the fee to the department of revenue in the manner prescribed in chapter 82.08 RCW, the seller shall be personally liable to the state for the amount of the fee. The collection provisions of chapter 82.32 RCW shall apply. The department of revenue shall deposit fees collected under this section in the woodstove education and enforcement account. [2020 c 20 § 1123; 2003 1st sp.s. c 25 § 932; 1991 sp.s. c 13 §§ 64, 65; 1991 c 199 § 505; 1990 c 128 § 5; 1987 c 405 § 10. Formerly RCW 70.94.483.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

Additional notes found at www.leg.wa.gov

70A.15.3630 Woodsmoke emissions—Findings. The legislature finds that there are some communities in the state in which the national ambient air quality standards for PM 2.5 are exceeded, primarily due to woodsmoke emissions, and that current strategies are not sufficient to reduce woodsmoke emissions to levels that comply with the federal standards or adequately protect public health. The legislature finds that it is in the state's interest and to the benefit of the people of the state to evaluate additional measures to reduce

woodsmoke emissions and update the state woodsmoke control program. [2007 c 339 § 2. Formerly RCW 70.94.488.]

70A.15.4000 Transportation demand management—Findings. The legislature finds that automotive traffic in Washington's metropolitan areas is the major source of emissions of air contaminants. This air pollution causes significant harm to public health, causes damage to trees, plants, structures, and materials and degrades the quality of the environment.

Increasing automotive traffic is also aggravating traffic congestion in Washington's metropolitan areas. This traffic congestion imposes significant costs on Washington's businesses, governmental agencies, and individuals in terms of lost working hours and delays in the delivery of goods and services. Traffic congestion worsens automobile-related air pollution, increases the consumption of fuel, and degrades the habitability of many of Washington's cities and suburban areas. The capital and environmental costs of fully accommodating the existing and projected automobile traffic on roads and highways are prohibitive. Decreasing the demand for vehicle trips is significantly less costly and at least as effective in reducing traffic congestion and its impacts as constructing new transportation facilities such as roads and bridges, to accommodate increased traffic volumes.

The legislature also finds that increasing automotive transportation is a major factor in increasing consumption of gasoline and, thereby, increasing reliance on imported sources of petroleum. Moderating the growth in automotive travel is essential to stabilizing and reducing dependence on imported petroleum and improving the nation's energy security.

The legislature further finds that reducing the number of commute trips to work made via single-occupant cars and light trucks is an effective way of reducing automobile-related air pollution, traffic congestion, and energy use. Major employers have significant opportunities to encourage and facilitate reducing single-occupant vehicle commuting by employees. In addition, the legislature also recognizes the importance of increasing individual citizens' awareness of air quality, energy consumption, and traffic congestion, and the contribution individual actions can make towards addressing these issues.

The intent of this chapter is to require local governments in those counties experiencing the greatest automobile-related air pollution and traffic congestion to develop and implement plans to reduce single-occupant vehicle commute trips. Such plans shall require major employers and employers at major worksites to implement programs to reduce single-occupant vehicle commuting by employees at major worksites. Local governments in counties experiencing significant but less severe automobile-related air pollution and traffic congestion may implement such plans. State agencies shall implement programs to reduce single-occupant vehicle commuting at all major worksites throughout the state. [1997 c 250 § 1; 1991 c 202 § 10. Formerly RCW 70.94.521.]

Additional notes found at www.leg.wa.gov

70A.15.4010 Transportation demand management—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "A major employer" means a private or public employer, including state agencies, that employs one hundred or more full-time employees at a single worksite who begin their regular workday between 6:00 a.m. and 9:00 a.m. on weekdays for at least twelve continuous months during the year.

(2)(a) "Affected urban growth area" means:

(i) An urban growth area, designated pursuant to RCW 36.70A.110, whose boundaries contain a state highway segment exceeding the one hundred person hours of delay threshold calculated by the department of transportation, and any contiguous urban growth areas; and

(ii) An urban growth area, designated pursuant to RCW 36.70A.110, containing a jurisdiction with a population over seventy thousand that adopted a commute trip reduction ordinance before the year 2000, and any contiguous urban growth areas.

(b) Affected urban growth areas will be listed by the department of transportation in the rules for chapter 329, Laws of 2006 using the criteria identified in (a) of this subsection.

(3) "Base year" means the twelve-month period commencing when a major employer is determined to be participating by the local jurisdiction, on which commute trip reduction goals shall be based.

(4) "Certification" means a determination by a regional transportation planning organization that a locally designated growth and transportation efficiency center program meets the minimum criteria developed in a collaborative regional process and the rules established by the department of transportation.

(5) "Commute trip" means trips made from a worker's home to a worksite during the peak period of 6:00 a.m. to 9:00 a.m. on weekdays.

(6) "Commute trip vehicle miles traveled per employee" means the sum of the individual vehicle commute trip lengths in miles over a set period divided by the number of full-time employees during that period.

(7) "Growth and transportation efficiency center" means a defined, compact, mixed-use urban area that contains jobs or housing and supports multiple modes of transportation. For the purpose of funding, a growth and transportation efficiency center must meet minimum criteria established by the commute trip reduction board under RCW 70A.15.4060, and must be certified by a regional transportation planning organization as established in RCW 47.80.020.

(8) "Major employment installation" means a military base or federal reservation, excluding tribal reservations, at which there are one hundred or more full-time employees, who begin their regular workday between 6:00 a.m. and 9:00 a.m. on weekdays, for at least twelve continuous months during the year.

(9) "Major worksite" means a building or group of buildings that are on physically contiguous parcels of land or on parcels separated solely by private or public roadways or rights-of-way, and at which there are one hundred or more full-time employees, who begin their regular workday between 6:00 a.m. and 9:00 a.m. on weekdays, for at least twelve continuous months.

(10) "Person hours of delay" means the daily person hours of delay per mile in the peak period of 6:00 a.m. to 9:00

a.m., as calculated using the best available methodology by the department of transportation.

(11) "Proportion of single-occupant vehicle commute trips" means the number of commute trips made by single-occupant automobiles divided by the number of full-time employees. [2020 c 20 § 1124; 2006 c 329 § 1; 1991 c 202 § 11. Formerly RCW 70.94.524.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Additional notes found at www.leg.wa.gov

70A.15.4020 Transportation demand management—Requirements for counties and cities.

(1) Each county containing an urban growth area, designated pursuant to RCW 36.70A.110, and each city within an urban growth area with a state highway segment exceeding the one hundred person hours of delay threshold calculated by the department of transportation, as well as those counties and cities located in any contiguous urban growth areas, shall adopt a commute trip reduction plan and ordinance for major employers in the affected urban growth area by a date specified by the commute trip reduction board. Jurisdictions located within an urban growth area with a population greater than seventy thousand that adopted a commute trip reduction ordinance before the year 2000, as well as any jurisdiction within contiguous urban growth areas, shall also adopt a commute trip reduction plan and ordinance for major employers in the affected urban growth area by a date specified by the commute trip reduction board. Jurisdictions containing a major employment installation in a county with an affected growth area, designated pursuant to RCW 36.70A.110, shall adopt a commute trip reduction plan and ordinance for major employers in the major employment installation by a date specified by the commute trip reduction board. The ordinance shall establish the requirements for major employers and provide an appeals process by which major employers, who as a result of special characteristics of their business or its locations would be unable to meet the requirements of the ordinance, may obtain waiver or modification of those requirements. The plan shall be designed to achieve reductions in the proportion of single-occupant vehicle commute trips and be consistent with the rules established by the department of transportation. The county, city, or town shall submit its adopted plan to the regional transportation planning organization. The county, city, or town plan shall be included in the regional commute trip reduction plan for regional transportation planning purposes, consistent with the rules established by the department of transportation in RCW 70A.15.4060.

(2) All other counties, cities, and towns may adopt and implement a commute trip reduction plan consistent with department of transportation rules established under RCW 70A.15.4060. Tribal governments are encouraged to adopt a commute trip reduction plan for their lands. State investment in voluntary commute trip reduction plans shall be limited to those areas that meet criteria developed by the commute trip reduction board.

(3) The department of ecology may, after consultation with the department of transportation, as part of the state implementation plan for areas that do not attain the national ambient air quality standards for carbon monoxide or ozone, require municipalities other than those identified in subsec-

tion (1) of this section to adopt and implement commute trip reduction plans if the department determines that such plans are necessary for attainment of said standards.

(4) A commute trip reduction plan shall be consistent with the rules established under RCW 70A.15.4060 and shall include but is not limited to (a) goals for reductions in the proportion of single-occupant vehicle commute trips consistent with the state goals established by the commute trip reduction board under RCW 70A.15.4060 and the regional commute trip reduction plan goals established in the regional commute trip reduction plan; (b) a description of the requirements for major public and private sector employers to implement commute trip reduction programs; (c) a commute trip reduction program for employees of the county, city, or town; and (d) means, consistent with rules established by the department of transportation, for determining base year values and progress toward meeting commute trip reduction plan goals. The plan shall be developed in consultation with local transit agencies, the applicable regional transportation planning organization, major employers, and other interested parties.

(5) The commute trip reduction plans adopted by counties, cities, and towns under this chapter shall be consistent with and may be incorporated in applicable state or regional transportation plans and local comprehensive plans and shall be coordinated, and consistent with, the commute trip reduction plans of counties, cities, or towns with which the county, city, or town has, in part, common borders or related regional issues. Such regional issues shall include assuring consistency in the treatment of employers who have worksites subject to the requirements of this chapter in more than one jurisdiction. Counties, cities, and towns adopting commute trip reduction plans may enter into agreements through the inter-local cooperation act or by resolution or ordinance as appropriate with other jurisdictions, local transit agencies, transportation management associations or other private or non-profit providers of transportation services, or regional transportation planning organizations to coordinate the development and implementation of such plans. Transit agencies shall work with counties, cities, and towns as a part of their six-year transit development plan established in RCW 35.58.2795 to take into account the location of major employer worksites when planning and prioritizing transit service changes or the expansion of public transportation services, including rideshare services. Counties, cities, or towns adopting a commute trip reduction plan shall review it annually and revise it as necessary to be consistent with applicable plans developed under RCW 36.70A.070. Regional transportation planning organizations shall review the local commute trip reduction plans during the development and update of the regional commute trip reduction plan.

(6) Each affected regional transportation planning organization shall adopt a commute trip reduction plan for its region consistent with the rules and deadline established by the department of transportation under RCW 70A.15.4060. The plan shall include, but is not limited to: (a) Regional program goals for commute trip reduction in urban growth areas and all designated growth and transportation efficiency centers; (b) a description of strategies for achieving the goals; (c) a sustainable financial plan describing projected revenues and expenditures to meet the goals; (d) a description of the

way in which progress toward meeting the goals will be measured; and (e) minimum criteria for growth and transportation efficiency centers. (i) Regional transportation planning organizations shall review proposals from local jurisdictions to designate growth and transportation efficiency centers and shall determine whether the proposed growth and transportation efficiency center is consistent with the criteria defined in the regional commute trip reduction plan. (ii) Growth and transportation efficiency centers certified as consistent with the minimum requirements by the regional transportation planning organization shall be identified in subsequent updates of the regional commute trip reduction plan. These plans shall be developed in collaboration with all affected local jurisdictions, transit agencies, and other interested parties within the region. The plan will be reviewed and approved by the commute trip reduction board as established under RCW 70A.15.4060. Regions without an approved regional commute trip reduction plan shall not be eligible for state commute trip reduction program funds.

The regional commute trip reduction plan shall be consistent with and incorporated into transportation demand management components in the regional transportation plan as required by RCW 47.80.030.

(7) Each regional transportation planning organization implementing a regional commute trip reduction program shall, consistent with the rules and deadline established by the department of transportation, submit its plan as well as any related local commute trip reduction plans and certified growth and transportation efficiency center programs, to the commute trip reduction board established under RCW 70A.15.4060. The commute trip reduction board shall review the regional commute trip reduction plan and the local commute trip reduction plans. The regional transportation planning organization shall collaborate with the commute trip reduction board to evaluate the consistency of local commute trip reduction plans with the regional commute trip reduction plan. Local and regional plans must be approved by the commute trip reduction board in order to be eligible for state funding provided for the purposes of this chapter.

(8) Each regional transportation planning organization implementing a regional commute trip reduction program shall submit an annual progress report to the commute trip reduction board established under RCW 70A.15.4060. The report shall be due at the end of each state fiscal year for which the program has been implemented. The report shall describe progress in attaining the applicable commute trip reduction goals and shall highlight any problems being encountered in achieving the goals. The information shall be reported in a form established by the commute trip reduction board.

(9) Any waivers or modifications of the requirements of a commute trip reduction plan granted by a jurisdiction shall be submitted for review to the commute trip reduction board established under RCW 70A.15.4060. The commute trip reduction board may not deny the granting of a waiver or modification of the requirements of a commute trip reduction plan by a jurisdiction but they may notify the jurisdiction of any comments or objections.

(10) Plans implemented under this section shall not apply to commute trips for seasonal agricultural employees.

(11) Plans implemented under this section shall not apply to construction worksites when the expected duration of the construction project is less than two years.

(12) If an affected urban growth area has not previously implemented a commute trip reduction program and the state has funded solutions to state highway deficiencies to address the area's exceeding the person hours of delay threshold, the affected urban growth area shall be exempt from the duties of this section for a period not exceeding two years. [2020 c 20 § 1125; 2006 c 329 § 2; 1997 c 250 § 2; 1996 c 186 § 513; 1991 c 202 § 12. Formerly RCW 70.94.527.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Additional notes found at www.leg.wa.gov

70A.15.4030 Transportation demand management—Growth and transportation efficiency centers. (1) A county, city, or town may, as part of its commute trip reduction plan, designate existing activity centers listed in its comprehensive plan or new activity centers as growth and transportation efficiency centers and establish a transportation demand management program in the designated area.

(a) The transportation demand management program for the growth and transportation efficiency center shall be developed in consultation with local transit agencies, the applicable regional transportation planning organization, major employers, and other interested parties.

(b) In order to be eligible for state funding provided for the purposes of this section, designated growth and transportation efficiency centers shall be certified by the applicable regional transportation organization to: (i) Meet the minimum land use and transportation criteria established in collaboration among local jurisdictions, transit agencies, the regional transportation planning organization, and other interested parties as part of the regional commute trip reduction plan; and (ii) have established a transportation demand management program that includes the elements identified in (c) of this subsection and is consistent with the rules established by the department of transportation in RCW 70A.15.4060(2). If a designated growth and transportation efficiency center is denied certification, the local jurisdiction may appeal the decision to the commute trip reduction board.

(c) Transportation demand management programs for growth and transportation efficiency centers shall include, but are not limited to: (i) Goals for reductions in the proportion of single-occupant vehicle trips that are more aggressive than the state program goal established by the commute trip reduction board; (ii) a sustainable financial plan demonstrating how the program can be implemented to meet state and regional trip reduction goals, indicating resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommending any innovative financing techniques consistent with chapter 47.29 RCW, including public/private partnerships, to finance needed facilities, services, and programs; (iii) a proposed organizational structure for implementing the program; (iv) a proposal to measure performance toward the goal and implementation progress; and (v) an evaluation to which local land use and transportation policies apply, including parking policies and ordinances, to determine the extent that they complement and support the trip reduction investments of major

employers. Each of these program elements shall be consistent with the rules established under RCW 70A.15.4060.

(d) A designated growth and transportation efficiency center shall be consistent with the land use and transportation elements of the local comprehensive plan.

(e) Transit agencies, local governments, and regional transportation planning organizations shall identify certified growth and transportation efficiency centers as priority areas for new service and facility investments in their respective investment plans.

(2) A county, city, or town that has established a growth and transportation efficiency center program shall support vehicle trip reduction activities in the designated area. The implementing jurisdiction shall adopt policies, ordinances, and funding strategies that will lead to attainment of program goals in those areas. [2020 c 20 § 1126; 2006 c 329 § 4. Formerly RCW 70.94.528.]

70A.15.4040 Transportation demand management—Requirements for employers. (1) State agency worksites are subject to the same requirements under this section and RCW 70A.15.4050 as private employers.

(2) Not more than ninety days after the adoption of a jurisdiction's commute trip reduction plan, each major employer in that jurisdiction shall perform a baseline measurement consistent with the rules established by the department of transportation under RCW 70A.15.4060. Not more than ninety days after receiving the results of the baseline measurement, each major employer shall develop a commute trip reduction program and shall submit a description of that program to the jurisdiction for review. The program shall be implemented not more than ninety days after approval by the jurisdiction.

(3) A commute trip reduction program of a major employer shall consist of, at a minimum (a) designation of a transportation coordinator and the display of the name, location, and telephone number of the coordinator in a prominent manner at each affected worksite; (b) regular distribution of information to employees regarding alternatives to single-occupant vehicle commuting; (c) a regular review of employee commuting and reporting of progress toward meeting the single-occupant vehicle reduction goals to the county, city, or town consistent with the method established in the commute trip reduction plan and the rules established by the department of transportation under RCW 70A.15.4060; and (d) implementation of a set of measures designed to achieve the applicable commute trip reduction goals adopted by the jurisdiction. Such measures may include but are not limited to:

- (i) Provision of preferential parking or reduced parking charges, or both, for high occupancy vehicles and motorcycles;
- (ii) Instituting or increasing parking charges for single-occupant vehicles;
- (iii) Provision of commuter ride matching services to facilitate employee ride sharing for commute trips;
- (iv) Provision of subsidies for transit fares;
- (v) Provision of vans for vanpools;
- (vi) Provision of subsidies for carpooling or vanpooling;
- (vii) Permitting the use of the employer's vehicles for carpooling or vanpooling;

(viii) Permitting flexible work schedules to facilitate employees' use of transit, carpools, or vanpools;

(ix) Cooperation with transportation providers to provide additional regular or express service to the worksite;

(x) Construction of special loading and unloading facilities for transit, carpool, and vanpool users;

(xi) Provision of bicycle parking facilities, lockers, changing areas, and showers for employees who bicycle or walk to work;

(xii) Provision of a program of parking incentives such as a rebate for employees who do not use the parking facility;

(xiii) Establishment of a program to permit employees to work part or full time at home or at an alternative worksite closer to their homes;

(xiv) Establishment of a program of alternative work schedules such as compressed workweek schedules which reduce commuting; and

(xv) Implementation of other measures designed to facilitate the use of high occupancy vehicles such as on-site day care facilities and emergency taxi services.

(4) Employers or owners of worksites may form or utilize existing transportation management associations or other transportation-related associations authorized by RCW 35.87A.010 to assist members in developing and implementing commute trip reduction programs.

(5) Employers shall make a good faith effort towards achievement of the goals identified in RCW 70A.15.4020(4)(d). [2020 c 20 § 1127; 2013 c 26 § 1; 2006 c 329 § 5; 1997 c 250 § 3; (1995 2nd sp.s. c 14 § 530 expired June 30, 1997); 1991 c 202 § 13. Formerly RCW 70.94.531.]

Additional notes found at www.leg.wa.gov

70A.15.4050 Transportation demand management—Jurisdictions' review and penalties. (1) Each jurisdiction implementing a commute trip reduction plan under this chapter or as part of a plan or ordinance developed under RCW 36.70A.070 shall review each employer's initial commute trip reduction program to determine if the program is likely to meet the applicable commute trip reduction goals. The employer shall be notified by the jurisdiction of its findings. If the jurisdiction finds that the program is not likely to meet the applicable commute trip reduction goals, the jurisdiction will work with the employer to modify the program as necessary. The jurisdiction shall complete review of each employer's initial commute trip reduction program within ninety days of receipt.

(2) Employers implementing commute trip reduction programs are expected to undertake good faith efforts to achieve the goals outlined in RCW 70A.15.4020(4). Employers are considered to be making a good faith effort if the following conditions have been met:

(a) The employer has met the minimum requirements identified in RCW 70A.15.4040;

(b) The employer has notified the jurisdiction of its intent to substantially change or modify its program and has either received the approval of the jurisdiction to do so or has acknowledged that its program may not be approved without additional modifications;

(c) The employer has provided adequate information and documentation of implementation when requested by the jurisdiction; and

(d) The employer is working collaboratively with its jurisdiction to continue its existing program or is developing and implementing program modifications likely to result in improvements to the program over an agreed upon length of time.

(3) Each jurisdiction shall review at least once every two years each employer's progress and good faith efforts toward meeting the applicable commute trip reduction goals. If an employer makes a good faith effort, as defined in this section, but is not likely to meet the applicable commute trip reduction goals, the jurisdiction shall work collaboratively with the employer to make modifications to the commute trip reduction program. Failure of an employer to reach the applicable commute trip reduction goals is not a violation of this chapter.

(4) If an employer fails to make a good faith effort and fails to meet the applicable commute trip reduction goals, the jurisdiction shall work collaboratively with the employer to propose modifications to the program and shall direct the employer to revise its program within thirty days to incorporate those modifications or modifications which the jurisdiction determines to be equivalent.

(5) Each jurisdiction implementing a commute trip reduction plan pursuant to this chapter may impose civil penalties, in the manner provided in chapter 7.80 RCW, for failure by an employer to implement a commute trip reduction program or to modify its commute trip reduction program as required in subsection (4) of this section. No major employer may be held liable for civil penalties for failure to reach the applicable commute trip reduction goals. No major employer shall be liable for civil penalties under this chapter if failure to achieve a commute trip reduction program goal was the result of an inability to reach agreement with a certified collective bargaining agent under applicable laws where the issue was raised by the employer and pursued in good faith.

(6) Jurisdictions shall notify major employers of the procedures for applying for goal modification or exemption from the commute trip reduction requirements based on the guidelines established by the commute trip reduction board authorized under RCW 70A.15.4060. [2020 c 20 § 1128; 2006 c 329 § 6; 1997 c 250 § 4; 1991 c 202 § 14. Formerly RCW 70.94.534.]

Additional notes found at www.leg.wa.gov

70A.15.4060 Transportation demand management—Commute trip reduction board. (1) A sixteen member state commute trip reduction board is established as follows:

(a) The secretary of transportation or the secretary's designee who shall serve as chair;

(b) One representative from the office of financial management;

(c) The director or the director's designee of one of the following agencies, to be determined by the secretary of transportation:

(i) Department of enterprise services;

(ii) Department of ecology;

(iii) Department of commerce;

(d) Three representatives from cities and towns or counties appointed by the secretary of transportation for staggered four-year terms from a list recommended by the association

of Washington cities or the Washington state association of counties;

(e) Two representatives from transit agencies appointed by the secretary of transportation for staggered four-year terms from a list recommended by the Washington state transit association;

(f) Two representatives from participating regional transportation planning organizations appointed by the secretary of transportation for staggered four-year terms;

(g) Four representatives of employers at or owners of major worksites in Washington, or transportation management associations, business improvement areas, or other transportation organizations representing employers, appointed by the secretary of transportation for staggered four-year terms; and

(h) Two citizens appointed by the secretary of transportation for staggered four-year terms.

Members of the commute trip reduction board shall serve without compensation but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Members appointed by the secretary of transportation shall be compensated in accordance with RCW 43.03.220. The board has all powers necessary to carry out its duties as prescribed by this chapter.

(2) By March 1, 2007, the department of transportation shall establish rules for commute trip reduction plans and implementation procedures. The commute trip reduction board shall advise the department on the content of the rules. The rules are intended to ensure consistency in commute trip reduction plans and goals among jurisdictions while fairly taking into account differences in employment and housing density, employer size, existing and anticipated levels of transit service, special employer circumstances, and other factors the board determines to be relevant. The rules shall include:

(a) Guidance criteria for growth and transportation efficiency centers;

(b) Data measurement methods and procedures for determining the efficacy of commute trip reduction activities and progress toward meeting commute trip reduction plan goals;

(c) Model commute trip reduction ordinances;

(d) Methods for assuring consistency in the treatment of employers who have worksites subject to the requirements of this chapter in more than one jurisdiction;

(e) An appeals process by which major employers, who as a result of special characteristics of their business or its locations would be unable to meet the requirements of a commute trip reduction plan, may obtain a waiver or modification of those requirements and criteria for determining eligibility for waiver or modification;

(f) Establishment of a process for determining the state's affected areas, including criteria and procedures for regional transportation planning organizations in consultation with local jurisdictions to propose to add or exempt urban growth areas;

(g) Listing of the affected areas of the program to be done every four years as identified in subsection (5) of this section;

(h) Establishment of a criteria and application process to determine whether jurisdictions that voluntarily implement commute trip reduction are eligible for state funding;

(i) Guidelines and deadlines for creating and updating local commute trip reduction plans, including guidance to ensure consistency between the local commute trip reduction plan and the transportation demand management strategies identified in the transportation element in the local comprehensive plan, as required by RCW 36.70A.070;

(j) Guidelines for creating and updating regional commute trip reduction plans, including guidance to ensure the regional commute trip reduction plan is consistent with and incorporated into transportation demand management components in the regional transportation plan;

(k) Methods for regional transportation planning organizations to evaluate and certify that designated growth and transportation efficiency center programs meet the minimum requirements and are eligible for funding;

(l) Guidelines for creating and updating growth and transportation efficiency center programs; and

(m) Establishment of statewide program goals. The goals shall be designed to achieve substantial reductions in the proportion of single-occupant vehicle commute trips and the commute trip vehicle miles traveled per employee, at a level that is projected to improve the mobility of people and goods by increasing the efficiency of the state highway system.

(3) The board shall create a state commute trip reduction plan that shall be updated every four years as discussed in subsection (5) of this section. The state commute trip reduction plan shall include, but is not limited to: (a) Statewide commute trip reduction program goals that are designed to substantially improve the mobility of people and goods; (b) identification of strategies at the state and regional levels to achieve the goals and recommendations for how transportation demand management strategies can be targeted most effectively to support commute trip reduction program goals; (c) performance measures for assessing the cost-effectiveness of commute trip reduction strategies and the benefits for the state transportation system; and (d) a sustainable financial plan. The board shall review and approve regional commute trip reduction plans, and work collaboratively with regional transportation planning organizations in the establishment of the state commute trip reduction plan.

(4) The board shall work with affected jurisdictions, major employers, and other parties to develop and implement a public awareness campaign designed to increase the effectiveness of local commute trip reduction programs and support achievement of the objectives identified in this chapter.

(5) The board shall evaluate and update the commute trip reduction program plan and recommend changes to the rules every four years, with the first assessment report due July 1, 2011, to ensure that the latest data methodology used by the department of transportation is incorporated into the program and to determine which areas of the state should be affected by the program. The board shall review the definition of a major employer no later than December 1, 2009. The board shall regularly identify urban growth areas that are projected to be affected by chapter 329, Laws of 2006 in the next four-year period and may provide advance planning support to the potentially affected jurisdictions.

(6) The board shall review progress toward implementing commute trip reduction plans and programs and the costs and benefits of commute trip reduction plans and programs and shall make recommendations to the legislature and the

governor by December 1, 2009, and every two years thereafter. In assessing the costs and benefits, the board shall consider the costs of not having implemented commute trip reduction plans and programs. The board shall examine other transportation demand management programs nationally and incorporate its findings into its recommendations to the legislature. The recommendations shall address the need for continuation, modification, or termination or any or all requirements of this chapter.

(7) The board shall invite personnel with appropriate expertise from state, regional, and local government, private, public, and nonprofit providers of transportation services, and employers or owners of major worksites in Washington to act as a technical advisory group. The technical advisory group shall advise the board on the implementation of local and regional commute trip reduction plans and programs, program evaluation, program funding allocations, and state rules and guidelines. [2015 c 225 § 104; 2011 1st sp.s. c 21 § 26; 2006 c 329 § 7; 1997 c 250 § 5; 1996 c 186 § 514; 1995 c 399 § 188; 1991 c 202 § 15. Formerly RCW 70.94.537.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Additional notes found at www.leg.wa.gov

70A.15.4070 Transportation demand management—Technical assistance. (1) The department of transportation shall provide staff support to the commute trip reduction board in carrying out the requirements of RCW 70A.15.4060.

(2) The department of transportation shall provide technical assistance to regional transportation planning organizations, counties, cities, towns, state agencies, as defined in RCW 40.06.010, and other employers in developing and implementing commute trip reduction plans and programs. The technical assistance shall include: (a) Guidance in single measurement methodology and practice to be used in determining progress in attaining plan goals; (b) developing model plans and programs appropriate to different situations; and (c) providing consistent training and informational materials for the implementation of commute trip reduction programs. Model plans and programs, training, and informational materials shall be developed in cooperation with representatives of regional transportation planning organizations, local governments, transit agencies, and employers.

(3) In carrying out this section the department of transportation may contract with statewide associations representing cities, towns, and counties to assist cities, towns, and counties in implementing commute trip reduction plans and programs. [2020 c 20 § 1129; 2009 c 427 § 1; 2006 c 329 § 8; 1996 c 186 § 515; 1991 c 202 § 16. Formerly RCW 70.94.541.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Additional notes found at www.leg.wa.gov

70A.15.4080 Transportation demand management—Use of funds. A portion of the funds made available for the purposes of this chapter shall be used to fund the commute trip reduction board in carrying out the responsibilities of RCW 70A.15.4060, and the department of transportation, including the activities authorized under RCW 70A.15.4070(2), and to assist regional transportation plan-

ning organizations, counties, cities, and towns implementing commute trip reduction plans. The commute trip reduction board shall determine the allocation of program funds made available for the purposes of this chapter to regional transportation planning organizations, counties, cities, and towns implementing commute trip reduction plans. If state funds for the purposes of this chapter are provided to those jurisdictions implementing voluntary commute trip reduction plans, the funds shall be disbursed based on criteria established by the commute trip reduction board under RCW 70A.15.4060. [2020 c 20 § 1130; 2006 c 329 § 9; 2001 c 74 § 1; 1991 c 202 § 17. Formerly RCW 70.94.544.]

Additional notes found at www.leg.wa.gov

70A.15.4090 Transportation demand management—Intent—State leadership. The legislature hereby recognizes the state's crucial leadership role in establishing and implementing effective commute trip reduction programs. Therefore, it is the policy of the state that the department of transportation and other state agencies, including institutions of higher education, shall aggressively develop substantive programs to reduce commute trips by state employees. Implementation of these programs will reduce energy consumption, congestion in urban areas, and air and water pollution associated with automobile travel. [2009 c 427 § 2; 2006 c 329 § 10; 1991 c 202 § 18. Formerly RCW 70.94.547.]

Additional notes found at www.leg.wa.gov

70A.15.4100 Transportation demand management—State agencies—Joint comprehensive commute trip reduction plan—Reports. (1) The secretary of the department of transportation may coordinate an interagency board or other interested parties for the purpose of developing policies or guidelines that promote consistency among state agency commute trip reduction programs required by RCW 70A.15.4020 and 70A.15.4040 or developed under the joint comprehensive commute trip reduction plan described in this section. The board shall include representatives of the departments of transportation, enterprise services, ecology, and commerce and such other departments and interested groups as the secretary of the department of transportation determines to be necessary. Policies and guidelines shall be applicable to all state agencies including but not limited to policies and guidelines regarding parking and parking charges, employee incentives for commuting by other than single-occupant automobiles, flexible and alternative work schedules, alternative worksites, and the use of state-owned vehicles for car and vanpools and guaranteed rides home. The policies and guidelines shall also consider the costs and benefits to state agencies of achieving commute trip reductions and consider mechanisms for funding state agency commute trip reduction programs.

(2) State agencies sharing a common location in affected urban growth areas where the total number of state employees is one hundred or more shall, with assistance from the department of transportation, develop and implement a joint commute trip reduction program. The worksite must be treated as specified in RCW 70A.15.4040 and 70A.15.4050.

(3) The department of transportation shall develop a joint comprehensive commute trip reduction plan for all state

agencies, including institutions of higher education, located in the Olympia, Lacey, and Tumwater urban growth areas.

(a) In developing the joint comprehensive commute trip reduction plan, the department of transportation shall work with applicable state agencies, including institutions of higher education, and shall collaborate with the following entities: Local jurisdictions; regional transportation planning organizations as described in chapter 47.80 RCW; transit agencies, including regional transit authorities as described in chapter 81.112 RCW and transit agencies that serve areas within twenty-five miles of the Olympia, Lacey, or Tumwater urban growth areas; and the capitol campus design advisory committee established in RCW 43.34.080.

(b) The joint comprehensive commute trip reduction plan must build on existing commute trip reduction programs and policies. At a minimum, the joint comprehensive commute trip reduction plan must include strategies for telework and flexible work schedules, parking management, and consideration of the impacts of worksite location and design on multimodal transportation options.

(c) The joint comprehensive commute trip reduction plan must include performance measures and reporting methods and requirements.

(d) The joint comprehensive commute trip reduction plan may include strategies to accommodate differences in worksite size and location.

(e) The joint comprehensive commute trip reduction plan must be consistent with jurisdictional and regional transportation, land use, and commute trip reduction plans, the state six-year facilities plan, and the master plan for the capitol of the state of Washington.

(f) Not more than ninety days after the adoption of the joint comprehensive commute trip reduction plan, state agencies within the three urban growth areas must implement a commute trip reduction program consistent with the objectives and strategies of the joint comprehensive commute trip reduction plan.

(4) The department of transportation shall review the initial commute trip reduction program of each state agency subject to the commute trip reduction plan for state agencies to determine if the program is likely to meet the applicable commute trip reduction goals and notify the agency of any deficiencies. If it is found that the program is not likely to meet the applicable commute trip reduction goals, the department of transportation will work with the agency to modify the program as necessary.

(5) Each state agency implementing a commute trip reduction plan shall report at least once per year to its agency director on the performance of the agency's commute trip reduction program as part of the agency's quality management, accountability, and performance system as defined by RCW 43.17.385. The reports shall assess the performance of the program, progress toward state goals established under RCW 70A.15.4060, and recommendations for improving the program.

(6) The department of transportation shall review the agency performance reports defined in subsection (5) of this section and submit a biennial report for state agencies subject to this chapter to the governor and incorporate the report in the commute trip reduction board report to the legislature as directed in RCW 70A.15.4060(6). The report shall include,

but is not limited to, an evaluation of the most recent measurement results, progress toward state goals established under RCW 70A.15.4060, and recommendations for improving the performance of state agency commute trip reduction programs. The information shall be reported in a form established by the commute trip reduction board. [2020 c 20 § 1131; 2015 c 225 § 105; 2009 c 427 § 3; 2006 c 329 § 11; 1997 c 250 § 6; 1996 c 186 § 516; 1991 c 202 § 19. Formerly RCW 70.94.551.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

State vehicle parking account: RCW 43.01.225.

Additional notes found at www.leg.wa.gov

70A.15.4110 Transportation demand management—Collective bargaining powers unaffected. Nothing in chapter 329, Laws of 2006 preempts the ability of state employees to collectively bargain over commute trip reduction issues, including parking fees under chapter 41.80 RCW, or the ability of private sector employees to collectively bargain over commute trip reduction issues if previously such issues were mandatory subjects of collective bargaining. [2006 c 329 § 3. Formerly RCW 70.94.555.]

70A.15.4500 Reports of authorities to department of ecology—Contents. All authorities in the state shall submit quarterly reports to the department of ecology detailing the current status of air pollution control regulations in the authority and, by county, the progress made toward bringing all sources in the authority into compliance with authority standards. [1979 ex.s. c 30 § 14; 1969 ex.s. c 168 § 52. Formerly RCW 70.94.600.]

70A.15.4510 Burning used oil fuel in land-based facilities. (1) Except as provided in subsection (2) of this section, a person may not burn used oil as fuel in a land-based facility or in state waters unless the used oil meets the following standards:

- (a) Cadmium: 2 ppm maximum
- (b) Chromium: 10 ppm maximum
- (c) Lead: 100 ppm maximum
- (d) Arsenic: 5 ppm maximum
- (e) Total halogens: 1000 ppm maximum
- (f) Polychlorinated biphenyls: 2 ppm maximum
- (g) Ash: .1 percent maximum
- (h) Sulfur: 1.0 percent maximum
- (i) Flash point: 100 degrees Fahrenheit minimum.

(2) This section shall not apply to: (a) Used oil burned in space heaters if the space heater has a maximum heat output of not greater than 0.5 million btu's per hour or used oil burned in facilities permitted by the department or a local air pollution control authority; or (b) ocean-going vessels.

(3) This section shall not apply to persons in the business of collecting used oil from residences when under authorization by a city, county, or the utilities and transportation commission. [1991 c 319 § 311. Formerly RCW 70.94.610.]

70A.15.4520 Metals mining and milling operations permits—Inspections by department of ecology. If a metals mining and milling operation is issued a permit pursuant to this chapter, then it will be subject to special inspection

requirements. The department of ecology shall inspect these mining operations at least quarterly in order to ensure that the operation is in compliance with the conditions of any permit issued to it pursuant to this chapter. The department shall conduct additional inspections during the construction phase of the mining and milling operation in order to ensure compliance with this chapter. [1994 c 232 § 18. Formerly RCW 70.94.620.]

Additional notes found at www.leg.wa.gov

70A.15.4530 Odors or fugitive dust caused by agricultural activities consistent with good agricultural practices exempt from chapter. (1) Odors or fugitive dust caused by agricultural activity consistent with good agricultural practices on agricultural land are exempt from the requirements of this chapter unless they have a substantial adverse effect on public health. In determining whether agricultural activity is consistent with good agricultural practices, the department of ecology or board of any authority shall consult with a recognized third-party expert in the activity prior to issuing any notice of violation.

(2) Any notice of violation issued under this chapter pertaining to odors or fugitive dust caused by agricultural activity shall include a detailed statement with evidence as to why the activity is inconsistent with good agricultural practices, or a detailed statement with evidence that the odors or fugitive dust shall have substantial adverse effect on public health.

(3) In any appeal to the pollution control hearings board or any judicial appeal, the agency issuing a final order pertaining to odors or fugitive dust caused by agricultural activity shall prove the activity is inconsistent with good agricultural practices or that the odors or fugitive dust have a substantial adverse impact on public health.

(4) If a person engaged in agricultural activity on a contiguous piece of agricultural land sells or has sold a portion of that land for residential purposes, the exemption of this section shall not apply.

(5) As used in this section:

(a) "Agricultural activity" means the growing, raising, or production of horticultural or viticultural crops, berries, poultry, livestock, shellfish, grain, mint, hay, and dairy products. "Agricultural activity" also includes the growing, raising, or production of cattle at cattle feedlots.

(b) "Good agricultural practices" means economically feasible practices which are customary among or appropriate to farms and ranches of a similar nature in the local area and for cattle feedlots means implementing best management practices pursuant to a fugitive dust control plan that conforms to the fugitive dust control guidelines for beef cattle feedlots, best management practices, and plan development and approval procedures that were approved by the department of ecology in December 1995 or in updates to those guidelines that are mutually agreed to by the department of ecology and by the Washington cattle feeders association or a successor organization on behalf of cattle feedlots.

(c) "Agricultural land" means at least five acres of land devoted primarily to the commercial production of livestock, agricultural commodities, or cultured aquatic products.

(d) "Fugitive dust" means a particulate emission made airborne by human activity, forces of wind, or both, and

which do not pass through a stack, chimney, vent, or other functionally equivalent opening.

(6) The exemption for fugitive dust provided in subsection (1) of this section does not apply to facilities subject to RCW 70A.15.2200 as specified in WAC 173-400-100 as of July 24, 2005, 70A.15.2210, or 70A.15.2260. The exemption for fugitive dust provided in subsection (1) of this section applies to cattle feedlots with operational facilities which have an inventory of one thousand or more cattle in operation between June 1st and October 1st, where vegetation forage growth is not sustained over the majority of the lot during the normal growing season; except that the cattle feedlots must comply with applicable requirements included in the approved state implementation plan for air quality as of July 23, 2017; and except if an area in which a cattle feedlot is located is at any time in the future designated nonattainment for a national ambient air quality standard for particulate matter, additional control measures may be required for cattle feedlots as part of a state implementation plan's control strategy for that area and as necessary to ensure the area returns to attainment. [2020 c 20 § 1132; 2017 c 217 § 1; 2005 c 511 § 4; 1981 c 297 § 30. Formerly RCW 70.94.640.]

Legislative finding, intent—1981 c 297: "The legislature finds that agricultural land is essential to providing citizens with food and fiber and to insuring aesthetic values through the preservation of open spaces in our state. The legislature further finds that government regulations can cause agricultural land to be converted to nonagricultural uses. The legislature intends that agricultural activity consistent with good practices be protected from government over-regulation." [1981 c 297 § 29.]

Reviser's note: The above legislative finding and intent section apparently applies to sections 30 and 31 of chapter 297, Laws of 1981, which sections have been codified pursuant to legislative direction as RCW 70.94.640 and 90.48.450, respectively.

Additional notes found at www.leg.wa.gov

70A.15.4540 Ammonia emissions from use as agricultural or silvicultural fertilizer—Regulation prohibited. The department shall not regulate ammonia emissions resulting from the storage, distribution, transport, or application of ammonia for use as an agricultural or silvicultural fertilizer. [1996 c 204 § 2. Formerly RCW 70.94.645.]

70A.15.5000 Definition of "outdoor burning." As used in this subchapter, "outdoor burning" means the combustion of material of any type in an open fire or in an outdoor container without providing for the control of combustion or the control of emissions from the combustion. [2009 c 118 § 101. Formerly RCW 70.94.6511.]

Purpose—2009 c 118: "The purpose of this act is to make technical, nonsubstantive changes to outdoor burning provisions of the Washington clean air act, chapter 70.94 RCW, to improve clarity. No provision of this act may be construed as a substantive change to the Washington clean air act." [2009 c 118 § 1.]

70A.15.5010 Outdoor burning—Fires prohibited—Exceptions. Except as provided in RCW 70A.15.5180, no person shall cause or allow any outdoor fire:

(1) Containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, or any substance other than natural vegetation that normally emits dense smoke or obnoxious odors. Agricultural heating devices that otherwise meet the requirements of this chapter shall not be considered outdoor fires under this section;

(2) During a forecast, alert, warning or emergency condition as defined in RCW 70A.15.6010 or impaired air quality condition as defined in RCW 70A.15.3580. [2020 c 20 § 1133; 2009 c 118 § 102; 1995 c 362 § 2; 1991 c 199 § 410; 1974 ex.s. c 164 § 1; 1973 2nd ex.s. c 11 § 1; 1973 1st ex.s. c 193 § 9. Formerly RCW 70.94.6512, 70.94.775.]

Purpose—2009 c 118: See note following RCW 70A.15.5000.

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.5020 Outdoor burning—Areas where prohibited—Exceptions—Use for management of storm or flood-related debris—Silvicultural burning. (1) Consistent with the policy of the state to reduce outdoor burning to the greatest extent practical, outdoor burning shall not be allowed in:

(a) Any area of the state where federal or state ambient air quality standards are exceeded for pollutants emitted by outdoor burning; or

(b) Any urban growth area as defined by RCW 36.70A.030, or any city of the state having a population greater than ten thousand people if such cities are threatened to exceed state or federal air quality standards, and alternative disposal practices consistent with good solid waste management are reasonably available or practices eliminating production of organic refuse are reasonably available.

(2) Notwithstanding any other provision of this section, outdoor burning may be allowed for the exclusive purpose of managing storm or flood-related debris. The decision to allow burning shall be made by the entity with permitting jurisdiction as determined under RCW 70A.15.5120 or 70A.15.5040. If outdoor burning is allowed in areas subject to subsection (1)(a) or (b) of this section, a permit shall be required, and a fee may be collected to cover the expenses of administering and enforcing the permit. All conditions and restrictions pursuant to RCW 70A.15.5080(1) and 70A.15.5010 apply to outdoor burning allowed under this section.

(3)(a) Outdoor burning that is normal, necessary, and customary to ongoing agricultural activities, that is consistent with agricultural burning authorized under RCW 70A.15.5090 and 70A.15.5110, is allowed within the urban growth area in accordance with RCW 70A.15.5090(8)(a).

(b) Outdoor burning of cultivated orchard trees shall be allowed as an ongoing agricultural activity under this section in accordance with RCW 70A.15.5090(8)(b).

(4) This section shall not apply to silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas.

(5) Notwithstanding any other provisions of this section, outdoor burning that reduces the risk of a wildfire, or is normal, necessary, and customary to ongoing silvicultural activities consistent with silvicultural burning authorized under RCW 70A.15.5120(1), is allowed within the urban growth area in accordance with RCW 70A.15.5120. Before issuing a burn permit within the urban growth area for any burn that exceeds one hundred tons of material, the department of natural resources shall consult with department of ecology and condition the issuance and use of such permits to comply with air quality standards established by the department of

ecology. [2020 c 20 § 1134; 2019 c 305 § 3; 2009 c 118 § 103; 2004 c 213 § 1; 2001 1st sp.s. c 12 § 1; 1998 c 68 § 1; 1997 c 225 § 1; 1991 c 199 § 402. Formerly RCW 70.94.6514, 70.94.743.]

Purpose—2009 c 118: See note following RCW 70A.15.5000.

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.5030 Outdoor burning—Permits issued by political subdivisions. In addition to any other powers granted to them by law, the fire protection agency, county, or conservation district issuing burning permits shall regulate or prohibit outdoor burning as necessary to prevent or abate the nuisances caused by such burning. No fire protection agency, county, or conservation district may issue a burning permit in an area where the department or local board has declared any stage of impaired air quality per RCW 70A.15.3580 or any stage of an air pollution episode. All burning permits issued shall be subject to all applicable fee, permitting, penalty, and enforcement provisions of this chapter. The permitted burning shall not cause damage to public health or the environment.

Any entity issuing a permit under this section may charge a fee at the level necessary to recover the costs of administering and enforcing the permit program. [2020 c 20 § 1135; 1991 c 199 § 411; 1973 1st ex.s. c 193 § 10. Formerly RCW 70.94.6516, 70.94.780.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.5040 Limited outdoor burning—Establishment of program. Each activated air pollution control authority, and the department of ecology in those areas outside the jurisdictional boundaries of an activated air pollution control authority, shall establish, through regulations, ordinances, or policy, a program implementing the limited burning policy authorized by RCW 70A.15.5020, 70A.15.5040, 70A.15.5050, 70A.15.5060, 70A.15.5070, and 70A.15.5080. [2020 c 20 § 1136; 2009 c 118 § 201; 1997 c 225 § 2; 1972 ex.s. c 136 § 4. Formerly RCW 70.94.6518, 70.94.755.]

Purpose—2009 c 118: See note following RCW 70A.15.5000.

70A.15.5050 Limited outdoor burning—Construction. Nothing contained in RCW 70A.15.5020, 70A.15.5040, 70A.15.5050, 70A.15.5060, 70A.15.5070, and 70A.15.5080 is intended to alter or change the provisions of RCW 70A.15.5120, 70A.15.6000 through 70A.15.6040, and 76.04.205. [2020 c 20 § 1137; 2009 c 118 § 202; 1986 c 100 § 55; 1972 ex.s. c 136 § 5. Formerly RCW 70.94.6520, 70.94.760.]

Purpose—2009 c 118: See note following RCW 70A.15.5000.

70A.15.5060 Limited outdoor burning—Authority of local air pollution control authority or department of ecology to allow outdoor fires not restricted. Nothing in RCW 70A.15.5020, 70A.15.5040, 70A.15.5050, 70A.15.5060, 70A.15.5070, and 70A.15.5080 shall be construed as prohibiting a local air pollution control authority or the department of ecology in those areas outside the jurisdictional boundaries of an activated pollution control authority from allowing the burning of outdoor fires. [2020 c 20 § 1138; 2009 c 118 § 203; 1972 ex.s. c 136 § 6. Formerly RCW 70.94.6522, 70.94.765.]

Purpose—2009 c 118: See note following RCW 70A.15.5000.

70A.15.5070 Limited outdoor burning—Program—

Exceptions. (1) It shall be the responsibility and duty of the department of natural resources, department of ecology, department of agriculture, county fire marshals in consultation with fire districts, and local air pollution control authorities to establish, through regulations, ordinances, or policy, a limited burning permit program.

(2) The permit program shall apply to residential and land clearing burning in the following areas:

(a) In the nonurban areas of any county with an unincorporated population of greater than fifty thousand; and

(b) In any city and urban growth area that is not otherwise prohibited from burning pursuant to RCW 70A.15.5020.

(3) The permit program shall apply only to land clearing burning in the nonurban areas of any county with an unincorporated population of less than fifty thousand.

(4) The permit program may be limited to a general permit by rule, or by verbal, written, or electronic approval by the permitting entity.

(5) Notwithstanding any other provision of this section, neither a permit nor the payment of a fee shall be required for outdoor burning for the purpose of disposal of tumbleweeds blown by wind. Such burning shall not be conducted during an air pollution episode or any stage of impaired air quality declared under RCW 70A.15.6010. This subsection (5) shall only apply within counties with a population less than two hundred fifty thousand.

(6) Burning shall be prohibited in an area when an alternate technology or method of disposing of the organic refuse is available, reasonably economical, and less harmful to the environment. It is the policy of this state to foster and encourage development of alternate methods or technology for disposing of or reducing the amount of organic refuse.

(7) Incidental agricultural burning must be allowed without applying for any permit and without the payment of any fee if:

(a) The burning is incidental to commercial agricultural activities;

(b) The operator notifies the local fire department within the area where the burning is to be conducted;

(c) The burning does not occur during an air pollution episode or any stage of impaired air quality declared under RCW 70A.15.6010; and

(d) Only the following items are burned:

(i) Orchard prunings;

(ii) Organic debris along fence lines or irrigation or drainage ditches; or

(iii) Organic debris blown by wind.

(8) As used in this section, "nonurban areas" are unincorporated areas within a county that are not designated as urban growth areas under chapter 36.70A RCW.

(9) Nothing in this section shall require fire districts to enforce air quality requirements related to outdoor burning, unless the fire district enters into an agreement with the department of ecology, department of natural resources, a local air pollution control authority, or other appropriate entity to provide such enforcement. [2020 c 20 § 1139; 2019 c 305 § 4; 2009 c 118 § 301; 1995 c 206 § 1; 1991 c 199 §

401; 1972 ex.s. c 136 § 2. Formerly RCW 70.94.6524, 70.94.745.]

Purpose—2009 c 118: See note following RCW 70A.15.5000.

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.5080 Limited outdoor burning—Permits issued by political subdivisions—Types of fires permitted.

The following outdoor fires described in this section may be burned subject to the provisions of this chapter and also subject to city ordinances, county resolutions, rules of fire districts and laws, and rules enforced by the department of natural resources if a permit has been issued by a fire protection agency, county, or conservation district:

(1) Fires consisting of leaves, clippings, prunings and other yard and gardening refuse originating on lands immediately adjacent and in close proximity to a human dwelling and burned on such lands by the property owner or his or her designee.

(2) Fires consisting of residue of a natural character such as trees, stumps, shrubbery or other natural vegetation arising from land clearing projects or agricultural pursuits for pest or disease control; except that the fires described in this subsection may be prohibited in those areas having a general population density of one thousand or more persons per square mile. [2009 c 118 § 302; 1991 c 199 § 412; 1972 ex.s. c 136 § 3. Formerly RCW 70.94.6526, 70.94.750.]

Purpose—2009 c 118: See note following RCW 70A.15.5000.

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.5090 Permits—Issuance—Conditioning of permits—Fees—Agricultural burning practices and research task force—Development of public education materials—Agricultural activities.

(1) Any person who proposes to set fires in the course of agricultural activities shall obtain a permit from an air pollution control authority, the department of ecology, or a local entity delegated permitting authority under RCW 70A.15.5100. General permit criteria of statewide applicability shall be established by the department, by rule, after consultation with the various air pollution control authorities.

(a) Permits shall be issued under this section based on seasonal operations or by individual operations, or both.

(b) Incidental agricultural burning consistent with provisions established in RCW 70A.15.5070 is allowed without applying for any permit and without the payment of any fee.

(2) The department of ecology, local air authorities, or a local entity with delegated permit authority shall:

(a) Condition all permits to ensure that the public interest in air, water, and land pollution and safety to life and property is fully considered;

(b) Condition all burning permits to minimize air pollution insofar as practical;

(c) Act upon, within seven days from the date an application is filed under this section, an application for a permit to set fires in the course of agricultural burning for controlling diseases, insects, weed abatement, or development of physiological conditions conducive to increased crop yield;

(d) Provide convenient methods for issuance and oversight of agricultural burning permits; and

(e) Work, through agreement, with counties and cities to provide convenient methods for granting permission for agri-

cultural burning, including telephone, facsimile transmission, issuance from local city or county offices, or other methods.

(3) A local air authority administering the permit program under subsection (2) of this section shall not limit the number of days of allowable agricultural burning, but may consider the time of year, meteorological conditions, and other criteria specified in rules adopted by the department to implement subsection (2) of this section.

(4) In addition to following any other requirements established by the department to protect air quality pursuant to other laws, applicants for permits must show that the setting of fires as requested is the most reasonable procedure to follow in safeguarding life or property under all circumstances or is otherwise reasonably necessary to successfully carry out the enterprise in which the applicant is engaged, or both. Nothing in this section relieves the applicant from obtaining permits, licenses, or other approvals required by any other law.

(5) The department of ecology, the appropriate local air authority, or a local entity with delegated permitting authority pursuant to RCW 70A.15.5100 at the time the permit is issued shall assess and collect permit fees for burning under this section. All fees collected shall be deposited in the air pollution control account created in RCW 70A.15.1010, except for that portion of the fee necessary to cover local costs of administering a permit issued under this section. Fees shall be set by rule by the permitting agency at the level determined by the task force created by subsection (6) of this section, but fees for field burning shall not exceed three dollars and seventy-five cents per acre to be burned, or in the case of pile burning shall not exceed one dollar per ton of material burned.

(6) An agricultural burning practices and research task force shall be established under the direction of the department. The task force shall be composed of a representative from the department who shall serve as chair; one representative of eastern Washington local air authorities; three representatives of the agricultural community from different agricultural pursuits; one representative of the department of agriculture; two representatives from universities or colleges knowledgeable in agricultural issues; one representative of the public health or medical community; and one representative of the conservation districts. The task force shall:

(a) Identify best management practices for reducing air contaminant emissions from agricultural activities and provide such information to the department and local air authorities;

(b) Determine the level of fees to be assessed by the permitting agency pursuant to subsection (5) of this section, based upon the level necessary to cover the costs of administering and enforcing the permit programs, to provide funds for research into alternative methods to reduce emissions from such burning, and to the extent possible be consistent with fees charged for such burning permits in neighboring states. The fee level shall provide, to the extent possible, for lesser fees for permittees who use best management practices to minimize air contaminant emissions;

(c) Identify research needs related to minimizing emissions from agricultural burning and alternatives to such burning; and

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(d) Make recommendations to the department on priorities for spending funds provided through this chapter for research into alternative methods to reduce emissions from agricultural burning.

(7) Conservation districts and the Washington State University agricultural extension program in conjunction with the department shall develop public education material for the agricultural community identifying the health and environmental effects of agricultural outdoor burning and providing technical assistance in alternatives to agricultural outdoor burning.

(8)(a) Outdoor burning that is normal, necessary, and customary to ongoing agricultural activities, that is consistent with agricultural burning authorized under this section and RCW 70A.15.5110, is allowed within the urban growth area as described in RCW 70A.15.5020 if the burning is not conducted during air quality episodes, or where a determination of impaired air quality has been made as provided in RCW 70A.15.3580, and the agricultural activities preceded the designation as an urban growth area.

(b) Outdoor burning of cultivated orchard trees, whether or not agricultural crops will be replanted on the land, shall be allowed as an ongoing agricultural activity under this section if a local horticultural pest and disease board formed under chapter 15.09 RCW, an extension office agent with Washington State University that has horticultural experience, or an entomologist employed by the department of agriculture, has determined in writing that burning is an appropriate method to prevent or control the spread of horticultural pests or diseases. [2020 c 20 § 1140; 2010 c 70 § 1; 2009 c 118 § 401; 1998 c 43 § 1. Prior: 1995 c 362 § 1; 1995 c 58 § 1; 1994 c 28 § 2; 1993 c 353 § 1; 1991 c 199 § 408; 1971 ex.s. c 232 § 1. Formerly RCW 70.94.6528, 70.94.650.]

Purpose—2009 c 118: See note following RCW 70A.15.5000.

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.5100 Delegation of permit issuance and enforcement to political subdivisions. Whenever an air pollution control authority, or the department of ecology for areas outside the jurisdictional boundaries of an activated air pollution control authority, shall find that any fire protection agency, county, or conservation district is capable of effectively administering the issuance and enforcement of permits for any or all of the kinds of burning identified in RCW 70A.15.5090, 70A.15.5180, and 70A.15.5210 and desirous of doing so, the authority or the department of ecology, as appropriate, may delegate powers necessary for the issuance or enforcement, or both, of permits for any or all of the kinds of burning to the fire protection agency, county, or conservation district. Such delegation may be withdrawn by the authority or the department of ecology upon finding that the fire protection agency, county, or conservation district is not effectively administering the permit program. [2020 c 20 § 1141; 2009 c 118 § 402; 1993 c 353 § 2; 1991 c 199 § 409; 1973 1st ex.s. c 193 § 6. Formerly RCW 70.94.6530, 70.94.654.]

Purpose—2009 c 118: See note following RCW 70A.15.5000.

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.5110 Open burning of grasses grown for seed—Alternatives—Studies—Deposit of permit fees in

special grass seed burning account—Procedures—Limitations—Report. It is hereby declared to be the policy of this state that strong efforts should be made to minimize adverse effects on air quality from the open burning of field and turf grasses grown for seed. To such end this section is intended to promote the development of economical and practical alternate agricultural practices to such burning, and to provide for interim regulation of such burning until practical alternates are found.

(1) The department shall approve of a study or studies for the exploration and identification of economical and practical alternate agricultural practices to the open burning of field and turf grasses grown for seed. Any study conducted pursuant to this section shall be conducted by Washington State University. The university may not charge more than eight percent for administrative overhead. Prior to the issuance of any permit for such burning under RCW 70A.15.5090, there shall be collected a fee not to exceed one dollar per acre of crop to be burned. Any such fees received by any authority shall be transferred to the department of ecology. The department of ecology shall deposit all such acreage fees in the general fund.

(2) The department shall allocate moneys annually for the support of any approved study or studies as provided for in subsection (1) of this section. The fee collected under subsection (1) of this section shall constitute the research portion of fees required under RCW 70A.15.5090 for open burning of grass grown for seed.

(3) Whenever on the basis of information available to it, the department after public hearings have been conducted wherein testimony will be received and considered from interested parties wishing to testify shall conclude that any procedure, program, technique, or device constitutes a practical alternate agricultural practice to the open burning of field or turf grasses grown for seed, the department shall, by order, certify approval of such alternate. Thereafter, in any case which any such approved alternate is reasonably available, the open burning of field and turf grasses grown for seed shall be disallowed and no permit shall issue therefor.

(4) Until approved alternates become available, the department or the authority may limit the number of acres on a pro rata basis among those affected for which permits to burn will be issued in order to effectively control emissions from this source.

(5) Permits issued for burning of field and turf grasses may be conditioned to minimize emissions insofar as practical, including denial of permission to burn during periods of adverse meteorological conditions.

(6) Every two years until grass seed burning is prohibited, Washington State University may prepare a brief report assessing the potential of the university's research to result in economical and practical alternatives to grass seed burning. [2020 c 20 § 1142; 2012 c 198 § 1; 2009 c 118 § 403; 1998 c 245 § 130; 1995 c 261 § 1; 1991 sp.s. c 13 § 28; 1991 c 199 § 413; 1990 c 113 § 1; 1985 c 57 § 69; 1973 1st ex.s. c 193 § 7. Formerly RCW 70.94.6532, 70.94.656.]

Effective date—2012 c 198: "This act takes effect July 1, 2012." [2012 c 198 § 29.]

Purpose—2009 c 118: See note following RCW 70A.15.5000.

Finding—1991 c 199: See note following RCW 70A.15.1005.

Grass burning research advisory committee: Chapter 43.21E RCW.

Additional notes found at www.leg.wa.gov

70A.15.5120 Burning permits for abating or prevention of forest fire hazards, management of ecosystems, instruction or silvicultural operations—Issuance—Fees.

(1) The department of natural resources is responsible for issuing and regulating burning permits required by it relating to the following activities for the protection of life or property and for the public health, safety, and welfare:

(a) Abating or prevention of a forest fire hazard;

(b) Reducing the risk of a wildfire under RCW 70A.15.5020(5);

(c) Instruction of public officials in methods of forest firefighting;

(d) Any silvicultural operation to improve the forestlands of the state, including but not limited to forest health and resiliency, decreasing forest insect or disease susceptibility, maintaining or restoring native vegetation, or otherwise enhancing resiliency to fire; and

(e) Silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas.

(2) The department of natural resources shall not retain such authority, but it shall be the responsibility of the appropriate fire protection agency for permitting and regulating outdoor burning on lands where the department of natural resources does not have fire protection responsibility, except for the issuance of permits for reducing the risk of wildfire under RCW 70A.15.5020(5). The department of natural resources may enter into cooperative agreements with local fire protection agencies to issue permits for reducing wildfire risk under RCW 70A.15.5020(5).

(3) Permit fees shall be assessed for wildfire risk reduction and for silvicultural burning under the jurisdiction of the department of natural resources and collected by the department of natural resources as provided for in this section. All fees shall be deposited in the air pollution control account, created in RCW 70A.15.1010. The legislature shall appropriate to the department of natural resources funds from the air pollution control account to enforce and administer the program under this section and RCW 70A.15.5130, 70A.15.5140, and 70A.15.5150. Fees shall be set by rule by the department of natural resources at the level necessary to cover the costs of the program after receiving recommendations on such fees from the public. [2020 c 20 § 1143; 2019 c 305 § 5; 2010 1st sp.s. c 7 § 128; 2009 c 118 § 501; 1991 c 199 § 404; 1971 ex.s. c 232 § 2. Formerly RCW 70.94.6534, 70.94.660.]

Purpose—2009 c 118: See note following RCW 70A.15.5000.

Finding—1991 c 199: See note following RCW 70A.15.1005.

Burning permits, issuance, air pollution a factor: RCW 76.04.205.

Disposal of forest debris: RCW 76.04.650.

Additional notes found at www.leg.wa.gov

70A.15.5130 Silvicultural forest burning—Reduce statewide emissions—Exemption—Monitoring program. (1)(a) The department of natural resources shall administer a program to reduce statewide emissions from silvicultural forest burning so as to achieve the following minimum objectives:

(i) Twenty percent reduction by December 31, 1994, providing a ceiling for emissions until December 31, 2000; and

(ii) Fifty percent reduction by December 31, 2000, providing a ceiling for emissions thereafter.

(b) Reductions shall be calculated from the average annual emissions level from calendar years 1985 to 1989, using the same methodology for both reduction and base year calculations.

(2)(a) The department of natural resources, within twelve months after May 15, 1991, shall develop a plan, based upon the existing smoke management agreement to carry out the programs as described in this section in the most efficient, cost-effective manner possible. The plan shall be developed in consultation with the department of ecology, public and private landowners engaged in silvicultural forest burning, and representatives of the public.

(b) The plan shall recognize the variations in silvicultural forest burning including, but not limited to, a landowner's responsibility to abate an extreme fire hazard under chapter 76.04 RCW and other objectives of burning, including abating and preventing a fire hazard, geographic region, climate, elevation and slope, proximity to populated areas, diversity of land ownership, improving forest health and resiliency, decreasing forest insect or disease susceptibility, maintaining or restoring native vegetation, or otherwise enhancing resiliency to fire. The plan shall establish priorities that the department of natural resources shall use to allocate allowable emissions, including but not limited to, forest health and resiliency, silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas. The plan shall also recognize the real costs of the emissions program and recommend equitable fees to cover the costs of the program.

(c) The emission reductions in this section are to apply to all forestlands including those owned and managed by the United States. If the United States does not participate in implementing the plan, the departments of natural resources and ecology shall use all appropriate and available methods or enforcement powers to ensure participation.

(d) The plan shall include a tracking system designed to measure the degree of progress toward the emission reductions goals set in this section. The department of natural resources shall report annually to the department of ecology and the legislature on the status of the plan, emission reductions and progress toward meeting the objectives specified in this section, and the goals of this chapter and chapter 76.04 RCW.

(3) If the December 31, 1994, emission reductions targets in this section are not met, the department of natural resources, in consultation with the department of ecology, shall use its authority granted in this chapter and chapter 76.04 RCW to immediately limit emissions from such burning to the 1994 target levels and limit silvicultural forest burning in subsequent years to achieve equal annual incremental reductions so as to achieve the December 31, 2000, target level. If, as a result of the program established in this section, the emission reductions are met in 1994, but are not met by December 31, 2000, the department of natural

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resources in consultation with the department of ecology shall immediately limit silvicultural forest burning to reduce emissions from such burning to the December 31, 2000, target level in all subsequent years.

(4) Emissions from silvicultural burning in eastern Washington that is conducted for the purpose of restoring forest health or preventing the additional deterioration of forest health are exempt from the reduction targets and calculations in this section if the following conditions are met:

(a) The landowner submits a written request to the department identifying the location of the proposed burning and the nature of the forest health problem to be corrected. The request shall include a brief description of alternatives to silvicultural burning and reasons why the landowner believes the alternatives not to be appropriate.

(b) The department determines that the proposed silvicultural burning operation is being conducted to restore forest health or prevent additional deterioration to forest health; meets the requirements of the state smoke management plan to protect public health, visibility, and the environment; and will not be conducted during an air pollution episode or during periods of impaired air quality in the vicinity of the proposed burn.

(c) Upon approval of the request by the department and before burning, the landowner is encouraged to notify the public in the vicinity of the burn of the general location and approximate time of ignition.

(5) The department of ecology may conduct a limited, seasonal ambient air quality monitoring program to measure the effects of forest health burning conducted under subsection (4) of this section. The monitoring program may be developed in consultation with the department of natural resources, private and public forestland owners, academic experts in forest health issues, and the general public. [2019 c 305 § 6; 1995 c 143 § 1; 1991 c 199 § 403. Formerly RCW 70.94.6536, 70.94.665.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.5140 Burning permits for abating or prevention of forest fire hazards, management of ecosystems, instruction or silvicultural operations—Conditions for issuance and use of permits—Air quality standards to be met—Alternate methods to lessen forest debris. The department of natural resources, in granting burning permits for fires for the purposes set forth in RCW 70A.15.5120, shall condition the issuance and use of such permits to comply to the extent feasible with air quality standards established by the department of ecology. Such burning shall not cause the state air quality standards to be exceeded in the ambient air up to two thousand feet above ground level over critical areas designated by the department of ecology, otherwise subject to air pollution from other sources. Air quality standards shall be established and published by the department of ecology which shall also establish a procedure for advising the department of natural resources when and where air contaminant levels exceed or threaten to exceed the ambient air standards over such critical areas. The air quality shall be quantitatively measured by the department of ecology or the appropriate local air pollution control authority at established monitoring stations over such designated areas. Further, such permitted burning shall not cause damage to public

health or the environment. All permits issued under this section shall be subject to all applicable fees, permitting, penalty, and enforcement provisions of this chapter. The department of natural resources shall set forth smoke dispersal objectives designed consistent with this section to minimize any air pollution from such burning and the procedures necessary to meet those objectives.

The department of natural resources shall encourage more intense utilization in logging and alternative silviculture practices to reduce the need for burning. The department of natural resources shall, whenever practical, encourage landowners to develop and use alternative acceptable disposal methods subject to the following priorities: (1) Slash production minimization, (2) slash utilization, (3) nonburning disposal, (4) silvicultural burning. Such alternative methods shall be evaluated as to the relative impact on air, water, and land pollution, public health, and their financial feasibility.

The department of natural resources shall not issue burning permits and shall revoke previously issued permits at any time in any area where the department of ecology or local board has declared a stage of impaired air quality as defined in RCW 70A.15.3580. [2020 c 20 § 1144; 2019 c 305 § 7; 2009 c 118 § 502; 1991 c 199 § 405; 1971 ex.s. c 232 § 3. Formerly RCW 70.94.6538, 70.94.670.]

Purpose—2009 c 118: See note following RCW 70A.15.5000.

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.5150 Cooperation between department of natural resources and state, local, or regional air pollution authorities—Withholding of permits. In the regulation of outdoor burning not included in RCW 70A.15.5120 requiring permits from the department of natural resources, said department and the state, local, or regional air pollution control authorities will cooperate in regulating such burning so as to minimize insofar as possible duplicate inspections and separate permits while still accomplishing the objectives and responsibilities of the respective agencies. The department of natural resources shall include any local authority's burning regulations with permits issued where applicable pursuant to RCW 70A.15.5010, 70A.15.5020, 70A.15.5040, 70A.15.5050, 70A.15.5060, 70A.15.5070, and 70A.15.5080. The department shall develop agreements with all local authorities to coordinate regulations.

Permits shall be withheld by the department of natural resources when so requested by the department of ecology if a forecast, alert, warning, or emergency condition exists as defined in the episode criteria of the department of ecology. [2020 c 20 § 1145; 2009 c 118 § 503; 1991 c 199 § 406; 1971 ex.s. c 232 § 5. Formerly RCW 70.94.6540, 70.94.690.]

Purpose—2009 c 118: See note following RCW 70A.15.5000.

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.5160 Adoption of rules. The department of natural resources and the department of ecology may adopt rules necessary to implement their respective responsibilities under the provisions of RCW 70A.15.5090, 70A.15.5100, 70A.15.5110, 70A.15.5120, 70A.15.5130, 70A.15.5140, 70A.15.5150, 70A.15.5160, and 70A.15.5170. [2020 c 20 § 1146; 2009 c 118 § 504; 1971 ex.s. c 232 § 6. Formerly RCW 70.94.6542, 70.94.700.]

Purpose—2009 c 118: See note following RCW 70A.15.5000.

70A.15.5170 Burning permits for regeneration of rare and endangered plants. Nothing in this chapter prohibits fires necessary to promote the regeneration of rare and endangered plants found within natural area preserves as identified under chapter 79.70 RCW. Permits issued for burning under this section shall be drafted to minimize emissions including denial of permission to burn during periods of adverse meteorological conditions. [2009 c 118 § 703; 1991 c 199 § 407. Formerly RCW 70.94.6544, 70.94.651.]

Purpose—2009 c 118: See note following RCW 70A.15.5000.

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.5180 Aircraft crash rescue fire training—Training to fight structural fires—Training to fight forest fires—Other firefighter instruction. (1) Aircraft crash rescue fire training activities meeting the following conditions do not require a permit under this section, or under RCW 70A.15.5010, 70A.15.5020, 70A.15.5030, 70A.15.5040, 70A.15.5050, 70A.15.5060, 70A.15.5070, and 70A.15.5080, from an air pollution control authority, the department, or any local entity with delegated permit authority:

(a) Firefighters participating in the training fires must be limited to those who provide firefighting support to an airport that is either certified by the federal aviation administration or operated in support of military or governmental activities;

(b) The fire training may not be conducted during an air pollution episode or any stage of impaired air quality declared under RCW 70A.15.6010 for the area where training is to be conducted;

(c) The number of training fires allowed per year without a permit shall be the minimum number necessary to meet federal aviation administration or other federal safety requirements;

(d) The facility shall use current technology and be operated in a manner that will minimize, to the extent possible, the air contaminants generated during operation; and

(e) The organization conducting training shall notify both the: (i) Local fire district or fire department; and (ii) air pollution control authority, department of ecology, or local entity delegated permitting authority under RCW 70A.15.5100, having jurisdiction within the area where training is to be conducted before the commencement of aircraft fire training. Written approval from the department or a local air pollution control authority shall be obtained prior to the initial operation of aircraft crash rescue fire training. Such approval will be granted to fire training activities meeting the conditions in this subsection.

(2) Aircraft crash rescue fire training activities conducted in compliance with subsection (1) of this section are not subject to the prohibition, in RCW 70A.15.5010(1), of outdoor fires containing petroleum products and are not considered outdoor burning under RCW 70A.15.5010, 70A.15.5020, 70A.15.5030, 70A.15.5040, 70A.15.5050, 70A.15.5060, 70A.15.5070, and 70A.15.5080.

(3) Training to fight structural fires located outside urban growth areas in counties that plan under the requirements of RCW 36.70A.040 and outside of any city with a population of ten thousand or more in all other counties does not need a permit under this section from an air pollution control author-

ity or the department of ecology, but must be conducted in accordance with RCW 52.12.150.

(4) Training to fight forest fires does not require a permit from an air pollution control authority or the department of ecology.

(5) To provide for firefighting instruction in instances not governed by subsections (1) through (3) of this section, or other actions to protect public health and safety, the department or a local air pollution control authority may issue permits that allow limited burning of prohibited materials listed in RCW 70A.15.5010(1). [2020 c 20 § 1147; 2009 c 118 § 601. Formerly RCW 70.94.6546.]

Purpose—2009 c 118: See note following RCW 70A.15.5000.

70A.15.5190 Outdoor burning allowed for managing storm or flood-related debris. Consistent with RCW 70A.15.5020, outdoor burning may be allowed anywhere in the state for the exclusive purpose of managing storm or flood-related debris. [2020 c 20 § 1148; 2009 c 118 § 701. Formerly RCW 70.94.6548.]

Purpose—2009 c 118: See note following RCW 70A.15.5000.

70A.15.5200 Fires necessary for Indian ceremonies or smoke signals. Nothing in this chapter prohibits fires necessary for Indian ceremonies or for the sending of smoke signals if part of a religious ritual. Permits issued for burning under this section shall be drafted to minimize emissions including denial of permission to burn during periods of adverse meteorological conditions. [2009 c 118 § 702. Formerly RCW 70.94.6550.]

Purpose—2009 c 118: See note following RCW 70A.15.5000.

70A.15.5210 Permit to set fires for weed abatement. Any person who proposes to set fires in the course of weed abatement shall obtain a permit from an air pollution control authority, the department of ecology, or a local entity delegated permitting authority under RCW 70A.15.5100. General permit criteria of statewide applicability shall be established by the department, by rule, after consultation with the various air pollution control authorities. Permits shall be issued under this section based on seasonal operations or by individual operations, or both. All permits shall be conditioned to insure that the public interest in air, water, and land pollution and safety to life and property is fully considered. In addition to any other requirements established by the department to protect air quality pursuant to other laws, applicants for permits must show that the setting of fires as requested is the most reasonable procedure to follow in safeguarding life or property under all circumstances or is otherwise reasonably necessary to successfully carry out the enterprise in which the applicant is engaged, or both. All burning permits will be designed to minimize air pollution insofar as practical. Nothing in this section relieves the applicant from obtaining permits, licenses, or other approvals required by any other law. An application for a permit to set fires in the course of weed abatement shall be acted upon within seven days from the date such application is filed. [2020 c 20 § 1149; 2009 c 118 § 704. Formerly RCW 70.94.6552.]

Purpose—2009 c 118: See note following RCW 70A.15.5000.

70A.15.5220 Disposal of tumbleweeds. Consistent with RCW 70A.15.5070, neither a permit nor the payment of a fee shall be required for outdoor burning for the purpose of disposal of tumbleweeds blown by wind. Such burning shall not be conducted during an air pollution episode or any stage of impaired air quality declared under RCW 70A.15.6010. This section shall only apply within counties with a population less than two hundred fifty thousand. [2020 c 20 § 1150; 2009 c 118 § 705. Formerly RCW 70.94.6554.]

Purpose—2009 c 118: See note following RCW 70A.15.5000.

70A.15.6000 Air pollution episodes—Legislative finding—Declaration of policy. The legislature finds that whenever meteorological conditions occur which reduce the effective volume of air into which air contaminants are introduced, there is a high danger that normal operations at air contaminant sources in the area affected will be detrimental to public health or safety. Whenever such conditions, herein denominated as air pollution episodes, are forecast, there is a need for rapid short-term emission reduction in order to avoid adverse health or safety consequences.

Therefore, it is declared to be the policy of this state that an episode avoidance plan should be developed and implemented for the temporary reduction of emissions during air pollution episodes.

It is further declared that power should be vested in the governor to issue emergency orders for the reduction or discontinuance of emissions when such emissions and weather combine to create conditions imminently dangerous to public health and safety. [1971 ex.s. c 194 § 1. Formerly RCW 70.94.710.]

70A.15.6010 Air pollution episodes—Episode avoidance plan—Contents—Source emission reduction plans—Authority—Considered orders. The department of ecology is hereby authorized to develop an episode avoidance plan providing for the phased reduction of emissions wherever and whenever an air pollution episode is forecast. Such an episode avoidance plan shall conform with any applicable federal standards and shall be effective statewide. The episode avoidance plan may be implemented on an area basis in accordance with the occurrence of air pollution episodes in any given area.

The department of ecology may delegate authority to adopt source emission reduction plans and authority to implement all stages of occurrence up to and including the warning stage, and all intermediate stages up to the warning stage, in any area of the state, to the air pollution control authority with jurisdiction therein.

The episode avoidance plan, which shall be established by regulation in accordance with chapter 34.05 RCW, shall include, but not be limited to, the following:

(1) The designation of episode criteria and stages, the occurrence of which will require the carrying out of pre-planned episode avoidance procedures. The stages of occurrence shall be (a) forecast, (b) alert, (c) warning, (d) emergency, and such intermediate stages as the department shall designate. "Forecast" means the presence of meteorological conditions that are conducive to accumulation of air contaminants and is the first stage of an episode. The department shall not call a forecast episode prior to the department or an

authority calling a first stage impaired air quality condition as provided by RCW 70A.15.3580(1)(b) or calling a single-stage impaired air quality condition as provided by RCW 70A.15.3580. "Alert" means concentration of air contaminants at levels at which short-term health effects may occur, and is the second stage of an episode. "Warning" means concentrations are continuing to degrade, contaminant concentrations have reached a level which, if maintained, can result in damage to health, and additional control actions are needed and is the third level of an episode. "Emergency" means the air quality is posing an imminent and substantial endangerment to public health and is the fourth level of an episode;

(2) The requirement that persons responsible for the operation of air contaminant sources prepare and obtain approval from the director of source emission reduction plans, consistent with good operating practice and safe operating procedures, for reducing emissions during designated episode stages;

(3) Provision for the director of the department of ecology or his or her authorized representative, or the air pollution control officer if implementation has been delegated, on the satisfaction of applicable criteria, to declare and terminate the forecast, alert, warning and all intermediate stages, up to the warning episode stage, such declarations constituting orders for action in accordance with applicable source emission reduction plans;

(4) Provision for the governor to declare and terminate the emergency stage and all intermediate stages above the warning episode stage, such declarations constituting orders in accordance with applicable source emission reduction plans;

(5) Provisions for enforcement by state and local police, personnel of the departments of ecology and social and health services, and personnel of local air pollution control agencies; and

(6) Provisions for reduction or discontinuance of emissions immediately, consistent with good operating practice and safe operating procedures, under an air pollution emergency as provided in RCW 70A.15.6020.

Source emission reduction plans shall be considered orders of the department and shall be subject to appeal to the pollution control hearings board according to the procedure in chapter 43.21B RCW. [2020 c 20 § 1152; 2012 c 117 § 409; 1990 c 128 § 4; 1971 ex.s. c 194 § 2. Formerly RCW 70.94.715.]

70A.15.6020 Air pollution episodes—Declaration of air pollution emergency by governor. Whenever the governor finds that emissions from the operation of one or more air contaminant sources is causing imminent danger to public health or safety, he or she may declare an air pollution emergency and may order the person or persons responsible for the operation of such air contaminant source or sources to reduce or discontinue emissions consistent with good operating practice, safe operating procedures, and source emission reduction plans, if any, adopted by the department of ecology or any local air pollution control authority to which the department of ecology has delegated authority to adopt emission reduction plans. Orders authorized by this section shall be in writing and may be issued without prior notice or hearing. In the absence of the governor, any findings, declara-

tions, and orders authorized by this section may be made and issued by his or her authorized representative. [2012 c 117 § 410; 1971 ex.s. c 194 § 3. Formerly RCW 70.94.720.]

70A.15.6030 Air pollution episodes—Restraining orders, temporary injunctions to enforce orders—Procedure. Whenever any order has been issued pursuant to RCW 70A.15.6000 through 70A.15.6040, the attorney general, upon request from the governor, the director of the department of ecology, an authorized representative of either, or the attorney for a local air pollution control authority upon request of the control officer, shall petition the superior court of the county in which is located the air contaminant source for which such order was issued for a temporary restraining order requiring the immediate reduction or discontinuance of emissions from such source.

Upon request of the party to whom a temporary restraining order is directed, the court shall schedule a hearing thereon at its earliest convenience, at which time the court may withdraw the restraining order or grant such temporary injunction as is reasonably necessary to prevent injury to the public health or safety. [2020 c 20 § 1153; 1971 ex.s. c 194 § 4. Formerly RCW 70.94.725.]

70A.15.6040 Air pollution episodes—Orders to be effective immediately. Orders issued to declare any stage of an air pollution episode avoidance plan under RCW 70A.15.6010, and to declare an air pollution emergency, under RCW 70A.15.6020, and orders to persons responsible for the operation of an air contaminant source to reduce or discontinue emissions, according to RCW 70A.15.6010 and 70A.15.6020 shall be effective immediately and shall not be stayed pending completion of review. [2020 c 20 § 1154; 1971 ex.s. c 194 § 5. Formerly RCW 70.94.730.]

70A.15.6050 Plans approved pursuant to federal clean air act—Enforcement authority. Notwithstanding any provision of the law to the contrary, except RCW 70A.15.5120 through 70A.15.5150, the department of ecology, upon its approval of any plan (or part thereof) required or permitted under the federal clean air act, shall have the authority to enforce all regulatory provisions within such plan (or part thereof): PROVIDED, That departmental enforcement of any such provision which is within the power of an activated authority to enforce shall be initiated only, when with respect to any source, the authority is not enforcing the provisions and then only after written notice is given the authority. [2020 c 20 § 1155; 1973 1st ex.s. c 193 § 11. Formerly RCW 70.94.785.]

70A.15.6200 Legislative declaration—Intent. The legislature recognizes that:

(1) Acid deposition resulting from commercial, industrial or other emissions of sulphur dioxide and nitrogen oxides pose a threat to the delicate balance of the state's ecological systems, particularly in alpine lakes that are known to be highly sensitive to acidification;

(2) Failure to act promptly and decisively to mitigate or eliminate this danger may soon result in untold and irreparable damage to the fish, forest, wildlife, agricultural, water, and recreational resources of this state;

(3) There is a direct correlation between emissions of sulphur dioxides and nitrogen oxides and increases in acid deposition;

(4) Acidification is cumulative; and

(5) Once an environment is acidified, it is difficult, if not impossible, to restore the natural balance.

It is therefore the intent of the legislature to provide for early detection of acidification and the resulting environmental degradation through continued monitoring of acid deposition levels and trends, and major source changes, so that the legislature can take any necessary action to prevent environmental degradation resulting from acid deposition. [1985 c 456 § 1; 1984 c 277 § 1. Formerly RCW 70.94.800.]

70A.15.6210 Definitions. As used in RCW 70A.15.6200 through 70A.15.6220, the following terms have the following meanings.

(1) "Acid deposition" means wet or dry deposition from the atmosphere of chemical compounds with a pH of less than 5.6.

(2) "Critical level of acid deposition and lake, stream, and soil acidification" means the level at which irreparable damage may occur unless corrective action is taken. [2020 c 20 § 1156; 1985 c 456 § 2; 1984 c 277 § 2. Formerly RCW 70.94.805.]

70A.15.6220 Monitoring by department of ecology. The department of ecology shall maintain a program of periodic monitoring of acid rain deposition and lake, stream, and soil acidification to ensure early detection of acidification and environmental degradation. [1987 c 505 § 61; 1985 c 456 § 5; 1984 c 277 § 6. Formerly RCW 70.94.820.]

70A.15.6230 Emission credits banking program—Amount of credit. The department of ecology and the local boards may implement an emission credits banking program. For the purposes of this section, an emission credits banking program means a program whereby an air contaminant source which reduces emissions of a given air contaminant by an amount greater than that required by applicable law, regulation, or order is granted credit for a given amount, which credit shall be administered by a credit bank operated by the appropriate agency. The amount of the credit shall be determined by the department or local board with jurisdiction, but it shall be less than the amount of the emissions reduction. The credit may be used, traded, sold, or otherwise expended for purposes established by regulation of state or local agencies consistent with the provisions of the prevention of significant deterioration program under RCW 70A.15.6240, the bubble program under RCW 70A.15.2240, and the new source review program under RCW 70A.15.2210, if there will be no net adverse impact on air quality. [2020 c 20 § 1157; 1984 c 164 § 1. Formerly RCW 70.94.850.]

70A.15.6240 Department of ecology may accept delegation of programs. The department of ecology may accept delegation of programs as provided for in the federal clean air act. Subject to federal approval, the department may, in turn, delegate such programs to the local authority with jurisdiction

in a given area. [1991 c 199 § 312; 1984 c 164 § 2. Formerly RCW 70.94.860.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.6250 Evaluation of information on acid deposition in Pacific Northwest—Establishment of critical levels—Notification of legislature. The department of ecology, in consultation with the appropriate committees of the house of representatives and of the senate, shall:

(1) Continue evaluation of information and research on acid deposition in the Pacific Northwest region;

(2) Establish critical levels of acid deposition and lake, stream, and soil acidification; and

(3) Notify the legislature if acid deposition or lake, stream, and soil acidification reaches the levels established under subsection (2) of this section. [1991 c 199 § 313; 1985 c 456 § 3. Formerly RCW 70.94.875.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.15.6260 Establishment of critical deposition and acidification levels—Considerations. In establishing critical levels of acid deposition and lake, stream, and soil acidification, the department of ecology shall consider:

(1) Current acid deposition and lake, stream, and soil acidification levels;

(2) Changes in acid deposition and lake, stream, and soil acidification levels;

(3) Effects of acid deposition and lake, stream, and soil acidification on the environment; and

(4) The need to prevent environmental degradation. [1985 c 456 § 4. Formerly RCW 70.94.880.]

70A.15.6270 Carbon dioxide mitigation—Fees. (1) For fossil-fueled electric generation facilities having more than twenty-five thousand kilowatts station generating capability but less than three hundred fifty thousand kilowatts station generation capability, except for fossil-fueled floating thermal electric generation facilities under the jurisdiction of the energy facility site evaluation council pursuant to RCW 80.50.010, the department or authority shall implement a carbon dioxide mitigation program consistent with the requirements of chapter 80.70 RCW.

(2) For mitigation projects conducted directly by or under the control of the applicant, the department or local air authority shall approve or deny the mitigation plans, as part of its action to approve or deny an application submitted under RCW 70A.15.2210 based upon whether or not the mitigation plan is consistent with the requirements of chapter 80.70 RCW.

(3) The department or authority may determine, assess, and collect fees sufficient to cover the costs to review and approve or deny the carbon dioxide mitigation plan components of an order of approval issued under RCW 70A.15.2210. The department or authority may also collect fees sufficient to cover its additional costs to monitor conformance with the carbon dioxide mitigation plan components of the registration and air operating permit programs authorized in RCW 70A.15.2200 and 70A.15.2260. The department or authority shall track its costs related to review, approval, and monitoring conformance with carbon dioxide

mitigation plans. [2020 c 20 § 1158; 2004 c 224 § 8. Formerly RCW 70.94.892.]

70A.15.6400 Clean fuel matching grants for public transit, vehicle mechanics, and refueling infrastructure. The department may disburse matching grants from funds provided by the legislature from the air pollution control account, created in RCW 70A.15.1010, to units of local government to partially offset the additional cost of purchasing "clean fuel" and/or operating "clean-fuel vehicles" provided that such vehicles are used for public transit. Publicly owned school buses are considered public transit for the purposes of this section. The department may also disburse grants to vocational-technical institutes for the purpose of establishing programs to certify clean-fuel vehicle mechanics. The department may also distribute grants to Washington State University for the purpose of furthering the establishment of clean fuel refueling infrastructure. [2020 c 20 § 1159; 1996 c 186 § 517; 1991 c 199 § 218. Formerly RCW 70.94.960.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Finding—1991 c 199: See note following RCW 70A.15.1005.

Clean fuel: RCW 70A.25.120.

Refueling: RCW 80.28.280.

State vehicles: RCW 43.19.637.

70A.15.6440 Stationary natural gas engines used in combined heat and power systems—Permitting process—Emission limits. (1) It is the intent of the legislature for a general permit or permit by rule adopted by the department under this section to streamline the permitting process for a stationary natural gas engine used in a combined heat and power system. It is the further intent of the legislature that a general permit or permit by rule be adopted and implemented as the permitting mechanism for the new construction of a combined heat and power system.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Natural gas" includes: Naturally occurring mixtures of hydrocarbon gases and vapors consisting principally of methane, whether in gaseous or liquid form; and biogas derived from landfills, wastewater treatment facilities, anaerobic digesters, and other sources of organic decomposition that have been purified to meet standards for natural gas derived from fossil fuel sources.

(b) "Stationary natural gas engine" includes any stationary, natural gas internal combustion engine, whether it is an internal combustion reciprocating engine or a gas turbine. The term does not include a natural gas engine that powers a motor vehicle or other mobile source.

(3) This section applies only to a stationary natural gas engine used in a combined heat and power system.

(4) The department shall issue a general permit or permit by rule for new stationary natural gas engines used in a combined heat and power system that establishes emission limits for air contaminants released by the engines.

(5) In adopting a general permit or permit by rule under this section, the department may consider:

(a) The geographic location in which a stationary natural gas engine may be used, including the proximity to an area designated as a nonattainment area;

(b) The total annual operating hours of a stationary natural gas engine;

(c) The technology used by a stationary natural gas engine;

(d) Whether the stationary natural gas engine will be a major stationary source or part of a new or modified major stationary source as those terms are utilized in Title I of the federal clean air act; and

(e) Other relevant emission control or clean air policies of the state.

(6) In addition to emission limits required by federal and state laws, the department must provide for the emission limits for stationary natural gas engines subject to this section to be measured in terms of air contaminant emissions per United States environmental protection agency unit of energy output. The department shall consider both the primary and secondary functions when determining the engine's emissions per unit of energy output. [2015 3rd sp.s. c 19 § 13. Formerly RCW 70.94.991.]

Finding—Intent—2015 3rd sp.s. c 19: See note following RCW 39.35.010.

70A.15.6450 Boiler or process heaters—Assessment and reporting requirements. (1) An owner or operator of an industrial, commercial, or institutional boiler or process heater required to complete an energy assessment under 40 C.F.R. Part 63 subpart DDDDD shall:

(a) By January 31, 2018, submit nonproprietary information reported in the energy assessment electronically to the department or air pollution control authority that issues the air operating permit for the source, following completion of the assessment; and

(b) By January 31, 2018, submit a report electronically to the Washington State University extension energy program that identifies, if applicable, the economic, technical, and other barriers to implementing thermal efficiency opportunities identified in the energy assessment.

(2) An owner or operator of an industrial, commercial, or institutional boiler or process heater who has not completed an energy assessment under 40 C.F.R. Part 63 subpart DDDDD must request a free combined heat and power site qualification screening from the United States department of energy.

(3) The requirements established in this section shall not apply to an owner or operator of an industrial, commercial, or institutional boiler or process heater if:

(a) The owner or operator is not required to complete an energy assessment under 40 C.F.R. Part 63 subpart DDDDD as it existed on October 9, 2015; or

(b) Prior to the dates in subsection (1) of this section, the owner or operator is no longer required to complete an energy assessment under 40 C.F.R. Part 63 subpart DDDDD. [2015 3rd sp.s. c 19 § 14. Formerly RCW 70.94.992.]

Finding—Intent—2015 3rd sp.s. c 19: See note following RCW 39.35.010.

70A.15.9001 Construction—1967 c 238. This 1967 amendatory act shall not be construed to create in any way nor to enlarge, diminish or otherwise affect in any way any private rights in any civil action for damages. Any determination that there has been a violation of the provisions of this

1967 amendatory act or of any ordinance, rule, regulation or order issued pursuant thereto, shall not create by reason thereof any presumption or finding of fact or of law for use in any lawsuit brought by a private citizen. [1967 c 238 § 65. Formerly RCW 70.94.901.]

70A.15.9002 Construction, repeal of RCW 70.94.061 through 70.94.066—Saving. The following acts or parts of acts are each repealed:

- (1) Section 7, chapter 238, Laws of 1967, and RCW 70.94.061;
- (2) Section 8, chapter 238, Laws of 1967, and RCW 70.94.062;
- (3) Section 9, chapter 238, Laws of 1967, and RCW 70.94.064; and
- (4) Section 10, chapter 238, Laws of 1967, and RCW 70.94.066.

Such repeals shall not be construed as affecting any authority in existence on April 24, 1969, nor as affecting any action, activities or proceedings initiated by such authority prior hereto, nor as affecting any civil or criminal proceedings instituted by such authority, nor any rule, regulation, resolution, ordinance, or order promulgated by such authority, nor any administrative action taken by such authority, nor the term of office, or appointment or employment of any person appointed or employed by such authority. [1969 ex.s. c 168 § 46. Formerly RCW 70.94.902.]

70A.15.9003 Effective dates—1991 c 199. Sections 602 and 603 of this act shall take effect July 1, 1992. Sections 202 through 209 of this act shall take effect January 1, 1993. Sections 210 and 505 of this act shall take effect January 1, 1992.

The remainder of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately. [1991 c 199 § 717. Formerly RCW 70.94.904.]

70A.15.9004 Severability—1967 c 238. If any phrase, clause, subsection or section of this 1967 amendatory act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid. [1967 c 238 § 64. Formerly RCW 70.94.911.]

Chapter 70A.20 RCW NOISE CONTROL

Sections

70A.20.010	Purpose.
70A.20.020	Definitions.
70A.20.030	Powers and duties of department.
70A.20.040	Technical advisory committee.
70A.20.050	Civil penalties.
70A.20.060	Other rights, remedies, powers, duties and functions—Local regulation—Approval—Procedure.
70A.20.070	Rules relating to motor vehicles—Violations—Penalty.
70A.20.080	Exemptions.
70A.20.900	Construction—Severability—1974 ex.s. c 183.

(2022 Ed.)

70A.20.901 Short title.

70A.20.010 Purpose. The legislature finds that inadequately controlled noise adversely affects the health, safety and welfare of the people, the value of property, and the quality of the environment. Antinoise measures of the past have not adequately protected against the invasion of these interests by noise. There is a need, therefore, for an expansion of efforts statewide directed toward the abatement and control of noise, considering the social and economic impact upon the community and the state. The purpose of this chapter is to provide authority for such an expansion of efforts, supplementing existing programs in the field. [1974 ex.s. c 183 § 1. Formerly RCW 70.107.010.]

70A.20.020 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

- (1) "Department" means the department of ecology.
- (2) "Director" means director of the department of ecology.
- (3) "Local government" means county or city government or any combination of the two.
- (4) "Noise" means the intensity, duration and character of sounds from any and all sources.
- (5) "Person" means any individual, corporation, partnership, association, governmental body, state, or other entity whatsoever. [1974 ex.s. c 183 § 2. Formerly RCW 70.107.020.]

70A.20.030 Powers and duties of department. The department is empowered as follows:

(1) The department, after consultation with state agencies expressing an interest therein, shall adopt, by rule, maximum noise levels permissible in identified environments in order to protect against adverse affects of noise on the health, safety and welfare of the people, the value of property, and the quality of environment: PROVIDED, That in so doing the department shall take also into account the economic and practical benefits to be derived from the use of various products in each such environment, whether the source of the noise or the use of such products in each environment is permanent or temporary in nature, and the state of technology relative to the control of noise generated by all such sources of the noise or the products.

(2) At any time after the adoption of maximum noise levels under subsection (1) of this section the department shall, in consultation with state agencies and local governments expressing an interest therein, adopt rules, consistent with the Federal Noise Control Act of 1972 (86 Stat. 1234; 42 U.S.C. Sec. 4901-4918 and 49 U.S.C. Sec. 1431), for noise abatement and control in the state designed to achieve compliance with the noise level adopted in subsection (1) of this section, including reasonable implementation schedules where appropriate, to insure that the maximum noise levels are not exceeded and that application of the best practicable noise control technology and practice is provided. These rules may include, but shall not be limited to:

- (a) Performance standards setting allowable noise limits for the operation of products which produce noise;
- (b) Use standards regulating, as to time and place, the operation of individual products which produce noise above

specified levels considering frequency spectrum and duration: PROVIDED, The rules shall provide for temporarily exceeding those standards for stated purposes; and

(c) Public information requirements dealing with disclosure of levels and characteristics of noise produced by products.

(3) The department may, as desirable in the performance of its duties under this chapter, conduct surveys, studies and public education programs, and enter into contracts.

(4) The department is authorized to apply for and accept moneys from the federal government and other sources to assist in the implementation of this chapter.

(5) The legislature recognizes that the operation of motor vehicles on public highways as defined in RCW 46.09.310 contributes significantly to environmental noise levels and directs the department, in exercising the rule-making authority under the provisions of this section, to give first priority to the adoption of motor vehicle noise performance standards.

(6) Noise levels and rules adopted by the department pursuant to this chapter shall not be effective prior to March 31, 1975. [2011 c 171 § 107; 1974 ex.s. c 183 § 3. Formerly RCW 70.107.030.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

70A.20.040 Technical advisory committee. The director shall name a technical advisory committee to assist the department in the implementation of this chapter. Committee members shall be entitled to reimbursement for travel expenses as provided in RCW 43.03.050 and 43.03.060, as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 164; 1974 ex.s. c 183 § 4. Formerly RCW 70.107.040.]

Additional notes found at www.leg.wa.gov

70A.20.050 Civil penalties. (1) Any person who violates any rule adopted by the department under this chapter shall be subject to a civil penalty not to exceed one hundred dollars imposed by local government pursuant to this section. An action under this section shall not preclude enforcement of any provisions of the local government noise ordinance.

Penalties shall become due and payable thirty days from the date of receipt of a notice of penalty unless within such time said notice is appealed in accordance with the administrative procedures of the local government, or if it has no such administrative appeal, to the pollution control hearings board pursuant to the provisions of chapter 43.21B RCW and procedural rules adopted thereunder. In cases in which appeals are timely filed, penalties sustained by the local administrative agency or the pollution control hearings board shall become due and payable on the issuance of said agency or board's final order in the appeal.

(2) Whenever penalties incurred pursuant to this section have become due and payable but remain unpaid, the attorney for the local government may bring an action in the superior court of the county in which the violation occurred for recovery of penalties incurred. In all such actions the procedures and rules of evidence shall be the same as in any other civil action. [1987 c 103 § 2; 1974 ex.s. c 183 § 5. Formerly RCW 70.107.050.]

70A.20.060 Other rights, remedies, powers, duties and functions—Local regulation—Approval—Procedure. (1) Nothing in this chapter shall be construed to deny, abridge or alter alternative rights of action or remedies in equity or under common law or statutory law, criminal or civil.

(2) Nothing in this chapter shall deny, abridge or alter any powers, duties and functions relating to noise abatement and control now or hereafter vested in any state agency, nor shall this chapter be construed as granting jurisdiction over the industrial safety and health of employees in workplaces of the state, as now or hereafter vested in the department of labor and industries.

(3) Standards and other control measures adopted by the department under this chapter shall be exclusive except as hereinafter provided. A local government may impose limits or control sources differing from those adopted or controlled by the department upon a finding that such requirements are necessitated by special conditions. Noise limiting requirements of local government which differ from those adopted or controlled by the department shall be invalid unless first approved by the department. If the department of ecology fails to approve or disapprove standards submitted by local governmental jurisdictions within ninety days of submittal, such standards shall be deemed approved. If disapproved, the local government may appeal the decision to the pollution control hearings board which shall decide the appeal on the basis of the provisions of this chapter, and the applicable regulations, together with such briefs, testimony, and oral argument as the hearings board in its discretion may require. The department determination of whether to grant approval shall depend on the reasonableness and practicability of compliance. Particular attention shall be given to stationary sources located near jurisdictional boundaries, and temporary noise producing operations which may operate across one or more jurisdictional boundaries.

(4) In carrying out the rule-making authority provided in this chapter, the department shall follow the procedures of the administrative procedure act, chapter 34.05 RCW, and shall take care that no rules adopted purport to exercise any powers preempted by the United States under federal law. [1987 c 103 § 1; 1974 ex.s. c 183 § 6. Formerly RCW 70.107.060.]

70A.20.070 Rules relating to motor vehicles—Violations—Penalty. Any rule adopted under this chapter relating to the operation of motor vehicles on public highways shall be administered according to testing and inspection procedures adopted by rule by the state patrol. Violation of any motor vehicle performance standard adopted pursuant to this chapter shall be a misdemeanor, enforced by such authorities and in such manner as violations of chapter 46.37 RCW. Violations subject to the provisions of this section shall be exempt from the provisions of RCW 70A.20.050. [2020 c 20 § 1326; 1987 c 330 § 749; 1974 ex.s. c 183 § 7. Formerly RCW 70.107.070.]

Additional notes found at www.leg.wa.gov

70A.20.080 Exemptions. The department shall, in the exercise of rule-making power under this chapter, provide exemptions or specially limited regulations relating to recre-

ational shooting and emergency or law enforcement equipment where appropriate in the interests of public safety.

The department in the development of rules under this chapter, shall consult and take into consideration the land use policies and programs of local government. [1974 ex.s. c 183 § 8. Formerly RCW 70.107.080.]

70A.20.900 Construction—Severability—1974 ex.s. c 183. (1) This chapter shall be liberally construed to carry out its broad purposes.

(2) If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1974 ex.s. c 183 § 11. Formerly RCW 70.107.900.]

70A.20.901 Short title. This chapter shall be known and may be cited as the "Noise Control Act of 1974". [1974 ex.s. c 183 § 12. Formerly RCW 70.107.910.]

Chapter 70A.25 RCW MOTOR VEHICLE EMISSION CONTROL

Sections

70A.25.010	Definitions.
70A.25.020	Programs.
70A.25.030	Vehicle inspections—Failed—Certificate of acceptance.
70A.25.040	Vehicle inspections—Fleets.
70A.25.050	Vehicle inspections—Complaints.
70A.25.060	Rules.
70A.25.070	Authority.
70A.25.080	Vehicle emission and equipment standards—Designation of noncompliance areas and emission contributing areas.
70A.25.090	Noncompliance areas—Annual review.
70A.25.110	Used vehicles.
70A.25.120	Clean-fuel performance and clean-fuel vehicle emissions specifications.
70A.25.130	Scientific advisory board—Composition of board—Duties.
70A.25.900	Effective date—1989 c 240.

Environmental certification programs—Fees—Rules—Liability: RCW 43.21A.175.

70A.25.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of ecology.

(2) "Director" means the director of the department of ecology.

(3) "Fleet" means a group of fifteen or more motor vehicles registered in the same name and whose owner has been assigned a fleet identifier code by the department of licensing.

(4) "Motor vehicle" means any self-propelled vehicle required to be licensed pursuant to chapter 46.16A RCW.

(5) "Motor vehicle dealer" means a motor vehicle dealer, as defined in RCW 46.70.011, that is licensed pursuant to chapter 46.70 RCW.

(6) "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision of the state, municipality, or governmental agency.

(7) The terms "air contaminant," "air pollution," "air quality standard," "ambient air," "emission," and "emission standard" have the meanings given them in RCW 70A.15.1030. [2020 c 20 § 1360; 2011 c 171 § 108; 1991 c 199 § 201; 1979 ex.s. c 163 § 1. Formerly RCW 70.120.010.]

(2022 Ed.)

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Finding—1991 c 199: See note following RCW 70A.15.1005.

Additional notes found at www.leg.wa.gov

70A.25.020 Programs. (1) The department shall conduct a public educational program regarding the health effects of air pollution emitted by motor vehicles; the purpose, operation, and effect of emission control devices and systems; and the effect that proper maintenance of motor vehicle engines has on fuel economy and air pollution emission and a public notification program identifying the geographic areas of the state that are designated as being non-compliance areas and emission contributing areas and describing the requirements imposed under this chapter for those areas.

(2)(a) The department shall grant certificates of instruction to persons who successfully complete a course of study, under general requirements established by the director, in the maintenance of motor vehicle engines, the use of engine and exhaust analysis equipment, and the repair and maintenance of emission control devices. The director may establish and implement procedures for granting certification to persons who successfully complete other training programs or who have received certification from public and private organizations which meet the requirements established in this subsection, including programs on clean fuel technology and maintenance.

(b) The department shall make available to the public a list of those persons who have received certificates of instruction under subsection (2)(a) of this section. [1991 c 199 § 202; 1989 c 240 § 5; 1979 ex.s. c 163 § 2. Formerly RCW 70.120.020.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

Additional notes found at www.leg.wa.gov

70A.25.030 Vehicle inspections—Failed—Certificate of acceptance. (1) Any person:

(a) Whose motor vehicle is tested pursuant to this chapter and fails to comply with the emission standards established for the vehicle; and

(b) Who, following such a test, expends more than one hundred dollars on a 1980 or earlier model year motor vehicle or expends more than one hundred fifty dollars on a 1981 or later model year motor vehicle for repairs solely devoted to meeting the emission standards and that are performed by a certified emission specialist authorized by RCW 70A.25.020(2)(a); and

(c) Whose vehicle fails a retest, may be issued a certificate of acceptance if (i) the vehicle has been in use for more than five years or fifty thousand miles, and (ii) any component of the vehicle installed by the manufacturer for the purpose of reducing emissions, or its appropriate replacement, is installed and operative.

To receive the certificate, the person must document compliance with (b) and (c) of this subsection to the satisfaction of the department.

Should any provision of (b) of this subsection be disapproved by the administrator of the United States environmental protection agency, all vehicles shall be required to expend

at least four hundred fifty dollars to qualify for a certificate of acceptance.

(2) Persons who fail the initial tests shall be provided with:

(a) Information regarding the availability of federal warranties and certified emission specialists;

(b) Information on the availability and procedure for acquiring license trip-permits;

(c) Information on the availability and procedure for receiving a certificate of acceptance; and

(d) The local phone number of the department's local vehicle specialist. [2020 c 20 § 1361; 1998 c 342 § 2; 1991 c 199 § 203; 1989 c 240 § 6; 1980 c 176 § 4; 1979 ex.s. c 163 § 7. Formerly RCW 70.120.070.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

Additional notes found at www.leg.wa.gov

70A.25.040 Vehicle inspections—Fleets. The director may authorize an owner or lessee of a fleet of motor vehicles, or the owner's or lessee's agent, to inspect the vehicles in the fleet and issue certificates of compliance for the vehicles in the fleet if the director determines that: (1) The director's inspection procedures will be complied with; and (2) certificates will be issued only to vehicles in the fleet that meet emission and equipment standards adopted under RCW 70A.25.080 and only when appropriate.

In addition, the director may authorize an owner or lessee of one or more diesel motor vehicles with a gross vehicle weight rating in excess of eight thousand five hundred pounds, or the owner's or lessee's agent, to inspect the vehicles and issue certificates of compliance for the vehicles. The inspections shall be conducted in compliance with inspection procedures adopted by the department and certificates of compliance shall only be issued to vehicles that meet emission and equipment standards adopted under RCW 70A.25.080.

The director shall establish by rule the fee for fleet or diesel inspections provided for in this section. The fee shall be set at an amount necessary to offset the department's cost to administer the fleet and diesel inspection program authorized by this section.

Owners, leaseholders, or their agents conducting inspections under this section shall pay only the fee established in this section and not be subject to fees under *RCW 70A.25.100(4). [2020 c 20 § 1362; 1991 c 199 § 205; 1979 ex.s. c 163 § 8. Formerly RCW 70.120.080.]

*Reviser's note: RCW 70A.25.100 expired January 1, 2020.

Finding—1991 c 199: See note following RCW 70A.15.1005.

Additional notes found at www.leg.wa.gov

70A.25.050 Vehicle inspections—Complaints. The department shall investigate complaints received regarding the operation of emission testing stations and shall require corrections or modifications in those operations when deemed necessary.

The department shall also review complaints received regarding the maintenance or repairs secured by owners of motor vehicles for the purpose of complying with the requirements of this chapter. When possible, the department shall

assist such owners in determining the merits of the complaints.

The department shall keep a copy of all complaints received, and on request, make copies available to the public. This is not intended to require disclosure of any information that is exempt from public disclosure under chapter 42.56 RCW. [2005 c 274 § 340; 1998 c 342 § 3; 1979 ex.s. c 163 § 10. Formerly RCW 70.120.100.]

Additional notes found at www.leg.wa.gov

70A.25.060 Rules. The director shall adopt rules implementing and enforcing this chapter in accordance with chapter 34.05 RCW. The department shall take into account when considering proposed modifications of emission contributing boundaries, as provided for in RCW 70A.25.080(6), alternative transportation control and motor vehicle emission reduction measures that are required by local municipal corporations for the purpose of satisfying federal emission guidelines. [2020 c 20 § 1363; 1991 c 199 § 206; 1989 c 240 § 8; 1979 ex.s. c 163 § 13. Formerly RCW 70.120.120.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

Additional notes found at www.leg.wa.gov

70A.25.070 Authority. The authority granted by this chapter to the director and the department for controlling vehicle emissions is supplementary to the department's authority to control air pollution pursuant to chapter 70A.15 RCW. [2020 c 20 § 1364; 1979 ex.s. c 163 § 14. Formerly RCW 70.120.130.]

Additional notes found at www.leg.wa.gov

70A.25.080 Vehicle emission and equipment standards—Designation of noncompliance areas and emission contributing areas. The director:

(1) Shall adopt motor vehicle emission and equipment standards to: Ensure that no less than seventy percent of the vehicles tested comply with the standards on the first inspection conducted, meet federal clean air act requirements, and protect human health and the environment.

(2) Shall adopt rules implementing the smoke opacity testing requirement for diesel vehicles that ensure that such test is objective and repeatable and that properly maintained engines that otherwise would meet the applicable federal emission standards, as measured by the new engine certification test, would not fail the smoke opacity test.

(3) Shall designate a geographic area as being a "non-compliance area" for motor vehicle emissions if (a) the department's analysis of emission and ambient air quality data, covering a period of no less than one year, indicates that the standard has or will probably be exceeded, and (b) the department determines that the primary source of the air contaminant is motor vehicle emissions.

(4) Shall reevaluate noncompliance areas if the United States environmental protection agency modifies the relevant air quality standards, and shall discontinue the program if compliance is indicated and if the department determines that the area would continue to be in compliance after the program is discontinued. The director shall notify persons residing in noncompliance areas of the reevaluation.

(5) Shall analyze information regarding the motor vehicle traffic in a noncompliance area to determine the smallest

land area within whose boundaries are present registered motor vehicles that contribute significantly to the violation of motor vehicle-related air quality standards in the noncompliance area. The director shall declare the area to be an "emission contributing area." An emission contributing area established for a carbon monoxide or oxides of nitrogen noncompliance area must contain the noncompliance area within its boundaries. An emission contributing area established for an ozone noncompliance area located in this state need not contain the ozone noncompliance area within its boundaries if it can be proven that vehicles registered in the area contribute significantly to violations of the ozone air quality standard in the noncompliance area. An emission contributing area may be established in this state for violations of federal air quality standards for ozone in an adjacent state if (a) the United States environmental protection agency designates an area to be a "nonattainment area for ozone" under the provisions of the federal Clean Air Act (42 U.S.C. 7401 et seq.), and (b) it can be proven that vehicles registered in this state contribute significantly to the violation of the federal air quality standards for ozone in the adjacent state's nonattainment area.

(6) Shall, after consultation with the appropriate local government entities, designate areas as being noncompliance areas or emission contributing areas, and shall establish the boundaries of such areas by rule. The director may also modify boundaries. In establishing the external boundaries of an emission contributing area, the director shall use the boundaries established for ZIP code service areas by the United States postal service.

(7) May make grants to units of government in support of planning efforts to reduce motor vehicle emissions. [1991 c 199 § 207; 1989 c 240 § 2. Formerly RCW 70.120.150.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

Additional notes found at www.leg.wa.gov

70A.25.090 Noncompliance areas—Annual review.

(1) The director shall review annually the air quality and forecasted air quality of each area in the state designated as a noncompliance area for motor vehicle emissions.

(2) An area shall no longer be designated as a noncompliance area if the director determines that:

(a) Air quality standards for contaminants derived from motor vehicle emissions are no longer being violated in the noncompliance area; and

(b) The standards would not be violated if the emission inspection system in the emission contributing area was discontinued and the requirements of RCW 46.16A.060 no longer applied. [2011 c 171 § 109; 1989 c 240 § 3. Formerly RCW 70.120.160.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

70A.25.110 Used vehicles. (1) Motor vehicle dealers selling a used vehicle not under a new vehicle warranty shall include a notice in each vehicle purchase order form that reads as follows: "The owner of a vehicle may be required to spend up to (a dollar amount established under RCW 70A.25.030) for repairs if the vehicle does not meet the vehicle emission standards under this chapter. Unless expressly warranted by the motor vehicle dealer, the dealer is not war-

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ranteeing that this vehicle will pass any emission tests required by federal or state law."

(2) The signature of the purchaser on the notice required under subsection (1) of this section shall constitute a valid disclaimer of any implied warranty by the dealer as to a vehicle's compliance with any emission standards.

(3) The disclosure requirement of subsection (1) of this section applies to all motor vehicle dealers located in counties where state emission inspections are required. [2020 c 20 § 1365; 1991 c 199 § 210. Formerly RCW 70.120.190.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

Additional notes found at www.leg.wa.gov

70A.25.120 Clean-fuel performance and clean-fuel vehicle emissions specifications. By July 1, 1992, the department shall develop, in cooperation with the departments of *general administration and transportation, and Washington State University, aggressive clean-fuel performance and clean-fuel vehicle emissions specifications including clean-fuel vehicle conversion equipment. To the extent possible, such specifications shall be equivalent for all fuel types. In developing such specifications the department shall consider the requirements of the clean air act and the findings of the environmental protection agency, other states, the American petroleum institute, the gas research institute, and the motor vehicles manufacturers association. [1996 c 186 § 518; 1991 c 199 § 212. Formerly RCW 70.120.210.]

***Reviser's note:** The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Finding—1991 c 199: See note following RCW 70A.15.1005.

Clean-fuel grants: RCW 70A.15.6400.

Additional notes found at www.leg.wa.gov

70A.25.130 Scientific advisory board—Composition of board—Duties. The department shall establish a scientific advisory board to review plans to establish or expand the geographic area where an inspection and maintenance system for motor vehicle emissions is required. The board shall consist of three to five members. All members shall have at least a master's degree in physics, chemistry, or engineering, or a closely related field. No member may be a current employee of a local air pollution control authority, the department, the United States environmental protection agency, or a company that may benefit from a review by the board.

The board shall review an inspection and maintenance plan at the request of a local air pollution control authority, the department, or by a petition of at least fifty people living within the proposed boundaries of a vehicle emission inspection and maintenance system. The entity or entities requesting a scientific review may include specific issues for the board to consider in its review. The board shall limit its review to matters of science and shall not provide advice on penalties or issues that are strictly legal in nature.

The board shall provide a complete written review to the department. If the board members are not in agreement as to the scientific merit of any issue under review, the board may include a dissenting opinion in its report to the department. The department shall immediately make copies available to the local air pollution control authority and to the public.

The department shall conduct a public hearing, within the area affected by the proposed rule, if any significant aspect of the rule is in conflict with a majority opinion of the board. The department shall include in its responsiveness summary the rationale for including a rule that is not consistent with the review of the board, including a response to the issues raised at the public hearing.

Members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. [1998 c 342 § 5. Formerly RCW 70.120.230.]

70A.25.900 Effective date—1989 c 240. This act shall take effect January 1, 1990. [1989 c 240 § 14. Formerly RCW 70.120.902.]

Chapter 70A.30 RCW

MOTOR VEHICLE EMISSION STANDARDS

Sections

- 70A.30.010 Department of ecology to adopt rules to implement California motor vehicle emission standards.
 70A.30.020 Warranty repair service—Manufacturers, repair shops.
 70A.30.030 New vehicle greenhouse gas emissions disclosure—Rule-making authority.

70A.30.010 Department of ecology to adopt rules to implement California motor vehicle emission standards.

(1) Pursuant to the federal clean air act, the legislature adopts the California motor vehicle emission standards in Title 13 of the California Code of Regulations. The department of ecology shall adopt rules to implement the motor vehicle emission standards of the state of California, including the zero emission vehicle program, and shall amend the rules from time to time, to maintain consistency with the California motor vehicle emission standards and 42 U.S.C. Sec. 7507 (section 177 of the federal clean air act).

(2) The provisions of this chapter do not apply with respect to the use by a resident of this state of a motor vehicle acquired and used while the resident is a member of the armed services and is stationed outside this state pursuant to military orders. [2020 c 143 § 1; 2020 c 20 § 1366; 2010 c 76 § 1; 2005 c 295 § 2. Formerly RCW 70.120A.010.]

Reviser's note: This section was amended by 2020 c 20 § 1366 and by 2020 c 143 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—2005 c 295: "The legislature finds that:

(1) Motor vehicles are the largest source of air pollution in the state of Washington, and motor vehicles contribute approximately fifty-seven percent of criteria air pollutant emissions, eighty percent of air toxics emissions, and fifty-five percent of greenhouse gas emissions;

(2) Air pollution levels routinely measured in the state of Washington continue to harm public health, the environment, and the economy. Air pollution causes or contributes to premature death, cancer, asthma, and heart and lung disease. Over half of the state's population suffers from one or more medical conditions that make them very vulnerable to air pollution. Air pollution increases pain and suffering for vulnerable individuals. Air pollution imposes several hundred million dollars annually in added health care costs for air pollution-associated death and illness, reducing the quality of life and economic security of the citizens of Washington;

(3) Reductions of greenhouse gas emissions from transportation sources are necessary, and it is equitable to seek such reductions because reductions in greenhouse gas emissions have already been initiated in other sectors such as power generation;

(4) Reductions in greenhouse gas emissions made under this act should be credited toward any future federal, state, or regional comprehensive regulatory structure enacted to address reducing greenhouse gas emissions;

(5) Under the federal clean air act, the state of Washington has the option to implement either federal motor vehicle emission standards or California motor vehicle emission standards for passenger cars, light duty trucks, and medium duty passenger vehicles;

(6) Opting into the California motor vehicle standards will provide significant and necessary air quality benefits to residents of the state of Washington; and

(7) Adoption of the California motor vehicle standards will increase consumer choices of cleaner vehicles, provide better warranties to consumers, and provide sufficient air quality benefit to allow additional business and economic growth in the key airsheds of the state while maintaining conformance with federal air quality standards." [2005 c 295 § 1.]

Additional notes found at www.leg.wa.gov

70A.30.020 Warranty repair service—Manufacturers, repair shops. Individual automobile manufacturers may certify independent automobile repair shops to perform warranty service on the manufacturers' vehicles. Upon certification of the independent automobile repair shops, the manufacturers shall compensate the repair shops at the same rate as franchised dealers for covered warranty repair services. [2005 c 295 § 4. Formerly RCW 70.120A.030.]

Findings—2005 c 295: See note following RCW 70A.30.010.

70A.30.030 New vehicle greenhouse gas emissions disclosure—Rule-making authority.

(1) No model year 2010 or subsequent model year new passenger car, light duty truck, or medium duty vehicle may be sold in Washington unless there is securely and conspicuously affixed in a clearly visible location a label on which the manufacturer clearly discloses comparative greenhouse gas emissions for that new vehicle.

(2) The label required by this section should include a greenhouse gas index or rating system that contains quantitative and graphical information presented in a continuous, easy-to-read scale that compares the greenhouse gas emissions from the vehicle with the average projected greenhouse gas emissions from all passenger cars, light duty trucks, and medium duty vehicles of the same model year. For reference purposes, the index or rating system should also identify the greenhouse gas emissions from the vehicle model of that same model year that has the lowest greenhouse gas emissions.

(3) The index or rating system included in the label under subsection (2) of this section shall be updated as necessary to ensure that the differences in greenhouse gas emissions among vehicles are readily apparent to the consumer.

(4) An automobile manufacturer may apply to the department of ecology for approval of an alternative to the disclosure labeling requirement that is at least as effective in providing notification and disclosure of the vehicle's greenhouse gas emissions as is the labeling required by this section.

(5) A label that complies with the requirements of the California greenhouse gas vehicle labeling program shall be deemed to meet the requirements of this section and any rules adopted under this section.

(6) The department of ecology may adopt such rules as are necessary to implement this section. [2020 c 143 § 2; 2014 c 76 § 8; 2008 c 32 § 2. Formerly RCW 70.120A.050.]

Intent—2008 c 32: "The legislature intends that new passenger cars, light duty trucks, and medium duty passenger vehicles for sale in Washington display clear and easy to understand information disclosing the new vehicle's greenhouse gas emissions. Further, the legislature intends that disclosure of such emissions serves as a means of educating consumers, other motorists, and the general public about the sources of greenhouse gas, their impact, available options, and in particular the role and contribution of automobiles and other motor vehicles." [2008 c 32 § 1.]

Chapter 70A.35 RCW

LOW-INCOME RESIDENTIAL WEATHERIZATION PROGRAM

Sections

70A.35.010 Legislative findings.
 70A.35.020 Definitions.
 70A.35.030 Low-income weatherization and structural rehabilitation assistance account.
 70A.35.040 Proposals for low-income weatherization programs—Matching funds.
 70A.35.050 Program compliance with laws and rules—Energy audit required.
 70A.35.060 Weatherization of leased or rented residences—Limitations.
 70A.35.070 Payments to low-income weatherization and structural rehabilitation assistance account.

70A.35.010 Legislative findings. (1) The legislature finds and declares that weatherization of the residences of low-income households will help conserve energy resources in this state and can reduce the need to obtain energy from more costly conventional energy resources. The legislature also finds that while many efforts have been made by the federal government and by the state, including its cities, counties, and utilities, to increase both the habitability and the energy efficiency of residential structures within the state, stronger coordination of these efforts will result in even greater energy efficiencies, increased cost savings to the state's residents in the form of lower utility bills, improvements in health and safety, lower greenhouse gas emissions and associated climate impacts, as well as increased employment for the state's workforce. The legislature further finds that there is emerging scientific evidence linking residents' health outcomes such as asthma, lead poisoning, and unintentional injuries to substandard housing.

(2) Therefore, it is the intent of the legislature that state funds be dedicated to weatherization and energy efficiency activities as well as the moderate to significant repair and rehabilitation of residential structures that are required as a necessary antecedent to those activities. It is also the intent of the legislature that the department prioritize weatherization, energy efficiency activities, and structural repair of residential structures to facilitate the expeditious allocation of funds from federal energy efficiency programs including, but not limited to, the weatherization assistance program, the weatherization plus health initiative, the energy efficiency and conservation block grant program, residential energy efficiency components of the state energy program, and the retrofit ramp-up program for energy efficiency projects. The legislature further intends to allocate future distributions of energy-related federal jobs stimulus funding to strengthen these programs, and to coordinate energy retrofit and rehabilitation improvements as authorized by chapter 287, Laws of 2010 to increase the number of structures qualifying for assistance under these multiple state and federal energy efficiency programs.

(3) The program implementing the policy of this chapter is necessary to support the poor and infirm and also to benefit the health, safety, and general welfare of all citizens of the state. [2015 c 50 § 1; 2010 c 287 § 1; 1987 c 36 § 1. Formerly RCW 70.164.010.]

70A.35.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of commerce.

(2) "Direct outreach" means:

(a) The use of door-to-door contact, community events, and other methods of direct interaction with customers to inform them of energy efficiency and weatherization opportunities; and

(b) The performance of energy audits.

(3) "Energy audit" means an analysis of a dwelling unit to determine the need for cost-effective energy conservation measures as determined by the department.

(4) "Healthy housing improvements" means increasing the health and safety of a home by integrating energy efficiency activities and indoor environmental quality measures, consistent with the weatherization plus health initiative of the federal department of energy and the healthy housing principles adopted by the federal department of housing and urban development.

(5) "Household" means an individual or group of individuals living in a dwelling unit as defined by the department.

(6) "Low income" means household income as defined by the department, provided that the definition may not exceed eighty percent of median household income, adjusted for household size, for the county in which the dwelling unit to be weatherized is located.

(7) "Nonutility sponsor" means any sponsor other than a public service company, municipality, public utility district, mutual or cooperative, furnishing gas or electricity used to heat low-income residences.

(8) "Residence" means a dwelling unit as defined by the department.

(9) "Sponsor" means any entity that submits a proposal under RCW 70A.35.040, including but not limited to any local community action agency, tribal nation, community service agency, or any other participating agency or any public service company, municipality, public utility district, mutual or cooperative, or any combination of such entities that jointly submits a proposal.

(10) "Sponsor match" means the share of the cost of weatherization to be paid by the sponsor.

(11) "Sustainable residential weatherization" or "weatherization" means activities that use funds administered by the department for one or more of the following: (a) Energy and resource conservation; (b) energy efficiency improvements; (c) repairs, indoor air quality improvements, and health and safety improvements; and (d) client education. Funds administered by the department for activities authorized under this subsection may only be used for the preservation of a dwelling unit occupied by a low-income household and must, to the extent feasible, be used to support and advance sustainable technologies.

(12) "Weatherizing agency" means any approved department grantee, tribal nation, or any public service company,

municipality, public utility district, mutual or cooperative, or other entity that bears the responsibility for ensuring the performance of weatherization of residences under this chapter and has been approved by the department. [2020 c 20 § 1392; 2015 c 50 § 2; 2010 c 287 § 2. Prior: 2009 c 565 § 51; 2009 c 379 § 201; 1995 c 399 § 199; 1987 c 36 § 2. Formerly RCW 70.164.020.]

Finding—Intent—Effective date—2009 c 379: See notes following RCW 70A.50.010.

70A.35.030 Low-income weatherization and structural rehabilitation assistance account. (1) The low-income weatherization and structural rehabilitation assistance account is created in the state treasury. All moneys from the money distributed to the state pursuant to *Exxon v. United States*, 561 F.Supp. 816 (1983), affirmed 773 F.2d 1240 (1985), or any other oil overcharge settlements or judgments distributed by the federal government, that are allocated to the low-income weatherization and structural rehabilitation assistance account shall be deposited in the account. The department may accept such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, and shall deposit such funds in the account. Any moneys received from sponsor match payments shall be deposited in the account. The legislature may also appropriate moneys to the account. Moneys in the account shall be spent pursuant to appropriation and only for the purposes and in the manner provided in RCW 70A.35.040. Any moneys appropriated that are not spent by the department shall return to the account.

(2) The purposes of the low-income weatherization and structural rehabilitation assistance account are to:

(a) Maximize the number of energy efficient residential structures in the state;

(b) Achieve the greatest possible expected monetary and energy savings by low-income households and other energy consumers over the longest period of time;

(c) Identify and correct, to the extent practicable, health and safety problems for residents of low-income households, including asbestos, lead, and mold hazards;

(d) Leverage the many available state and federal programs aimed at increasing the quality and energy efficiency of low-income residences in the state;

(e) Create family-wage jobs that may lead to careers in the construction trades or in the energy efficiency sectors; and

(f) Leverage, to the extent feasible, sustainable technologies, practices, and designs, including renewable energy systems. [2020 c 20 § 1393; 2010 c 287 § 3; 1991 sp.s. c 13 § 62; 1987 c 36 § 3. Formerly RCW 70.164.030.]

Additional notes found at www.leg.wa.gov

70A.35.040 Proposals for low-income weatherization programs—Matching funds. (1) The department shall solicit proposals for low-income weatherization programs from potential sponsors. A proposal shall state the amount of the sponsor match, the amount requested, the name of the weatherizing agency, and any other information required by the department.

(2)(a) A sponsor may use its own moneys, including corporate or ratepayer moneys, or moneys provided by land-

lords, charitable groups, government programs, the Bonneville power administration, or other sources to pay the sponsor match.

(b) Moneys provided by a sponsor pursuant to requirements in this section shall be in addition to and shall not supplant any funding for low-income weatherization that would otherwise have been provided by the sponsor or any other entity enumerated in (a) of this subsection.

(c) No proposal may require any contribution as a condition of weatherization from any household whose residence is weatherized under the proposal.

(d) Proposals shall provide that full levels of all cost-effective, structurally feasible, sustainable residential weatherization materials, measures, and practices, as determined by the department, shall be installed when a low-income residence is weatherized.

(3) Sponsors may propose to utilize grant awards and matching funds to make healthy housing improvements to homes undergoing weatherization.

(4)(a) The department may in its discretion accept, accept in part, or reject proposals submitted.

(b) The department shall prioritize allocating funds from the low-income weatherization and structural rehabilitation assistance account to projects that maximize energy efficiency, extend the usable life of an affordable home, and improve the health and safety of its residents by: (i) Installing energy efficiency measures; and (ii) providing structural rehabilitation and repairs, so that funding from federal energy efficiency programs such as the weatherization assistance program, the weatherization plus health initiative, the energy efficiency and conservation block grant program, residential energy efficiency components of the state energy program, and the retrofit ramp-up program is distributed expeditiously.

(c) When allocating funds from the low-income weatherization and structural rehabilitation assistance account, the department shall, to the extent feasible, consider local and state benefits including pledged sponsor match, available energy efficiency, repair, and rehabilitation funds from other sources, the preservation of affordable housing, and balance of participation in proportion to population among low-income households for: (i) Geographic regions in the state; (ii) types of fuel used for heating, except that the department shall encourage the use of energy efficient sustainable technologies; (iii) owner-occupied and rental residences; and (iv) single-family and multifamily dwellings.

(d) The department shall then allocate funds appropriated from the low-income weatherization and structural rehabilitation assistance account for energy efficiency and repair activities among proposals accepted or accepted in part.

(e) The department shall develop policies to ensure prudent, cost-effective investments are made in homes and buildings requiring energy efficiency, repair, and rehabilitation improvements that will maximize energy savings, extend the life of a home, and improve the health and safety of its residents.

(f) The department shall give priority to the structural rehabilitation and weatherization of dwelling units occupied by low-income households with incomes at or below one hundred twenty-five percent of the federally established poverty level.

(g) The department may allocate funds to a nonutility sponsor without requiring a sponsor match if the department determines that such an allocation is necessary to provide the greatest benefits to low-income residents of the state.

(h) The department shall require weatherizing agencies to employ individuals trained from workforce training and apprentice programs established under chapter 536, Laws of 2009 if these workers are available, pay prevailing wages under chapter 39.12 RCW, hire from the community in which the program is located, and create employment opportunities for veterans, members of the national guard, and low-income and disadvantaged populations.

(5)(a) A sponsor may elect to: (i) Pay a sponsor match as a lump sum at the time of structural rehabilitation or weatherization; or (ii) make yearly payments to the low-income weatherization and structural rehabilitation assistance account over a period not to exceed ten years. If a sponsor elects to make yearly payments, the value of the payments shall not be less than the value of the lump sum payment that would have been made under (a)(i) of this subsection.

(b) The department may permit a sponsor to meet its match requirement in whole or in part through providing labor, materials, or other in-kind expenditures.

(6) Service providers receiving funding under this section must report to the department at least quarterly, or in alignment with federal reporting, whichever is the greater frequency, the project costs, and the number of dwelling units repaired, rehabilitated, and weatherized, the number of jobs created or maintained, and the number of individuals trained through workforce training and apprentice programs. The director of the department shall review the accuracy of these reports.

(7) The department shall adopt rules to carry out this section. [2015 c 50 § 3; 2010 c 287 § 4; 2009 c 379 § 202; 1987 c 36 § 4. Formerly RCW 70.164.040.]

Finding—Intent—Effective date—2009 c 379: See notes following RCW 70A.50.010.

70A.35.050 Program compliance with laws and rules—Energy audit required. (1) The department is responsible for ensuring that sponsors and weatherizing agencies comply with the state laws, the department's rules, and the sponsor's proposal in carrying out proposals.

(2) Before a residence is weatherized, the department shall require that an energy audit be conducted.

(3) To the greatest extent practicable and allowable under federal rules and regulations, the department shall maximize available federal low-income home energy assistance program funding for weatherization projects. [2009 c 379 § 203; 1987 c 36 § 5. Formerly RCW 70.164.050.]

Finding—Intent—Effective date—2009 c 379: See notes following RCW 70A.50.010.

70A.35.060 Weatherization of leased or rented residences—Limitations. Before a leased or rented residence is weatherized, written permission shall be obtained from the owner of the residence for the weatherization. The department shall adopt rules to ensure that: (1) The benefits of weatherization assistance, including utility bill reduction and preservation of affordable housing stock, accrue primarily to low-income tenants occupying a leased or rented residence;

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(2) as a result of weatherization provided under this chapter, the rent on the residence is not increased and the tenant is not evicted; and (3) as a result of weatherization provided under this chapter, no undue or excessive enhancement occurs in the value of the residence. This section is in the public interest and any violation by a landlord of the rules adopted under this section shall be an act in trade or commerce violating chapter 19.86 RCW, the consumer protection act. [2009 c 379 § 204; 1987 c 36 § 6. Formerly RCW 70.164.060.]

Finding—Intent—Effective date—2009 c 379: See notes following RCW 70A.50.010.

70A.35.070 Payments to low-income weatherization and structural rehabilitation assistance account. Payments to the low-income weatherization and structural rehabilitation assistance account shall be treated, for purposes of state law, as payments for energy conservation and shall be eligible for any tax credits or deductions, equity returns, or other benefits for which conservation investments are eligible. [2010 c 287 § 5; 1987 c 36 § 7. Formerly RCW 70.164.070.]

Chapter 70A.40 RCW

WASHINGTON ACADEMY OF SCIENCES

Sections

- 70A.40.010 Finding—Purpose.
- 70A.40.020 Washington academy of sciences to assist governor, legislature—Duty of state scientists not diminished.
- 70A.40.030 Organizing committee, staff support—Organizational structure.
- 70A.40.040 Duties—Review panels—Funding.
- 70A.40.050 Additional services permitted.

70A.40.010 Finding—Purpose. The legislature finds that public policies and programs will be improved when informed by independent scientific analysis and communication with state and local policymakers. Throughout the state there are highly qualified persons in a wide range of scientific disciplines who are willing to contribute their time and expertise in such reviews, but that presently there is lacking an organizational structure in which the entire scientific community may most effectively respond to requests for assessments of complex public policy questions. Therefore it is the purpose of chapter 305, Laws of 2005 to authorize the creation of the Washington academy of sciences as a nonprofit entity independent of government, whose principal mission will be the provision of scientific analysis and recommendations on questions referred to the academy by the governor, the governor's designee, or the legislature. [2005 c 305 § 1. Formerly RCW 70.220.010.]

70A.40.020 Washington academy of sciences to assist governor, legislature—Duty of state scientists not diminished. The Washington academy of sciences authorized to be formed under RCW 70A.40.030 shall serve as a principal source of scientific investigation, examination, and reporting on scientific questions referred to the academy by the governor or the legislature under the provisions of RCW 70A.40.040. Nothing in this section or this chapter supercedes or diminishes the responsibilities performed by scien-

tists employed by the state or its political subdivisions. [2020 c 20 § 1394; 2005 c 305 § 2. Formerly RCW 70.220.020.]

70A.40.030 Organizing committee, staff support—Organizational structure. (1) The presidents of the University of Washington and Washington State University shall jointly form and serve as the cochairs of an organizing committee for the purpose of creating the Washington academy of sciences as an independent entity to carry out the purposes of this chapter. The committee should be representative of appropriate disciplines from the academic, private, governmental, and research sectors.

(2) Staff from the University of Washington and Washington State University, and from other available entities, shall provide support to the organizing committee under the direction of the cochairs.

(3)(a) The committee shall investigate organizational structures that will ensure the participation or membership in the academy of scientists and experts with distinction in their fields, and that will ensure broad participation among the several disciplines that may be called upon in the investigation, examination, and reporting upon questions referred to the academy by the governor or the legislature.

(b) The organizational structure shall include a process by which the academy responds to inquiries from the governor or the legislature, including but not limited to the identification of research projects, past or present, at Washington or other research institutions and the findings of such research projects.

(4) The committee cochairs shall use their best efforts to form the committee by January 1, 2006, and to complete the committee's review by April 30, 2007. By April 30, 2007, the committee, or such individuals as the committee selects, shall file articles of incorporation to create the academy as a Washington independent organizational entity. The articles shall expressly recognize the power and responsibility of the academy to provide services as described in RCW 70A.40.040 upon request of the governor, the governor's designee, or the legislature. The articles shall also provide for a board of directors of the academy that includes distinguished scientists from the range of disciplines that may be called upon to provide such services to the state and its political subdivisions, and provide a balance of representation from the academic, private, governmental, and research sectors.

(5) The articles shall provide for all such powers as may be appropriate or necessary to carry out the academy's purposes under this chapter, to the full extent allowable under the proposed organizational structure. [2020 c 20 § 1395; 2005 c 305 § 3. Formerly RCW 70.220.030.]

70A.40.040 Duties—Review panels—Funding. (1) The academy shall investigate, examine, and report on any subject of science requested by the governor, the governor's designee, or the legislature. The procedures for selecting panels of experts to respond to such requests shall be set forth in the bylaws or other appropriate operating guidelines. In forming review panels, the academy shall endeavor to assure that the panel members have no conflicts of interest and that proposed panelists first disclose any advocacy positions or financial interest related to the questions to be addressed by the panel that the candidate has held within the past ten years.

(2) The governor shall provide funding to the academy for the actual expense of such investigation, examination, and reports. Such funding shall be in addition to state funding assistance to the academy in its initial years of operation as described in *RCW 70.220.060. [2005 c 305 § 4. Formerly RCW 70.220.040.]

*Reviser's note: RCW 70.220.060 was repealed by 2017 3rd sp.s. c 25 § 9.

70A.40.050 Additional services permitted. The academy may carry out functions or provide services to its members and the public in addition to the services provided under RCW 70A.40.040, such as public education programs, newsletters, websites, science fairs, and research assistance. [2020 c 20 § 1396; 2005 c 305 § 5. Formerly RCW 70.220.050.]

Chapter 70A.45 RCW

LIMITING GREENHOUSE GAS EMISSIONS

Sections

70A.45.005	Findings—Intent.
70A.45.010	Definitions.
70A.45.020	Greenhouse gas emissions reductions—Reporting requirements.
70A.45.030	Development of a design for a regional multisector market-based system to limit and reduce emissions of greenhouse gas—Information required to be submitted to the legislature.
70A.45.040	Consultation with climate impacts group at the University of Washington—Report to the legislature.
70A.45.050	Greenhouse gas emission limits for state agencies—Timeline—Reports—Strategy—Reports to the legislature.
70A.45.060	Emissions calculator for estimating aggregate emissions—Reports.
70A.45.070	Distribution of funds for infrastructure and capital development projects—Prerequisites.
70A.45.090	Forests and forest products sector—Climate response.
70A.45.100	Carbon sequestration.
70A.45.110	Siting of certain facilities.
70A.45.900	Scope of chapter 14, Laws of 2008.

70A.45.005 Findings—Intent. (1) The legislature finds that Washington has long been a national and international leader on energy conservation and environmental stewardship, including air quality protection, renewable energy development and generation, emission standards for fossil-fuel based energy generation, energy efficiency programs, natural resource conservation, sustainable forestry and the production of forest products, vehicle emission standards, and the use of biofuels. Washington is also unique among most states in that in addition to its commitment to reduce emissions of greenhouse gases, it has established goals to grow the clean energy sector and reduce the state's expenditures on imported fuels.

(2) The legislature further finds that Washington should continue its leadership on climate change policy by creating accountability for achieving the emission reductions established in RCW 70A.45.020, participating in the design of a regional multisector market-based system to help achieve those emission reductions, assessing other market strategies to reduce emissions of greenhouse gases, maintaining and enhancing the state's ability to continue to sequester carbon through natural and working lands and forest products, and ensuring the state has a well trained workforce for our clean energy future.

(3) It is the intent of the legislature that the state will: (a) Limit and reduce emissions of greenhouse gas consistent

with the emission reductions established in RCW 70A.45.020; (b) minimize the potential to export pollution, jobs, and economic opportunities; (c) support industry sectors that can act as sequesterers of carbon; and (d) reduce emissions at the lowest cost to Washington's economy, consumers, and businesses.

(4) In the event the state elects to participate in a regional multisector market-based system, it is the intent of the legislature that the system will become effective by January 1, 2012, after authority is provided to the department for its implementation. By acting now, Washington businesses and citizens will have adequate time and opportunities to be well positioned to take advantage of the low carbon economy and to make necessary investments in low carbon technology.

(5) It is also the intent of the legislature that the regional multisector market-based system recognize Washington's unique emissions and sequestration portfolio, including the:

(a) State's hydroelectric system;

(b) Opportunities presented by Washington's abundant forest resources and the associated forest products industry, along with aquatic and agriculture land and the associated industries; and

(c) State's leadership in energy efficiency and the actions it has already taken that have reduced its generation of greenhouse gas emissions and that entities receive appropriate credit for early actions to reduce greenhouse gases.

(6) If any revenues, excluding those from state trust lands, that accrue to the state are created by a market system, they must be used for the purposes established in chapter 70A.65 RCW and to further the state's efforts to achieve the goals established in RCW 70A.45.020, address the impacts of global warming on affected habitats, species, and communities, promote and invest in industry sectors that act as sequesterers of carbon, and increase investment in the clean economy particularly for communities and workers that have suffered from heavy job losses and chronic unemployment and underemployment. [2021 c 316 § 44. Prior: 2020 c 120 § 2; 2020 c 20 § 1397; 2008 c 14 § 1. Formerly RCW 70.235.005.]

Short title—2021 c 316: See RCW 70A.65.900.

Findings—2020 c 120: "(1) The legislature finds that the intergovernmental panel on climate change (IPCC) released a report in 2019 entitled "IPCC special report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems" that provides guidance relating to how natural and working lands can be utilized to assist with a global climate response strategy. In addition, the food and agricultural organization of the United Nations issued a report in 2016 entitled "forestry for a low carbon future" with specific recommendations for integrating forest and wood products in climate change strategies. Recommendations from these reports are critical as Washington develops its own climate response and charts how the state can use its forestland base and vibrant forest products sector as part of its contribution to the global climate response.

(2) The legislature further finds that the 2019 intergovernmental panel on climate change report identifies several measures where sustainable forest management and forest products may be utilized to maintain and enhance carbon sequestration. These include increasing the carbon sequestration potential of forests and forest products by maintaining and expanding the forestland base, reducing emissions from land conversion to nonforest uses, increasing forest resiliency to reduce the risk of carbon releases from disturbances such as wildfire, pest infestation, and disease, and applying sustainable forest management techniques to maintain or enhance forest carbon stocks and forest carbon sinks, including through the transference of carbon to wood products.

(3) The legislature further finds that the food and agricultural organization of the United Nations reports similar recommendations, with a focus on

forest management tools that increases the carbon density in forests, increases carbon storage out of the forest in harvested wood products, utilizes wood energy, and suppresses forest disturbances from fire, pests, and disease." [2020 c 120 § 1.]

70A.45.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Carbon dioxide equivalents" means a metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential.

(2) "Carbon sequestration" means the process of capturing and storing atmospheric carbon dioxide through biologic, chemical, geologic, or physical processes.

(3) "Climate advisory team" means the stakeholder group formed in response to executive order 07-02.

(4) "Climate impacts group" means the University of Washington's climate impacts group.

(5) "Department" means the department of ecology.

(6) "Director" means the director of the department.

(7) "Greenhouse gas" and "greenhouse gases" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other gas or gases designated by the department by rule.

(8) "Person" means an individual, partnership, franchise holder, association, corporation, a state, a city, a county, or any subdivision or instrumentality of the state.

(9) "Program" means the department's climate change program.

(10) "Western climate initiative" means the collaboration of states, Canadian provinces, Mexican states, and tribes to design a multisector market-based mechanism as directed under the western regional climate action initiative signed by the governor on February 22, 2007. [2021 c 315 § 3. Prior: 2020 c 79 § 5; prior: 2019 c 284 § 2; 2010 c 146 § 1; 2008 c 14 § 2. Formerly RCW 70.235.010.]

Intent—2020 c 79: See note following RCW 70A.45.020.

Finding—Intent—2019 c 284: See note following RCW 70A.60.060.

70A.45.020 Greenhouse gas emissions reductions—Reporting requirements. (1)(a) The state shall limit anthropogenic emissions of greenhouse gases to achieve the following emission reductions for Washington state:

(i) By 2020, reduce overall emissions of greenhouse gases in the state to 1990 levels, or ninety million five hundred thousand metric tons;

(ii) By 2030, reduce overall emissions of greenhouse gases in the state to fifty million metric tons, or forty-five percent below 1990 levels;

(iii) By 2040, reduce overall emissions of greenhouse gases in the state to twenty-seven million metric tons, or seventy percent below 1990 levels;

(iv) By 2050, reduce overall emissions of greenhouse gases in the state to five million metric tons, or ninety-five percent below 1990 levels.

(b) By December 1, 2008, the department shall submit a greenhouse gas reduction plan for review and approval to the legislature, describing those actions necessary to achieve the emission reductions in (a) of this subsection by using existing statutory authority and any additional authority granted by the legislature. Actions taken using existing statutory author-

ity may proceed prior to approval of the greenhouse gas reduction plan.

(c) In addition to the emissions limits specified in (a) of this subsection, the state shall also achieve net zero greenhouse gas emissions by 2050. Except where explicitly stated otherwise, nothing in chapter 14, Laws of 2008 limits any state agency authorities as they existed prior to June 12, 2008.

(d) Consistent with this directive, the department shall take the following actions:

(i) Develop and implement a system for monitoring and reporting emissions of greenhouse gases as required under RCW 70A.15.2200; and

(ii) Track progress toward meeting the emission reductions established in this subsection, including the results from policies currently in effect that have been previously adopted by the state and policies adopted in the future, and report on that progress. Progress reporting should include statewide emissions as well as emissions from key sectors of the economy including, but not limited to, electricity, transportation, buildings, manufacturing, and agriculture.

(e) Nothing in this section creates any new or additional regulatory authority for any state agency as they existed prior to January 1, 2019.

(2) By December 31st of each even-numbered year beginning in 2010, the department and the department of commerce shall report to the governor and the appropriate committees of the senate and house of representatives the total emissions of greenhouse gases for the preceding two years, and totals in each major source sector, including emissions associated with leaked gas identified by the utilities and transportation commission under RCW 81.88.160. The report must include greenhouse gas emissions from wildfires, developed in consultation with the department of natural resources. The department shall ensure the reporting rules adopted under RCW 70A.15.2200 allow it to develop a comprehensive inventory of emissions of greenhouse gases from all significant sectors of the Washington economy.

(3) Except for purposes of reporting, emissions of carbon dioxide from industrial combustion of biomass in the form of fuel wood, wood waste, wood by-products, and wood residuals shall not be considered a greenhouse gas as long as the region's silvicultural sequestration capacity is maintained or increased. [2020 c 79 § 2; 2020 c 32 § 4; 2020 c 20 § 1398; 2008 c 14 § 3. Formerly RCW 70.235.020.]

Reviser's note: This section was amended by 2020 c 20 § 1398, 2020 c 32 § 4, and by 2020 c 79 § 2, without reference to one another. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2020 c 79: "(1) Global climate change represents an existential threat to the livelihoods, health, and well-being of all Washingtonians. Our state is experiencing a climate emergency in the form of devastating wildfires, drought, lack of snowpack, and increases in ocean acidification caused in part by climate change.

(2) These threats are not distributed evenly across the state. In particular, rural communities with natural resource-based economies, tribes, and communities of lower and moderate incomes will be disproportionately exposed to health and economic impacts driven by climate change.

(3) The longer we delay in taking definitive action to reduce greenhouse gas emissions, the greater the threat posed by climate change to current and future generations, and the more costly it will be to protect and maintain our communities against the impacts of climate change. Unchecked, climate change will bring ever more drastic decline to the health and prosperity of future generations, particularly for the most vulnerable communities.

(4) According to the climate impacts group at the University of Washington, with global warming of at least one and one-half degrees Celsius, by 2050 Washington is projected to experience:

(a) An increase of sixty-seven percent in the number of days per year above ninety degrees Fahrenheit, relative to 1976-2005, leading to an increased risk of heat-related illness and death, warmer streams, and more frequent algal blooms;

(b) A decrease of thirty-eight percent in the state's snowpack, relative to 1970-1999, leading to reduced water storage, irrigation shortages, and winter and summer recreation losses;

(c) An increase of sixteen percent in winter streamflow, relative to 1970-1999, leading to an increased risk of river flooding;

(d) A decrease of twenty-three percent in summer streamflow, relative to 1970-1999, leading to reduced summer hydropower, conflicts over water resources, and negative effects on salmon populations; and

(e) An increase of one and four-tenths feet in sea level, relative to 1991-2010, leading to coastal flooding and inundation, damage to coastal infrastructure, and bluff erosion.

(5) The legislature has taken steps to understand and address the threats posed by climate change as climate change science has continued to evolve. In 2008 with the passage of Engrossed Second Substitute House Bill No. 2815, *chapter 70.235 RCW, the legislature acknowledged Washington's history of national and international leadership in clean energy, and set limits on the greenhouse gas emissions that drive climate change.

(6) *Chapter 70.235 RCW recognizes that the state of climate change science will continue to evolve, and so it directs the department of ecology to consult with the climate impacts group at the University of Washington for the purpose of issuing periodic reports that summarize the current climate change science and that make recommendations regarding whether the state's greenhouse gas emissions reductions need to be updated. As required by *chapter 70.235 RCW, the department of ecology prepared and submitted reviews of current climate change science and the state of global warming trends in both December 2016, Ecology Publication No. 16-01-010, and again in December 2019, Ecology Publication No. 19-02-031. The most recent report underscores the need for Washington to take immediate and aggressive action to reduce greenhouse gas emissions, the primary cause of global climate change.

(7) Based on the current science and emissions trends, as reported by the department of ecology and the climate impacts group at the University of Washington, the legislature finds that avoiding global warming of at least one and one-half degrees Celsius is possible only if global greenhouse gas emissions start to decline precipitously, and as soon as possible. Restoring a safe and stable climate will require mobilization across all levels of government and economic sectors, including agriculture, manufacturing, transportation, and energy production, to reach net zero greenhouse gas emissions by 2050. Washington must therefore further strengthen its emissions reduction targets for 2030 and beyond. In addition, all pathways to one and one-half degrees Celsius rely on some amount of negative emissions through carbon sequestration. It is therefore the intent of the legislature to strengthen Washington's statutory greenhouse gas emission limits to reflect current science and to align with the limits that other jurisdictions are setting to combat climate change and to encourage voluntary actions that increase carbon sequestration on natural and working lands and storage in the related products from those lands.

(8) In strengthening Washington's statutory greenhouse gas emission limits, it is the intent of the legislature to pursue these limits in a way that:

(a) Reduces the burdens and creates benefits for vulnerable populations and highly impacted communities with long-term and short-term outcomes for public health, economic well-being, local environments, and community resiliency that benefits all Washington residents;

(b) Supports the current skilled and trained construction workforce, retains and creates other high quality employment opportunities, and generates broad, widely shared economic benefits for the state and Washington residents; and

(c) Maintains Washington's manufacturing economy and avoids leakage of emissions to other jurisdictions." [2020 c 79 § 1.]

***Reviser's note:** Chapter 70.235 RCW was recodified as chapter 70A.45 RCW by 2020 c 20 § 2052.

Intent—2020 c 32: See note following RCW 80.28.420.

70A.45.030 Development of a design for a regional multisector market-based system to limit and reduce emissions of greenhouse gas—Information required to be submitted to the legislature. (1)(a) The director shall

develop, in coordination with the western climate initiative, a design for a regional multisector market-based system to limit and reduce emissions of greenhouse gas consistent with the emission reductions established in RCW 70A.45.020(1).

(b) By December 1, 2008, the director and the director of the department of commerce shall deliver to the legislature specific recommendations for approval and request for authority to implement the preferred design of a regional multisector market-based system in (a) of this subsection. These recommendations must include:

(i) Proposed legislation, necessary funding, and the schedule necessary to implement the preferred design by January 1, 2012;

(ii) Any changes determined necessary to the reporting requirements established under RCW 70A.15.2200; and

(iii) Actions that the state should take to prevent manipulation of the multisector market-based system designed under this section.

(2) In developing the design for the regional multisector market-based system under subsection (1) of this section, the department shall consult with the affected state agencies, and provide opportunity for public review and comment.

(3) In addition to the information required under subsection (1)(b) of this section, the director and the director of the department of commerce shall submit the following to the legislature by December 1, 2008:

(a) Information on progress to date in achieving the requirements of chapter 14, Laws of 2008;

(b) The final recommendations of the climate advisory team, including recommended most promising actions to reduce emissions of greenhouse gases or otherwise respond to climate change. These recommendations must include strategies to reduce the quantity of emissions of greenhouse gases per distance traveled in the transportation sector;

(c) A request for additional resources and statutory authority needed to limit and reduce emissions of greenhouse gas consistent with chapter 14, Laws of 2008 including implementation of the most promising recommendations of the climate advisory team;

(d) Recommendations on how projects funded by the green energy incentive account in *RCW 43.325.040 may be used to expand the electrical transmission infrastructure into urban and rural areas of the state for purposes of allowing the recharging of plug-in hybrid electric vehicles;

(e) Recommendations on how local governments could participate in the multisector market-based system designed under subsection (1) of this section;

(f) Recommendations regarding the circumstances under which generation of electricity or alternative fuel from land-fill gas and gas from anaerobic digesters may receive an offset or credit in the regional multisector market-based system or other strategies developed by the department; and

(g) Recommendations developed in consultation with the department of natural resources and the department of agriculture with the climate advisory team, the college of forest resources at the University of Washington, and the Washington State University, and a nonprofit consortium involved in research on renewable industrial materials, regarding how forestry and agricultural lands and practices may participate voluntarily as an offset or other credit program in the regional multisector market-based system. The recommendations

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must ensure that the baseline for this offset or credit program does not disadvantage this state in relation to another state or states. These recommendations shall address:

(i) Commercial and other working forests, including accounting for site-class specific forest management practices;

(ii) Agricultural and forest products, including accounting for substitution of wood for fossil intensive substitutes;

(iii) Agricultural land and practices;

(iv) Forest and agricultural lands set aside or managed for conservation as of, or after, June 12, 2008; and

(v) Reforestation and afforestation projects. [2020 c 20 § 1399; 2008 c 14 § 4. Formerly RCW 70.235.030.]

*Reviser's note: RCW 43.325.040 expired June 30, 2016.

70A.45.040 Consultation with climate impacts group at the University of Washington—Report to the legislature. Within eighteen months of the next and each successive global or national assessment of climate change science, the department shall consult with the climate impacts group at the University of Washington regarding the science on human-caused climate change and provide a report to the legislature summarizing that science and make recommendations regarding whether the greenhouse gas emissions reductions required under RCW 70A.45.020 need to be updated. [2020 c 20 § 1400; 2008 c 14 § 7. Formerly RCW 70.235.040.]

70A.45.050 Greenhouse gas emission limits for state agencies—Timeline—Reports—Strategy—Reports to the legislature. (1) State agencies shall meet the statewide greenhouse gas emission limits established in RCW 70A.45.020 to achieve the following, using the estimates and strategy established in subsections (2) and (3) of this section:

(a) By July 1, 2020, reduce emissions of greenhouse gases to eight hundred five thousand metric tons, or fifteen percent below 2005 emission levels;

(b) By 2030, reduce emissions of greenhouse gases to five hundred twenty-one thousand metric tons, or forty-five percent below 2005 levels;

(c) By 2040, reduce emissions of greenhouse gases to two hundred eighty-four thousand metric tons, or seventy percent below 2005 levels; and

(d) By 2050, reduce overall emissions of greenhouse gases to forty-seven thousand metric tons, or ninety-five percent below 2005 levels and achieve net zero greenhouse gas emissions by state government as a whole.

(2)(a) By June 30, 2010, state agencies shall report estimates of emissions for 2005 to the department, including 2009 levels of emissions, and projected emissions through 2035.

(b) State agencies required to report under RCW 70A.15.2200 must estimate emissions from methodologies recommended by the department and must be based on actual operation of those agencies. Agencies not required to report under RCW 70A.15.2200 shall derive emissions estimates using an emissions calculator provided by the department.

(3) By June 1st of each even-numbered year beginning in 2022, state agencies shall report to the department, and to the state efficiency and environmental performance office at the department of commerce, the actions planned for the next

two biennia to meet emission reduction targets and the actions taken to meet the emission reduction targets established in this section. The report must also include the agency's long-term strategy for meeting the emission reduction targets established in this section, which the agency shall update as appropriate. The department and the state efficiency and environmental performance office at the department of commerce shall review and compile the agency reports and, by December 1st of each even-numbered year beginning in 2022, provide a consolidated report to the appropriate committees of the legislature. This report must include recommendations for budgetary and other actions that will assist state agencies in achieving the greenhouse gas emissions reductions specified in this section. The department may authorize the department of enterprise services to report on behalf of any state agency having fewer than five hundred full-time equivalent employees at any time during the reporting period. The department shall cooperate with the department of enterprise services and the state efficiency and environmental performance office at the department of commerce to develop consolidated reporting methodologies that incorporate emission reduction actions taken across all or substantially all state agencies.

(4) State agencies shall cooperate in providing information to the department, the department of enterprise services, and the department of commerce for the purposes of this section. [2020 c 79 § 3; 2020 c 20 § 1401; 2015 c 225 § 110; 2009 c 519 § 2. Formerly RCW 70.235.050.]

Reviser's note: This section was amended by 2020 c 20 § 1401 and by 2020 c 79 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2020 c 79: See note following RCW 70A.45.020.

Findings—2009 c 519: See RCW 70A.05.900.

70A.45.060 Emissions calculator for estimating aggregate emissions—Reports. (1) The department shall develop an emissions calculator to assist state agencies in estimating aggregate emissions as well as in estimating the relative emissions from different ways in carrying out activities.

(2) The department may use data such as totals of building space occupied, energy purchases and generation, motor vehicle fuel purchases and total mileage driven, and other reasonable sources of data to make these estimates. The estimates may be derived from a single methodology using these or other factors, except that for the top ten state agencies in occupied building space and vehicle miles driven, the estimates must be based upon the actual and projected operations of those agencies. The estimates may be adjusted, and reasonable estimates derived, when agencies have been created since 1990 or functions reorganized among state agencies since 1990. The estimates may incorporate projected emissions reductions that also affect state agencies under the program authorized in RCW 70A.45.020 and other existing policies that will result in emissions reductions.

(3) By December 31st of each even-numbered year beginning in 2010, the department shall report to the governor and to the appropriate committees of the senate and house of representatives the total state agencies' emissions of greenhouse gases for 2005 and the preceding two years and actions

taken to meet the emissions reduction targets. [2020 c 20 § 1402; 2009 c 519 § 5. Formerly RCW 70.235.060.]

Findings—2009 c 519: See RCW 70A.05.900.

70A.45.070 Distribution of funds for infrastructure and capital development projects—Prerequisites. Beginning in 2010, when distributing capital funds through competitive programs for infrastructure and economic development projects, all state agencies must consider whether the entity receiving the funds has adopted policies to reduce greenhouse gas emissions. Agencies also must consider whether the project is consistent with:

(1) The state's limits on the emissions of greenhouse gases established in RCW 70A.45.020;

(2) Statewide goals to reduce annual per capita vehicle miles traveled by 2050, in accordance with RCW 47.01.440, except that the agency shall consider whether project locations in rural counties, as defined in RCW 43.160.020, will maximize the reduction of vehicle miles traveled; and

(3) Applicable federal emissions reduction requirements. [2020 c 20 § 1403; 2009 c 519 § 9. Formerly RCW 70.235.070.]

Findings—2009 c 519: See RCW 70A.05.900.

70A.45.090 Forests and forest products sector—Climate response. (1)(a) Washington's existing forest products sector, including public and private working forests and the harvesting, transportation, and manufacturing sectors that enable working forests to remain on the land and the state to be a global supplier of forest products, is, according to a University of Washington study analyzing the global warming mitigating role of wood products from Washington's private forests, an industrial sector that currently operates as a significant net sequesterer of carbon. This value, which is only provided through the maintenance of an intact and synergistic industrial sector, is an integral component of the state's contribution to the global climate response and efforts to mitigate carbon emissions.

(b) Satisfying the goals set forth in RCW 70A.45.020 requires supporting, throughout all of state government, consistent with other laws and mandates of the state, the economic vitality of the sustainable forest products sector and other business sectors capable of sequestering and storing carbon. This includes support for working forests of all sizes, ownerships, and management objectives, and the necessary manufacturing sectors that support the transformation of stored carbon into long-lived forest products while maintaining and enhancing the carbon mitigation benefits of the forest sector, sustaining rural communities, and providing for fish, wildlife, and clean water, as provided in chapter 76.09 RCW. Support for the forest sector also ensures the state's public and private working forests avoid catastrophic wildfire and other similar disturbances and avoid conversion in the face of unprecedented conversion pressures.

(c) It is the policy of the state to support the contributions of all working forests and the synergistic forest products sector to the state's climate response. This includes landowners, mills, bioenergy, pulp and paper, and the related harvesting and transportation infrastructure that is necessary for forestland owners to continue the rotational cycle of carbon capture and sequestration in growing trees and allows forest products

manufacturers to store the captured carbon in wood products and maintain and enhance the forest sector's role in mitigating a significant percentage of the state's carbon emissions while providing other environmental and social benefits and supporting a strong rural economic base. It is further the policy of the state to support the participation of working forests in current and future carbon markets, strengthening the state's role as a valuable contributor to the global carbon response while supporting one of its largest manufacturing sectors.

(d) It is further the policy of the state to utilize carbon accounting land use, land use change, and forestry reporting principles consistent with established reporting guidelines, such as those used by the intergovernmental panel on climate change and the United States national greenhouse gas reporting inventories.

(2) Any state carbon programs must support the policies stated in this section and recognize the forest products industry's contribution to the state's climate response. [2021 c 65 § 70; 2020 c 120 § 3.]

Explanatory statement—2021 c 65: See note following RCW 53.54.030.

Findings—2020 c 120: See note following RCW 70A.45.005.

70A.45.100 Carbon sequestration. (1) Separate and apart from the emissions limits established in RCW 70A.45.020, it is the policy of the state to promote the removal of excess carbon from the atmosphere through voluntary and incentive-based sequestration activities in Washington including, but not limited to, on natural and working lands and by recognizing the potential for sequestration in products and product supply chains. It is the policy of the state to prioritize carbon sequestration in amounts necessary to achieve the carbon neutrality goal established in RCW 70A.45.020, and at a level consistent with pathways to limit global warming to one and one-half degrees.

(2)(a) All agencies of state government including, but not limited to, the department, the department of natural resources, the department of transportation, the department of fish and wildlife, the department of agriculture, the department of commerce, the recreation and conservation office, and the conservation commission, shall seek all practicable opportunities, consistent with existing legal mandates and requirements and statutory objectives, to cost-effectively maximize carbon sequestration and carbon storage in their nonland management agency operations, contracting, and grant-making activities.

(b) Any such effort to promote carbon sequestration activities that affects support for, or management of private lands or trust lands managed by the department of natural resources must be done in cooperation with the owners and managers of those natural and working lands. [2021 c 65 § 71; 2020 c 79 § 4.]

Explanatory statement—2021 c 65: See note following RCW 53.54.030.

Intent—2020 c 79: See note following RCW 70A.45.020.

70A.45.110 Siting of certain facilities. The state, state agencies, and political subdivisions of the state, in implementing their duties and authorities established under other laws, may only consider the greenhouse gas limits established in RCW 70A.45.020 in a manner that recognizes,

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where applicable, that the siting and placement of new or expanded best-in-class facilities with lower carbon emitting processes is in the economic and environmental interests of the state of Washington. [2021 c 316 § 36.]

Short title—2021 c 316: See RCW 70A.65.900.

70A.45.900 Scope of chapter 14, Laws of 2008.

Except where explicitly stated otherwise, nothing in chapter 14, Laws of 2008 alters or limits any authorities of the department as they existed prior to June 12, 2008. [2008 c 14 § 11. Formerly RCW 70.235.900.]

Chapter 70A.50 RCW

ENERGY EFFICIENCY IMPROVEMENTS

Sections

70A.50.010 Definitions.

70A.50.020 Grants for pilot programs providing urban residential and commercial energy efficiency upgrades—Requirements of pilot programs—Report to the governor and legislature.

70A.50.030 Farm energy efficiency improvements.

70A.50.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Customers" means residents, businesses, and building owners.

(2) "Direct outreach" means:

(a) The use of door-to-door contact, community events, and other methods of direct interaction with customers to inform them of energy efficiency and weatherization opportunities; and

(b) The performance of energy audits.

(3) "Energy audit" means an assessment of building energy efficiency opportunities, from measures that require very little investment and without any disruption to building operation, normally involving general building operational measures, to low or relatively higher cost investment, such as installing timers to turn off equipment, replacing light bulbs, installing insulation, replacing equipment and appliances with higher efficiency equipment and appliances, and similar measures. The term includes an assessment of alternatives for generation of heat and power from renewable energy resources, including installation of solar water heating and equipment for photovoltaic electricity generation.

(4) "Energy efficiency and conservation block grant program" means the federal program created under the energy independence and security act of 2007 (P.L. 110-140).

(5) "Energy efficiency services" means energy audits, weatherization, energy efficiency retrofits, energy management systems as defined in RCW 39.35.030, and other activities to reduce a customer's energy consumption, and includes assistance with paperwork, arranging for financing, program design and development, and other postenergy audit assistance and education to help customers meet their energy savings goals.

(6) "Low-income individual" means an individual whose annual household income does not exceed eighty percent of the area median income for the metropolitan, micropolitan, or combined statistical area in which that individual resides as determined annually by the United States department of housing and urban development.

(7) "Sponsor" means any entity or group of entities that submits a proposal under RCW 70A.50.020, including but not limited to any nongovernmental nonprofit organization, local community action agency, tribal nation, community service agency, public service company, county, municipality, publicly owned electric, or natural gas utility.

(8) "Sponsor match" means the share, if any, of the cost of efficiency improvements to be paid by the sponsor.

(9) "Weatherization" means making energy and resource conservation and energy efficiency improvements. [2020 c 20 § 1410; 2009 c 379 § 101. Formerly RCW 70.260.010.]

Finding—Intent—2009 c 379: "(1) The legislature finds that improving energy efficiency in structures is one of the most cost-effective means to meet energy requirements, and that while there have been significant efficiency savings achieved in the state over the past quarter century, there remains enormous potential to achieve even greater savings. Increased weatherization and more extensive efficiency improvements in residential, commercial, and public buildings achieves many benefits, including reducing energy bills, avoiding the construction of new electricity generating facilities with associated climate change impacts, and creation of family-wage jobs in performing energy audits and improvements.

(2) It is the intent of the legislature that financial and technical assistance programs be expanded to direct municipal, state, and federal funds, as well as electric and natural gas utility funding, toward greater achievement of energy efficiency improvements. To this end, the legislature establishes a policy goal of assisting in weatherizing twenty thousand homes and businesses in the state in each of the next five years. The legislature also intends to attain this goal in part through supporting programs that rely on community organizations and that there be maximum family-wage job creation in fields related to energy efficiency." [2009 c 379 § 1.]

Additional notes found at www.leg.wa.gov

70A.50.020 Grants for pilot programs providing urban residential and commercial energy efficiency upgrades—Requirements of pilot programs—Report to the governor and legislature. The Washington State University extension energy program is authorized to implement grants for pilot programs providing community-wide urban residential and commercial energy efficiency upgrades. The Washington State University extension energy program must coordinate and collaborate with the *department of community, trade, and economic development on the design, administration, and implementation elements of the pilot program.

(1) There must be at least three grants for pilot programs, awarded on a competitive basis to sponsors for conducting direct outreach and delivering energy efficiency services that, to the extent feasible, ensure a balance of participation for: (a) Geographic regions in the state; (b) types of fuel used for heating; (c) owner-occupied and rental residences; (d) small commercial buildings; and (e) single-family and multifamily dwellings.

(2) The pilot programs must:

(a) Provide assistance for energy audits and energy efficiency-related improvements to structures owned by or used for residential, commercial, or nonprofit purposes in specified urban neighborhoods where the objective is to achieve a high rate of participation among building owners within the pilot area;

(b) Utilize volunteer support to reach out to potential customers through the use of community-based institutions;

(c) Employ qualified energy auditors and energy efficiency service providers to perform the energy audits using recognized energy efficiency and weatherization services that are cost-effective;

(d) Select and provide oversight of contractors to perform energy efficiency services. Sponsors shall require contractors to participate in quality control and efficiency training, use workers trained from workforce training and apprentice programs established under chapter 536, Laws of 2009 if these workers are available, pay prevailing wages under chapter 39.12 RCW, hire from the community in which the program is located, and create employment opportunities for veterans, members of the national guard, and low-income and disadvantaged populations; and

(e) Work with customers to secure financing for their portion of the project and apply for and administer utility, public, and charitable funding provided for energy audits and retrofits.

(3) The Washington State University extension energy program must give priority to sponsors that can secure a sponsor match of at least one dollar for each dollar awarded.

(a) A sponsor may use its own moneys, including corporate or ratepayer moneys, or moneys provided by landlords, charitable groups, government programs, the Bonneville power administration, or other sources to pay the sponsor match.

(b) A sponsor may meet its match requirement in whole or in part through providing labor, materials, or other in-kind expenditures.

(4)(a) Pilot programs receiving funding must report compliance with performance metrics for each sponsor receiving a grant award. The performance metrics include:

(i) Monetary and energy savings achieved;

(ii) Savings-to-investment ratio achieved for customers;

(iii) Wage levels of jobs created;

(iv) Utilization of preapprentice and apprenticeship programs; and

(v) Efficiency and speed of delivery of services.

(b) Pilot programs receiving funding under this section are required to report to the Washington State University extension [extension energy] program on compliance with the performance metrics every six months following the receipt of grants, with the last report submitted six months after program completion.

(c) The Washington State University extension energy program shall review the accuracy of these reports and provide a progress report on all grant pilot programs to the appropriate committees of the legislature by December 1st of each year.

(5)(a) By December 1, 2009, the Washington State University extension energy program shall provide a report to the governor and appropriate legislative committees on the: Number of grants awarded; number of jobs created or maintained; number and type of individuals trained through workforce training and apprentice programs; number of veterans, members of the national guard, and individuals of low-income and disadvantaged populations employed by pilot programs; and amount of funding provided through the grants as established in subsection (1) of this section and the performance metrics established in subsection (4) of this section.

(b) By December 1, 2010, the Washington State University extension energy program shall provide a final report to the governor and appropriate legislative committees on the: Number of grants awarded; number of jobs created or main-

tained; number and type of individuals trained through workforce training and apprentice programs; number of veterans, members of the national guard, and individuals of low-income and disadvantaged populations employed by pilot programs; and amount of funding provided through the grants as established in subsection (1) of this section and the performance metrics established in subsection (4) of this section. [2009 c 379 § 102. Formerly RCW 70.260.020.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Finding—Intent—Effective date—2009 c 379: See notes following RCW 70A.50.010.

70A.50.030 Farm energy efficiency improvements.

(1) The legislature finds that increasing energy costs put farm viability and competitiveness at risk and that energy efficiency improvements on the farm are the most cost-effective way to manage these costs. The legislature further finds that current on-farm energy efficiency programs often miss opportunities to evaluate and conserve all types of energy, including fuels and fertilizers.

(2) The Washington State University extension energy program, in consultation with the department of agriculture, shall form an interdisciplinary team of agricultural and energy extension agencies to develop and offer new methods to help agricultural producers assess their opportunities to increase energy efficiency in all aspects of their operations. The interdisciplinary team must develop and deploy:

(a) Online energy self-assessment software tools to allow agricultural producers to assess whole-farm energy use and to identify the most cost-effective efficiency opportunities;

(b) Energy auditor training curricula specific to the agricultural sector and designed for use by agricultural producers, conservation districts, agricultural extensions, and commodity groups;

(c) An effective infrastructure of trained energy auditors available to assist agricultural producers with on-farm energy audits and identify cost-share assistance for efficiency improvements; and

(d) Measurement systems for cost savings, energy savings, and carbon emission reduction benefits resulting from efficiency improvements identified by the interdisciplinary team.

(3) The Washington State University extension energy program shall seek to obtain additional resources for this section from federal and state agricultural assistance programs and from other sources.

(4) The Washington State University extension energy program shall provide technical assistance for farm energy assessment activities as specified in this section. [2009 c 379 § 103. Formerly RCW 70.260.030.]

Finding—Intent—Effective date—2009 c 379: See notes following RCW 70A.50.010.

Chapter 70A.55 RCW DIESEL EMISSIONS—AIR POLLUTION REDUCTION

Sections

70A.55.010 Findings—Intent.

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70A.55.020 Definitions.

70A.55.030 Diesel idle emission reduction technologies and infrastructure—Loans.

70A.55.040 Diesel idle reduction account.

70A.55.050 Adoption of rules.

70A.55.010 Findings—Intent. The legislature finds that investments in diesel engine idling reduction projects cost-effectively improve public health by reducing harmful diesel emissions. The legislature further finds that these investments also result in long-term savings in fuel and maintenance costs. It is therefore the intent of the legislature to establish a stable, wholly self-sustaining account for the department of ecology to use for investments in diesel idle reduction projects. [2014 c 74 § 1. Formerly RCW 70.325.010.]

70A.55.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Account" means the diesel idle reduction account created in RCW 70A.55.040.

(2) "Department" means the department of ecology.

(3) "Loan recipient" means a state, local, or other governmental entity that owns diesel vehicles or equipment. [2020 c 20 § 1432; 2014 c 74 § 2. Formerly RCW 70.325.020.]

70A.55.030 Diesel idle emission reduction technologies and infrastructure—Loans. (1) The department shall use the moneys in the account to provide loans with low or no interest to loan recipients for the purpose of reducing exposure to diesel emissions and improving public health by investing in diesel idle emission reduction technologies and infrastructure. The department shall, to the extent practical, integrate communications, outreach, and other aspects of the administration of loans from the account with the administration of existing grant programs to reduce diesel emissions from vehicles and equipment. In selecting loan recipients, the department shall consider anticipated human health, environmental, and greenhouse gas benefits from reduced exposure to harmful air emissions associated with diesel idling.

(2) The department shall make loans in such a manner that the remittances from loan recipients are of equal value over a long-term planning horizon to the disbursements from the fund.

(3) Loan moneys may not be spent on vehicles or equipment that spend less than one-half of their operating time in Washington. Permissible diesel idle reduction expenditures include, but are not limited to:

(a) Electrified parking spaces and truck stops;

(b) Shore connection systems and alternative maritime power;

(c) Shore connection systems for locomotives;

(d) Auxiliary power units and generator sets;

(e) Fuel-operated heaters or direct-fired heaters, including engine fluid preheaters and cab air heaters;

(f) Battery powered systems, including battery powered heating and air conditioning systems;

(g) Thermal storage systems;

(h) Automatic engine start-up and shutdown systems;

(i) Projects to augment or replace diesel engines or power systems with engines or power systems that use liquefied or compressed natural gas; and

(j) Other operation or maintenance efficiencies that achieve emission reduction benefits for the public. [2014 c 74 § 3. Formerly RCW 70.325.030.]

70A.55.040 Diesel idle reduction account. The diesel idle reduction account is created in the state treasury. All receipts from remittances made by loan recipients pursuant to RCW 70A.55.030 and any moneys appropriated to the account by law must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes of this chapter, including the costs of program administration. [2020 c 20 § 1433; 2014 c 74 § 4. Formerly RCW 70.325.040.]

70A.55.050 Adoption of rules. The department may adopt rules necessary to implement this chapter only after the legislature appropriates moneys to the account created in RCW 70A.55.040. [2020 c 20 § 1434; 2014 c 74 § 7. Formerly RCW 70.325.050.]

Chapter 70A.60 RCW HYDROFLUOROCARBONS—EMISSIONS REDUCTION

Sections

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70A.60.005 Finding—Intent. (1) The legislature finds that hydrofluorocarbons are air pollutants that pose significant threats to our environment. Although hydrofluorocarbons currently represent a small proportion of the state's greenhouse gas emissions, emissions of hydrofluorocarbons have been rapidly increasing in the United States and worldwide, and they are hundreds to thousands of times more potent than carbon dioxide. In 2019, the legislature took a significant step towards reducing greenhouse gas emissions from hydrofluorocarbons by transitioning to the use of less damaging hydrofluorocarbons or suitable substitutes in certain new foam, aerosol, and refrigerant uses. However, significant sources of hydrofluorocarbon emissions in Washington remain unaddressed by the 2019 legislation, including legacy uses of hydrofluorocarbons as a refrigerant in infrastructure that was installed prior to the effective dates of the restrictions in the 2019 law, and from sources like stationary air conditioners and heat pumps that were not covered by the 2019 law.

(2) Therefore, it is the intent of the legislature to reduce hydrofluorocarbon emissions, including by:

(a) Authorizing the establishment of a maximum global warming potential threshold for hydrofluorocarbons used as a refrigerant;

(b) Authorizing the regulation of hydrofluorocarbons in air conditioning and heat pumps;

(c) Applying the same basic emission control requirements to hydrofluorocarbons that have long applied to ozone-depleting substances used as refrigerants;

(d) Establishing a program to reduce leaks and encourage refrigerant recovery from large refrigeration and air conditioning systems;

(e) Directing the state building code council to adopt codes that are consistent with the goal of reducing greenhouse gas emissions associated with hydrofluorocarbons;

(f) Establishing a state procurement preference for recycled refrigerants; and

(g) Allowing consideration of the global warming potential of refrigerants used in equipment incentivized under utility conservation programs.

(3) Furthermore, it is the intent of the legislature that the ice rink used by Seattle's newest hockey franchise, the Seattle Kraken, should be as cold as possible, but also should be refrigerated using climate-friendly refrigerants, so that on opening night of the 2021-2022 National Hockey League season, as many fans as possible can simultaneously yell the Pacific Northwest's favorite new phrase: 'Release the Kraken!' [2021 c 315 § 1.]

70A.60.010 Definitions. (1)(a) "Air conditioning" means the process of treating air to meet the requirements of a conditioned space by controlling its temperature, humidity, cleanliness, or distribution.

(b)(i) "Air conditioning" includes chillers, except for purposes of RCW 70A.60.020.

(ii) "Air conditioning" includes heat pumps.

(c) "Air conditioning" applies to stationary air conditioning equipment and does not apply to mobile air conditioning, including those used in motor vehicles, rail and trains, aircraft, watercraft, recreational vehicles, recreational trailers, and campers.

(2) "Class I substance" and "class II substance" means those substances listed in 42 U.S.C. Sec. 7671a, as of November 15, 1990, or those substances listed in Appendix A or B of Subpart A of 40 C.F.R. Part 82, as of January 3, 2017.

(3) "Department" means the department of ecology.

(4) "Hydrofluorocarbons" means a class of greenhouse gases that are saturated organic compounds containing hydrogen, fluorine, and carbon.

(5) "Ice rink" means a frozen body of water, hardened chemicals, or both, including, but not limited to, professional ice skating rinks and those used by the general public for recreational purposes.

(6) "Manufacturer" includes any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces any product that contains or uses hydrofluorocarbons or is an importer or domestic distributor of such a product.

(7) "Person" means an individual, partnership, franchise holder, association, corporation, a state, a city, a county, or any subdivision or instrumentality of the state.

(8) "Refrigeration equipment" or "refrigeration system" means any stationary device that is designed to contain and use refrigerant. "Refrigeration equipment" includes refrigeration equipment used in retail food, cold storage, industrial process refrigeration and cooling that does not use a chiller, ice rinks, and other refrigeration applications.

(9) "Regulated refrigerant" means a class I or class II substance as listed in Title VI of section 602 of the federal clean air act amendments of November 15, 1990.

(10) "Residential consumer refrigeration products" has the same meaning as defined in section 430.2 of Subpart A of 10 C.F.R. Part 430 (2017).

(11) "Retrofit" has the same meaning as defined in section 152 of Subpart F of 40 C.F.R. Part 82, as that section existed as of January 3, 2017.

(12) "Substitute" means a chemical, product, or alternative manufacturing process, whether existing or new, that is used to perform a function previously performed by a class I substance or class II substance and any chemical, product, or alternative manufacturing process subsequently developed, adapted, or adopted to perform that function including, but not limited to, hydrofluorocarbons. "Substitute" does not include 2-BTP or any compound as applied to its use in aerospace fire extinguishing systems. [2021 c 315 § 2.]

70A.60.020 Refrigerant substitutes—Limitations—

Rule making. (1) Within 12 months of another state's enactment or adoption of restrictions on substitutes applicable to new light duty vehicles, the department may adopt restrictions applicable to the sale, lease, rental, or other introduction into commerce by a manufacturer of new light duty vehicles consistent with the restrictions identified in appendix B, Subpart G of 40 C.F.R. Part 82, as of January 3, 2017. The department may apply an effective date to the restrictions adopted under this subsection that differs from the effective date of the restrictions adopted by another state, but the department may not adopt restrictions that take effect prior to the effective date of restrictions adopted or enacted in at least one other state.

(2) The department may adopt rules that establish a maximum global warming potential of 750 for substitutes used in new stationary air conditioning. Rules adopted under this subsection may not take effect prior to:

(a) January 1, 2023, for dehumidifiers and room air conditioners;

(b)(i) January 1, 2025, for other types of stationary air conditioning equipment, but only if before January 1, 2023, the state building code council adopts the following safety standards into the state building code as these standards existed as of January 1, 2022:

(A) American society of heating, refrigerating, and air-conditioning engineers standard 15;

(B) American society of heating, refrigerating, and air-conditioning engineers standard 15.2;

(C) American society of heating, refrigerating, and air-conditioning engineers standard 34; and

(D) Underwriters laboratories standard UL 60335-2-40 edition 4;

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(ii) If the state building code council adopts the safety standards referenced in (b)(i) of this subsection after January 1, 2023, the restrictions of this subsection may apply to refrigeration equipment manufactured no earlier than 24 months after the adoption of the safety standards; and

(c) January 1, 2026, for systems with variable refrigerant flow or volume.

(3)(a) Consistent with the timeline established in (b) of this subsection, the department may adopt rules to prohibit the use of refrigerant substitutes that have a global warming potential of greater than 150 for use in refrigeration equipment containing more than 50 pounds of refrigerant;

(b)(i) The restrictions in (a) of this subsection must apply to new refrigeration equipment manufactured after December 31, 2024, but only if before January 1, 2023, the state building code council adopts the following safety standards into the state building code, as these standards existed as of January 1, 2022:

(A) American society of heating, refrigerating, and air-conditioning engineers standard 15;

(B) American society of heating, refrigerating, and air-conditioning engineers standard 34; and

(C) Underwriters laboratories standard UL 60335-2-89 edition 2;

(ii) If the state building code council adopts the safety standards referenced in (b)(i) of this subsection after January 1, 2023, the restrictions of (a) of this subsection may apply to refrigeration equipment manufactured no earlier than 24 months after the adoption of the safety standards.

(4) The department shall prohibit the use of refrigerant substitutes that have a global warming potential of greater than:

(a) One hundred fifty for use in new equipment manufactured after December 31, 2023, for installation in new ice rinks; and

(b) Seven hundred fifty for use in new equipment manufactured after December 31, 2023, for installation in existing ice rinks.

(5)(a) The department, in rules adopted to implement this section, may establish reporting, labeling, and record-keeping requirements applicable to regulated facilities and persons. To the extent practicable, rules adopted under this section must be harmonized with reporting, labeling, or recordkeeping requirements established under RCW 70A.60.030.

(b) To the extent practicable, the department must adopt rules to implement this section that are consistent with similar programs in other states that reduce emissions from refrigerants.

(c) The department may adopt rules to grant variances from the requirements of this section.

(d) Restrictions adopted by the department under this section are additional to specific restrictions on applications and end uses established in RCW 70A.60.060.

(6)(a) Prior to adopting final rules to implement restrictions under subsection (2) or (3) of this section, the department must review the availability and affordability of:

(i) Equipment that meets applicable global warming potential requirements;

(ii) Refrigerants that meet applicable global warming potential requirements; and

(iii) Appropriate training to utilize equipment that meets applicable global warming potential requirements.

(b) After the review required under (a) of this subsection, the department is encouraged to consider delaying the effective date of restrictions under this section in the event that the department determines that significant training or compliant equipment or refrigerant availability and affordability limitations are expected to occur. [2021 c 315 § 8.]

Effective date—2021 c 315 § 8: "Section 8 of this act takes effect January 1, 2022." [2021 c 315 § 22.]

70A.60.030 Refrigerant management program—Rules—Fees. (1) The department shall establish a refrigerant management program designed to reduce emissions of refrigerants, including regulated substances and their substitutes, from activities or equipment responsible for significant volumes of such emissions. The program must include, at minimum, larger stationary refrigeration systems and larger commercial air conditioning systems. The department must adopt rules to implement and enforce the requirements of this section. The department may require compliance with refrigerant management program requirements beginning no earlier than January 1, 2024, and no earlier than the adjournment of the regular legislative session following the submission of a report to the appropriate committees of the legislature by the department estimating leakage of refrigerants from existing systems in Washington, and estimating a statewide rate of leakage from the categories of systems that are subject to the refrigerant management program rules adopted by the department under this section.

(2)(a) The department shall exempt refrigeration and air conditioning equipment operations associated with de minimis emissions or with a de minimis charging capacity of less than 50 pounds in a single system from registration, reporting, and leak detection requirements established in this section. The department shall exempt from the requirements established in this section equipment that uses refrigerants with a global warming potential of less than 150 and that are not class I or class II substances.

(b) The department may scale the requirements adopted under this section based on the size of the equipment, the facility containing the equipment, or the business operations of a person responsible for such emissions. The department may establish delayed effective dates of requirements applicable to persons and systems associated with lower emissions of refrigerants than other persons and systems regulated under this section.

(3) Each year, the owner or operator of a stationary refrigeration system or air conditioning system that exceeds a de minimis charge capacity of 50 pounds must register with the department. The department must phase in system registration requirements under this subsection in order to prioritize systems with the largest charge capacity or greatest potential for refrigerant emissions. Registration with the department must, consistent with rules adopted by the department, include the submission of information about the refrigeration system, including equipment type, refrigerant charge capacity, and the type of refrigerant used.

(4) Prior to the sale of a registered refrigeration or air conditioning system, the owners or operators of the system

must provide leak rate documentation to the prospective purchaser.

(5) The owner or operator of a registered stationary refrigeration system or air conditioning system must conduct periodic leak-detection inspections of the system. The department may require inspections to be conducted with relatively greater frequency for systems with larger volumes of refrigerants. The department may exempt systems that use refrigerants with low global warming potential or that have automatic leak-detection systems from the requirements of this subsection.

(6) The owner or operator of a registered stationary refrigeration or air conditioning system must inspect for leaks each time significant amounts of refrigerant are added to the system.

(7) The department must adopt rules that:

(a) Require refrigeration or air conditioning systems found to be leaking to be repaired within a specified amount of time;

(b) Require the retrofit, replacement, or retirement of a refrigeration or air conditioning system with a leak that is not capable of being repaired;

(c) Establish annual reporting requirements for owners or operators of refrigeration systems or air conditioning systems that include information about the system, including system service and leak repair conducted on the system over the preceding year, and information on the purchase and use of refrigerants in the covered system during the preceding year;

(d) Establish annual reporting requirement for refrigerant wholesalers, distributors, and reclaimers;

(e) Establish record retention requirements for operators of facilities and wholesalers, distributors, and reclaimers of refrigerants and substitutes;

(f) Apply leak rates and other regulatory thresholds that achieve greater emission reductions than the federal regulations adopted by the United States environmental protection agency, and that reflect levels of achievable superior performance established for the greenchill voluntary program implemented by the United States environmental protection agency; and

(g) To the maximum extent practicable while giving consideration to the goals of this chapter, establish recordkeeping and reporting requirements that are consistent with programs implemented by the federal environmental protection agency or in other states, and that minimize compliance costs and regulatory burdens for regulated parties.

(8) The department may adopt rules to establish:

(a) Service practices for stationary appliances, including both stationary refrigeration systems and air conditioning systems. Service practices established by the department may include requiring technicians certified under United States environmental protection agency standards to service refrigerant systems, requiring reporting and recordkeeping that identifies the technicians that have serviced appliances, prohibiting practices likely to result in releases to the environment, requiring all practicable efforts to recover refrigerants from covered systems, and prohibiting the addition of refrigerants to systems known to have a leak; and

(b) A process for wholesalers, distributors, reclaimers, and refrigeration and air conditioning equipment operators to

apply to the department for an exemption from some or all of the requirements of this section. Exemptions may be granted by the department on the basis of economic hardship, natural disaster, or after considering a calculation of life-cycle greenhouse gas emissions associated with the granting of an exemption that will allow an identified leak to go unrepaired for a finite period of time.

(9) The department may determine, assess, and collect annual fees from the owners or operators of refrigeration and air conditioning systems regulated under this section in an amount sufficient to cover the direct and indirect costs of administering and enforcing the provisions of this section. All fees collected under this subsection must be deposited in the refrigerant emission management account created in RCW 70A.60.050.

(10) By December 1, 2029, and every five years thereafter, the department must consider the greenhouse gas emissions reductions achieved under the program created in this section and the criteria of RCW 70A.60.040(3), and make a determination whether to continue to implement the program for the following five years. The department must notify the appropriate committees of the house of representatives and the senate of its determination. [2021 c 315 § 9.]

70A.60.040 Department's authority. (1) The authority granted by this chapter to the department for restricting the use of substitutes is supplementary to the department's authority to control air pollution pursuant to chapter 70A.15 RCW. Nothing in this chapter limits the authority of the department under chapter 70A.15 RCW.

(2) The department, in enforcing the requirements of this chapter, must adhere to the provisions applicable to the department under chapter 43.05 RCW regarding site inspections, technical assistance visits, notices of correction, and the issuance of civil penalties, to the extent that these provisions are not in conflict with federal requirements described in RCW 43.05.901.

(3) The department may elect to refrain from or cease administering or enforcing a requirement of this chapter if the United States environmental protection agency adopts requirements that:

(a) Are substantially duplicative of the requirements of this chapter and that negate the additional emission reduction benefits of state implementation of any requirement of this chapter; or

(b) Preempt state authority under this chapter. [2021 c 315 § 11.]

70A.60.050 Refrigerant emission management account. The refrigerant emission management account is created in the state treasury. All receipts received by the state from the fees imposed under RCW 70A.60.030 must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only to develop and implement the provisions of RCW 70A.60.030. [2021 c 315 § 12.]

70A.60.060 Prohibited products and equipment—Department's rule-making authority—Disclosure of substitutes used in products or equipment. (1) A person may not offer any product or equipment for sale, lease, or rent, or

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install or otherwise cause any equipment or product to enter into commerce in Washington if that equipment or product consists of, uses, or will use a substitute, as set forth in appendix U and V, Subpart G of 40 C.F.R. Part 82, as those read on January 3, 2017, for the applications or end uses restricted by appendix U or V of the federal regulation, as those read on January 3, 2017, consistent with the deadlines established in subsection (2) of this section. Except where existing equipment is retrofit, nothing in this subsection requires a person that acquired a restricted product or equipment prior to the effective date of the restrictions in subsection (2) of this section to cease use of that product or equipment. Products or equipment manufactured prior to the applicable effective date of the restrictions specified in subsection (2) of this section may be sold, imported, exported, distributed, installed, and used after the specified effective date.

(2) The restrictions under subsection (1) of this section for the following products and equipment identified in appendix U and V, Subpart G of 40 C.F.R. Part 82, as those read on January 3, 2017, take effect beginning:

(a) January 1, 2020, for:

(i) Propellants;

(ii) Rigid polyurethane applications and spray foam, flexible polyurethane, integral skin polyurethane, flexible polyurethane foam, polystyrene extruded sheet, polyolefin, phenolic insulation board, and bunstock;

(iii) Supermarket systems, remote condensing units, and stand-alone units;

(b) January 1, 2021, for:

(i) Refrigerated food processing and dispensing equipment;

(ii) Compact residential consumer refrigeration products;

(iii) Polystyrene extruded boardstock and billet, and rigid polyurethane low-pressure two component spray foam;

(c) January 1, 2022, for:

(i) Residential consumer refrigeration products other than compact and built-in residential consumer refrigeration products; and

(ii) Vending machines;

(d) January 1, 2023, for cold storage warehouses;

(e) January 1, 2023, for built-in residential consumer refrigeration products;

(f) January 1, 2024, for centrifugal chillers and positive displacement chillers; and

(g) On either January 1, 2020, or the effective date of the restrictions identified in appendix U and V, Subpart G of 40 C.F.R. Part 82, as those read on January 3, 2017, whichever comes later, for all other applications and end uses for substitutes not covered by the categories listed in (a) through (f) of this subsection.

(3) The department may by rule:

(a) Modify the effective date of a prohibition established in subsection (2) of this section if the department determines that the rule reduces the overall risk to human health or the environment and reflects the earliest date that a substitute is currently or potentially available;

(b) Prohibit the use of a substitute if the department determines that the prohibition reduces the overall risk to human health or the environment and that a lower risk substitute is currently or potentially available;

(c)(i) Adopt a list of approved substitutes, use conditions, or use limits, if any; and

(ii) Add or remove substitutes, use conditions, or use limits to or from the list of approved substitutes if the department determines those substitutes reduce the overall risk to human health and the environment; and

(d) Designate acceptable uses of hydrofluorocarbons for medical uses that are exempt from the requirements of subsection (2) of this section.

(4) The department shall adopt rules requiring that manufacturers disclose the substitutes used in their products or equipment or to disclose the compliance status of their products or equipment. That disclosure must take the form of:

(a) A label on the equipment or product. The label must meet requirements designated by the department by rule. To the extent feasible, the department must recognize existing labeling that provides sufficient disclosure of the use of substitutes in the product or equipment or of the compliance status of the products or equipment.

(i) The department must consider labels required by state building codes and other safety standards in its rule making; and

(ii) The department may not require labeling of aircraft and aircraft components subject to certification requirements of the federal aviation administration.

(b) Submitting information about the use of substitutes to the department, upon request.

(i) By December 31, 2019, all manufacturers must notify the department of the status of each product class utilizing hydrofluorocarbons or other substitutes restricted under subsection (1) of this section that the manufacturer sells, offers for sale, leases, installs, or rents in Washington state. This status notification must identify the substitutes used by products or equipment in each product or equipment class in a manner determined by rule by the department.

(ii) Within one hundred twenty days after the date of a restriction put in place under this section, any manufacturer affected by the restriction must provide an updated status notification. This notification must indicate whether the manufacturer has ceased the use of hydrofluorocarbons or substitutes restricted under this section within each product class and, if not, what hydrofluorocarbons or other restricted substitutes remain in use.

(iii) After the effective date of a restriction put in place under this section, any manufacturer must provide an updated status notification when the manufacturer introduces a new or modified product or piece of equipment that uses hydrofluorocarbons or changes the type of hydrofluorocarbons utilized within a product class affected by a restriction. Such a notification must occur within one hundred twenty days of the introduction into commerce in Washington of the product or equipment triggering this notification requirement.

(c) Alternative disclosure requirements to (a) of this subsection, if the department determines that the inclusion of a label denoting substitutes used or compliance status is not feasible for a particular product or equipment.

(5) The department may adopt rules to administer, implement, and enforce this section. If the department elects to adopt rules, the department must seek, where feasible and appropriate, to adopt rules, including rules under subsection (4) of this section, that are the same or consistent with the

regulatory standards, exemptions, reporting obligations, disclosure requirements, and other compliance requirements of other states or the federal government that have adopted restrictions on the use of hydrofluorocarbons and other substitutes. Prior to the adoption or update of a rule under this section, the department must identify the sources of information it relied upon, including peer-reviewed science.

(6) For the purposes of implementing the restrictions specified in appendix U of Subpart G of 40 C.F.R. Part 82, as it read on January 3, 2017, consistent with this section, the department must interpret the term "aircraft maintenance" to mean activities to support the production, fabrication, manufacture, rework, inspection, maintenance, overhaul, or repair of commercial, civil, or military aircraft, aircraft parts, aerospace vehicles, or aerospace components.

(7) Except where existing equipment is retrofit, the restrictions of this section do not apply to or limit any use of commercial refrigeration equipment that was installed or in use prior to the effective date of the restrictions established in this section. [2021 c 315 § 7; 2020 c 20 § 1404; 2019 c 284 § 3. Formerly RCW 70A.45.080, 70.235.080.]

Finding—Intent—2019 c 284: "(1) The legislature finds that hydrofluorocarbons are air pollutants that pose significant threats to our environment and that safer alternatives for the most damaging hydrofluorocarbons are readily available and cost-effective.

(2) Hydrofluorocarbons came into widespread commercial use as United States environmental protection agency-approved replacements for ozone-depleting substances that were being phased out under an international agreement. However, under a 2017 federal appeals court ruling, while the environmental protection agency had been given the power to originally designate hydrofluorocarbons as suitable replacements for the ozone-depleting substances, the environmental protection agency did not have clear authority to require the replacement of hydrofluorocarbons once the replacement of the original ozone-depleting substances had already occurred.

(3) Because the impacts of climate change will not wait until congress acts to clarify the scope of the environmental protection agency's authority, it falls to the states to provide leadership on addressing hydrofluorocarbons. Doing so will not only help the climate, but will help American businesses retain their positions as global leaders in air conditioning and refrigerant technologies. Although hydrofluorocarbons currently represent a small proportion of the state's greenhouse gas emissions, emissions of hydrofluorocarbons have been rapidly increasing in the United States and worldwide, and they are thousands of times more potent than carbon dioxide. However, hydrofluorocarbons are also a segment of the state's emissions that will be comparatively easy to reduce and eliminate without widespread implications for the way that power is produced, heavy industries operate, or people transport themselves. Substituting or reducing the use of hydrofluorocarbons with the highest global warming potential will provide a significant boost to the state's efforts to reduce its greenhouse gas emissions to the limits established in RCW 70.235.020.

(4) Therefore, it is the intent of the legislature to transition to the use of less damaging hydrofluorocarbons or suitable substitutes in various applications in Washington, in a manner similar to the regulations that were adopted by the environmental protection agency, and that have been subsequently adopted or will be adopted in several other states around the country." [2019 c 284 § 1.]

70A.60.070 Recovery of regulated refrigerants. (1) A person who services or repairs or disposes of a motor vehicle air conditioning system; commercial or industrial air conditioning, heating, or refrigeration system; or consumer appliance shall use refrigerant extraction equipment to recover regulated refrigerants and substitutes that would otherwise be released into the atmosphere.

(2) Upon request, the department shall provide information and assistance to persons interested in collecting, transporting, or recycling regulated refrigerants and substitutes.

(3) The willful release of regulated refrigerants and substitutes from a source listed in subsection (1) of this section is prohibited. [2021 c 315 § 4; 1991 c 199 § 602. Formerly RCW 70A.15.6410, 70.94.970.]

Finding—1991 c 199: "The legislature finds that:

(1) The release of chlorofluorocarbons and other ozone-depleting chemicals into the atmosphere contributes to the destruction of stratospheric ozone and threatens plant and animal life with harmful overexposure to ultraviolet radiation;

(2) The technology and equipment to extract and recover chlorofluorocarbons and other ozone-depleting chemicals from air conditioners, refrigerators, and other appliances are available;

(3) A number of nonessential consumer products contain ozone-depleting chemicals; and

(4) Unnecessary releases of chlorofluorocarbons and other ozone-depleting chemicals from these sources should be eliminated." [1991 c 199 § 601.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.60.080 Regulated refrigerants—Substitutes—Nonessential consumer products containing hydrofluorocarbons—Limitation on sale or purchase. No person may sell, offer for sale, or purchase any of the following:

(1) A substitute with a global warming potential of greater than 150 or a regulated refrigerant in a container designed for consumer recharge of a motor vehicle air conditioning system or consumer appliance during repair or service;

(2) Nonessential consumer products that contain hydrofluorocarbons with a global warming potential of greater than 150 and chlorofluorocarbons or other ozone-depleting chemicals, and for which suitable alternatives are readily available. Products affected under this subsection shall include, but are not limited to, party streamers, tire inflators, air horns, noise makers, and cleaning sprays designed for noncommercial or nonindustrial cleaning of electronic or photographic equipment. Products and equipment subject to restrictions on applications or end uses under RCW 70A.60.060 are not nonessential products for which hydrofluorocarbons are restricted under this section. [2021 c 315 § 5; 1991 c 199 § 603. Formerly RCW 70A.15.6420, 70.94.980.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

70A.60.090 Refrigerants—Rules. The department shall adopt rules to implement RCW 70A.60.070 and 70A.60.080. Rules shall include but not be limited to minimum performance specifications for refrigerant extraction equipment, procedures under which owners or operators of stationary refrigeration equipment and air conditioning equipment subject to the requirements of RCW 70A.60.030 must provide the department with information related to their use of regulated refrigerants and substitutes, as well as procedures for enforcing RCW 70A.60.070, 70A.60.080, and 70A.60.020. [2021 c 315 § 6; 2020 c 20 § 1160; 1991 c 199 § 604. Formerly RCW 70A.15.6430, 70.94.990.]

Finding—1991 c 199: See note following RCW 70A.15.1005.

Chapter 70A.65 RCW

GREENHOUSE GAS EMISSIONS—CAP AND INVEST PROGRAM

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70A.65.901	Suspension of certain sections and rules.

70A.65.005 Findings—Intent. (1) The legislature finds that climate change is one of the greatest challenges facing our state and the world today, an existential crisis with major negative impacts on environmental and human health. Washington is experiencing environmental and community impacts due to climate change through increasingly devastating wildfires, flooding, droughts, rising temperatures and sea levels, and ocean acidification. Greenhouse gas emissions already in the atmosphere will increase impacts for some period of time. Actions to increase resilience of our communities, natural resource lands, and ecosystems can prevent and reduce impacts to communities and our environment and improve their ability to recover.

(2) In 2020, the legislature updated the state's greenhouse gas emissions limits that are to be achieved by 2030, 2040, and 2050, based on current science and emissions trends, to support local and global efforts to avoid the most significant impacts from climate change. Meeting these limits will require coordinated, comprehensive, and multisectoral implementation of policies, programs, and laws, as other enacted policies are insufficient to meet the limits.

(3) The legislature further finds that while climate change is a global problem, there are communities that have historically borne the disproportionate impacts of environmental burdens and that now bear the disproportionate negative impacts of climate change. Although the state has done significant work in the past to highlight these environmental health disparities, beginning with senator Rosa Franklin's environmental equity study, and continuing through the work of the governor's interagency council on health disparities, the creation of the Washington environmental health disparities map, and recommendations of the environmental justice task force, the state can do much more to ensure that state programs address environmental equity.

(4) The legislature further finds that while enacted carbon policies can be well-intended to reduce greenhouse gas emissions and provide environmental benefits to communities, the policies may not do enough to ensure environmental health disparities are reduced and environmental benefits are provided to those communities most impacted by environmental harms from greenhouse gas and air pollutant emissions.

(5) The legislature further finds that wildfires have become one of the largest sources of black carbon in the last five years. From 2014 through 2018, wildfires in Washington state generated 39,200,000 metric tons of carbon, the equivalent of more than 8,500,000 cars on the road a year. In 2015, when 1,130,000 acres burned in Washington, wildfires were the second largest source of greenhouse gas emissions releasing 17,975,112 metric tons of carbon dioxide into the atmosphere. Wildfire pollution affects all Washingtonians, but has disproportionate health effects on low-income communities, communities of color, and the most vulnerable of our population. Restoring the health of our forests and investing in wildfire prevention and preparedness will therefore contribute to improved air quality and improved public health outcomes.

(6) The legislature further finds that by exercising a leadership role in addressing climate change, Washington will position its economy, technology centers, financial institutions, and manufacturers to benefit from national and international efforts that must occur to reduce greenhouse gases. The legislature intends to create climate policy that recognizes the special nature of emissions-intensive, trade-exposed industries by minimizing leakage and increased life-cycle emissions associated with product imports. The legislature further finds that climate policies must be appropriately designed, in order to avoid leakage that results in net increases in global greenhouse gas emissions and increased negative impacts to those communities most impacted by environmental harms from climate change. The legislature further intends to encourage these industries to continue to innovate, find new ways to be more energy efficient, use lower carbon products, and be positioned to be global leaders in a low carbon economy.

(7) Under the program, the legislature intends to identify overburdened communities where the highest concentrations of criteria pollutants occur, determine the sources of those emissions and pollutants, and pursue significant reductions of emissions and pollutants in those communities. The legislature further intends for the department of ecology to conduct environmental justice assessments to ensure that funds and programs created under this chapter provide direct and meaningful benefits to vulnerable populations and overburdened communities. Additionally, the legislature intends to prevent job loss and provide protective measures if workers are adversely impacted by the transition to a clean energy economy through transition and assistance programs, worker-support projects, and workforce development and other activities designed to grow and expand the clean manufacturing sector in communities across Washington state. The legislature further intends to empower the environmental justice council established under RCW 70A.02.110 to provide recommendations for the development and implementation of the program, the distribution of funds, and the establishment of programs, activities, and projects to achieve environmental jus-

tice and environmental health goals. The legislature further intends for the department of ecology to create and adopt community engagement plans and tribal consultation frameworks in the administration of the program to ensure equitable practices for meaningful community and federally recognized tribal involvement. Finally, the legislature intends to establish this program to contribute to a healthy environment for all of Washington's communities. [2021 c 316 § 1.]

70A.65.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(27) "Electricity importer" means:

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

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

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

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

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

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

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

(h) For electricity from facilities allocated to a consumer-owned utility inside the state of Washington from a multijurisdictional consumer-owned utility, the electricity

importer is the consumer-owned utility inside the state of Washington.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) "Imported electricity" does not include electricity imports of unspecified electricity that are netted by exports of unspecified electricity to any jurisdiction not covered by a linked program by the same entity within the same hour.

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

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

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

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

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

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

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

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

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

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

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

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

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

(54) "Overburdened community" means a geographic area where vulnerable populations face combined, multiple

environmental harms and health impacts or risks due to exposure to environmental pollutants or contaminants through multiple pathways, which may result in significant disparate adverse health outcomes or effects.

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

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

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

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

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

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

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

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

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

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

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

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

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

(63) "Specified source of electricity" or "specified source" means a facility, unit, or asset controlling supplier that is permitted to be claimed as the source of electricity

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delivered. The reporting entity must have either full or partial ownership in the facility or a written power contract to procure electricity generated by that facility or unit or from an asset controlling supplier at the time of entry into the transaction to procure electricity.

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

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

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

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

(68) "Vulnerable populations" has the same meaning as defined in RCW 70A.02.010. [2022 c 181 § 10; 2021 c 316 § 2.]

70A.65.020 Environmental justice review. (1) To ensure that the program created in RCW 70A.65.060 through 70A.65.210 achieves reductions in criteria pollutants as well as greenhouse gas emissions in overburdened communities highly impacted by air pollution, the department must:

(a) Identify overburdened communities, which may be accomplished through the department's process to identify overburdened communities under chapter 70A.02 RCW;

(b) Deploy an air monitoring network in overburdened communities to collect sufficient air quality data for the 2023 review and subsequent reviews of criteria pollutant reductions conducted under subsection (2) of this section; and

(c)(i) Within the identified overburdened communities, analyze and determine which sources are the greatest contributors of criteria pollutants and develop a high priority list of significant emitters.

(ii) Prior to listing any entity as a high priority emitter, the department must notify that entity and share the data used to rank that entity as a high priority emitter, and provide a period of not less than 60 days for the covered entity to submit more recent data or other information relevant to the designation of that entity as a high priority emitter.

(2)(a) Beginning in 2023, and every two years thereafter, the department must conduct a review to determine levels of criteria pollutants, as well as greenhouse gas emissions, in the overburdened communities identified under subsection (1) of this section. This review must also include an evaluation of initial and subsequent health impacts related to criteria pollution in overburdened communities. The department may conduct this evaluation jointly with the department of health.

(b) Once this review determines the levels of criteria pollutants in an identified overburdened community, then the department, in consultation with local air pollution control authorities, must:

(i) Establish air quality targets to achieve air quality consistent with whichever is more protective for human health:

(A) National ambient air quality standards established by the United States environmental protection agency; or

(B) The air quality experienced in neighboring communities that are not identified as overburdened;

(ii) Identify the stationary and mobile sources that are the greatest contributors of those emissions that are either increasing or not decreasing;

(iii) Achieve the reduction targets through adoption of emission control strategies or other methods;

(iv) Adopt, along with local air pollution control authorities, stricter air quality standards, emission standards, or emissions limitations on criteria pollutants, consistent with the authority of the department provided under RCW 70A.15.3000, and may consider alternative mitigation actions that would reduce criteria pollution by similar amounts; and

(v) After adoption of the stricter air quality standards, emission standards, or emissions limitations on criteria pollutants under (b)(iv) of this subsection, issue an enforceable order or the local air authority must issue an enforceable order, as authorized under RCW 70A.15.1100, as necessary to comply with the stricter standards or limitations and the requirements of this section. The department or local air authority must initiate the process, including provision of notice to all relevant affected permittees or registered sources and to the public, to adopt and implement an enforceable order required under this subsection within six months of the adoption of standards or limitations under (b)(iv) of this subsection.

(c) Actions imposed under this section may not impose requirements on a permitted stationary source that are disproportionate to the permitted stationary source's contribution to air pollution compared to other permitted stationary sources and other sources of criteria pollutants in the overburdened community.

(3) An eligible facility sited after July 25, 2021, that receives allowances under RCW 70A.65.110 must mitigate increases in particulate matter in overburdened communities due to its emissions.

(4)(a) The department must create and adopt a supplement to the department's community engagement plan developed pursuant to chapter 70A.02 RCW. The supplement must describe how the department will engage with overburdened communities and vulnerable populations in:

(i) Identifying emitters in overburdened communities; and

(ii) Monitoring and evaluating criteria pollutant emissions in those areas.

(b) The community engagement plan must include methods for outreach and communication with those who face barriers, language or otherwise, to participation. [2022 c 181 § 5; 2021 c 316 § 3.]

70A.65.030 Environmental justice assessment. (1) Each year or biennium, as appropriate, when allocating funds from the carbon emissions reduction account created in RCW 70A.65.240, the climate commitment account created in RCW 70A.65.260, the natural climate solutions account created in RCW 70A.65.270, the climate investment account created in RCW 70A.65.250, the air quality and health disparities improvement account created in RCW 70A.65.280,

the climate transit programs account created in RCW 46.68.500, or the climate active transportation account created in RCW 46.68.490, or administering grants or programs funded by the accounts, agencies shall conduct an environmental justice assessment consistent with the requirements of RCW 70A.02.060 and establish a minimum of not less than 35 percent and a goal of 40 percent of total investments that provide direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities through: (a) The direct reduction of environmental burdens in overburdened communities; (b) the reduction of disproportionate, cumulative risk from environmental burdens, including those associated with climate change; (c) the support of community led project development, planning, and participation costs; or (d) meeting a community need identified by the community that is consistent with the intent of this chapter or RCW 70A.02.010.

(2) The allocation of funding under subsection (1) of this section must adhere to the following principles, additional to the requirements of RCW 70A.02.080: (a) Benefits and programs should be directed to areas and targeted to vulnerable populations and overburdened communities to reduce statewide disparities; (b) investments and benefits should be made roughly proportional to the health disparities that a specific community experiences, with a goal of eliminating the disparities; (c) investments and programs should focus on creating environmental benefits, including eliminating health burdens, creating community and population resilience, and raising the quality of life of those in the community; and (d) efforts should be made to balance investments and benefits across the state and within counties, local jurisdictions, and unincorporated areas as appropriate to reduce disparities by location and to ensure efforts contribute to a reduction in disparities that exist based on race or ethnicity, socioeconomic status, or other factors.

(3) State agencies allocating funds or administering grants or programs from the carbon emissions reduction account created in RCW 70A.65.240, the climate commitment account created in RCW 70A.65.260, the natural climate solutions account created in RCW 70A.65.270, the climate investment account created in RCW 70A.65.250, the air quality and health disparities improvement account created in RCW 70A.65.280, the climate transit programs account created in RCW 46.68.500, or the climate active transportation account created in RCW 46.68.490, must:

(a) Report annually to the environmental justice council created in RCW 70A.02.110 regarding progress toward meeting environmental justice and environmental health goals;

(b) Consider recommendations by the environmental justice council; and

(c)(i) If the agency is not a covered agency subject to the requirements of chapter 70A.02 RCW, create and adopt a community engagement plan to describe how it will engage with overburdened communities and vulnerable populations in allocating funds or administering grants or programs from the climate investment account.

(ii) The plan must include methods for outreach and communication with those who face barriers, language or otherwise, to participation. [2022 c 182 § 104; 2022 c 181 § 13; 2021 c 316 § 4.]

Reviser's note: This section was amended by 2022 c 181 § 13 and by 2022 c 182 § 104, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2022 c 182: See notes following RCW 70A.65.240.

70A.65.040 Environmental justice council—Duties.

(1) The environmental justice council created in RCW 70A.02.110 must provide recommendations to the legislature, agencies, and the governor in the development and implementation of the program established in RCW 70A.65.060 through 70A.65.210, and the programs funded from the carbon emissions reduction account created in RCW 70A.65.240, the climate commitment account created in RCW 70A.65.260, the natural climate solutions account created in RCW 70A.65.270, the climate investment account created in RCW 70A.65.250, the climate transit programs account created in RCW 46.68.500, and the climate active transportation account created in RCW 46.68.490.

(2) In addition to the duties and authorities granted in chapter 70A.02 RCW to the environmental justice council, the environmental justice council must:

(a) Provide recommendations to the legislature, agencies, and the governor in the development of:

(i) The program established in RCW 70A.65.060 through 70A.65.210 including, but not limited to, linkage with other jurisdictions, protocols for establishing offset projects and securing offset credits, designation of emissions-intensive and trade-exposed industries under RCW 70A.65.110, and administration of allowances under the program; and

(ii) Investment plans and funding proposals for the programs funded from the climate investment account created in RCW 70A.65.250 for the purpose of providing environmental benefits and reducing environmental health disparities within overburdened communities;

(b) Provide a forum to analyze policies adopted under this chapter to determine if the policies lead to improvements within overburdened communities;

(c) Recommend procedures and criteria for evaluating programs, activities, or projects;

(d) Recommend copollutant emissions reduction goals in overburdened communities;

(e) Evaluate the level of funding provided to assist vulnerable populations, low-income individuals, and impacted workers and the funding of projects and activities located within or benefiting overburdened communities;

(f) Recommend environmental justice and environmental health goals for programs, activities, and projects funded from the climate investment account, and review agency annual reports on outcomes and progress toward meeting these goals;

(g) Provide recommendations to implementing agencies for meaningful consultation with vulnerable populations, including community engagement plans under RCW 70A.65.020 and 70A.65.030; and

(h) Recommend how to support public participation through capacity grants for participation.

(3) For the purpose of performing the duties under subsection (2) of this section, two additional tribal members are (2022 Ed.)

added to the council. [2022 c 182 § 105; 2022 c 181 § 14; 2021 c 316 § 5.]

Reviser's note: This section was amended by 2022 c 181 § 14 and by 2022 c 182 § 105, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2022 c 182: See notes following RCW 70A.65.240.

70A.65.050 Governance structure. (1) The governor shall establish a governance structure to implement the state's climate commitment under the authority provided under this chapter and other statutory authority to provide accountability for achieving the state's greenhouse gas limits in RCW 70A.45.020, to establish a coordinated and strategic state-wide approach to climate resilience, to build an equitable and inclusive clean energy economy, and to ensure that the government provides clear policy and requirements, financial tools, and other mechanisms to support achieving those limits.

(2) The governance structure for implementing the state's climate commitment must:

(a) Be holistic and address the needs, challenges, and opportunities to meet the climate commitment;

(b) Address emission reductions from all relevant sectors and sources by ensuring that emitters are responsible for meeting targeted greenhouse gas reductions and that the government provides clear policy and requirements, financial tools, and other mechanisms to support achieving those reductions;

(c) Support an equitable transition for vulnerable populations and overburdened communities, including through early and meaningful engagement of overburdened communities and workers to ensure the program achieves equitable and just outcomes;

(d) Build increasing climate resilience for at-risk communities and ecosystems through cross-sectoral coordination, strategic planning, and cohesive policies; and

(e) Apply the most current, accurate, and complete scientific and technical information available to guide the state's climate actions and strategies.

(3) The governance structure for implementing the state's climate commitment must include, but not be limited to, the following elements:

(a) A strategic plan for aligning existing law, rules, policies, programs, and plans with the state's greenhouse gas limits, to the full extent allowed under existing authority;

(b) Common state policies, standards, and procedures for addressing greenhouse gas emissions and climate resilience, including grant and funding programs, infrastructure investments, and planning and siting decisions;

(c) A process for prioritizing and coordinating funding consistent with strategic needs for greenhouse gas reductions, equity and environmental justice, and climate resilience actions;

(d) An updated statewide strategy for addressing climate risks and improving resilience of communities and ecosystems;

(e) A comprehensive community engagement plan that addresses and mitigates barriers to engagement from vulner-

able populations, overburdened communities, and other historically or currently marginalized groups; and

(f) An analysis of gaps and conflicts in state law and programs, with recommendations for improvements to state law.

(4) The governor's office shall develop policy and budget recommendations to the legislature necessary to implement the state's climate commitment by December 31, 2021, in accordance with the purpose, principles, and elements in subsections (1) through (3) of this section.

(5) Nothing in this section establishes or creates legal authority for the department or any other state agency to enact, adopt, issue an order, or in any way implement additional regulatory programs beyond what is provided for under this chapter and other statutes. [2021 c 316 § 7.]

70A.65.060 Cap on greenhouse gas emissions. (1) In order to ensure that greenhouse gas emissions are reduced by covered entities consistent with the limits established in RCW 70A.45.020, the department must implement a cap on greenhouse gas emissions from covered entities and a program to track, verify, and enforce compliance through the use of compliance instruments.

(2) The program must consist of:

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

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

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

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

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

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

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

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

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

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

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

(3) The department shall consider opportunities to implement the program in a manner that allows linking the state's program with those of other jurisdictions. The department must evaluate whether such linkage will provide for a more cost-effective means for covered entities to meet their compliance obligations in Washington while recognizing the special characteristics of the state's economy, communities, and industries. The department is authorized to enter into a

linkage agreement with another jurisdiction after conducting an environmental justice assessment and after formal notice and opportunity for a public hearing, and when consistent with the requirements of RCW 70A.65.210.

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

(5) By December 1, 2027, and at least every four years thereafter and in compliance with RCW 43.01.036, the department must submit a report to the legislature that includes a comprehensive review of the implementation of the program to date, including but not limited to outcomes relative to the state's emissions reduction limits, overburdened communities, covered entities, and emissions-intensive, trade-exposed businesses. The department must transmit the report to the environmental justice council at the same time it is submitted to the legislature.

(6) The department must bring forth agency request legislation if the department finds that any provision of this chapter prevents linking Washington's cap and invest program with that of any other jurisdiction. [2021 c 316 § 8.]

70A.65.070 Annual allowance budget and timelines.

(1)(a) The department shall commence the program by January 1, 2023, by determining an emissions baseline establishing the proportionate share that the total greenhouse gas emissions of covered entities for the first compliance period bears to the total anthropogenic greenhouse gas emissions in the state during 2015 through 2019, based on data reported to the department under RCW 70A.15.2200 or provided as required by this chapter, as well as other relevant data. By October 1, 2022, the department shall adopt annual allowance budgets for the first compliance period of the program, calendar years 2023 through 2026, to be distributed from January 1, 2023, through December 31, 2026.

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

(c) By October 1, 2028, the department shall adopt by rule the annual allowance budgets for calendar years 2031 through 2040.

(2) The annual allowance budgets must be set to achieve the share of reductions by covered entities necessary to achieve the 2030, 2040, and 2050 statewide emissions limits established in RCW 70A.45.020, based on data reported to the department under chapter 70A.15 RCW or provided as required by this chapter. Annual allowance budgets must be

set such that the use of offsets as compliance instruments, consistent with RCW 70A.65.170, does not prevent the achievement of the emissions limits established in RCW 70A.45.020. In so setting annual allowance budgets, the department must reduce the annual allowance budget relative to the limits in an amount equivalent to offset use, or in accordance with a similar methodology adopted by the department. The department must adopt annual allowance budgets for the program on a calendar year basis that provide for progressively equivalent reductions year over year. An allowance distributed under the program, either directly by the department under RCW 70A.65.110 through 70A.65.130 or through auctions under RCW 70A.65.100, does not expire and may be held or banked consistent with RCW 70A.65.100(6) and 70A.65.150(1).

(3) The department must complete evaluations by December 31, 2027, and by December 31, 2035, of the performance of the program, including its performance in reducing greenhouse gases. If the evaluation shows that adjustments to the annual allowance budgets are necessary for covered entities to achieve their proportionate share of the 2030 and 2040 emission reduction limits identified in RCW 70A.45.020, as applicable, the department shall adjust the annual allowance budgets accordingly. The department must complete additional evaluations of the performance of the program by December 31, 2040, and by December 31, 2045, and make any necessary adjustments in the annual allowance budgets to ensure that covered entities achieve their proportionate share of the 2050 emission reduction limit identified in RCW 70A.45.020. Nothing in this subsection precludes the department from making additional adjustments to annual allowance budgets as necessary to ensure successful achievement of the proportionate emission reduction limits by covered entities. The department shall determine and make public the circumstances, metrics, and processes that would initiate the public consideration of additional allowance budget adjustments to ensure successful achievement of the proportionate emission reduction limits.

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

(5) The legislature intends to promote a growing and sustainable economy and to avoid leakage of emissions from manufacturing to other jurisdictions. Therefore, the legislature finds that implementation of this section is contingent upon the enactment of RCW 70A.65.110. [2022 c 181 § 1; 2021 c 316 § 9.]

70A.65.080 Program coverage. (1) A person is a covered entity as of the beginning of the first compliance period and all subsequent compliance periods if the person reported emissions under RCW 70A.15.2200 for any calendar year from 2015 through 2019, or if additional data provided as

required by this chapter indicates that emissions for any calendar year from 2015 through 2019 equaled or exceeded any of the following thresholds, or if the person is a first jurisdictional deliverer and imports electricity into the state during the compliance period:

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

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

(c) Where the person is a first jurisdictional deliverer importing electricity into the state and the cumulative annual total of emissions associated with the imported electricity, whether from specified or unspecified sources, exceeds 25,000 metric tons of carbon dioxide equivalent. In consultation with any linked jurisdiction to the program created by this chapter, by October 1, 2026, the department, in consultation with the department of commerce and the utilities and transportation commission, shall adopt by rule a methodology for addressing imported electricity associated with a centralized electricity market;

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

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

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

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

(2) A person is a covered entity as of the beginning of the second compliance period and all subsequent compliance periods if the person reported emissions under RCW 70A.15.2200 or provided emissions data as required by this chapter for any calendar year from 2023 through 2025, where

the person owns or operates a waste to energy facility utilized by a county and city solid waste management program and the facility's emissions equal or exceed 25,000 metric tons of carbon dioxide equivalent.

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

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

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

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

this chapter, were equal to or exceeded the emissions threshold.

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

- (a) Emissions from the combustion of aviation fuels;
- (b) Emissions from watercraft fuels supplied in Washington that are combusted outside of Washington;
- (c) Emissions from a coal-fired electric generation facility exempted from additional greenhouse gas limitations, requirements, or performance standards under RCW 80.80.110;
- (d) Carbon dioxide emissions from the combustion of biomass or biofuels;
- (e)(i) Motor vehicle fuel or special fuel that is used exclusively for agricultural purposes by a farm fuel user. This exemption is available only if a buyer of motor vehicle fuel or special fuel provides the seller with an exemption certificate in a form and manner prescribed by the department. For the purposes of this subsection, "agricultural purposes" and "farm fuel user" have the same meanings as provided in RCW 82.08.865.

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

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

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

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

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

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

(c) In conducting a life-cycle analysis, if required, for new or expanded facilities that require review under chapter 43.21C RCW, a lead agency must evaluate and attribute any potential net cumulative greenhouse gas emissions resulting

from the project as compared to other existing facilities or best available technology including best-in-class facilities and emerging lower carbon processes that supply the same product or end use. The department may adopt rules to determine the appropriate threshold for applying this analysis.

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

(e) A lead agency under chapter 43.21C RCW or a permitting agency shall allow a new or expanded facility that is a covered entity or opt-in entity to satisfy a mitigation requirement for its covered emissions under chapter 316, Laws of 2021 and under any greenhouse gas emission mitigation requirements for covered emissions under chapter 43.21C RCW by submitting to the department the number of compliance instruments equivalent to its covered emissions during a compliance period. [2022 c 179 § 14; 2021 c 316 § 10.]

70A.65.090 Requirements. (1) All covered entities must register to participate in the program, following procedures adopted by the department by rule.

(2) Entities registering to participate in the program must describe any direct or indirect affiliation with other registered entities.

(3) A person responsible for greenhouse gas emissions that is not a covered entity may voluntarily participate in the program by registering as an opt-in entity. An opt-in entity must satisfy the same registration requirements as covered entities. Once registered, an opt-in entity is allowed to participate as a covered entity in auctions and must assume the same compliance obligation to transfer compliance instruments equal to their emissions at the appointed transfer dates. An opt-in entity may opt out of the program at the end of any compliance period by providing written notice to the department at least six months prior to the end of the compliance period. The opt-in entity continues to have a compliance obligation through the current compliance period. An opt-in entity is not eligible to receive allowances directly distributed under RCW 70A.65.110, 70A.65.120, or 70A.65.130.

(4) A person that is not covered by the program and is not a covered entity or opt-in entity may voluntarily participate in the program as a general market participant. General market participants must meet all applicable registration requirements specified by rule.

(5) Federally recognized tribes and federal agencies may elect to participate in the program as opt-in entities or general market participants.

(6) The department shall use a secure, online electronic tracking system to: Register entities in the state program; issue compliance instruments; track ownership of compliance instruments; enable and record compliance instrument transfers; facilitate program compliance; and support market oversight.

(7) The department must use an electronic tracking system that allows two accounts to each covered or opt-in entity:

(a) A compliance account where the compliance instruments are transferred to the department for retirement. Compliance instruments in compliance accounts may not be sold, traded, or otherwise provided to another account or person.

(b) A holding account that is used when a registered entity is interested in trading allowances. Allowances in holding accounts may be bought, sold, transferred to another registered entity, or traded. The amount of allowances a registered entity may have in its holding account is constrained by the holding limit as determined by the department by rule. Information about the contents of each holding account, including but not limited to the number of allowances in the account, must be displayed on a regularly maintained and searchable public website established and updated by the department.

(8) Registered general market participants are each allowed an account, to hold, trade, sell, or transfer allowances.

(9) The department shall maintain an account for the purpose of retiring allowances transferred by registered entities and from the voluntary renewable reserve account.

(10) The department shall maintain a public roster of all covered entities, opt-in entities, and general market participants on the department's public website.

(11) The department shall include a voluntary renewable reserve account. [2021 c 316 § 11.]

70A.65.100 Auctions of allowances. (1) Except as provided in RCW 70A.65.110, 70A.65.120, and 70A.65.130, the department shall distribute allowances through auctions as provided in this section and in rules adopted by the department to implement these sections. An allowance is not a property right.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) For fiscal year 2024, upon completion and verification of the auction results, the financial services administrator shall notify winning bidders and transfer the auction proceeds to the state treasurer for deposit as follows: (i) \$356,697,000 must first be deposited into the carbon emissions reduction account created in RCW 70A.65.240; and (ii) the remaining auction proceeds to the climate investment account created in RCW 70A.65.250 and the air quality and health disparities improvement account created in RCW 70A.65.280.

(c) For fiscal year 2025, upon completion and verification of the auction results, the financial services administrator shall notify winning bidders and transfer the auction proceeds to the state treasurer for deposit as follows: (i) \$366,558,000 must first be deposited into the carbon emissions reduction account created in RCW 70A.65.240; and (ii) the remaining auction proceeds to the climate investment account created in

RCW 70A.65.250 and the air quality and health disparities improvement account created in RCW 70A.65.280.

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

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

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

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

(a) Provided false or misleading facts;

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

(c) Violated any part of the auction rules;

(d) Violated registration requirements; or

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

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

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

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

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

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

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

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

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

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

(12) In setting the number of allowances offered at each auction, the department shall consider the allowances in the marketplace due to the marketing of allowances issued as required under RCW 70A.65.110, 70A.65.120, and 70A.65.130 in the department's determination of the number of allowances to be offered at auction. The department shall offer only such number of allowances at each auction as will enhance the likelihood of achieving the goals of RCW 70A.45.020. [2022 c 181 § 3; 2021 c 316 § 12.]

70A.65.110 Allocation of allowances to emissions-intensive, trade-exposed industries. (1) Facilities owned or operated by a covered entity must receive an allocation of allowances for the covered emissions at those facilities under this subsection at no cost if the operations of the facility are classified as emissions-intensive and trade-exposed, as determined by being engaged in one or more of the processes described by the following industry descriptions and codes in the North American industry classification system:

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) By July 1, 2022, the department must adopt by rule objective criteria for both emissions' intensity and trade exposure for the purpose of identifying emissions-intensive, trade-exposed manufacturing businesses during the second compliance period of the program and subsequent compliance periods. A facility covered by subsection (1)(a) through (m) of this section is considered an emissions-intensive, trade-exposed facility and is eligible for allocation of no cost allowances as described in this section. In addition, any covered party that is a manufacturing business that can demonstrate to the department that it meets the objective criteria adopted by rule is also eligible for treatment as emissions-intensive, trade-exposed and is eligible for allocation of no cost allowances as described in this section. In developing the objective criteria under this subsection, the department must consider the locations of facilities potentially identified as emissions-intensive, trade-exposed manufacturing businesses relative to overburdened communities.

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

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

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

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

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

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

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

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

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

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

(f) Prior to the beginning of either the second, third, or subsequent compliance periods, the department may make an upward adjustment in the next compliance period's benchmark for an emissions-intensive, trade-exposed facility based on the facility's demonstration to the department that additional reductions in carbon intensity or mass emissions are not technically or economically feasible. The department may base the upward adjustment applicable to an emissions-intensive, trade-exposed facility in the next compliance period on the facility's best available technology analysis. The department shall by rule provide for emissions-intensive, trade-exposed facilities to apply to the department for an adjustment to the allocation for direct distribution of no cost allowances based on its facility-specific carbon intensity benchmark or mass emissions baseline. The department shall make adjustments based on:

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

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

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

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

(b) If the legislature does not adopt a compliance obligation for emissions-intensive, trade-exposed facilities by December 1, 2027, those facilities must continue to receive

allowances as provided in the third four-year compliance period that begins January 1, 2031.

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

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

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

(8) Rules adopted by the department under this section must include protocols for allocating allowances at no cost to an eligible facility built after July 25, 2021. The protocols must include consideration of the products and criteria pollutants being produced by the facility, as well as the local environmental and health impacts associated with the facility. For a facility that is built on tribal lands or is determined by the department to impact tribal lands and resources, the protocols must be developed in consultation with the affected tribal nations. [2021 c 316 § 13.]

70A.65.120 Allocation of allowances to electric utilities. (1) The legislature intends by this section to allow all consumer-owned electric utilities and investor-owned electric utilities subject to the requirements of chapter 19.405 RCW, the Washington clean energy transformation act, to be eligible for allowance allocation as provided in this section in order to mitigate the cost burden of the program on electricity customers.

(2)(a) By October 1, 2022, the department shall adopt rules, in consultation with the department of commerce and the utilities and transportation commission, establishing the methods and procedures for allocating allowances for consumer-owned and investor-owned electric utilities. The rules

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must take into account the cost burden of the program on electricity customers.

(b) By October 1, 2022, the department shall adopt an allocation schedule by rule, in consultation with the department of commerce and the utilities and transportation commission, for the first compliance period for the provision of allowances at no cost to consumer-owned and investor-owned electric utilities. This allocation must be consistent with a forecast, that is approved by the appropriate governing board or the utilities and transportation commission, of each utility's supply and demand, and the cost burden resulting from the inclusion of the covered entities in the first compliance period.

(c) By October 1, 2026, the department shall adopt an allocation schedule by rule, in consultation with the department of commerce and the utilities and transportation commission, for the provision of allowances for the second compliance period at no cost to consumer-owned and investor-owned electric utilities. This allocation must be consistent with a forecast, that is approved by the appropriate governing board or the utilities and transportation commission, of each utility's supply and demand, and the cost burden resulting from the inclusion of covered entities in the second compliance period. The allowances included in this schedule must reflect the increased scope of coverage in the electricity sector relative to the program budget of allowances established in 2022.

(d) By October 1, 2028, the department shall adopt an allocation schedule by rule, in consultation with the department of commerce and the utilities and transportation commission, for the provision of allowances at no cost to consumer-owned and investor-owned electric utilities for the compliance periods contained within calendar years 2031 through 2045. This allocation must be consistent with a forecast, that is approved by the appropriate governing board or the utilities and transportation commission, of each utility's supply and demand, and the cost burden resulting from the inclusion of the covered entities in the compliance periods. The rule developed under this subsection (2)(d) may prescribe an amount of allowances allocated at no cost that must be consigned to auction by consumer-owned and investor-owned electric utilities. However, utilities may use allowances for compliance equal to their covered emissions in any calendar year they were not subject to potential penalty under RCW 19.405.090. Under no circumstances may utilities receive any free allowances after 2045.

(3)(a) During the first compliance period, allowances allocated at no cost to consumer-owned and investor-owned electric utilities may be consigned to auction for the benefit of ratepayers, deposited for compliance, or a combination of both. The rules adopted by the department under subsection (2) of this section must include provisions for directing revenues generated under this subsection to the applicable utilities.

(b) By October 1, 2026, the department, in consultation with the department of commerce and the utilities and transportation commission, must adopt rules governing the amount of allowances allocated at no cost under subsection (2)(c) of this section that must be consigned to auction. For calendar year 2030, electric utilities may use allowances for

compliance equal to their covered emissions if not subject to potential penalty under RCW 19.405.090.

(4) The benefits of all allowances consigned to auction under this section must be used by consumer-owned and investor-owned electric utilities for the benefit of ratepayers, with the first priority the mitigation of any rate impacts to low-income customers.

(5) If an entity is identified by the department as an emissions-intensive, trade-exposed industry under RCW 70A.65.110, unless allowances have been otherwise allocated for electricity-related emissions to the entity under RCW 70A.65.110 or to a consumer-owned utility under this section, the department shall allocate allowances at no cost to the electric utility or power marketing administration that is providing electricity to the entity in an amount equal to the forecasted emissions for electricity consumption for the entity for the compliance period.

(6) The department shall allow for allowances to be transferred between a power marketing administration and electric utilities and used for direct compliance.

(7) Rules establishing the allocation of allowances to consumer-owned utilities and investor-owned utilities must consider the impact of electrification of buildings, transportation, and industry on the electricity sector.

(8) Nothing in this section affects the requirements of chapter 19.405 RCW.

(9) A consumer-owned utility that is party to a contract that meets the following conditions must be issued allowances under this section for emissions associated with imported electricity, in order to prevent impairment of the value of the contract to either party:

(a) The contract does not address compliance costs imposed upon the consumer-owned utility by the program created in this chapter; and

(b) The contract was in effect as of July 25, 2021, and expires no later than the end of the first compliance period. [2021 c 316 § 14.]

70A.65.130 Allocation of allowances to natural gas utilities. (1) For the benefit of ratepayers, allowances must be allocated at no cost to covered entities that are natural gas utilities.

(a) By October 1, 2022, the department shall adopt rules, in consultation with the utilities and transportation commission, establishing the methods and procedures for allocating allowances to natural gas utilities. Rules adopted under this subsection must allow for a natural gas utility to be provided allowances at no cost to cover their emissions and decline proportionally with the cap, consistent with RCW 70A.65.070. Allowances allocated at no cost to natural gas utilities must be consigned to auction for the benefit of ratepayers consistent with subsection (2) of this section, deposited for compliance, or a combination of both. The rules adopted by the department pursuant to this section must include provisions directing revenues generated under this subsection to the applicable utilities.

(b) By October 1, 2022, the department shall adopt an allocation schedule by rule, in consultation with the utilities and transportation commission, for the first two compliance periods for the provision of allowances for the benefit of ratepayers at no cost to natural gas utilities.

(c) By October 1, 2028, the department shall adopt an allocation schedule by rule, in consultation with the utilities and transportation commission, for the provision of allowances for the benefit of ratepayers at no cost to natural gas utilities for the compliance periods contained within calendar years 2031 through 2040.

(2)(a) Beginning in 2023, 65 percent of the no cost allowances must be consigned to auction for the benefit of customers, including at a minimum eliminating any additional cost burden to low-income customers from the implementation of this chapter. Rules adopted under this subsection must increase the percentage of allowances consigned to auction by five percent each year until a total of 100 percent is reached.

(b) Revenues from allowances sold at auction must be returned by providing nonvolumetric credits on ratepayer utility bills, prioritizing low-income customers, or used to minimize cost impacts on low-income, residential, and small business customers through actions that include, but are not limited to, weatherization, decarbonization, conservation and efficiency services, and bill assistance. The customer benefits provided from allowances consigned to auction under this section must be in addition to existing requirements in statute, rule, or other legal requirements.

(c) Except for low-income customers, the customer bill credits under this subsection are reserved exclusively for customers at locations connected to a natural gas utility's system on July 25, 2021. Bill credits may not be provided to customers of the gas utility at a location connected to the system after July 25, 2021.

(3) In order to qualify for no cost allowances, covered entities that are natural gas utilities must provide copies of their greenhouse gas emissions reports filed with the United States environmental protection agency under 40 C.F.R. Part 98 subpart NN - suppliers of natural gas and natural gas liquids for calendar years 2015 through 2021 to the department on or before March 31, 2022. The copies of the reports must be provided in electronic form to the department, in a manner prescribed by the department. The reports must be complete and contain all information required by 40 C.F.R. Sec. 98.406 including, but not limited to, information on large end users served by the natural gas utility. For any year where a natural gas utility was not required to file this report with the United States environmental protection agency, a report may be submitted in a manner prescribed by the department containing all of the information required in the subpart NN report.

(4) To continue receiving no cost allowances, a natural gas utility must provide to the department the United States environmental protection agency subpart NN greenhouse gas emissions report for each reporting year in the manner and by the dates provided by RCW 70A.15.2200(5) as part of the greenhouse gas reporting requirements of this chapter. [2021 c 316 § 15.]

70A.65.140 Emissions containment reserve withholding. (1) To help ensure that the price of allowances remains sufficient to incentivize reductions in greenhouse gas emissions, the department must establish an emissions containment reserve and set an emissions containment reserve trigger price by rule. The price must be set at a reasonable amount above the auction floor price and equal to the level

established in jurisdictions with which the department has entered into a linkage agreement. If a jurisdiction with which the department might enter into a linkage agreement has no emissions containment trigger price, the department may suspend the trigger price under this subsection. The purpose of withholding allowances in the emissions containment reserve is to secure additional emissions reductions.

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

(3) Emissions containment reserve allowances may only be withheld from an auction if the demand for allowances would result in an auction clearing price that is less than the emissions containment reserve trigger price prior to the withholding from the auction of any emissions containment reserve allowances.

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

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

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

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

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

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

(b) Allowances equal to the greenhouse gas emissions resulting from a new or expanded emissions-intensive, trade-exposed facility with emissions in excess of 25,000 metric tons per year during the first applicable compliance period will be provided to the facility from the reserve created in this section and must be retired by the facility. In subsequent compliance periods, the facility will be subject to the regulatory cap and related requirements under this chapter. [2022 c 181 § 11; 2021 c 316 § 16.]

70A.65.150 Allowance price containment. (1) To help minimize allowance price volatility in the auction, the department shall adopt by rule an auction floor price and a schedule for the floor price to increase by a predetermined amount every year. The department may not sell allowances at bids lower than the auction floor price. The department's rules must specify holding limits that determine the maximum number of allowances that may be held for use or trade by a registered entity at any one time. The department shall also establish a reserve auction floor price to limit extraordinary prices and to determine when to offer allowances through the allowance price containment reserve auctions authorized under this section.

(2) For calendar years 2023 through 2026, the department must place no less than two percent of the total number of allowances available from the allowance budgets for those

years in an allowance price containment reserve. The reserve must be designed as a mechanism to assist in containing compliance costs for covered and opt-in entities in the event of unanticipated high costs for compliance instruments.

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

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

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

(5) The process for reserve auctions is the same as the process provided in RCW 70A.65.100 and the proceeds from reserve auctions must be treated the same.

(6) The department shall by rule:

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

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

(c) Establish the amount of allowances to be placed in the allowance price containment reserve after the first compliance period ending in 2026. [2022 c 181 § 6; 2021 c 316 § 17.]

70A.65.160 Price ceiling. (1) The department shall establish a price ceiling to provide cost protection for covered entities obligated to comply with this chapter. The ceiling must be set at a level sufficient to facilitate investments to achieve further emission reductions beyond those enabled by the price ceiling, with the intent that investments accelerate the state's achievement of greenhouse gas limits established under RCW 70A.45.020. The price ceiling must increase annually in proportion to the reserve auction floor price established in RCW 70A.65.150(1).

(2) In the event that no allowances remain in the allowance price containment reserve, the department must issue the number of price ceiling units for sale sufficient to provide cost protection for covered entities as established under subsection (1) of this section. Purchases must be limited to entities that do not have sufficient eligible compliance instruments in their holding and compliance accounts for the current compliance period and these entities may only purchase what they need to meet their compliance obligation for the current compliance period. Price ceiling units may not be sold or transferred and must be retired for compliance in the current compliance period. A price ceiling unit is not a property right.

(3) The price ceiling unit emission reduction investment account is created in the state treasury. All receipts from the sale of price ceiling units must be deposited in the account. Moneys in the account may only be spent after appropriation. Moneys in the account must be expended to achieve emissions reductions on at least a metric ton for metric ton basis that are real, permanent, quantifiable, verifiable, enforceable

by the state, and in addition to any greenhouse gas emission reduction otherwise required by law or regulation and any other greenhouse gas emission reduction that otherwise would occur. [2022 c 181 § 7; 2021 c 316 § 18.]

70A.65.170 Offsets. (1) The department shall adopt by rule the protocols for establishing offset projects and securing offset credits that may be used to meet a portion of a covered or opt-in entity's compliance obligation under this chapter. The protocols adopted by the department under this section must align with the policies of the state established under RCW 70A.45.090 and 70A.45.100.

(2) Offset projects must:

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

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

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

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

(c) Have been certified by a recognized registry.

(3)(a) A total of no more than five percent of a covered or opt-in entity's compliance obligation during the first compliance period may be met by transferring offset credits. During these years, at least 50 percent of a covered or opt-in entity's compliance obligation satisfied by offset credits must be sourced from offset projects that provide direct environmental benefits in the state.

(b) A total of no more than four percent of a covered or opt-in entity's compliance obligation during the second compliance period may be met by transferring offset credits. During these years, at least 75 percent of a covered or opt-in entity's compliance obligation satisfied by offset credits must be sourced from offset projects that provide direct environmental benefits in the state. The department may reduce the 75 percent requirement if it determines there is not sufficient offset supply in the state to meet offset demand during the second compliance period.

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

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

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

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

(e) An offset project on federally recognized tribal land does not count against the offset credit limits described in (a) and (b) of this subsection.

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

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

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

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

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

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

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

(5) Any offset credits used must:

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

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

(c) Be consistent with offset protocols adopted by the department.

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

(7) Beginning in 2031, the limits established in subsection (3)(b) and (e)(ii) of this section apply unless modified by rule as adopted by the department after a public consultation process. [2022 c 181 § 12; 2021 c 316 § 19.]

70A.65.180 Assistance program for offsets on tribal lands. (1) In order to ensure that a sufficient number of high quality offset projects are available under the limits set in RCW 70A.65.170, the department must establish an assistance program for offset projects on federally recognized tribal lands in Washington. The assistance may include, but is

not limited to, funding or consultation for federally recognized tribal governments to assess a project's technical feasibility, investment requirements, development and operational costs, expected returns, administrative and legal hurdles, and project risks and pitfalls. The department may provide funding or assistance upon request by a federally recognized tribe.

(2) It is the intent of the legislature that not less than \$5,000,000 be provided in the biennial omnibus operating appropriations act for the purposes of this section. [2021 c 316 § 20.]

70A.65.190 Small forestland owner work group. (Expires July 1, 2023.) (1) The department of natural resources must contract with an eligible entity capable of providing public value to the state through the establishment and implementation of a small forestland owner work group. The purpose of the work group is to forward the goals and implementation of this chapter by identifying possible carbon market opportunities including, but not limited to, the provision of offset credits that qualify under RCW 70A.65.170, and other incentive-based greenhouse gas reduction programs that Washington landowners may be able to access, including compliance markets operated by other jurisdictions, voluntary markets, and federal, state, and private programs for forestlands that can be leveraged to achieve carbon reductions.

(2) The work group established by the eligible entity under this section must:

(a) Provide recommendations for the implementation and funding of a pilot program to develop an aggregator account that will pursue carbon offset projects for small forestland owners in Washington state, including recommendations based on programs established in other jurisdictions;

(b) Coordinate with the department on the development of offset protocols related to landowners under RCW 70A.65.170(4)(d);

(c) Develop a framework and funding proposals for establishing a program to link interested small forestland owners with incentive-based carbon reducing programs that facilitate adoption of forest practices that increase carbon storage and sequestration in forests and wood products. The framework may include:

(i) Identifying areas of coordination and layering among state, federal, and private landowner incentive programs and identifying roadblocks to better scalability;

(ii) Assisting landowners with access to feasibility analyses, market applications, stand inventories, pilot project support, and other services to reduce the transaction costs and barriers to entry to carbon markets or carbon incentive programs; and

(iii) Sharing information with private and other landowners about best practices employed to increase carbon storage and access to incentive programs; and

(d) Recommend policies to support the implementation of incentives for participation in carbon markets.

(3) The work group must transmit a final report to the department by December 1, 2022, that provides recommendations for incentives, the implementation of incentives, and payment structures necessary to support small forest landowners and any recommendations around extending the work group or making the work group permanent. The department

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must submit the final report to the legislature, in compliance with RCW 43.01.036, by December 31, 2022.

(4) For the purposes of this section, "eligible entity" means a nonprofit entity solely based in Washington that can demonstrate a membership of at least 1000 small forestland owners and that has, as part of its mission, the promotion of the sustainable stewardship of family forestlands.

(5) This section expires July 1, 2023. [2021 c 316 § 21.]

70A.65.200 Enforcement—Penalty. (1) All covered and opt-in entities are required to submit compliance instruments in a timely manner to meet the entities' compliance obligations and shall comply with all requirements for monitoring, reporting, holding, and transferring emission allowances and other provisions of this chapter.

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

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

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

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

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

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

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

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

(b) No state agency may adopt or enforce a greenhouse gas pricing or market-based emissions cap and reduce program for stationary sources, or adopt or enforce emission lim-

itations on greenhouse gas emissions from stationary sources except as:

- (i) Provided in this chapter;
 - (ii) Authorized or directed by a state statute in effect as of July 1, 2022; or
 - (iii) Required to implement a federal statute, rule, or program.
- (c) This chapter preempts the provisions of chapter 173-442 WAC, and the department shall repeal chapter 173-442 WAC.

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

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

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

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

- (i) Chapter 19.27A RCW;
- (ii) Chapter 19.280 RCW;
- (iii) Chapter 19.405 RCW;
- (iv) Chapter 36.165 RCW;
- (v) Chapter 43.21F RCW;
- (vi) Chapter 70.30 RCW;
- (vii) Chapter 70A.15 RCW;
- (viii) Chapter 70A.45 RCW;
- (ix) Chapter 70A.60 RCW;
- (x) Chapter 70A.535 RCW;
- (xi) Chapter 80.04 RCW;
- (xii) Chapter 80.28 RCW;
- (xiii) Chapter 80.70 RCW;
- (xiv) Chapter 80.80 RCW; and
- (xv) Chapter 81.88 RCW.

(c) The office of financial management may contract for all or part of the work product required under this subsection. [2022 c 181 § 4; 2021 c 316 § 23.]

70A.65.210 Linkage with other jurisdictions. (1) Subject to making the findings and conducting the public comment process described in subsection (3) of this section, the department shall seek to enter into linkage agreements with other jurisdictions with external greenhouse gas emissions trading programs in order to:

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

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

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

(d) Enhance market security;

(e) Reduce program administration costs; and

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

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

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

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

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

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

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

(f) Provisions for public notice and participation; and

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

(3) Before entering into a linkage agreement under this section, the department must evaluate and make a finding regarding whether the aggregate number of unused allowances in a linked program would reduce the stringency of Washington's program and the state's ability to achieve its greenhouse gas emissions reduction limits. The department must include in its evaluation a consideration of pre-2020 unused allowances that may exist in the program with which it is proposing to link. Before entering into a linkage agreement, the department must also establish a finding that the linking jurisdiction and the linkage agreement meet certain criteria identified under this subsection and conduct a public comment process to obtain input and a review of the linkage agreement by relevant stakeholders and other interested parties. The department must consider input received from the public comment process before finalizing a linkage agreement. In the event that the department determines that a full linkage agreement is unlikely to meet the criteria, it may enter into a linkage agreement with limitations, including limits on the share of compliance that may be met with allowances originating from linked jurisdictions and other limitations deemed necessary by the department. A linkage agreement approved by the department must:

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

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

(c) Be determined by the department to not yield net adverse impacts to either jurisdictions' highly impacted com-

munities or analogous communities in the aggregate, relative to the baseline level of emissions; and

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

(4) The state retains all legal and policymaking authority over its program design and enforcement. [2021 c 316 § 24.]

70A.65.220 Adoption of rules. The department shall adopt rules to implement the provisions of the program established in RCW 70A.65.060 through 70A.65.210. The department may adopt emergency rules pursuant to RCW 34.05.350 for initial implementation of the program, to implement the state omnibus appropriations act for the 2021-2023 fiscal biennium, and to ensure that reporting and other program requirements are determined early for the purpose of program design and early notice to registered entities with a compliance obligation under the program. [2021 c 316 § 25.]

70A.65.230 Investments—Legislative intent—Evaluation. (1) It is the intent of the legislature that each year the total investments made through the carbon emissions reduction account created in RCW 70A.65.240, the climate commitment account created in RCW 70A.65.260, the natural climate solutions account created in RCW 70A.65.270, the air quality and health disparities improvement account created in RCW 70A.65.280, the climate transit programs account created in RCW 46.68.500, and the climate active transportation account created in RCW 46.68.490, achieve the following:

(a) A minimum of not less than 35 percent and a goal of 40 percent of total investments that provide direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities identified under chapter 70A.02 RCW; and

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

(2) The expenditure of moneys under this chapter must be consistent with applicable federal, state, and local laws, and treaty rights including, but not limited to, prohibitions on uses of funds imposed by the state Constitution.

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

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

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

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

(4) The state must develop a process by which to evaluate the impacts of the investments made under this chapter,

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work across state agencies to develop and track priorities across the different eligible funding categories, and work with the environmental justice council pursuant to RCW 70A.65.040. [2022 c 182 § 426; 2022 c 181 § 8; 2021 c 316 § 26.]

Reviser's note: This section was amended by 2022 c 181 § 8 and by 2022 c 182 § 426, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2022 c 182: See notes following RCW 70A.65.240.

70A.65.240 Carbon emissions reduction account. (1) The carbon emissions reduction account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account are intended to affect reductions in transportation sector carbon emissions through a variety of carbon reducing investments. These can include, but are not limited to: Transportation alternatives to single occupancy passenger vehicles; reductions in single occupancy passenger vehicle miles traveled; reductions in per mile emissions in vehicles, including through the funding of alternative fuel infrastructure and incentive programs; and emission reduction programs for freight transportation, including motor vehicles and rail, as well as for ferries and other maritime and port activities. Expenditures from the account may only be made for transportation carbon emission reducing purposes and may not be made for highway purposes authorized under the 18th Amendment of the Washington state Constitution, other than specified in this section, and shall be made in accordance with subsection (2) of this section. It is the legislature's intent that expenditures from the account used to reduce carbon emissions be made with the goal of achieving equity for communities that historically have been omitted or adversely impacted by past transportation policies and practices.

(2) Appropriations in an omnibus transportation appropriations act from the carbon emissions reduction account shall be made exclusively to fund the following activities:

(a) Active transportation;

(b) Transit programs and projects;

(c) Alternative fuel and electrification;

(d) Ferries; and

(e) Rail. [2022 c 182 § 101; 2021 c 316 § 27.]

Intent—2022 c 182: "The legislature intends that \$500,000,000 of the amounts in the 16-year move ahead WA investment program must enhance stormwater runoff treatment from existing roads and infrastructure with an emphasis on green infrastructure retrofits. Projects must be prioritized based on benefits to salmon recovery and ecosystem health, reducing toxic pollution, addressing health disparities, and cost effectiveness. The department of transportation must submit progress reports on its efforts to reduce the toxicity of stormwater runoff from existing infrastructure, recommendations for addressing barriers to innovative solutions, and anticipated demand for funding each biennium." [2022 c 182 § 1.]

Effective date—2022 c 182: "Sections 1, 101 through 105, 201 through 204, 211, 301 through 312, 401 through 407, 415 through 420, 422, 423, 425 through 439, and 505 of this act take effect July 1, 2022." [2022 c 182 § 511.]

70A.65.250 Climate investment account. (1)(a) The climate investment account is created in the state treasury. Except as otherwise provided in chapter 316, Laws of 2021, all receipts from the auction of allowances authorized in this chapter must be deposited into the account. Moneys in the account may be spent only after appropriation.

(b) Projects or activities funded from the account must meet high labor standards, including family sustaining wages, providing benefits including health care and employer-contributed retirement plans, career development opportunities, and maximize access to economic benefits from such projects for local workers and diverse businesses. Each contracting entity's proposal must be reviewed for equity and opportunity improvement efforts, including: (i) Employer paid sick leave programs; (ii) pay practices in relation to living wage indicators such as the federal poverty level; (iii) efforts to evaluate pay equity based on gender identity, race, and other protected status under Washington law; (iv) facilitating career development opportunities, such as apprenticeship programs, internships, job-shadowing, and on-the-job training; and (v) employment assistance and employment barriers for justice affected individuals.

(2) Moneys in the account may be used only for projects and programs that achieve the purposes of the greenhouse gas emissions cap and invest program established under this chapter and for tribal capacity grants under RCW 70A.65.305. Moneys in the account as described in this subsection must first be appropriated for the administration of the requirements of this chapter, in an amount not to exceed five percent of the total receipt of funds from allowance auction proceeds under this chapter. Beginning July 1, 2024, and annually thereafter, the state treasurer shall distribute funds in the account that exceed the amounts appropriated for the purposes of this subsection (2) as follows:

(a) Seventy-five percent of the moneys to the climate commitment account created in RCW 70A.65.260; and

(b) Twenty-five percent of the moneys to the natural climate solutions account created in RCW 70A.65.270.

(3) The allocations specified in subsection (2)(a) and (b) of this section must be reviewed by the legislature on a biennial basis based on the changing needs of the state in meeting its clean economy and greenhouse gas reduction goals in a timely, economically advantageous, and equitable manner. [2022 c 253 § 2; 2021 c 316 § 28.]

70A.65.260 Climate commitment account. (1) The climate commitment account is created in the state treasury. The account must receive moneys distributed to the account from the climate investment account created in RCW 70A.65.250. Moneys in the account may be spent only after appropriation. Projects, activities, and programs eligible for funding from the account must be physically located in Washington state and include, but are not limited to, the following:

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

(b) Supplementing the growth management planning and environmental review fund established in RCW 36.70A.490 for the purpose of making grants or loans to local governments for the purposes set forth in RCW 43.21C.240, 43.21C.031, 36.70A.500, and 36.70A.600, for costs associated with RCW 36.70A.610, and to cover costs associated with the adoption of optional elements of comprehensive plans consistent with RCW 43.21C.420;

(c) Programs, activities, or projects that reduce and mitigate impacts from greenhouse gases and copollutants in overburdened communities, including strengthening the air qual-

ity monitoring network to measure, track, and better understand air pollution levels and trends and to inform the analysis, monitoring, and pollution reduction measures required in RCW 70A.65.020;

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

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

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

(i) Fertilizer management;

(ii) Soil management;

(iii) Bioenergy;

(iv) Biofuels;

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

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

(vii) Renewable energy projects;

(viii) Farmworker housing weatherization programs;

(ix) Dairy digester research and development;

(x) Alternative manure management; and

(xi) Eligible fund uses under RCW 89.08.615;

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

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

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

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

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

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

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

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

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

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

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

(k) Programs, activities, or projects that reduce emissions from landfills and waste-to-energy facilities through diversion of organic materials, methane capture or conversion strategies, installation of gas collection devices and gas control systems, monitoring and reporting of methane emissions, or other means, prioritizing funding needed for any activities by local governments to comply with chapter 70A.540 RCW;

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

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

(2) Moneys in the account may not be used for projects or activities that would violate tribal treaty rights or result in significant long-term damage to critical habitat or ecological functions. Investments from this account must result in long-term environmental benefits and increased resilience to the impacts of climate change. [2022 c 179 § 17; 2021 c 316 § 29.]

70A.65.270 Natural climate solutions account. (1) The natural climate solutions account is created in the state (2022 Ed.)

treasury. All moneys directed to the account from the climate investment account created in RCW 70A.65.250 must be deposited in the account. Moneys in the account may be spent only after appropriation. Moneys in the account are intended to increase the resilience of the state's waters, forests, and other vital ecosystems to the impacts of climate change, conserve working forestlands at risk of conversion, and increase their carbon pollution reduction capacity through sequestration, storage, and overall system integrity. Moneys in the account must be spent in a manner that is consistent with existing and future assessments of climate risks and resilience from the scientific community and expressed concerns of and impacts to overburdened communities.

(2) Moneys in the account may be allocated for the following purposes:

(a) Clean water investments that improve resilience from climate impacts. Funding under this subsection (2)(a) must be used to:

(i) Restore and protect estuaries, fisheries, and marine shoreline habitats and prepare for sea level rise including, but not limited to, making fish passage correction investments such as those identified in the cost-share barrier removal program for small forestland owners created in RCW 76.13.150 and those that are considered by the fish passage barrier removal board created in RCW 77.95.160;

(ii) Increase carbon storage in the ocean or aquatic and coastal ecosystems;

(iii) Increase the ability to remediate and adapt to the impacts of ocean acidification;

(iv) Reduce flood risk and restore natural floodplain ecological function;

(v) Increase the sustainable supply of water and improve aquatic habitat, including groundwater mapping and modeling;

(vi) Improve infrastructure treating stormwater from previously developed areas within an urban growth boundary designated under chapter 36.70A RCW, with a preference given to projects that use green stormwater infrastructure;

(vii) Either preserve or increase, or both, carbon sequestration and storage benefits in forests, forested wetlands, agricultural soils, tidally influenced agricultural or grazing lands, or freshwater, saltwater, or brackish aquatic lands; or

(viii) Either preserve or establish, or both, carbon sequestration by protecting or planting trees in marine shorelines and freshwater riparian areas sufficient to promote climate resilience, protect cold water fisheries, and achieve water quality standards;

(b) Healthy forest investments to improve resilience from climate impacts. Funding under this subsection (2)(b) must be used for projects and activities that will:

(i) Increase forest and community resilience to wildfire in the face of increased seasonal temperatures and drought;

(ii) Improve forest health and reduce vulnerability to changes in hydrology, insect infestation, and other impacts of climate change; or

(iii) Prevent emissions by preserving natural and working lands from the threat of conversion to development or loss of critical habitat, through actions that include, but are not limited to, the creation of new conservation lands, community forests, or increased support to small forestland owners through assistance programs including, but not limited to,

the forest riparian easement program and the family forest fish passage program. It is the intent of the legislature that not less than \$10,000,000 be expended each biennium for the forestry riparian easement program created in chapter 76.13 RCW or for riparian easement projects funded under the agricultural conservation easements program established under RCW 89.08.530, or similar riparian enhancement programs.

(3) Moneys in the account may not be used for projects that would violate tribal treaty rights or result in significant long-term damage to critical habitat or ecological functions. Investments from this account must result in long-term environmental benefits and increased resilience to the impacts of climate change. [2021 c 316 § 30.]

70A.65.280 Air quality and health disparities improvement account. (1) The air quality and health disparities improvement account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account are intended to:

(a) Improve air quality through the reduction of criteria pollutants, including through effective air quality monitoring and the establishment of adequate baseline emissions data; and

(b) Reduce health disparities in overburdened communities by improving health outcomes through the reduction or elimination of environmental harms and the promotion of environmental benefits.

(2) Moneys in the account may be used for either capital budget or transportation budget purposes, or both. Moneys in the account may not be used for projects that would violate tribal treaty rights or result in significant long-term damage to critical habitat or ecological functions. Investments from the account must result in long-term environmental benefits and increased resilience to the impacts of climate change.

(3) It is the intent of the legislature that not less than \$20,000,000 per biennium be dedicated to the account for the purposes of the account. [2021 c 316 § 31.]

70A.65.290 Joint legislative audit and review committee—Program implementation analysis. (Expires June 30, 2030.) (1) By December 1, 2029, the joint legislative audit and review committee must analyze the impacts of the initial five years of program implementation and must submit a report summarizing the analysis to the legislature. The analysis must include, at minimum, the following components:

(a) Costs and benefits, including environmental and public health costs and benefits, associated with this chapter for categories of persons participating in the program or that are most impacted by air pollution, as defined in consultation with the departments of ecology and health and as measured on a census tract scale. This component of the analysis must, at a minimum, assess the costs and benefits of changes in the following metrics since the start of the program:

(i) Levels of greenhouse gas emissions and criteria air pollutants for which the United States environmental protection agency has established national ambient air quality standards;

(ii) Fuel prices; and

(iii) Total employment in categories of industries that are covered entities. The categories of industries assessed must include, but are not limited to, electric utilities, natural gas

utilities, oil refineries, and other industries classified as emissions-intensive and trade-exposed;

(b) An evaluation of the information provided by the department in its 2027 program evaluation under RCW 70A.65.070(3);

(c) A summary of the estimated total statewide costs and benefits attributable to the program, including state agency administrative costs and covered entity compliance costs. For purposes of calculating the benefits of the program, the summary may rely, in part, on a constant value of the social costs attributable to greenhouse gas emissions, as identified in contemporary internationally accepted estimates of such global social cost. This summary must include an estimate of the total statewide costs of the program per ton of greenhouse gas emissions reductions achieved by the program; and

(d) An evaluation of the impacts of the program on low-income households.

(2) This section expires June 30, 2030. [2021 c 316 § 32.]

70A.65.300 Distributions of moneys—Annual report.

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

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

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

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

(5) The department shall submit its report to the appropriate committees of the legislature with the information described in subsection (2) of this section no later than September 30 of each year. [2021 c 316 § 46.]

70A.65.305 Tribal consultation. (1) Agencies that allocate funding or administer grant programs appropriated from the climate investment account created in RCW 70A.65.250, the climate commitment account created in RCW 70A.65.260, and the natural climate solutions account created in RCW 70A.65.270 must offer early, meaningful, and individual consultation with any affected federally recognized tribe on all funding decisions and funding programs that may impact tribal resources, including tribal cultural

resources, archaeological sites, sacred sites, fisheries, or other rights and interests in tribal lands and lands within which a tribe or tribes possess rights reserved or protected by federal treaty, statute, or executive order. The consultation is independent of, and in addition to, any public participation process required by federal or state law, or by a federal or state agency, including the requirements of Executive Order 21-02 related to archaeological and cultural resources, and regardless of whether the agency receives a request for consultation from a federally recognized tribe. The goal of the consultation process is to identify tribal resources or rights potentially affected by the funding decisions and funding programs, assess their effects, and seek ways to avoid, minimize, or mitigate any adverse effects on tribal resources or rights.

(2) At the earliest possible date prior to submittal of an application, applicants for funding from the accounts created in RCW 70A.65.250, 70A.65.260, and 70A.65.270 shall engage in a preapplication process with all affected federally recognized tribes within the project area.

(a) The preapplication process must include the applicant notifying the department of archaeology and historic preservation, the department of fish and wildlife, and all affected federally recognized tribes within the project area. The notification must include geographical location, detailed scope of the proposed project, preliminary application details available to federal, state, or local governmental jurisdictions, and all publicly available materials, including public funding sources.

(b) The applicant must also offer to discuss the project with the department of archaeology and historic preservation, the department of fish and wildlife, and all affected federally recognized tribes within the project area. Discussions may include the project's impact to tribal resources, including tribal cultural resources, archaeological sites, sacred sites, fisheries, or other rights and interests in tribal lands and lands within which a tribe or tribes possess rights reserved or protected by federal treaty, statute, or executive order.

(c) All affected federally recognized tribes may submit to the appropriate agency or agencies a summary of tribal issues, questions, concerns, or other statements regarding the project, which must become part of the official application file. The summary does not limit what issues affected federally recognized tribes may raise in the consultation process identified in subsections (1), (3) through (7), and (9) of this section.

(d) The notification and offer to initiate discussion must be documented with the application when it is filed, and a copy of the application must be delivered to the department of archaeology and historic preservation, the department of fish and wildlife, and to the affected federally recognized tribe or tribes. If the discussions pursuant to (b) of this subsection do not occur, the applicant must document the reason why the discussion or discussions did not occur.

(e) Nothing in this section may be interpreted to require the disclosure of information that is exempt from disclosure pursuant to RCW 42.56.300 or federal law, including section 304 of the national historic preservation act of 1966. Any information that is exempt from disclosure pursuant to RCW 42.56.300 or federal law, including section 304 of the

national historic preservation act of 1966, shall not become part of the official application file.

(3) If any funding decision, program, project, or activity that may impact tribal resources, including tribal cultural resources, archaeological sites, sacred sites, fisheries, or other rights and interests in tribal lands and lands within which a tribe or tribes possess rights reserved by federal treaty, statute, or executive order is funded from the accounts created in RCW 70A.65.250, 70A.65.260, and 70A.65.270 without such a consultation with an affected federally recognized tribe, the affected federally recognized tribe may request that all further action on the decision, program, project, or activity cease until meaningful consultation is completed. Upon receipt of such a request by an agency or agencies with the authority to allocate funding or administer grant programs from the accounts listed in subsection (1) of this section in support of the proposed project, further action by the agency or agencies on any decision, program, project, or activity that would result in significant physical disturbance of the tribal resource or resources described in this subsection must cease until the consultation has been completed.

(4) Upon completion of agency and tribal consultation, an affected federally recognized tribe may request a formal review of the consultation by submitting a request to the governor's office of Indian affairs and notifying the appropriate agencies and the department of archaeology and historic preservation. The state agencies and tribe must meet to initiate discussion within no more than 20 days of the request. This consultation must be offered and conducted separately with each affected federally recognized tribe, unless the tribes agree to conduct a joint consultation with the state.

(5) After the state agencies and tribe or tribes have conducted a formal review under subsection (4) of this section, an affected federally recognized tribe or state agency may request that the governor and an elected tribal leader or leaders of a federally recognized tribal government meet to formally consider the recommendations from the parties. If requested, this meeting must occur within 30 days of the request, except that a federally recognized tribe may choose to opt out of the meeting. This timeline may be extended by mutual agreement between the governor and the tribal leaders.

(6) After the meeting identified in subsection (5) of this section has occurred, the governor or an elected tribal leader of a federally recognized tribe may call for the state and tribe or tribes to enter into formal mediation, except that a federally recognized tribe may choose to opt out of the mediation. If entered into, the mediation must be conducted as a government-to-government proceeding, with each sovereign government retaining their right to a final decision that meets their separate obligations and interests. Mediators must be jointly selected by the parties to the mediation. An agreement between the governor and a tribal leader or leaders resulting from the mediation is formally recognized and binding on the signatory parties. Absent an agreement, participation in mediation does not preclude any additional steps that any party can initiate, including legal review, to resolve a continuing disagreement.

(7) During the proceedings outlined in subsections (4) through (6) of this section, the agency or agencies with the authority to allocate funding or administer grant programs

from the accounts listed in subsection (1) of this section in support of the proposed project may not approve or release funding, or make other formal decisions, including permitting, that advance the proposed project except where required by law.

(8) By June 30, 2023, the governor's office of Indian affairs, in coordination with the department of archaeology and historic preservation and federally recognized tribes, shall develop a state agency tribal consultation process, including best practices for early, meaningful, and effective consultation, early notification and engagement by applicants with federally recognized tribes as a part of the preapplication process in subsection (2) of this section, and protocols for communication and collaboration with federally recognized tribes. The consultation process developed under this section must be periodically reviewed and updated in coordination with federally recognized tribes. The governor's office of Indian affairs must provide training and other technical assistance to state agencies, as they implement the required consultation. Notwithstanding the governor's office of Indian affairs' ongoing work pursuant to this subsection, the provisions of subsections (1) through (7) and (9) of this section become effective as of June 9, 2022.

(9) The requirements of this section apply to local governments that receive funding from the accounts created in RCW 70A.65.250, 70A.65.260, and 70A.65.270, where that funding is disbursed to project and program applicants. Where requested, the governor's office of Indian affairs must provide training and other technical assistance to local government agencies as they implement the consultation requirements of this section.

(10) Any agency subject to or implementing this section may adopt rules in furtherance of its duties under this section.

(11) Subject to the availability of amounts appropriated for this specific purpose, the department must establish a tribal capacity grant program to provide funding to federally recognized tribes for the costs of implementing this section. [2022 c 253 § 1.]

70A.65.310 Covered or opt-in entity compliance obligation. (1) A covered or opt-in entity has a compliance obligation for its emissions during each four-year compliance period, with the first compliance period commencing January 1, 2023. The department shall by rule require that covered or opt-in entities annually transfer a percentage of compliance instruments, but must fully satisfy their compliance obligation, for each compliance period.

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

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

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

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

(5) Upon receipt by the department of all compliance instruments transferred by a covered entity or opt-in entity to

meet its compliance obligation, the department shall retire the allowances or offset credits. [2022 c 181 § 2.]

70A.65.900 Short title—2021 c 316. This act may be known and cited as the Washington climate commitment act. [2021 c 316 § 37.]

70A.65.901 Suspension of certain sections and rules. (1) RCW 70A.65.060 through 70A.65.210, and any rules adopted by the department of ecology to implement the program established under those sections, are suspended on December 31, 2055, in the event that the department of ecology determines by December 1, 2055, that the 2050 emissions limits of RCW 70A.45.020 have been met for two or more consecutive years.

(2) Upon the occurrence of the events identified in subsection (1) of this section, the department of ecology must provide written notice of the suspension date of RCW 70A.65.060 through 70A.65.210 to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department. [2021 c 316 § 39.]

Chapter 70A.100 RCW

PUBLIC WATER SYSTEM COORDINATION ACT OF 1977

Sections

70A.100.010	Legislative declaration.
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70A.100.110	Rate making authority preserved.
70A.100.120	Short title.
70A.100.130	Satellite system management agencies—Definitions.
70A.100.140	Review of water or sewer system plan—Time limitations—Notice of rejection of plan or extension of timeline.

Drinking water quality consumer complaints: RCW 80.04.110.

70A.100.010 Legislative declaration. The legislature hereby finds that an adequate supply of potable water for domestic, commercial, and industrial use is vital to the health and well-being of the people of the state. Readily available water for use in public water systems is limited and should be developed and used efficiently with a minimum of loss or waste.

In order to maximize efficient and effective development of the state's public water supply systems, the department of health shall assist water purveyors by providing a procedure to coordinate the planning of the public water supply systems. [1991 c 3 § 365; 1977 ex.s. c 142 § 1. Formerly RCW 70.116.010.]

70A.100.020 Declaration of purpose. The purposes of this chapter are:

(1) To provide for the establishment of critical water supply service areas related to water utility planning and development;

(2) To provide for the development of minimum planning and design standards for critical water supply service areas to insure that water systems developed in these areas are consistent with regional needs;

(3) To assist in the orderly and efficient administration of state financial assistance programs for public water systems; and

(4) To assist public water systems to meet reasonable standards of quality, quantity and pressure. [1977 ex.s. c 142 § 2. Formerly RCW 70.116.020.]

70A.100.030 Definitions. Unless the context clearly requires otherwise, the following terms when used in this chapter shall be defined as follows:

(1) "Coordinated water system plan" means a plan for public water systems within a critical water supply service area which identifies the present and future needs of the systems and sets forth means for meeting those needs in the most efficient manner possible. Such a plan shall include provisions for subsequently updating the plan. In areas where more than one water system exists, a coordinated plan may consist of either: (a) A new plan developed for the area following its designation as a critical water supply service area; or (b) a compilation of compatible water system plans existing at the time of such designation and containing such supplementary provisions as are necessary to satisfy the requirements of this chapter. Any such coordinated plan must include provisions regarding: Future service area designations; assessment of the feasibility of shared source, transmission, and storage facilities; emergency inter-ties; design standards; and other concerns related to the construction and operation of the water system facilities.

(2) "Critical water supply service area" means a geographical area which is characterized by a proliferation of small, inadequate water systems, or by water supply problems which threaten the present or future water quality or reliability of service in such a manner that efficient and orderly development may best be achieved through coordinated planning by the water utilities in the area.

(3) "Public water system" means any system providing water intended for, or used for, human consumption or other domestic uses. It includes, but is not limited to, the source, treatment for purifying purposes only, storage, transmission, pumping, and distribution facilities where water is furnished to any community, or number of individuals, or is made available to the public for human consumption or domestic use, but excluding water systems serving one single-family residence. However, systems existing on September 21, 1977 which are owner operated and serve less than ten single-family residences or which serve only one industrial plant shall be excluded from this definition and the provisions of this chapter.

(4) "Purveyor" means any agency or subdivision of the state or any municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity, that owns or operates for wholesale or retail service a public water system. It also means the authorized agents of any such entities.

(5) "Secretary" means the secretary of the department of health or the secretary's authorized representative.

(6) "Service area" means a specific geographical area serviced or for which service is planned by a purveyor. [1991 c 3 § 366; 1977 ex.s. c 142 § 3. Formerly RCW 70.116.030.]

70A.100.040 Critical water supply service area—Designation—Establishment or amendment of external boundaries—Procedures. (1) The secretary and the appropriate local planning agencies and purveyors, shall study geographical areas where water supply problems related to uncoordinated planning, inadequate water quality or unreliable service appear to exist. If the results of the study indicate that such water supply problems do exist, the secretary or the county legislative authority shall designate the area involved as being a critical water supply service area, consult with the appropriate local planning agencies and purveyors, and appoint a committee of not less than three representatives therefrom solely for the purpose of establishing the proposed external boundaries of the critical water supply service area. The committee shall include a representative from each purveyor serving more than fifty customers, the county legislative authority, county planning agency, and health agencies. Such proposed boundaries shall be established within six months of the appointment of the committee.

During the six month period following the establishment of the proposed external boundaries of the critical water supply services areas, the county legislative authority shall conduct public hearings on the proposed boundaries and shall modify or ratify the proposed boundaries in accordance with the findings of the public hearings. The boundaries shall reflect the existing land usage, and permitted densities in county plans, ordinances, and/or growth policies. If the proposed boundaries are not modified during the six month period, the proposed boundaries shall be automatically ratified and be the critical water supply service area.

After establishment of the external boundaries of the critical water supply service area, no new public water systems may be approved within the boundary area unless an existing water purveyor is unable to provide water service.

(2) At the time a critical water supply service area is established, the external boundaries for such area shall not include any fractional part of a purveyor's existing contiguous service area.

(3) The external boundaries of the critical water supply service area may be amended in accordance with procedures prescribed in subsection (1) of this section for the establishment of the critical water supply service areas when such amendment is necessary to accomplish the purposes of this chapter. [1977 ex.s. c 142 § 4. Formerly RCW 70.116.040.]

70A.100.050 Development of water system plans for critical water supply service areas. (1) Each purveyor within the boundaries of a critical water supply service area shall develop a water system plan for the purveyor's future service area if such a plan has not already been developed: PROVIDED, That nonmunicipally owned public water systems are exempt from the planning requirements of this chapter, except for the establishment of service area boundaries if they have no plans for water service beyond their existing service area: PROVIDED FURTHER, That if the county leg-

islative authority permits a change in development that will increase the demand for water service of such a system beyond the existing system's ability to provide minimum water service, the purveyor shall develop a water system plan in accordance with this section. The establishment of future service area boundaries shall be in accordance with RCW 70A.100.070.

(2) After the boundaries of a critical water supply service area have been established pursuant to RCW 70A.100.040, the committee established in RCW 70A.100.040 shall participate in the development of a coordinated water system plan for the designated area. Such a plan shall incorporate all water system plans developed pursuant to subsection (1) of this section. The plan shall provide for maximum integration and coordination of public water system facilities consistent with the protection and enhancement of the public health and well-being. Decisions of the committee shall be by majority vote of those present at meetings of the committee.

(3) Those portions of a critical water supply service area not yet served by a public water system shall have a coordinated water system plan developed by existing purveyors based upon permitted densities in county plans, ordinances, and/or growth policies for a minimum of five years beyond the date of establishment of the boundaries of the critical water supply service area.

(4) To insure that the plan incorporates the proper designs to protect public health, the secretary shall adopt regulations pursuant to chapter 34.05 RCW concerning the scope and content of coordinated water system plans, and shall ensure, as minimum requirements, that such plans:

(a) Are reviewed by the appropriate local governmental agency to insure that the plan is not inconsistent with the land use plans, shoreline master programs, and/or developmental policies of the general purpose local government or governments whose jurisdiction the water system plan affects.

(b) Recognize all water resource plans, water quality plans, and water pollution control plans which have been adopted by units of local, regional, and state government.

(c) Incorporate the fire protection standards developed pursuant to RCW 70A.100.080.

(d) Identify the future service area boundaries of the public water system or systems included in the plan within the critical water supply service area.

(e) Identify feasible emergency inter-ties between adjacent purveyors.

(f) Include satellite system management requirements consistent with RCW 70A.100.130.

(g) Include policies and procedures that generally address failing water systems for which counties may become responsible under RCW 43.70.195.

(5) If a "water general plan" for a critical water supply service area or portion thereof has been prepared pursuant to chapter 36.94 RCW and such a plan meets the requirements of subsections (1) and (4) of this section, such a plan shall constitute the coordinated water system plan for the applicable geographical area.

(6) The committee established in RCW 70A.100.040 may develop and utilize a mechanism for addressing disputes that arise in the development of the coordinated water system plan.

(7) Prior to the submission of a coordinated water system plan to the secretary for approval pursuant to RCW 70A.100.060, the legislative authorities of the counties in which the critical water supply service area is located shall hold a public hearing thereon and shall determine the plan's consistency with subsection (4) of this section. If within sixty days of receipt of the plan, the legislative authorities find any segment of a proposed service area of a purveyor's plan or any segment of the coordinated water system plan to be inconsistent with any current land use plans, shoreline master programs, and/or developmental policies of the general purpose local government or governments whose jurisdiction the water system plan affects, the secretary shall not approve that portion of the plan until the inconsistency is resolved between the local government and the purveyor. If no comments have been received from the legislative authorities within sixty days of receipt of the plan, the secretary may consider the plan for approval.

(8) Any county legislative authority may adopt an abbreviated plan for the provision of water supplies within its boundaries that includes provisions for service area boundaries, minimum design criteria, and review process. The elements of the abbreviated plan shall conform to the criteria established by the department under subsection (4) of this section and shall otherwise be consistent with other adopted land use and resource plans. The county legislative authority may, in lieu of the committee required under RCW 70A.100.040, and the procedures authorized in this section, utilize an advisory committee that is representative of the water utilities and local governments within its jurisdiction to assist in the preparation of the abbreviated plan, which may be adopted by resolution and submitted to the secretary for approval. Purveyors within the boundaries covered by the abbreviated plan need not develop a water system plan, except to the extent required by the secretary or state board of health under other authority. Any abbreviated plan adopted by a county legislative authority pursuant to this subsection shall be subject to the same provisions contained in RCW 70A.100.060 for coordinated water system plans that are approved by the secretary. [2020 c 20 § 1327; 1995 c 376 § 7; 1977 ex.s. c 142 § 5. Formerly RCW 70.116.050.]

Findings—1995 c 376: See note following RCW 70A.100.060.

70A.100.060 Approval of coordinated water system plan—Limitations following approval—Dispute resolution mechanism—Update or revision of plan. (1) A coordinated water system plan shall be submitted to the secretary for design approval within two years of the establishment of the boundaries of a critical water supply service area.

(2) The secretary shall review the coordinated water system plan and, to the extent the plan is consistent with the requirements of this chapter and regulations adopted hereunder, shall approve the plan, provided that the secretary shall not approve those portions of a coordinated water system plan that fail to meet the requirements for future service area boundaries until any boundary dispute is resolved as set forth in RCW 70A.100.070.

(3) Following the approval of a coordinated water system plan by the secretary:

(a) All purveyors constructing or proposing to construct public water system facilities within the area covered by the plan shall comply with the plan.

(b) No other purveyor shall establish a public water system within the area covered by the plan, unless the local legislative authority determines that existing purveyors are unable to provide the service in a timely and reasonable manner, pursuant to guidelines developed by the secretary. An existing purveyor is unable to provide the service in a timely manner if the water cannot be provided to an applicant for water within one hundred twenty days unless specified otherwise by the local legislative authority. If such a determination is made, the local legislative authority shall require the new public water system to be constructed in accordance with the construction standards and specifications embodied in the coordinated water system plan approved for the area. The service area boundaries in the coordinated plan for the affected utilities shall be revised to reflect the decision of the local legislative authority.

(4) The secretary may deny proposals to establish or to expand any public water system within a critical water supply service area for which there is not an approved coordinated water system plan at any time after two years of the establishment of the critical water supply service area: PROVIDED, That service connections shall not be considered expansions.

(5) The affected legislative authorities may develop and utilize a mechanism for addressing disputes that arise in the implementation of the coordinated water system plan after the plan has been approved by the secretary.

(6) After adoption of the initial coordinated water system plan, the local legislative authority or the secretary may determine that the plan should be updated or revised. The legislative authority may initiate an update at any time, but the secretary may initiate an update no more frequently than once every five years. The update may encompass all or a portion of the plan, with the scope of the update to be determined by the secretary and the legislative authority. The process for the update shall be the one prescribed in RCW 70A.100.050.

(7) The provisions of subsection (3) of this section shall not apply in any county for which a coordinated water system plan has not been approved under subsection (2) of this section.

(8) If the secretary initiates an update or revision of a coordinated water system plan, the state shall pay for the cost of updating or revising the plan. [2020 c 20 § 1328; 1995 c 376 § 2; 1977 ex.s. c 142 § 6. Formerly RCW 70.116.060.]

Findings—1995 c 376: "The legislature finds that:

(1) Protection of the state's water resources, and utilization of such resources for provision of public water supplies, requires more efficient and effective management than is currently provided under state law;

(2) The provision of public water supplies to the people of the state should be undertaken in a manner that is consistent with the planning principles of the growth management act and the comprehensive plans adopted by local governments under the growth management act;

(3) Small water systems have inherent difficulties with proper planning, operation, financing, management and maintenance. The ability of such systems to provide safe and reliable supplies to their customers on a long-term basis needs to be assured through proper management and training of operators;

(4) New water quality standards and operational requirements for public water systems will soon generate higher rates for the customers of those systems, which may be difficult for customers to afford to pay. It is in the best interest of the people of this state that small systems maintain themselves in a financially viable condition;

(5) The drinking water 2000 task force has recommended maintaining a strong and properly funded statewide drinking water program, retaining primary responsibility for administering the federal safe drinking water act in Washington. The task force has further recommended delegation of as many water system regulatory functions as possible to local governments, with provision of adequate resources and elimination of barriers to such delegation. In order to achieve these objectives, the state shall provide adequate funding from both general state funds and funding directly from the regulated water system;

(6) The public health services improvement plan recommends that the principal public health functions in Washington, including regulation of public water systems, should be fully funded by state revenues and undertaken by local jurisdictions with the capacity to perform them; and

(7) State government, local governments, water suppliers, and other interested parties should work for continuing economic growth of the state by maximizing the use of existing water supply management alternatives, including regional water systems, satellite management, and coordinated water system development." [1995 c 376 § 1.]

70A.100.070 Service area boundaries within critical water supply area. (1) The proposed service area boundaries of public water systems within the critical water supply service area that are required to submit water system plans under this chapter shall be identified in the system's plan. The local legislative authority, or its planning department or other designee, shall review the proposed boundaries to determine whether the proposed boundaries of one or more systems overlap. The boundaries determined by the local legislative authority not to overlap shall be incorporated into the coordinated water system plan. Where any overlap exists, the local legislative authority may attempt to resolve the conflict through procedures established under RCW 70A.100.060(5).

(2) Any final decision by a local legislative authority regarding overlapping service areas, or any unresolved disputes regarding service area boundaries, may be appealed or referred to the secretary in writing for resolution. After receipt of an appeal or referral, the secretary shall hold a public hearing thereon. The secretary shall provide notice of the hearing by certified mail to each purveyor involved in the dispute, to each county legislative authority having jurisdiction in the area and to the public. The secretary shall provide public notice pursuant to the provisions of chapter 65.16 RCW. Such notice shall be given at least twenty days prior to the hearing. The hearing may be continued from time to time and, at the termination thereof, the secretary may restrict the expansion of service of any purveyor within the area if the secretary finds such restriction is necessary to provide the greatest protection of the public health and well-being. [2020 c 20 § 1329; 1995 c 376 § 13; 1977 ex.s. c 142 § 7. Formerly RCW 70.116.070.]

Findings—1995 c 376: See note following RCW 70A.100.060.

70A.100.080 Performance standards relating to fire protection. The secretary shall adopt performance standards relating to fire protection to be incorporated into the design and construction of public water systems. The standards shall be consistent with recognized national standards. The secretary shall adopt regulations pertaining to the application and enforcement of the standards: PROVIDED, That the regulations shall require the application of the standards for new and expanding systems only. The standards shall apply in critical water supply service areas unless the approved coordinated plan provides for nonfire flow systems. [1977 ex.s. c 142 § 8. Formerly RCW 70.116.080.]

70A.100.090 Assumption of jurisdiction or control of public water system by city, town, or code city. The assumption of jurisdiction or control of any public water system or systems by a city, town, or code city, shall be subject to the provisions of chapter 35.13A RCW, and the provisions of this chapter shall be superseded by the provisions of chapter 35.13A RCW regarding such an assumption of jurisdiction. [1977 ex.s. c 142 § 9. Formerly RCW 70.116.090.]

70A.100.100 Bottled water exempt. Nothing in this chapter shall apply to water which is bottled or otherwise packaged in a container for human consumption or domestic use, or to the treatment, storage and transportation facilities used in the processing of the bottled water or the distribution of the bottles or containers of water. [1977 ex.s. c 142 § 10. Formerly RCW 70.116.100.]

70A.100.110 Rate making authority preserved. Nothing in this chapter shall be construed to alter in any way the existing authority of purveyors and municipal corporations to establish, administer and apply water rates and rate provisions. [1977 ex.s. c 142 § 11. Formerly RCW 70.116.110.]

70A.100.120 Short title. This chapter shall be known and may be cited as the "Public Water System Coordination Act of 1977". [1977 ex.s. c 142 § 12. Formerly RCW 70.116.120.]

70A.100.130 Satellite system management agencies—Definitions. (1) The secretary shall adopt rules pursuant to chapter 34.05 RCW establishing criteria for designating individuals or water purveyors as qualified satellite system management agencies. The criteria shall set forth minimum standards for designation as a satellite system management agency qualified to assume ownership, operation, or both, of an existing or proposed public water system. The criteria shall include demonstration of financial integrity and operational capability, and may require demonstration of previous experience in successful operation and management of a public water system.

(2) Each county shall identify potential satellite system management agencies to the secretary for areas where: (a) No purveyor has been designated a future service area pursuant to this chapter, or (b) an existing purveyor is unable or unwilling to provide service. Preference shall be given to public utilities or utility districts or to investor-owned utilities under the jurisdiction of the utilities and transportation commission.

(3) The secretary shall approve satellite system management agencies meeting the established criteria and shall maintain and make available to counties a list of approved agencies. Prior to the construction of a new public water system, the individual(s) proposing the new system or requesting service shall first be directed by the local agency responsible for issuing the construction or building permit to one or more qualified satellite system management agencies designated for the service area where the new system is proposed for the purpose of exploring the possibility of a satellite agency either owning or operating the proposed new water system.

(4) Approved satellite system management agencies shall be reviewed periodically by the secretary for continued compliance with established criteria. The secretary may require status reports and other information necessary for such review. Satellite system management agencies shall be subject to reapproval at the discretion of the secretary but not less than once every five years.

(5) The secretary may assess reasonable fees to process applications for initial approval and for periodic review of satellite system management agencies.

(6) For purposes of this section, "satellite system management agency" and "satellite agency" shall mean a person or entity that is certified by the secretary to own or operate more than one public water system on a regional or county-wide basis, without the necessity for a physical connection between such systems. [2013 c 251 § 8; 1991 c 18 § 1. Formerly RCW 70.116.134.]

Residual balance of funds—Effective date—2013 c 251: See notes following RCW 41.06.280.

70A.100.140 Review of water or sewer system plan—Time limitations—Notice of rejection of plan or extension of timeline. For any new or revised water or sewer system plan submitted for review under this chapter, the department of health shall review and either approve, conditionally approve, reject, or request amendments within ninety days of the receipt of the submission of the plan. The department of health may extend this ninety-day time limitation for new submittals by up to an additional ninety days if insufficient time exists to adequately review the general comprehensive plan. For rejections of plans or extensions of the timeline, the department shall provide in writing, to the person or entity submitting the plan, the reason for such action. In addition, the person or entity submitting the plan and the department of health may mutually agree to an extension of the deadlines contained in this section. [2002 c 161 § 3. Formerly RCW 70.116.140.]

Chapter 70A.105 RCW ON-SITE SEWAGE DISPOSAL SYSTEMS

Sections

70A.105.010	Legislative declaration.
70A.105.020	Definitions.
70A.105.030	Local boards of health—Administrative search warrant—Administrative plan—Corrections.
70A.105.040	Local boards of health—Authority to waive sections of local plumbing and/or building codes.
70A.105.050	Adoption of more restrictive standards.
70A.105.060	Additive regulation.
70A.105.070	Additives—Confidentiality.
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70A.105.090	Funding.
70A.105.100	Alternative systems—State guidelines and standards.
70A.105.110	Inspectors—Certificate of competency.
70A.105.120	Civil penalties.

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

Local health officer authority to grant waiver from on-site sewage system requirements: RCW 70.05.072.

70A.105.010 Legislative declaration. The legislature finds that over one million, two hundred thousand persons in the state are not served by sanitary sewers and that they must

rely on septic tank systems. The failure of large numbers of such systems has resulted in significant health hazards, loss of property values, and water quality degradation. The legislature further finds that failure of such systems could be reduced by utilization of nonwater-carried sewage disposal systems, or other alternative methods of effluent disposal, as a correctional measure. Wastewater volume diminution and disposal of most of the high bacterial waste through composting or other alternative methods of effluent disposal would result in restorative improvement or correction of existing substandard systems. [1977 ex.s. c 133 § 1. Formerly RCW 70.118.010.]

70A.105.020 Definitions. As used in this chapter, the terms defined in this section shall have the meanings indicated unless the context clearly indicates otherwise.

(1) "Nonwater-carried sewage disposal devices" means any device that stores and treats nonwater-carried human urine and feces.

(2) "Alternative methods of effluent disposal" means systems approved by the department of health, including at least, mound systems, alternating drainfields, anaerobic filters, evapotranspiration systems, and aerobic systems.

(3) "Failure" means: (a) Effluent has been discharged on the surface of the ground prior to approved treatment; or (b) effluent has percolated to the surface of the ground; or (c) effluent has contaminated or threatens to contaminate a groundwater supply.

(4) "Additive" means any commercial product intended to affect the performance or aesthetics of an on-site sewage disposal system.

(5) "Department" means the department of health.

(6) "On-site sewage disposal system" means any system of piping, treatment devices, or other facilities that convey, store, treat, or dispose of sewage on the property where it originates or on nearby property under the control of the user where the system is not connected to a public sewer system. For purposes of this chapter, an on-site sewage disposal system does not include indoor plumbing and associated fixtures.

(7) "Chemical additive" means those additives containing acids, bases, or other chemicals deemed unsafe by the department for use in an on-site sewage disposal system.

(8) "Additive manufacturer" means any person who manufactures, formulates, blends, packages, or repackages an additive product for sale, use, or distribution within the state. [1994 c 281 § 2; 1993 c 321 § 2; 1991 c 3 § 367; 1977 ex.s. c 133 § 2. Formerly RCW 70.118.020.]

Finding—Purpose—1994 c 281: "The legislature finds that chemical additives do, and that other types of additives may, contribute to septic system failure and groundwater contamination. In order to determine which ingredients of nonchemically based additive products have adverse effects on public health or the environment, it is necessary to submit such products to a review procedure.

The purpose of this act is: (1) To establish a timely and orderly procedure for review and approval of on-site sewage disposal system additives; (2) to prohibit the use, sale, or distribution of additives having an adverse effect on public health or the water quality of the state; (3) to require the disclosure of the contents of additives that are advertised, sold, or distributed in the state; and (4) to provide for consumer protection." [1994 c 281 § 1.]

Intent—1993 c 321: See note following RCW 70A.105.060.

Additional notes found at www.leg.wa.gov

70A.105.030 Local boards of health—Administrative search warrant—Administrative plan—Corrections. (1) Local boards of health shall identify failing septic tank drainfield systems in the normal manner and will use reasonable effort to determine new failures. The local health officer, environmental health director, or equivalent officer may apply for an administrative search warrant to a court official authorized to issue a criminal search warrant. The warrant may only be applied for after the local health officer or the health officer's designee has requested inspection of the person's property under the specific administrative plan required in this section, and the person has refused the health officer or the health officer's designee access to the person's property. Timely notice must be given to any affected person that a warrant is being requested and that the person may be present at any court proceeding to consider the requested search warrant. The court official may issue the warrant upon probable cause. A request for a search warrant must show [that] the inspection, examination, test, or sampling is in response to pollution in commercial or recreational shellfish harvesting areas or pollution in fresh water. A specific administrative plan must be developed expressly in response to the pollution. The local health officer, environmental health director, or equivalent officer shall submit the plan to the court as part of the justification for the warrant, along with specific evidence showing that it is reasonable to believe pollution is coming from the septic system on the property to be accessed for inspection. The plan must include each of the following elements:

(a) The overall goal of the inspection;

(b) The location and identification by address of the properties being authorized for inspection;

(c) Requirements for giving the person owning the property and the person occupying the property if it is someone other than the owner, notice of the plan, its provisions, and times of any inspections;

(d) The survey procedures to be used in the inspection;

(e) The criteria that would be used to define an on-site sewage system failure; and

(f) The follow-up actions that would be pursued once an on-site sewage system failure has been identified and confirmed.

(2) Discretionary judgment will be made in implementing corrections by specifying nonwater-carried sewage disposal devices or other alternative methods of treatment and effluent disposal as a measure of ameliorating existing substandard conditions. Local regulations shall be consistent with the intent and purposes stated in this section. [1998 c 152 § 1; 1977 ex.s. c 133 § 3. Formerly RCW 70.118.030.]

70A.105.040 Local boards of health—Authority to waive sections of local plumbing and/or building codes. With the advice of the secretary of the department of health, local boards of health are hereby authorized to waive applicable sections of local plumbing and/or building codes that might prohibit the use of an alternative method for correcting a failure. [1991 c 3 § 368; 1977 ex.s. c 133 § 4. Formerly RCW 70.118.040.]

70A.105.050 Adoption of more restrictive standards. If the legislative authority of a county or city finds that more

restrictive standards than those contained in *section 2 of this act or those adopted by the state board of health for systems allowed under *section 2 of this act or limitations on expansion of a residence are necessary to ensure protection of the public health, attainment of state water quality standards, and the protection of shellfish and other public resources, the legislative authority may adopt ordinances or resolutions setting standards as they may find necessary for implementing their findings. The legislative authority may identify the geographic areas where it is necessary to implement the more restrictive standards. In addition, the legislative authority may adopt standards for the design, construction, maintenance, and monitoring of sewage disposal systems. [1989 c 349 § 3. Formerly RCW 70.118.050.]

***Reviser's note:** "Section 2 of this act" did not become law. See effective date note following.

***Reviser's note:** Section 2 of this act did not take effect. See chapter 248-96 WAC.

Additional notes found at www.leg.wa.gov

70A.105.060 Additive regulation. (1) After July 1, 1994, a person may not use, sell, or distribute a chemical additive to on-site sewage disposal systems.

(2) After January 1, 1996, no person shall use, sell, or distribute any on-site sewage disposal additive whose ingredients have not been approved by the department.

(3) Each manufacturer of an on-site sewage disposal system additive that is sold, advertised, or distributed in the state shall submit the following information to the department: (a) The name and address of the company; (b) the name of the product; (c) the complete product formulation; (d) the location where the product is manufactured; (e) the intended method of product application; and (f) a request that the product be reviewed.

(4) The department shall adopt rules providing the criteria, review, and decision-making procedures to be used in reviewing on-site sewage disposal additives for use, sale, or distribution in the state. The criteria shall be designed to determine whether the additive has an adverse effect on public health or water quality. The department may charge a fee sufficient to cover the costs of evaluating the additive, including the development of criteria and review procedures. The fee schedule shall be established by rule.

(5) The department shall issue a decision as to whether a product registered pursuant to subsection (3) of this section is approved or denied within forty-five days of receiving a complete evaluation as required pursuant to subsection (4) of this section.

(6) Manufacturers shall reregister their product as provided in subsection (3) of this section each time their product formulation changes. The department may require a new approval for products registered under this subsection prior to allowing the use, sale, or distribution within the state.

(7) The department may contract with private laboratories for the performance of any duties necessary to carry out the purpose of this section.

(8) The attorney general or appropriate city or county prosecuting attorney is authorized to bring an appropriate action to enjoin any violation of the prohibition on the sale or distribution of additives, or to enjoin any violation of the conditions in RCW 70A.105.080.

(9) The department is responsible for providing written notification to additives manufacturers of the provisions of this section and RCW 70A.105.070 and 70A.105.080. The notification shall be provided no later than thirty days after April 1, 1994. Within thirty days of notification from the department, manufacturers shall provide the same notification to their distributors, wholesalers, and retail customers. [2020 c 20 § 1330; 1994 c 281 § 3; 1993 c 321 § 3. Formerly RCW 70.118.060.]

Finding—Purpose—Effective date—1994 c 281: See notes following RCW 70A.105.020.

Intent—1993 c 321: "The legislature finds that most additives do not have a positive effect on the operation of on-site systems and can contaminate groundwater aquifers, render septic drainfields dysfunctional, and result in costly repairs to homeowners. It is therefore the intent of the legislature to ban the use, sale, and distribution of additives within the state unless an additive has been specifically approved by the department of health." [1993 c 321 § 1.]

70A.105.070 Additives—Confidentiality. The department shall hold confidential any information obtained pursuant to RCW 70A.105.060 when shown by any manufacturer that such information, if made public, would divulge confidential business information, methods, or processes entitled to protection as trade secrets of the manufacturer. [2020 c 20 § 1331; 1994 c 281 § 4. Formerly RCW 70.118.070.]

Finding—Purpose—Effective date—1994 c 281: See notes following RCW 70A.105.020.

70A.105.080 Additives—Unfair practices. (1) Each manufacturer of a certified and approved additive product advertised, sold, or distributed in the state shall:

(a) Make no claims relating to the elimination of the need for septic tank pumping or proper septic tank maintenance;

(b) List the components of additive products on the product label, along with information regarding instructions for use and precautions;

(c) Make no false statements, design, or graphic representation relative to an additive product that is inconsistent with RCW 70A.105.060, 70A.105.070, or this section; and

(d) Make no claims, either direct or implied, about the performance of the product based on state approval of its ingredients.

(2) A violation of this section is an unfair act or practice in violation of the consumer protection act, chapter 19.86 RCW. [2020 c 20 § 1332; 1994 c 281 § 5. Formerly RCW 70.118.080.]

Finding—Purpose—Effective date—1994 c 281: See notes following RCW 70A.105.020.

70A.105.090 Funding. The department may not use funds appropriated to implement an element of the action agenda developed by the Puget Sound partnership under RCW 90.71.310 to conduct any activity required under chapter 281, Laws of 1994. [2007 c 341 § 61; 1994 c 281 § 6. Formerly RCW 70.118.090.]

Finding—Purpose—Effective date—1994 c 281: See notes following RCW 70A.105.020.

Additional notes found at www.leg.wa.gov

70A.105.100 Alternative systems—State guidelines and standards. In order to assure that technical guidelines and standards keep pace with advancing technologies, the department of health in collaboration with local health departments and other interested parties, must review and update as appropriate, the state guidelines and standards for alternative on-site sewage disposal every three years. The first review and update must be completed by January 1, 1999. [2010 1st sp.s. c 7 § 80; 1997 c 447 § 5. Formerly RCW 70.118.110.]

Finding—Purpose—1997 c 447: See note following RCW 70.05.074.
Additional notes found at www.leg.wa.gov

70A.105.110 Inspectors—Certificate of competency. (1) The local board of health shall ensure that individuals who conduct inspections of on-site wastewater treatment systems or who otherwise conduct reviews of such systems are qualified in the technology and application of on-site sewage treatment principles. A certificate of competency issued by the state board of registration for professional engineers and land surveyors is adequate demonstration that an individual is competent in the engineering aspects of on-site wastewater treatment system technology.

(2) A local board of health may allow noncertified individuals to review designs of, and conduct inspections of, on-site wastewater treatment systems for a maximum of two years after the date of hire, if a certified individual reviews or supervises the work during that time. [2019 c 442 § 20; 1999 c 263 § 22. Formerly RCW 70.118.120.]

70A.105.120 Civil penalties. A local health officer who is responsible for administering and enforcing regulations regarding on-site sewage disposal systems is authorized to issue civil penalties for violations of those regulations under the same limitations and requirements imposed on the department under RCW 70A.115.050, except that the amount of a penalty shall not exceed one thousand dollars per day for every violation, and judgments shall be entered in the name of the local health jurisdiction and penalties shall be placed into the general fund or funds of the entity or entities operating the local health jurisdiction. [2020 c 20 § 1333; 2007 c 343 § 9. Formerly RCW 70.118.130.]

Chapter 70A.110 RCW

ON-SITE SEWAGE DISPOSAL SYSTEMS—MARINE RECOVERY AREAS

Sections

70A.110.010	Findings—Purpose.
70A.110.020	Definitions.
70A.110.030	Local health officers to develop a written on-site program management plan.
70A.110.040	Local health officers—Determination of marine recovery areas.
70A.110.050	Marine recovery area on-site strategy.
70A.110.060	Local health officer duties—Electronic data systems.
70A.110.070	Department review of on-site program management plans—Assistance to local health jurisdictions.
70A.110.080	Department to contract with local health jurisdictions—Funding assistance—Requirements—Revised compliance dates—Work group.
70A.110.090	Chapter to supplement chapter 70A.105 RCW.
70A.110.100	Self-inspection of systems.

(2022 Ed.)

70A.110.010 Findings—Purpose. The legislature finds that:

(1) Hood Canal and other marine waters in Puget Sound are at risk of severe loss of marine life from low-dissolved oxygen. The increased input of human-influenced nutrients, especially nitrogen, is a factor causing this low-dissolved oxygen condition in some of Puget Sound's waters, in addition to such natural factors as poor overall water circulation and stratification that discourages mixing of surface-to-deeper waters;

(2) A significant portion of the state's residents live in homes served by on-site sewage disposal systems, and many new residences will be served by these systems;

(3) Properly functioning on-site sewage disposal systems largely protect water quality. However, improperly functioning on-site sewage disposal systems in marine recovery areas may contaminate surface water, causing public health problems;

(4) Local programs designed to identify and correct failing on-site sewage disposal systems have proven effective in reducing and eliminating public health hazards, improving water quality, and reopening previously closed shellfish areas; and

(5) State water quality monitoring data and analysis can help to focus these enhanced local programs on specific geographic areas that are sources of pollutants degrading Puget Sound waters.

Therefore, it is the purpose of this chapter to authorize enhanced local programs in marine recovery areas to inventory existing on-site sewage disposal systems, to identify the location of all on-site sewage disposal systems in marine recovery areas, to require inspection of on-site sewage disposal systems and repairs to failing systems, to develop electronic data systems capable of sharing information regarding on-site sewage disposal systems, and to monitor these programs to ensure that they are working to protect public health and Puget Sound water quality. [2006 c 18 § 1. Formerly RCW 70.118A.010.]

70A.110.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the state board of health.

(2) "Department" means the department of health.

(3) "Failing" means a condition of an existing on-site sewage disposal system or component that threatens the public health by inadequately treating sewage, or by creating a potential for direct or indirect contact between sewage and the public. Examples of a failing on-site sewage disposal system include:

(a) Sewage on the surface of the ground;

(b) Sewage backing up into a structure caused by slow soil absorption of septic tank effluent;

(c) Sewage leaking from a sewage tank or collection system;

(d) Cesspools or seepage pits where evidence of groundwater or surface water quality degradation exists;

(e) Inadequately treated effluent contaminating groundwater or surface water; or

(f) Noncompliance with standards stipulated on the permit.

(4) "Local health officer" or "local health jurisdiction" means the local health officers and local health jurisdictions in the following counties bordering Puget Sound: Clallam, Island, Kitsap, Jefferson, Mason, San Juan, Seattle-King, Skagit, Snohomish, Tacoma-Pierce, Thurston, and Whatcom.

(5) "Marine recovery area" means an area of definite boundaries where the local health officer, or the department in consultation with the health officer, determines that additional requirements for existing on-site sewage disposal systems may be necessary to reduce potential failing systems or minimize negative impacts of on-site sewage disposal systems.

(6) "Marine recovery area on-site strategy" or "on-site strategy" means a local health jurisdiction's on-site sewage disposal system strategy required under RCW 70A.110.050. This strategy is a component of the on-site program management plan required under RCW 70A.110.030.

(7) "On-site sewage disposal system" means an integrated system of components, located on or nearby the property it serves, that conveys, stores, treats, or provides subsurface soil treatment and dispersal of sewage. It consists of a collection system, a treatment component or treatment sequence, and a soil dispersal component. An on-site sewage disposal system also refers to a holding tank sewage system or other system that does not have a soil dispersal component. For purposes of this chapter, the term "on-site sewage disposal system" does not include any system regulated by a water quality discharge permit issued under chapter 90.48 RCW.

(8) "Unknown system" means an on-site sewage disposal system that was installed without the knowledge or approval of the local health jurisdiction, including those that were installed before such approval was required. [2020 c 20 § 1334; 2006 c 18 § 2. Formerly RCW 70.118A.020.]

70A.110.030 Local health officers to develop a written on-site program management plan. By July 1, 2007, the local health officers of health jurisdictions in the twelve counties bordering Puget Sound shall develop a written on-site program management plan to provide guidance to the local health jurisdiction. [2006 c 18 § 3. Formerly RCW 70.118A.030.]

70A.110.040 Local health officers—Determination of marine recovery areas. (1) In developing on-site program management plans required under RCW 70A.110.030, the local health officer shall propose a marine recovery area for those land areas where existing on-site sewage disposal systems are a significant factor contributing to concerns associated with:

(a) Shellfish growing areas that have been threatened or downgraded by the department under chapter 69.30 RCW;

(b) Marine waters that are listed by the department of ecology under section 303(d) of the federal clean water act (33 U.S.C. Sec. 1251 et seq.) for low-dissolved oxygen or fecal coliform; or

(c) Marine waters where nitrogen has been identified as a contaminant of concern by the local health officer.

(2) In determining the boundaries for a marine recovery area, the local health officer shall assess and include those

land areas where existing on-site sewage disposal systems may affect water quality in the marine recovery area.

(3) Determinations made by the local health officer under this section, including identification of nitrogen as a contaminant of concern, will be based on published guidance developed by the department. The guidance must be designed to ensure the proper use of available scientific and technical data. The health officer shall document the basis for these determinations when plans are submitted to the department.

(4) After July 1, 2007, the local health officer may designate additional marine recovery areas meeting the criteria of this section, according to new information. Where the department recommends the designation of a marine recovery area or expansion of a designated marine recovery area, the local health officer shall notify the department of its decision concerning the recommendation within ninety days of receipt of the recommendation. [2020 c 20 § 1335; 2006 c 18 § 4. Formerly RCW 70.118A.040.]

70A.110.050 Marine recovery area on-site strategy.

(1) The local health officer of a local health jurisdiction where a marine recovery area has been proposed under RCW 70A.110.040 shall develop and approve a marine recovery area on-site strategy that includes designation of marine recovery areas to guide the local health jurisdiction in developing and managing all existing on-site sewage disposal systems within marine recovery areas within its jurisdiction. The on-site strategy must be a component of the program management plan required under RCW 70A.110.030. The department may grant an extension of twelve months where a local health jurisdiction has demonstrated substantial progress toward completing its on-site strategy.

(2) An on-site strategy for a marine recovery area must specify how the local health jurisdiction will by July 1, 2012, and thereafter, find:

(a) Existing failing systems and ensure that system owners make necessary repairs; and

(b) Unknown systems and ensure that they are inspected as required to ensure that they are functioning properly, and repaired, if necessary. [2020 c 20 § 1336; 2006 c 18 § 5. Formerly RCW 70.118A.050.]

70A.110.060 Local health officer duties—Electronic data systems. In a marine recovery area, each local health officer shall:

(1) Require that on-site sewage disposal system maintenance specialists, septic tank pumpers, or others performing on-site sewage disposal system inspections submit reports or inspection results to the local health jurisdiction regarding any failing system; and

(2) Develop and maintain an electronic data system of all on-site sewage disposal systems within a marine recovery area to enable the local health jurisdiction to actively manage on-site sewage disposal systems. In assisting development of electronic data systems, the department shall work with local health jurisdictions with marine recovery areas and the on-site sewage disposal system industry to develop common forms and protocols to facilitate sharing of data. A marine recovery area on-site sewage disposal electronic data system must be compatible with all on-site sewage disposal elec-

tronic data systems used throughout a local health jurisdiction. [2006 c 18 § 6. Formerly RCW 70.118A.060.]

70A.110.070 Department review of on-site program management plans—Assistance to local health jurisdictions. (1) The on-site program management plans of local health jurisdictions required under RCW 70A.110.030 must be submitted to the department by July 1, 2007, and be reviewed to determine if they contain all necessary elements. The department shall provide in writing to the local board of health its review of the completeness of the plan. The board may adopt additional criteria by rule for approving plans.

(2) In reviewing the on-site strategy component of the plan, the department shall ensure that all required elements, including designation of any marine recovery area, have been addressed.

(3) Within thirty days of receiving an on-site strategy, the department shall either approve the on-site strategy or provide in writing the reasons for not approving the strategy and recommend changes. If the department does not approve the on-site strategy, the local health officer must amend and resubmit the plan to the department for approval.

(4) Upon receipt of department approval or after thirty days without notification, whichever comes first, the local health officer shall implement the on-site strategy.

(5) If the department denies approval of an on-site strategy, the local health officer may appeal the denial to the board. The board must make a final determination concerning the denial.

(6) The department shall assist local health jurisdictions in:

(a) Developing written on-site program management plans required by RCW 70A.110.030;

(b) Identifying reasonable methods for finding unknown systems; and

(c) Developing or enhancing electronic data systems that will enable each local health jurisdiction to actively manage all on-site sewage disposal systems within their jurisdictions, with priority given to those on-site sewage disposal systems that are located in or which could affect designated marine recovery areas. [2020 c 20 § 1337; 2006 c 18 § 7. Formerly RCW 70.118A.070.]

70A.110.080 Department to contract with local health jurisdictions—Funding assistance—Requirements—Revised compliance dates—Work group. (1) The department shall enter into a contract with each local health jurisdiction subject to the requirements of this chapter to implement plans developed under this chapter, and to develop or enhance electronic data systems required by this chapter. The contract must include state funding assistance to the local health jurisdiction from funds appropriated to the department for this purpose.

(2) The contract must require, at a minimum, that within a marine recovery area, the local health jurisdiction:

(a) Show progressive improvement in finding failing systems;

(b) Show progressive improvement in working with on-site sewage disposal system owners to make needed system repairs;

(2022 Ed.)

(c) Is actively taking steps to find previously unknown systems and ensuring that they are inspected as required and repaired if necessary;

(d) Show progressive improvement in the percentage of on-site sewage disposal systems that are included in an electronic data system; and

(e) Of those on-site sewage disposal systems in the electronic data system, show progressive improvement in the percentage that have had required inspections.

(3) The contract must also include provisions for state assistance in updating the plan. Beginning July 1, 2012, the contract may adopt revised compliance dates, including those in RCW 70A.110.050, where the local health jurisdiction has demonstrated substantial progress in updating the on-site strategy.

(4) The department shall convene a work group for the purpose of making recommendations to the appropriate committees of the legislature for the development of certification or licensing of maintenance specialists. The work group shall make its recommendation with consideration given to the 1998 report to the legislature entitled "On-Site Wastewater Certification Work Group" as it pertains to maintenance specialists. The work group may give priority to appropriate levels of certification or licensure of maintenance specialists who work in the Puget Sound basin. [2020 c 20 § 1338; 2006 c 18 § 8. Formerly RCW 70.118A.080.]

70A.110.090 Chapter to supplement chapter 70A.105 RCW. The provisions of this chapter are supplemental to all other authorities governing on-site sewage disposal systems, including chapter 70A.105 RCW and rules adopted under that chapter. [2020 c 20 § 1339; 2006 c 18 § 9. Formerly RCW 70.118A.090.]

70A.110.100 Self-inspection of systems. Nothing in this chapter prohibits a county from relying on self-inspection of on-site sewage systems consistent with RCW 36.70A.690 or eliminates the requirement that counties protect water quality consistent with RCW 36.70A.070 (1) and (5). [2017 c 105 § 2. Formerly RCW 70.118A.100.]

Chapter 70A.115 RCW

LARGE ON-SITE SEWAGE DISPOSAL SYSTEMS

Sections

70A.115.005	Findings.
70A.115.010	Definitions.
70A.115.020	Comprehensive regulation—Department duties.
70A.115.030	Operating permits required—Application.
70A.115.040	Rules.
70A.115.050	Violations—Civil penalties.
70A.115.060	Injunctions.
70A.115.070	Authority and duties.

70A.115.005 Findings. The legislature finds that:

(1) Protection of the environment and public health requires properly designed, operated, and maintained on-site sewage systems. Failure of those systems can pose certain health and environmental hazards if sewage leaks above ground or if untreated sewage reaches surface or groundwater.

(2) Chapter 70A.110 RCW provides a framework for ongoing management of on-site sewage systems located in

marine recovery areas and regulated by local health jurisdictions under state board of health rules. This chapter will provide a framework for comprehensive management of large on-site sewage systems statewide.

(3) The primary purpose of this chapter is to establish, in a single state agency, comprehensive regulation of the design, operation, and maintenance of large on-site sewage systems, and their operators, that provides both public health and environmental protection. To accomplish these purposes, this chapter provides for:

(a) The permitting and continuing oversight of large on-site sewage systems;

(b) The establishment by the department of standards and rules for the siting, design, construction, installation, operation, maintenance, and repair of large on-site sewage systems; and

(c) The enforcement by the department of the standards and rules established under this chapter. [2020 c 20 § 1340; 2007 c 343 § 1. Formerly RCW 70.118B.005.]

70A.115.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the state department of health.

(2) "Industrial wastewater" means the water or liquid carried waste from an industrial process. These wastes may result from any process or activity of industry, manufacture, trade, or business, from the development of any natural resource, or from animal operations such as feedlots, poultry houses, or dairies. The term includes contaminated stormwater and leachate from solid waste facilities.

(3) "Large on-site sewage system" means an on-site sewage system with design flows of between three thousand five hundred gallons per day and one hundred thousand gallons per day.

(4) "On-site sewage system" means an integrated system of components, located on or nearby the property it serves, that conveys, stores, treats, and provides subsurface soil treatment and disposal of domestic sewage. It consists of a collection system, a treatment component or treatment sequence, and a subsurface soil disposal component. It may or may not include a mechanical treatment system. An on-site sewage system also refers to a holding tank sewage system or other system that does not have a soil dispersal component. A holding tank that discharges to a sewer is not included in the definition of on-site sewage system. A system into which stormwater or industrial wastewater is discharged is not included in the definition of on-site sewage system.

(5) "Person" means any individual, corporation, company, association, firm, partnership, governmental agency, or any other entity whatsoever, and the authorized agents of any such entities.

(6) "Secretary" means the secretary of health.

(7) "Waters of the state" has the same meaning as defined in RCW 90.48.020. [2007 c 343 § 2. Formerly RCW 70.118B.010.]

70A.115.020 Comprehensive regulation—Department duties. (1) For the protection of human health and the environment the department shall:

(a) Establish and provide for the comprehensive regulation of large on-site sewage systems including, but not limited to, system siting, design, construction, installation, operation, maintenance, and repair;

(b) Control and prevent pollution of streams, lakes, rivers, ponds, inland waters, salt waters, water courses, and other surface and underground waters of the state of Washington, except to the extent authorized by permits issued under this chapter;

(c) Issue annual operating permits for large on-site sewage systems based on the system's ability to function properly in compliance with the applicable comprehensive regulatory requirements; and

(d) Enforce the large on-site sewage system requirements.

(2) Large on-site sewage systems permitted by the department may not be used for treatment and disposal of industrial wastewater or combined sanitary sewer and stormwater systems.

(3) The work group convened under RCW 70A.110.080(4) to make recommendations to the appropriate committees of the legislature for the development of certification or licensing of maintenance specialists shall include recommendations for the development of certification or licensing of large on-site sewage system operators. [2020 c 20 § 1341; 2007 c 343 § 3. Formerly RCW 70.118B.020.]

70A.115.030 Operating permits required—Application. (1) A person may not install or operate a large on-site sewage system without an operating permit as provided in this chapter after July 1, 2009. The owner of the system is responsible for obtaining a permit.

(2) The department shall issue operating permits in accordance with the rules adopted under RCW 70A.115.040.

(3) The department shall ensure the system meets all applicable siting, design, construction, and installation requirements prior to issuing an initial operating permit. Prior to renewing an operating permit, the department may review the performance of the system to determine compliance with rules and any permit conditions.

(4) At the time of initial permit application or at the time of permit renewal the department shall impose those permit conditions, requirements for system improvements, and compliance schedules as it determines are reasonable and necessary to ensure that the system will be operated and maintained properly. Each application must be accompanied by a fee as established in rules adopted by the department.

(5) Operating permits shall be issued for a term of one year, and shall be renewed annually, unless the operator fails to apply for a new permit or the department finds good cause to deny the application for renewal.

(6) Each permit may be issued only for the site and owner named in the application. Permits are not transferable or assignable except with the written approval of the department.

(7) The department may deny an application for a permit or modify, suspend, or revoke a permit in any case in which it finds that the permit was obtained by fraud or there is or has been a failure, refusal, or inability to comply with the requirements of this chapter or the standards or rules adopted under this chapter. RCW 43.70.115 governs notice of denial, revo-

cation, suspension, or modification and provides the right to an adjudicative proceeding to the permit applicant or permittee.

(8) For systems with design flows of more than fourteen thousand five hundred gallons per day, the department shall adopt rules to ensure adequate public notice and opportunity for review and comment on initial large on-site sewage system permit applications and subsequent permit applications to increase the volume of waste disposal or change effluent characteristics. The rules must include provisions for notice of final decisions. Methods for providing notice may include email, posting on the department's internet site, publication in a local newspaper, press releases, mailings, or other means of notification the department determines appropriate.

(9) A person aggrieved by the issuance of an initial permit, or by the issuance of a subsequent permit to increase the volume of waste disposal or to change effluent characteristics, for systems with design flows of more than fourteen thousand five hundred gallons per day, has the right to an adjudicative proceeding. The application for an adjudicative proceeding must be in writing, state the basis for contesting the action, include a copy of the decision, be served on and received by the department within twenty-eight days of receipt of notice of the final decision, and be served in a manner that shows proof of receipt. An adjudicative proceeding conducted under this subsection is governed by chapter 34.05 RCW.

(10) Any permit issued by the department of ecology for a large on-site sewage system under chapter 90.48 RCW is valid until it first expires after July 22, 2007. The system owner shall apply for an operating permit at least one hundred twenty days prior to expiration of the department of ecology permit.

(11) Systems required to meet operator certification requirements under chapter 70A.212 RCW must continue to meet those requirements as a condition of the department operating permit. [2020 c 20 § 1342; 2007 c 343 § 4. Formerly RCW 70.118B.030.]

70A.115.040 Rules. (1) For the protection of human health and the environment, the secretary shall adopt rules for the comprehensive regulation of large on-site sewage systems, which includes, but is not limited to, the siting, design, construction, installation, maintenance, repair, and permitting of the systems.

(2) In adopting the rules, the secretary shall, in consultation with the department of ecology, require that large on-site sewage systems comply with the applicable sections of chapter 90.48 RCW regarding control and prevention of pollution of waters of the state, including but not limited to:

(a) Surface and groundwater standards established under RCW 90.48.035; and

(b) Those provisions requiring all known, available, and reasonable methods of treatment.

(3) In adopting the rules, the secretary shall ensure that requirements for large on-site sewage systems are consistent with the requirements of any comprehensive plans or development regulations adopted under chapter 36.70A RCW or any other applicable comprehensive plan, land use plan, or development regulation adopted by a city, town, or county. [2007 c 343 § 5. Formerly RCW 70.118B.040.]

(2022 Ed.)

70A.115.050 Violations—Civil penalties. (1) A person who violates a law or rule regulating large on-site sewage systems administered by the department is subject to a penalty of not more than ten thousand dollars per day for every violation. Every violation is a separate and distinct offense. In case of a continuing violation, each day's continuing violation is a separate and distinct violation. The penalty assessed must reflect the significance of the violation and the previous record of compliance on the part of the person responsible for compliance with large on-site sewage system requirements.

(2) Every person who, through an act of commission or omission, procures, aids, or abets a violation is considered to have violated the provisions of this section and is subject to the penalty provided in this section.

(3) The penalty provided for in this section must be imposed by a notice in writing to the person against whom the civil penalty is assessed and must describe the violation. The notice must be personally served in the manner of service of a summons in a civil action or in a manner that shows proof of receipt. A penalty imposed by this section is due twenty-eight days after receipt of notice unless application for an adjudicative proceeding is filed as provided in subsection (4) of this section.

(4) Within twenty-eight days after notice is received, the person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter 34.05 RCW and applicable rules.

(5) A penalty imposed by a final administrative order is due upon service of the final administrative order. A person who fails to pay a penalty assessed by a final administrative order within thirty days of service of the final administrative order shall pay, in addition to the amount of the penalty, interest at the rate of one percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid, commencing with the month in which the notice of penalty was served, and reasonable attorneys' fees as are incurred if civil enforcement of the final administrative order is required to collect the penalty.

(6) A person who institutes proceedings for judicial review of a final administrative order assessing a civil penalty under this chapter shall place the full amount of the penalty in an interest-bearing account in the registry of the reviewing court. At the conclusion of the proceeding the court shall, as appropriate, enter a judgment on behalf of the department and order that the judgment be satisfied to the extent possible from moneys paid into the registry of the court or shall enter a judgment in favor of the person appealing the penalty assessment and order return of the moneys paid into the registry of the court together with accrued interest to the person appealing. The judgment may award reasonable attorneys' fees for the cost of the attorney general's office in representing the department.

(7) If no appeal is taken from a final administrative order assessing a civil penalty under this chapter, the department may file a certified copy of the final administrative order with the clerk of the superior court in which the large on-site sewage system is located or in Thurston county, and the clerk shall enter judgment in the name of the department and in the amount of the penalty assessed in the final administrative order.

(8) A judgment entered under subsection (6) or (7) of this section has the same force and effect as, and is subject to all of the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

(9) The large on-site sewage systems account is created in the custody of the state treasurer. All receipts from penalties imposed under this section shall be deposited into the account. Expenditures from the account shall be used by the department to provide training and technical assistance to large on-site sewage system owners and operators. Only the secretary or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2007 c 343 § 6. Formerly RCW 70.118B.050.]

70A.115.060 Injunctions. Notwithstanding the existence or use of any other remedy, the department may bring an action to enjoin a violation or threatened violation of this chapter or rules adopted under this chapter. The department may bring the action in the superior court of the county in which the large on-site sewage system is located or in the superior court of Thurston county. [2007 c 343 § 7. Formerly RCW 70.118B.060.]

70A.115.070 Authority and duties. The authority and duties created in this chapter are in addition to any authority and duties already provided in law. Nothing in this chapter limits the powers of the state or any political subdivision to exercise such authority. [2007 c 343 § 8. Formerly RCW 70.118B.070.]

Chapter 70A.120 RCW

PUBLIC WATER SUPPLY SYSTEMS—OPERATORS

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70A.120.010 Legislative declaration. The legislature declares that competent operation of a public water system is necessary for the protection of the consumers' health, and therefore it is of vital interest to the public. In order to protect the public health and conserve and protect the water resources of the state, it is necessary to provide for the classifying of all public water systems; to require the examination and certification of the persons responsible for the technical

operation of such systems; and to provide for the promulgation of rules and regulations to carry out this chapter. [1991 c 305 § 1; 1983 c 292 § 1; 1977 ex.s. c 99 § 1. Formerly RCW 70.119.010.]

70A.120.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Backflow assembly tester" means a person in charge of inspecting, testing, maintaining, and repairing backflow assemblies, devices, and air gaps that protect the public water system.

(2) "Certificate" means a certificate of competency issued by the secretary stating that the operator has met the requirements for the specified operator classification of the certification program.

(3) "Certified operator" means an individual holding a valid certificate and employed or appointed by any county, water-sewer district, municipality, public or private corporation, company, institution, person, federal agency, or the state of Washington and who is designated by the employing or appointing officials as the person responsible for active daily technical operation.

(4) "Cross-connection control specialist" means a person in charge of developing and implementing cross-connection control programs.

(5) "Department" means the department of health.

(6) "Distribution system" means that portion of a public water system which stores, transmits, pumps and distributes water to consumers.

(7) "Groundwater under the direct influence of surface water" means any water beneath the surface of the ground with:

(a) Significant occurrence of insects or other macroorganisms, algae, or large diameter pathogens such as giardia lamblia; or

(b) Significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

(8) "Group A water system" means a system with fifteen or more service connections, regardless of the number of people; or a system serving an average of twenty-five or more people per day for sixty or more days within a calendar year, regardless of the number of service connections.

(9) "Nationally recognized association of certification authorities" shall mean an organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of potable water treatment plants, water distribution systems and wastewater facilities and certification of operators, facilitates reciprocity between state programs and assists authorities in establishing new certification programs and updating existing ones.

(10) "Operator" includes backflow assembly tester, certified operator, and cross-connection control specialist as these terms are defined in this section.

(11) "Public water system" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing piped water for human

consumption, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system; and collection or pretreatment storage facilities not under control of the purveyor but primarily used in connection with the system.

(12) "Purification plant" means that portion of a public water system which treats or improves the physical, chemical or bacteriological quality of the system's water to bring the water into compliance with state board of health standards.

(13) "Secretary" means the secretary of the department of health.

(14) "Service" means a connection to a public water system designed to serve a single-family residence, dwelling unit, or equivalent use. If the facility has group home or barracks-type accommodations, three persons will be considered equivalent to one service.

(15) "Surface water" means all water open to the atmosphere and subject to surface runoff. [2009 c 221 § 1; 1999 c 153 § 67; 1995 c 269 § 2904; 1991 c 305 § 2; 1991 c 3 § 369; 1983 c 292 § 2; 1977 ex.s. c 99 § 2. Formerly RCW 70.119.020.]

Public water supply systems to comply with water quality standards: RCW 70A.130.050.

Additional notes found at www.leg.wa.gov

70A.120.030 Certified operators required for certain public water systems. (1) A public water system shall have a certified operator if:

(a) It is a group A water system; or

(b) It is a public water system using a surface water source or a groundwater source under the direct influence of surface water.

(2) The certified operators shall be in charge of the technical direction of a water system's operation, or an operating shift of such a system, or a major segment of a system necessary for monitoring or improving the quality of water. The operator shall be certified as provided in RCW 70A.120.050.

(3) A certified operator may provide required services to more than one system or to a group of systems. The amount of time that a certified operator shall be required to be present at any given system shall be based upon the time required to properly operate and maintain the public water system as designed and constructed in accordance with RCW 43.20.050. The employing or appointing officials shall designate the position or positions requiring mandatory certification within their individual systems and shall assure that such certified operators are responsible for the system's technical operation.

(4) The department shall, in establishing by rule or otherwise the requirements for public water systems with fewer than one hundred connections, phase in such requirements in order to assure that (a) an adequate number of certified operators are available to serve the additional systems, (b) the systems have adequate notice and time to plan for securing the services of a certified operator, (c) the department has the additional data and other administrative capacity, (d) adequate training is available to certify additional operators as necessary, and (e) any additional requirements under federal law are satisfied. The department shall require certified operators for all group A systems as necessary to conform to federal law or implementing rules or guidelines. Unless neces-

sary to conform to federal law, rules, or guidelines, the department shall not require a certified operator for a system with fewer than one hundred connections unless that system is determined by the department to be in significant noncompliance with operational, monitoring, or water quality standards that would put the public health at risk, as defined by the department by rule, or has, or is required to have, water treatment facilities other than simple disinfection. [2020 c 20 § 1343; 2009 c 221 § 2; 1997 c 218 § 2; 1995 c 376 § 6; 1991 c 305 § 3; 1983 c 292 § 3; 1977 ex.s. c 99 § 3. Formerly RCW 70.119.030.]

Findings—1997 c 218: "The legislature finds and declares that:

(1) The provision of safe and reliable water supplies to the people of the state of Washington is fundamental to ensuring public health and continuing economic vitality of this state.

(2) The department of health, pursuant to legislative directive in 1995, has provided a report that incorporates the findings and recommendations of the *water supply advisory committee as to progress in meeting the objectives of the public health improvement plan, changes warranted by the recent congressional action reauthorizing the federal safe drinking water act, and new approaches to providing services under the general principles of regulatory reform.

(3) The environmental protection agency has recently completed a national assessment of public water system capital needs, which has identified over four billion dollars in such needs in the state of Washington.

(4) The changes to the safe drinking water act offer the opportunity for the increased ability of the state to tailor federal requirements and programs to meet the conditions and objectives within this state.

(5) The department of health and local governments should be provided with adequate authority, flexibility, and resources to be able to implement the principles and recommendations adopted by the *water supply advisory committee.

(6) Statutory changes are necessary to eliminate ambiguity or conflicting authorities, provide additional information and tools to consumers and the public, and make necessary changes to be consistent with federal law.

(7) A basic element to the protection of the public's health from waterborne disease outbreaks is systematic and comprehensive monitoring of water supplies for all contaminants, including hazardous substances with long-term health effects, and routine field visits to water systems for technical assistance and evaluation.

(8) The water systems of this state should have prompt and full access to the newly created federal state revolving fund program to help meet their financial needs and to achieve and maintain the technical, managerial, and financial capacity necessary for long-term compliance with state and federal regulations. This requires authority for streamlined program administration and the provision of the necessary state funds required to match the available federal funds.

(9) Stable, predictable, and adequate funding is essential to a statewide drinking water program that meets state public health objectives and provides the necessary state resources to utilize the new flexibility, opportunities, and programs under the safe drinking water act." [1997 c 218 § 1.]

*Reviser's note: The "water supply advisory committee" was eliminated pursuant to 2010 1st sp.s. c 7 § 120.

Findings—1995 c 376: See note following RCW 70A.100.060.

Additional notes found at www.leg.wa.gov

70A.120.040 Exclusions from chapter. Nothing in this chapter shall apply to:

(1) Industrial water supply systems which do not supply water to residences for domestic use and are under the jurisdictional requirements of the Washington Industrial Safety and Health Act of 1973, chapter 49.17 RCW, as now or hereafter amended; or

(2) The preparation, distribution, or sale of bottled water or water similarly packaged. [1977 ex.s. c 99 § 4. Formerly RCW 70.119.040.]

70A.120.050 Rules and regulations—Secretary to adopt. The secretary shall adopt such rules and regulations

as may be necessary for the administration of this chapter and shall enforce such rules and regulations. The rules and regulations shall include provisions establishing minimum qualifications and procedures for the certification of operators, criteria for determining the kind and nature of continuing educational requirements for renewal of certification under RCW 70A.120.100(2), and provisions for classifying water purification plants and distribution systems.

Rules and regulations adopted under the provisions of this section shall be adopted in accordance with the provisions of chapter 34.05 RCW. [2020 c 20 § 1344; 1995 c 269 § 2905; 1983 c 292 § 4; 1977 ex.s. c 99 § 5. Formerly RCW 70.119.050.]

Additional notes found at www.leg.wa.gov

70A.120.060 Public water systems—Secretary to categorize. The secretary shall further categorize all public water systems with regard to the size, type, source of water, and other relevant physical conditions affecting purification plants and distribution systems to assist in identifying the skills, knowledge and experience required for the certification of operators for each category of such systems, to assure the protection of the public health and conservation and protection of the state's water resources as required under RCW 70A.120.010, and to implement the provisions of the state safe drinking water act in chapter 70A.125 RCW. In categorizing all public water systems for the purpose of implementing these provisions of state law, the secretary shall take into consideration economic impacts as well as the degree and nature of any public health risk. [2020 c 20 § 1345; 1991 c 305 § 4; 1977 ex.s. c 99 § 6. Formerly RCW 70.119.060.]

70A.120.070 Secretary—Consideration of guidelines. The secretary is authorized, when taking action pursuant to RCW 70A.120.050 and 70A.120.060, to consider generally applicable criteria and guidelines developed by a nationally recognized association of certification authorities and commonly accepted national guidelines and standards. [2020 c 20 § 1346; 1983 c 292 § 5; 1977 ex.s. c 99 § 7. Formerly RCW 70.119.070.]

70A.120.080 Ad hoc advisory committees. The secretary, in cooperation with the director of ecology, may establish ad hoc advisory committees, as necessary, to obtain advice and technical assistance regarding the development of rules implementing this chapter and on the examination and certification of operators of water systems. [1995 c 269 § 2909. Formerly RCW 70.119.081.]

Additional notes found at www.leg.wa.gov

70A.120.090 Certificates without examination—Conditions. Certificates shall be issued without examination under the following conditions:

(1) Certificates shall be issued without application fee to operators who, on January 1, 1978, hold certificates of competency attained under the voluntary certification program sponsored jointly by the state department of social and health services, health services division, and the Pacific Northwest section of the American water works association.

(2) Certification shall be issued to persons certified by a governing body or owner of a public water system to have

been the operators of a purification plant or distribution system on January 1, 1978, but only to those who are required to be certified under RCW 70A.120.030(1). A certificate so issued shall be valid for operating any plant or system of the same classification and same type of water source.

(3) A nonrenewable certificate, temporary in nature, may be issued to an operator for a period not to exceed twelve months to fill a vacated position required to have a certified operator. Only one such certificate may be issued subsequent to each instance of vacation of any such position. [2020 c 20 § 1347; 1991 c 305 § 5; 1983 c 292 § 7; 1977 ex.s. c 99 § 9. Formerly RCW 70.119.090.]

Additional notes found at www.leg.wa.gov

70A.120.100 Certificates—Issuance and renewal—Conditions. The issuance and renewal of a certificate shall be subject to the following conditions:

(1) Except as provided in RCW 70A.120.090, a certificate shall be issued if the operator has satisfactorily passed a written examination, has paid the department an application fee as established by the department under RCW 70A.120.160, and has met the requirements specified in the rules and regulations as authorized by this chapter.

(2) Every certificate shall be renewed annually upon the payment of a fee as established by the department under RCW 70A.120.160 and satisfactory evidence is presented to the secretary that the operator has fulfilled the continuing education requirements as prescribed by rule of the department.

(3) The secretary shall notify operators who fail to renew their certificates before the end of the year that their certificates are temporarily valid for two months following the end of the certificate year. Certificates not renewed during the two month period shall be invalid and the secretary shall so notify the holders of such certificates.

(4) An operator who has failed to renew a certificate pursuant to the provisions of this section, may reapply for certification and the secretary may require the operator to meet the requirements established for new applicants. [2020 c 20 § 1348; 1993 c 306 § 1; 1991 c 305 § 6; 1987 c 75 § 11; 1983 c 292 § 8; 1982 c 201 § 13; 1977 ex.s. c 99 § 10. Formerly RCW 70.119.100.]

Additional notes found at www.leg.wa.gov

70A.120.110 Certificates—Grounds for revocation. The secretary may revoke or suspend a certificate: (1) Found to have been obtained by fraud or deceit; (2) for fraud, deceit, or gross negligence involving the operation or maintenance of a public water system; (3) for fraud, deceit, or gross negligence in inspecting, testing, maintenance, or repair of back-flow assemblies, devices, or air gaps intended to protect a public water system from contamination; or (4) for an intentional violation of the requirements of this chapter or any lawful rules, order, or regulation of the department. No person whose certificate is revoked under this section shall be eligible to apply for a certificate until the completion of the revocation period. [2009 c 221 § 5; 1995 c 269 § 2906; 1991 c 305 § 7; 1983 c 292 § 9; 1977 ex.s. c 99 § 11. Formerly RCW 70.119.110.]

Additional notes found at www.leg.wa.gov

70A.120.120 Secretary—Authority. To carry out the provisions and purposes of this chapter, the secretary is authorized and empowered to:

(1) Receive financial and technical assistance from the federal government and other public or private agencies.

(2) Participate in related programs of the federal government, other state, interstate agencies, or other public or private agencies or organizations.

(3) Assess fees determined pursuant to RCW 70A.120.160 on public water systems to support the waterworks operator certification program. [2020 c 20 § 1349; 1993 c 306 § 2; 1977 ex.s. c 99 § 12. Formerly RCW 70.119.120.]

70A.120.130 Violations—Penalties. Any person, including any operator or any firm, association, corporation, municipal corporation, or other governmental subdivision or agency who, after thirty days' written notice, operates a public water system which is not in compliance with RCW 70A.120.030(1), shall be guilty of a misdemeanor. Each month of such operation out of compliance with RCW 70A.120.030(1) shall constitute a separate offense. Upon conviction, violators shall be fined an amount not exceeding one hundred dollars for each offense. It shall be the duty of the prosecuting attorney or the attorney general, as appropriate, to secure injunctions of continuing violations of any provisions of this chapter or the rules and regulations adopted under this chapter. [2020 c 20 § 1350; 2009 c 221 § 6; 1991 c 305 § 8; 1983 c 292 § 10; 1977 ex.s. c 99 § 13. Formerly RCW 70.119.130.]

Additional notes found at www.leg.wa.gov

70A.120.140 Certificates—Reciprocity with other states. Operators certified by any state under provisions that, in the judgment of the secretary, are substantially equivalent to the requirements of this chapter and any rules and regulations promulgated hereunder, may be issued, upon application, a certificate without examination.

In making determinations pursuant to this section, the secretary shall consult with the *board and may consider any generally applicable criteria and guidelines developed by a nationally recognized association of certification authorities. [1977 ex.s. c 99 § 14. Formerly RCW 70.119.140.]

***Reviser's note:** RCW 70.95B.070, which created the water and wastewater operator certification board of examiners, was repealed by 1995 c 269 § 2907, effective July 1, 1995.

70A.120.150 Waterworks operator certification account. The waterworks operator certification account is created in the general fund of the state treasury. All fees paid pursuant to RCW 70A.120.100, 70A.120.120(3), and any other receipts realized in the administration of this chapter shall be deposited in the waterworks operator certification account. Moneys in the account shall be spent only after appropriation. Moneys from the account shall be used by the department of health to carry out the purposes of the waterworks operator certification program. [2020 c 20 § 1351; 1993 c 306 § 3; 1977 ex.s. c 99 § 15. Formerly RCW 70.119.150.]

(2022 Ed.)

70A.120.160 Fee schedules—Certified operators—Public water systems. The department of health certifies public water system operators and monitors public water systems to ensure that such systems comply with the requirements of this chapter and rules implementing this chapter. The secretary shall establish a schedule of fees for operator applicants and renewal licenses and a separate schedule of fees for public water systems to support the waterworks operator certification program. The fees shall be set at a level sufficient for the department to recover the costs of the waterworks operator certification program and in accordance with the procedures established under RCW 43.70.250. [2009 c 221 § 7; 1993 c 306 § 4. Formerly RCW 70.119.160.]

70A.120.170 Certification of backflow assembly testers and cross-connection control specialists. (1) Backflow assembly testers and cross-connection control specialists must hold a valid certificate and must be certified as provided by rule as adopted under the authority of RCW 70A.120.050.

(2) Backflow assembly testers who maintain or repair backflow assemblies, devices, or air gaps inside a building are subject to certification under chapter 18.106 RCW. [2020 c 20 § 1352; 2009 c 221 § 3. Formerly RCW 70.119.170.]

70A.120.180 Examinations. (1) Any examination required by the department as a prerequisite for the issuance of certificate under this chapter must be offered in both eastern and western Washington.

(2) Operators not required to be certified by this chapter are encouraged to become certified on a voluntary basis. [2009 c 221 § 4. Formerly RCW 70.119.180.]

70A.120.900 Effective date—1977 ex.s. c 99. This act shall take effect on January 1, 1978. [1977 ex.s. c 99 § 17. Formerly RCW 70.119.900.]

Chapter 70A.125 RCW

PUBLIC WATER SYSTEMS—PENALTIES AND COMPLIANCE

Sections

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- 70A.125.170 Water use efficiency requirements—Rules.
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- 70A.125.190 Measuring chlorine residuals.
- 70A.125.200 Fire sprinkler systems—Shutting off—Liability.
- 70A.125.900 Short title—1989 c 422.

Drinking water quality consumer complaints: RCW 80.04.110.

70A.125.010 Definitions. Unless the context clearly requires otherwise, the following definitions apply throughout this chapter:

(1) "Area-wide waivers" means a waiver granted by the department as a result of a geographically based testing program meeting required provisions of the federal safe drinking water act.

(2) "Department" means the department of health.

(3) "Federal safe drinking water act" means the federal safe drinking water act, 42 U.S.C. Sec. 300f et seq., as now in effect or hereafter amended.

(4) "Group A public water system" means a public water system with fifteen or more service connections, regardless of the number of people; or a system serving an average of twenty-five or more people per day for sixty or more days within a calendar year, regardless of the number of service connections; or a system serving one thousand or more people for two or more consecutive days.

(5) "Group B public water system" means a public water system that does not meet the definition of a group A public water system.

(6) "Local board of health" means the city, town, county, or district board of health.

(7) "Local health jurisdiction" means an entity created under chapter 70.05, 70.08, or 70.46 RCW which provides public health services to persons within the area.

(8) "Local health officer" means the legally qualified physician who has been appointed as the health officer for the city, town, county, or district public health department.

(9) "Order" means a written direction to comply with a provision of the regulations adopted under RCW 43.20.050(2) (a) and (b) or 70A.120.050 or to take an action or a series of actions to comply with the regulations.

(10) "Person" includes, but is not limited to, natural persons, municipal corporations, governmental agencies, firms, companies, mutual or cooperative associations, institutions, and partnerships. It also means the authorized agents of any such entities.

(11) "Public health emergency" means a declaration by an authorized health official of a situation in which either illness, or exposure known to cause illness, is occurring or is imminent.

(12) "Public water system" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing water for human consumption through pipes or other constructed conveyances, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system; and collection or pretreatment storage facilities not under control of the purveyor but primarily used in connection with the system, including:

(a) Any collection, treatment, storage, and distribution facilities under control of the purveyor and used primarily in connection with such system; and

(b) Any collection or pretreatment storage facilities not under control of the purveyor which are primarily used in connection with such system.

(13) "Purveyor" means any agency or subdivision of the state or any municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity, that owns or operates a public water system. It also means the authorized agents of any such entities.

(14) "Regulations" means rules adopted to carry out the purposes of this chapter.

(15) "Secretary" means the secretary of the department of health.

(16) "State board of health" is the board created by RCW 43.20.030. [2020 c 20 § 1353. Prior: 2009 c 495 § 3; 1999 c 118 § 2; 1994 c 252 § 2; 1991 c 304 § 2; 1991 c 3 § 370; 1989 c 422 § 2; 1986 c 271 § 2. Formerly RCW 70.119A.020.]

Finding—Intent—1999 c 118: "The legislature finds and declares that the provision of safe and reliable water supplies is essential to public health and the continued economic vitality of the state of Washington. Maintaining the authority necessary to ensure safe and reliable water supplies requires that state laws conform with the provisions of the federal safe drinking water act. It is the intent of the legislature that the definition of public water system be amended to reflect recent amendments to the federal safe drinking water act." [1999 c 118 § 1.]

Finding—1994 c 252: "The legislature finds that:

(1) The federal safe drinking water act has imposed significant new costs on public water systems and that the state should seek maximum regulatory flexibility allowed under federal law;

(2) There is a need to comprehensively assess and characterize the groundwaters of the state to evaluate public health risks from organic and inorganic chemicals regulated under federal law;

(3) That federal law provides a mechanism to significantly reduce testing and monitoring costs to public water systems through the use of area-wide waivers.

The legislature therefore directs the department of health to conduct a voluntary program to selectively test the groundwaters of the state for organic and inorganic chemicals regulated under federal law for the purpose of granting area-wide waivers." [1994 c 252 § 1.]

Additional notes found at www.leg.wa.gov

70A.125.020 Environmental excellence program agreements—Effect on chapter. Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 24. Formerly RCW 70.119A.025.]

Purpose—1997 c 381: See RCW 43.21K.005.

70A.125.030 Public health emergencies—Violations—Penalty. (1) The secretary or his or her designee or the local health officer may declare a public health emergency. As limited by RCW 70A.125.040, the department may impose penalties for violations of laws or regulations that are determined to be a public health emergency.

(2) As limited by RCW 70A.125.040, the department may impose penalties for violation of laws or rules regulating public water systems and administered by the department of health. [2020 c 20 § 1354; 1993 c 305 § 1; 1991 c 304 § 3; 1989 c 422 § 6; 1986 c 271 § 3. Formerly RCW 70.119A.030.]

Additional notes found at www.leg.wa.gov

70A.125.040 Additional or alternative penalty—

Informal resolution unless a public health emergency.

(1)(a) In addition to or as an alternative to any other penalty or action allowed by law, a person who violates a law or rule regulating public water systems and administered by the department of health is subject to a penalty of not more than five thousand dollars per day for every such violation, or, in the case of a violation that has been determined to be a public health emergency, a penalty of not more than ten thousand dollars per day for every such violation. Every such violation shall be a separate and distinct offense. The amount of fine shall reflect the health significance of the violation and the previous record of compliance on the part of the public water supplier. In case of continuing violation, every day's continuance shall be a separate and distinct violation.

(b) In addition, a person who constructs, modifies, or expands a public water system or who commences the construction, modification, or expansion of a public water system without first obtaining the required departmental approval is subject to penalties of not more than five thousand dollars per service connection, or, in the case of a system serving a transient population, a penalty of not more than four hundred dollars per person based on the highest average daily population the system serves or is anticipated to serve may be imposed. The total penalty that may be imposed pursuant to this subsection (1)(b) is five hundred thousand dollars. For the purpose of computing the penalty under this subsection, a service connection shall include any new service connection actually constructed, any anticipated service connection the system has been designed to serve, and, in the case of a system modification not involving expansions, each existing service connection that benefits or would benefit from the modification.

(c) Every person who, through an act of commission or omission, procures, aids, or abets a violation is considered to have violated the provisions of this section and is subject to the penalty provided in this section.

(2) The penalty provided for in this section shall be imposed by a notice in writing to the person against whom the civil penalty is assessed and shall describe the violation. The notice shall be personally served in the manner of service of a summons in a civil action or in a manner that shows proof of receipt. A penalty imposed by this section is due twenty-eight days after receipt of notice unless application for an adjudicative proceeding is filed as provided in subsection (3) of this section.

(3) Within twenty-eight days after notice is received, the person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter 34.05 RCW and applicable rules of the department or board of health.

(4) A penalty imposed by a final administrative order is due upon service of the final administrative order. A person who fails to pay a penalty assessed by a final administrative order within thirty days of service of the final administrative order shall pay, in addition to the amount of the penalty, interest at the rate of one percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid, commencing with the month in

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which the notice of penalty was served and such reasonable attorney's fees as are incurred in securing the final administrative order.

(5) A person who institutes proceedings for judicial review of a final administrative order assessing a civil penalty under this chapter shall place the full amount of the penalty in an interest bearing account in the registry of the reviewing court. At the conclusion of the proceeding the court shall, as appropriate, enter a judgment on behalf of the department and order that the judgment be satisfied to the extent possible from moneys paid into the registry of the court or shall enter a judgment in favor of the person appealing the penalty assessment and order return of the moneys paid into the registry of the court together with accrued interest to the person appealing. The judgment may award reasonable attorney's fees for the cost of the attorney general's office in representing the department.

(6) If no appeal is taken from a final administrative order assessing a civil penalty under this chapter, the department may file a certified copy of the final administrative order with the clerk of the superior court in which the public water system is located or in Thurston county, and the clerk shall enter judgment in the name of the department and in the amount of the penalty assessed in the final administrative order.

(7) A judgment entered under subsection (5) or (6) of this section shall have the same force and effect as, and is subject to all of the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

(8) All penalties imposed under this section shall be payable to the state treasury and credited to the safe drinking water account, and shall be used by the department to provide training and technical assistance to system owners and operators.

(9) Except in cases of public health emergencies, the department may not impose monetary penalties under this section unless a prior effort has been made to resolve the violation informally. [1995 c 376 § 8; 1993 c 305 § 2; 1990 c 133 § 8; 1989 c 175 § 135; 1986 c 271 § 4. Formerly RCW 70.119A.040.]

Findings—1995 c 376: See note following RCW 70A.100.060.

Findings—Severability—1990 c 133: See notes following RCW 36.94.140.

Additional notes found at www.leg.wa.gov

70A.125.050 Enforcement of regulations by local boards of health—Civil penalties.

Each local board of health that is enforcing the regulations regarding public water systems is authorized to impose and collect civil penalties for violations within the area of its responsibility under the same limitations and requirements imposed upon the department by RCW 70A.125.030 and 70A.125.040, except that judgment shall be entered in the name of the local board and penalties shall be placed into the general fund of the county, city, or town operating the local board of health. [2020 c 20 § 1355; 2009 c 495 § 4; 1993 c 305 § 3; 1989 c 422 § 8; 1986 c 271 § 5. Formerly RCW 70.119A.050.]

Additional notes found at www.leg.wa.gov

70A.125.060 Public water systems—Mandate—Conditions for approval or creation of new public water sys-

tem—Department and local health jurisdiction duties.

(1) To assure safe and reliable public drinking water and to protect the public health:

(a) Public water systems shall comply with all applicable federal, state, and local rules; and

(b) Group A public water systems shall:

(i) Protect the water sources used for drinking water;

(ii) Provide treatment adequate to assure that the public health is protected;

(iii) Provide and effectively operate and maintain public water system facilities;

(iv) Plan for future growth and assure the availability of safe and reliable drinking water;

(v) Provide the department with the current names, addresses, and telephone numbers of the owners, operators, and emergency contact persons for the system, including any changes to this information, and provide to users the name and twenty-four hour telephone number of an emergency contact person; and

(vi) Take whatever investigative or corrective action is necessary to assure that a safe and reliable drinking water supply is continuously available to users.

(2) No new public water system may be approved or created unless: (a) It is owned or operated by a satellite system management agency established under RCW 70A.100.130 and the satellite system management system complies with financial viability requirements of the department; or (b) a satellite management system is not available and it is determined that the new system has sufficient management and financial resources to provide safe and reliable service. The approval of any new system that is not owned by a satellite system management agency shall be conditioned upon future management or ownership by a satellite system management agency, if such management or ownership can be made with reasonable economy and efficiency, or upon periodic review of the system's operational history to determine its ability to meet the department's financial viability and other operating requirements. The department and local health jurisdictions shall enforce this requirement under authority provided under this chapter, chapter 70A.100, or 70.05 RCW, or other authority governing the approval of new water systems by the department or a local jurisdiction.

(3) The department and local health jurisdictions shall carry out the rules and regulations of the state board of health adopted pursuant to RCW 43.20.050(2) (a) and (b) and other rules adopted by the department relating to public water systems. [2020 c 20 § 1356; 2009 c 495 § 5; 1995 c 376 § 3; 1991 c 304 § 4; 1990 c 132 § 4; 1989 c 422 § 3. Formerly RCW 70.119A.060.]

Findings—1995 c 376: See note following RCW 70A.100.060.

Legislative findings—Severability—1990 c 132: See notes following RCW 43.20.240.

Additional notes found at www.leg.wa.gov

70A.125.070 Department contracting authority. The department may enter into contracts to carry out the purposes of this chapter. [1989 c 422 § 4. Formerly RCW 70.119A.070.]

70A.125.080 Drinking water program. (1) The department shall administer a drinking water program which

includes, but is not limited to, those program elements necessary to assume primary enforcement responsibility for part B, and section 1428 of part C of the federal safe drinking water act. No rule promulgated or implemented by the department of health or the state board of health for the purpose of compliance with the requirements of the federal safe drinking water act, 42 U.S.C. Sec. 300f et seq., shall be applicable to public water systems to which that federal law is not applicable, unless the department or the state board determines that such rule is necessary for the protection of public health.

(2) The department shall enter into an agreement of administration with the department of ecology and any other appropriate agencies, to administer the federal safe drinking water act.

(3) The department is authorized to accept federal grants for the administration of a primary program. [1991 c 3 § 371; 1989 c 422 § 5. Formerly RCW 70.119A.080.]

70A.125.090 Operating permits—Findings. The legislature finds that:

(1) The responsibility for ensuring that the citizens of this state have a safe and reliable drinking water supply is shared between local government and state government, and is the obligation of every public water system;

(2) A rapid increase in the number of public water systems supplying drinking water to the citizens of this state has significantly increased the burden on both local and state government to monitor and enforce compliance by these systems with state laws that govern planning, design, construction, operation, maintenance, financing, management, and emergency response;

(3) The federal safe drinking water act imposes on state and local governments and the public water systems of this state significant new responsibilities for monitoring, testing, and treating drinking water supplies; and

(4) Existing drinking water programs at both the state and local government level need additional authorities to enable them to more comprehensively and systematically address the needs of the public water systems of this state and assure that the public health and safety of its citizens are protected.

Therefore, annual operating permit requirements shall be established in accordance with this chapter. The operating permit requirements shall be administered by the department and shall be used as a means to assure that public water systems provide safe and reliable drinking water to the public. The department and local government shall conduct comprehensive and systematic evaluations to assess the adequacy and financial viability of public water systems. The department may impose permit conditions, requirements for system improvements, and compliance schedules in order to carry out the purpose of chapter 304, Laws of 1991. [1991 c 304 § 1. Formerly RCW 70.119A.100.]

Additional notes found at www.leg.wa.gov

70A.125.100 Operating permits—Application process—Annual fee—Adoption of rules—Phase-in of implementation—Satellite systems. (1) No person may operate a group A public water system unless the person first submits an application to the department and receives an operating

permit as provided in this section. A new application must be submitted upon any change in ownership of the system.

(2) The department may require that each application include the information that is reasonable and necessary to determine that the system complies with applicable standards and requirements of the federal safe drinking water act, state law, and rules adopted by the department or by the state board of health.

(3) Following its review of the application, its supporting material, and any information received by the department in its investigation of the application, the department shall issue or deny the operating permit. The department shall act on initial permit applications as expeditiously as possible, and shall in all cases either grant or deny the application within one hundred twenty days of receipt of the application or of any supplemental information required to complete the application. The applicant for a permit shall be entitled to file an appeal in accordance with chapter 34.05 RCW if the department denies the initial or subsequent applications or imposes conditions or requirements upon the operator. Any operator of a public water system that requests a hearing may continue to operate the system until a decision is issued after the hearing.

(4) At the time of initial permit application or at the time of permit renewal the department may impose such permit conditions, requirements for system improvements, and compliance schedules as it determines are reasonable and necessary to ensure that the system will provide a safe and reliable water supply to its users.

(5) Operating permits shall be issued for a term of one year, and shall be renewed annually, unless the operator fails to apply for a new permit or the department finds good cause to deny the application for renewal.

(6) Each application shall be accompanied by an annual fee.

(7) The department shall adopt rules, in accordance with chapter 34.05 RCW, necessary to implement this section.

(8) The department shall establish by rule categories of annual operating permit fees based on system size, complexity, and number of service connections. Fees charged must be sufficient to cover, but may not exceed, the costs to the department of administering a program for safe and reliable drinking water. The department shall use operating permit fees to monitor and enforce compliance by group A public water systems with state and federal laws that govern planning, water use efficiency, design, construction, operation, maintenance, financing, management, and emergency response.

(9) The annual per-connection fee may not exceed one dollar and fifty cents. The department shall phase-in implementation of any annual fee increase greater than ten percent, and shall establish the schedule for implementation by rule. Rules established by the department prior to 2020 must limit the annual operating permit fee for any public water system to no greater than one hundred thousand dollars.

(10) The department shall notify existing public water systems of the requirements of RCW 70A.125.030, 70A.125.060, and this section at least one hundred twenty days prior to the date that an application for a permit is required pursuant to RCW 70A.125.030, 70A.125.060, and this section.

(11) The department shall issue one operating permit to any approved satellite system management agency. Operating permit fees for approved satellite system management agencies must be established by the department by rule. Rules established by the department must set a single fee based on the total number of connections for all group A public water systems owned by a satellite management agency.

(12) For purposes of this section, "group A public water system" and "system" mean those water systems with fifteen or more service connections, regardless of the number of people; or a system serving an average of twenty-five or more people per day for sixty or more days within a calendar year, regardless of the number of service connections. [2020 c 20 § 1357; 2011 c 102 § 1; 2003 1st sp.s. c 5 § 18; 1991 c 304 § 5. Formerly RCW 70.119A.110.]

Additional notes found at www.leg.wa.gov

70A.125.110 Organic and inorganic chemicals—Area-wide waiver program. The department shall develop and implement a voluntary consolidated source monitoring program sufficient to accurately characterize the source water quality of the state's drinking water supplies and to maximize the flexibility allowed in the federal safe drinking water act to allow public water systems to be waived from full testing requirements for organic and inorganic chemicals under the federal safe drinking water act. The department shall arrange for the initial sampling and provide for testing and programmatic costs to the extent that the legislature provides funding for this purpose in water system operating permit fees or through specific appropriation of funds from other sources. The department shall assess a fee using its authority under RCW 43.20B.020, sufficient to cover all testing and directly related costs to public water systems that otherwise are not funded. The department shall adjust the amount of the fee based on the size of the public drinking water system. Fees charged by the department for this purpose may not vary by more than a factor of ten. The department shall, to the extent feasible and cost-effective, use the services of local governments, local health departments, and private laboratories to implement the testing program. The department shall consult with the departments of agriculture and ecology for the purpose of exchanging water quality and other information. [1997 c 218 § 3; 1994 c 252 § 3. Formerly RCW 70.119A.115.]

Findings—Effective date—1997 c 218: See notes following RCW 70A.120.030.

Finding—Effective date—1994 c 252: See notes following RCW 70A.125.010.

70A.125.120 Safe drinking water account. The safe drinking water account is created in the general fund of the state treasury. All receipts from the operating permit fees required to be paid under RCW 70A.125.100 shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used by the department of health to carry out the purposes of chapter 304, Laws of 1991 and to carry out contracts with local governments in accordance with this chapter. [2020 c 20 § 1358; 1991 c 304 § 6. Formerly RCW 70.119A.120.]

Additional notes found at www.leg.wa.gov

70A.125.130 Local government authority. (1) Local governments may establish separate operating permit requirements for public water systems provided the operating permit requirements have been approved by the department. The department shall not approve local operating permit requirements unless the local system will result in an increased level of service to the public water system. There shall not be duplicate operating permit requirements imposed by local governments and the department.

(2) Local governments may establish requirements for group B public water systems in addition to those established by rule by the state board of health pursuant to RCW 43.20.050(2) or other rules adopted by the department, provided that the requirements are at least as stringent as the state requirements. [2009 c 495 § 6; 1995 c 376 § 9; 1991 c 304 § 7. Formerly RCW 70.119A.130.]

Findings—1995 c 376: See note following RCW 70A.100.060.

Additional notes found at www.leg.wa.gov

70A.125.140 Report by bottled water plant operator or water dealer of contaminant in water source. In such cases where a bottled water plant operator or water dealer knows or has reason to believe that a contaminant is present in the source water because of spill, release of a hazardous substance, or otherwise, and the contaminant's presence would create a potential health hazard to consumers, the plant operator or water dealer must report such an occurrence to the state's department of health. [1992 c 34 § 5. Formerly RCW 70.119A.140.]

Additional notes found at www.leg.wa.gov

70A.125.150 Authority to enter premises—Search warrants—Investigations. (1)(a) Except as otherwise provided in (b) of this subsection, the secretary or his or her designee shall have the right to enter a premises under the control of a public water system at reasonable times with prior notification in order to determine compliance with laws and rules administered by the department of health to test, inspect, or sample features of a public water system and inspect, copy, or photograph monitoring equipment or other features of a public water system, or records required to be kept under laws or rules regulating public water systems. For the purposes of this section, "premises under the control of a public water system" does not include the premises or private property of a customer of a public water system past the point on the system where the service connection is made.

(b) The secretary or his or her designee need not give prior notification to enter a premises under (a) of this subsection if the purpose of the entry is to ensure compliance by the public water system with a prior order of the department or if the secretary or the secretary's designee has reasonable cause to believe the public water system is violating the law and poses a serious threat to public health and safety.

(2) The secretary or his or her designee may apply for an administrative search warrant to a court official authorized to issue a criminal search warrant. An administrative search warrant may be issued for the purposes of inspecting or examining property, buildings, premises, place, books, records, or other physical evidence, or conducting tests or taking samples. The warrant shall be issued upon probable

cause. It is sufficient probable cause to show any of the following:

(a) The inspection, examination, test, or sampling is pursuant to a general administrative plan to determine compliance with laws or rules administered by the department; or

(b) The secretary or his or her designee has reason to believe that a violation of a law or rule administered by the department has occurred, is occurring, or may occur.

(3) The local health officer or the designee of a local health officer of a local board of health that is enforcing rules regulating public water systems under an agreement with the department allocating state and local responsibility is authorized to conduct investigations and to apply for, obtain, and execute administrative search warrants necessary to perform the local board's agreed-to responsibilities under the same limitations and requirements imposed on the department under this section. [1993 c 305 § 4. Formerly RCW 70.119A.150.]

70A.125.160 Drinking water assistance account—Administrative subaccount—Program to provide financial assistance to public water systems—Responsibilities.

(1) A drinking water assistance account and an administrative subaccount are created in the state treasury. The purpose of the account is to allow the state to use any federal funds that become available to states from congress to fund a state revolving fund loan program as part of the reauthorization of the federal safe drinking water act. Moneys in the account may be spent only after appropriation. Until June 30, 2018, expenditures from the account may only be made by the secretary of health, the public works board, or the department of commerce. Beginning July 1, 2018, expenditures from the account may only be made by the secretary. Moneys in the account may only be used, consistent with federal law, to assist local governments and public water systems to provide safe and reliable drinking water through a program administered through the department and for other activities authorized under federal law. Money may be placed in the account from the proceeds of bonds when authorized by the legislature, transfers from other state funds or accounts, federal capitalization grants or other financial assistance, all repayments of moneys borrowed from the account, all interest payments made by borrowers from the account or otherwise earned on the account, or any other lawful source. All interest earned on moneys deposited in the account, including repayments, shall remain in the account and may be used for any eligible purpose.

(2) The department shall maintain a program to use the moneys in the drinking water assistance account as provided by the federal government under the safe drinking water act. The department shall make every reasonable effort to provide cost-effective, timely services and disburse federal funds to eligible public water systems as quickly as possible after the federal government has made them available.

(3) The department shall have the authority to establish assistance priorities and carry out oversight and related activities with respect to assistance provided with federal funds. By December 31, 2016, the department, the public works board, and the department of commerce shall develop a memorandum of understanding to transfer financial administra-

tion of the program as authorized under subsection (1) of this section.

(4) The department shall:

(a) Develop guidelines for providing assistance to public water systems and related oversight prioritization and oversight responsibilities including requirements for prioritization of loans or other financial assistance to public water systems;

(b) Establish a prioritized list of projects. Priority considerations must include, but are not limited to:

(i) Financial capability of the applicant to repay the loan;

(ii) The applicant's readiness to proceed and the ability of the applicant to promptly commence and complete the project;

(iii) Consistency with existing water resource planning and management, including coordinated water supply plans, regional water resource plans, and comprehensive plans under the growth management act, chapter 36.70A RCW;

(iv) Least-cost solutions, including restructuring of public water systems, where appropriate;

(v) The provision of regional benefits that affect more than one public water system;

(vi) Projects and activities that facilitate compliance with the federal safe drinking water act;

(vii) Projects and activities that are intended to achieve the public health objectives of federal and state drinking water laws[,] regulations, and rules; and

(viii) Implementation of water use efficiency and other demand management measures consistent with state laws and rules for water utilities;

(c) Provide assistance for the necessary planning and engineering to ensure that consistency, coordination, and proper professional review are incorporated into projects or activities proposed for funding;

(d) Establish minimum standards for water system capacity, including operational, technical, managerial, and financial capability, and as part of water system planning requirements;

(e) Oversee the testing and evaluation of the water quality of public water systems to ensure that priority for financial assistance is provided to systems and areas with threats to public health from contaminated supplies and reduce in appropriate cases the substantial increases in costs and rates that customers of small systems would otherwise incur under the monitoring and testing requirements of the federal safe drinking water act;

(f) Coordinate, to the maximum extent possible, with other state programs that provide financial assistance to public water systems and state programs that address existing or potential water quality or drinking water contamination problems;

(g) Submit a prioritized list of projects to the public works board for coordination with other state and federal infrastructure assistance programs, and to the appropriate committees of the legislature by February 1st of each year; and

(h) Fulfill the audit, accounting, and reporting requirements under federal law for the administration of the program.

(5) The department shall adopt such rules as are necessary under chapter 34.05 RCW to administer the program.

(2022 Ed.)

[2016 c 111 § 1; 2001 c 141 § 4; 1997 c 218 § 4; 1995 c 376 § 10. Formerly RCW 70.119A.170.]

Purpose—2001 c 141: See note following RCW 43.84.092.

Findings—Effective date—1997 c 218: See notes following RCW 70A.120.030.

Findings—1995 c 376: See note following RCW 70A.100.060.

70A.125.170 Water use efficiency requirements—Rules. (1) It is the intent of the legislature that the department establish water use efficiency requirements designed to ensure efficient use of water while maintaining water system financial viability, improving affordability of supplies, and enhancing system reliability.

(2) The requirements of this section shall apply to all municipal water suppliers and shall be tailored to be appropriate to system size, forecasted system demand, and system supply characteristics.

(3) For the purposes of this section:

(a) Water use efficiency includes conservation planning requirements, water distribution system leakage standards, and water conservation performance reporting requirements; and

(b) "Municipal water supplier" and "municipal water supply purposes" have the meanings provided by RCW 90.03.015.

(4) To accomplish the purposes of this section, the department shall adopt rules necessary to implement this section by December 31, 2005. The department shall:

(a) Develop conservation planning requirements that ensure municipal water suppliers are: (i) Implementing programs to integrate conservation with water system operation and management; and (ii) identifying how to appropriately fund and implement conservation activities. Requirements shall apply to the conservation element of water system plans and small water system management programs developed pursuant to chapter 43.20 RCW. In establishing the conservation planning requirements the department shall review the current department conservation planning guidelines and include those elements that are appropriate for rule. Conservation planning requirements shall include but not be limited to:

(A) Selection of cost-effective measures to achieve a system's water conservation objectives. Requirements shall allow the municipal water supplier to select and schedule implementation of the best methods for achieving its conservation objectives;

(B) Evaluation of the feasibility of adopting and implementing water delivery rate structures that encourage water conservation;

(C) Evaluation of each system's water distribution system leakage and, if necessary, identification of steps necessary for achieving water distribution system leakage standards developed under (b) of this subsection;

(D) Collection and reporting of water consumption and source production and/or water purchase data. Data collection and reporting requirements shall be sufficient to identify water use patterns among utility customer classes, where applicable, and evaluate the effectiveness of each system's conservation program. Requirements, including reporting frequency, shall be appropriate to system size and complexity. Reports shall be available to the public; and

(E) Establishment of minimum requirements for water demand forecast methodologies such that demand forecasts prepared by municipal water suppliers are sufficient for use in determining reasonably anticipated future water needs;

(b) Develop water distribution system leakage standards to ensure that municipal water suppliers are taking appropriate steps to reduce water system leakage rates or are maintaining their water distribution systems in a condition that results in leakage rates in compliance with the standards. Limits shall be developed in terms of percentage of total water produced and/or purchased and shall not be lower than ten percent. The department may consider alternatives to the percentage of total water supplied where alternatives provide a better evaluation of the water system's leakage performance. The department shall institute a graduated system of requirements based on levels of water system leakage. A municipal water supplier shall select one or more control methods appropriate for addressing leakage in its water system;

(c) Establish minimum requirements for water conservation performance reporting to assure that municipal water suppliers are regularly evaluating and reporting their water conservation performance. The objective of setting conservation goals is to enhance the efficient use of water by the water system customers. Performance reporting shall include:

(i) Requirements that municipal water suppliers adopt and achieve water conservation goals. The elected governing board or governing body of the water system shall set water conservation goals for the system. In setting water conservation goals the water supplier may consider historic conservation performance and conservation investment, customer base demographics, regional climate variations, forecasted demand and system supply characteristics, system financial viability, system reliability, and affordability of water rates. Conservation goals shall be established by the municipal water supplier in an open public forum;

(ii) Requirements that the municipal water supplier adopt schedules for implementing conservation program elements and achieving conservation goals to ensure that progress is being made toward adopted conservation goals;

(iii) A reporting system for regular reviews of conservation performance against adopted goals. Performance reports shall be available to customers and the public. Requirements, including reporting frequency, shall be appropriate to system size and complexity;

(iv) Requirements that any system not meeting its water conservation goals shall develop a plan for modifying its conservation program to achieve its goals along with procedures for reporting performance to the department;

(v) If a municipal water supplier determines that further reductions in consumption are not reasonably achievable, it shall identify how current consumption levels will be maintained;

(d) Adopt rules that, to the maximum extent practical, utilize existing mechanisms and simplified procedures in order to minimize the cost and complexity of implementation and to avoid placing unreasonable financial burden on smaller municipal systems.

(5) The department shall provide technical assistance upon request to municipal water suppliers and local governments regarding water conservation, which may include

development of best management practices for water conservation programs, conservation landscape ordinances, conservation rate structures for public water systems, and general public education programs on water conservation.

(6) To ensure compliance with this section, the department shall establish a compliance process that incorporates a graduated approach employing the full range of compliance mechanisms available to the department.

(7) Prior to completion of rule making required in subsection (4) of this section, municipal water suppliers shall continue to meet the existing conservation requirements of the department and shall continue to implement their current water conservation programs. [2010 1st sp.s. c 7 § 121; 2003 1st sp.s. c 5 § 7. Formerly RCW 70.119A.180.]

Additional notes found at www.leg.wa.gov

70A.125.180 Water system acquisition and rehabilitation program—Created. Subject to the availability of amounts appropriated for this specific purpose, the department shall provide financial assistance through a water system acquisition and rehabilitation program, hereby created. The program shall be jointly administered with the public works board and the department of commerce. The agencies shall adopt guidelines for the program using as a model the procedures and criteria of the drinking water revolving loan program authorized under RCW 70A.125.160. All financing provided through the program must be in the form of grants that partially cover project costs. The maximum grant to any eligible entity may not exceed twenty-five percent of the funds allocated to the appropriation in any fiscal year. [2020 c 20 § 1359; 2008 c 214 § 2. Formerly RCW 70.119A.190.]

Finding—Purpose—2008 c 214: "The legislature finds that it is the state's policy to maintain the highest quality and reliability of drinking water supplies to all citizens of the state. Small water systems may face greater challenges in this regard because of declining quality in water sources, catastrophic events such as flooding that impair water sources, the age of the system's infrastructure, saltwater intrusion into water sources, inadequate rate base for conducting necessary improvements, and other challenges. In response to these needs, the water system acquisition and rehabilitation program was created through biennial budget law, and through the current biennium has a total of nine million seven-hundred fifty thousand dollars toward assisting dozens of water systems to improve the quality of water supply service to thousands of customers.

It is the purpose of this act to establish an ongoing water system acquisition and rehabilitation program, to direct a review of the program to date, and to provide for recommendations for strengthening the program and increasing the financial assistance available under the program." [2008 c 214 § 1.]

70A.125.190 Measuring chlorine residuals. A group A water system serving fewer than one hundred connections that purchases water from a water system approved by the department shall measure chlorine residuals at the same time and location of collection for a routine and repeat coliform sample. [2009 c 367 § 8. Formerly RCW 70.119A.200.]

70A.125.200 Fire sprinkler systems—Shutting off—Liability. (1) A person or purveyor that owns, operates, or maintains a public water system shall not be liable for damages resulting from shutting off water to a residential home with an installed fire sprinkler system if the shut off is due to: (a) Routine maintenance or construction; (b) nonpayment by the customer; or (c) a water system emergency.

(2) Any governmental or municipal corporation, including but not limited to special districts, shall be deemed to be exercising a governmental function when it acts or undertakes to supply water, within or without its corporate limits, to a residential home with an installed fire sprinkler system. [2011 c 331 § 4. Formerly RCW 70.119A.210.]

Intent—2011 c 331: See note following RCW 82.02.100.

70A.125.900 Short title—1989 c 422. This act shall be known and cited as the "Washington state safe drinking water act." [1989 c 422 § 1. Formerly RCW 70.119A.900.]

Chapter 70A.130 RCW

CHEMICAL CONTAMINANTS AND WATER QUALITY

Sections

- 70A.130.010 Establishment of standards for chemical contaminants in drinking water by state board of health.
- 70A.130.020 Establishment of monitoring requirements for chemical contaminants in public water supplies by state board of health.
- 70A.130.030 Monitoring requirements—Considerations.
- 70A.130.040 Establishment of water quality standards by local health department in large counties.
- 70A.130.050 Noncomplying public water supply systems—Submission of corrective plan—Notification to system's customers.

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

70A.130.010 Establishment of standards for chemical contaminants in drinking water by state board of health. (1) In order to protect public health from chemical contaminants in drinking water, the state board of health shall conduct public hearings and, where technical data allow, establish by rule standards for allowable concentrations. For purposes of this chapter, the words "chemical contaminants" are limited to synthetic organic chemical contaminants and to any other contaminants which in the opinion of the board constitute a threat to public health. If adequate data to support setting of a standard is available, the state board of health shall adopt by rule a maximum contaminant level for water provided to consumers' taps. Standards set for contaminants known to be toxic shall consider both short-term and chronic toxicity. Standards set for contaminants known to be carcinogenic shall be consistent with risk levels established by the state board of health.

(2) The board shall consider the best available scientific information in establishing the standards. The board may review and revise the standards. State and local standards for chemical contaminants may be more strict than the federal standards. [1984 c 187 § 1. Formerly RCW 70.142.010.]

70A.130.020 Establishment of monitoring requirements for chemical contaminants in public water supplies by state board of health. The state board of health shall conduct public hearings and establish by rule monitoring requirements for chemical contaminants in public water supplies. Results of tests conducted pursuant to such requirements shall be submitted to the department of health and to the local health department. The state board of health may review and revise monitoring requirements for chemical con-

taminants. [1991 c 3 § 374; 1984 c 187 § 2. Formerly RCW 70.142.020.]

70A.130.030 Monitoring requirements—Considerations. The state board of health in determining monitoring requirements for public water supply systems shall take into consideration economic impacts as well as public health risks. [1984 c 187 § 5. Formerly RCW 70.142.030.]

70A.130.040 Establishment of water quality standards by local health department in large counties. Each local health department serving a county with a population of one hundred twenty-five thousand or more may establish water quality standards for its jurisdiction more stringent than standards established by the state board of health. Each local health department establishing such standards shall base the standards on the best available scientific information. [1991 c 363 § 145; 1984 c 187 § 3. Formerly RCW 70.142.040.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

70A.130.050 Noncomplying public water supply systems—Submission of corrective plan—Notification to system's customers. Public water supply systems as defined by RCW 70A.120.020 that the state board of health or local health department determines do not comply with the water quality standards applicable to the system shall immediately initiate preparation of a corrective plan designed to meet or exceed the minimum standards for submission to the department of health. The owner of such system shall within one year take any action required to bring the water into full compliance with the standards. The department of health may require compliance as promptly as necessary to abate an immediate public health threat or may extend the period of compliance if substantial new construction is required: PROVIDED FURTHER, That the extension shall be granted only upon a determination by the department, after a public hearing, that the extension will not pose an imminent threat to public health. Each such system shall include a notice identifying the water quality standards exceeded, and the amount by which the water tested exceeded the standards, in all customer bills mailed after such determination. The notification shall continue until water quality tests conducted in accordance with this chapter establish that the system meets or exceeds the minimum standards. [2020 c 20 § 1377; 1991 c 3 § 375; 1984 c 187 § 4. Formerly RCW 70.142.050.]

Chapter 70A.135 RCW

WATER POLLUTION CONTROL FACILITIES FINANCING

Sections

- 70A.135.010 Purpose—Legislative intent.
- 70A.135.020 Definitions.
- 70A.135.030 Water pollution control facilities and activities—Grants or loans.
- 70A.135.040 Level of grant or loan not precedent.
- 70A.135.050 Compliance schedule for secondary treatment.
- 70A.135.060 Use of funds—Limitations.
- 70A.135.070 Grants or loans for water pollution control facilities—Considerations.
- 70A.135.080 Extended grant payments.

- 70A.135.090 Grants and loans to local governments—Statement of environmental benefits—Development of outcome-focused performance measures.
- 70A.135.100 Water quality capital account—Expenditures.
- 70A.135.110 Puget Sound partners.
- 70A.135.120 Administering funds—Preference to an evergreen community.

70A.135.010 Purpose—Legislative intent. The long-range health and environmental goals for the state of Washington require the protection of the state's surface and underground waters for the health, safety, use, enjoyment, and economic benefit of its people. It is the purpose of this chapter to provide financial assistance to the state and to local governments for the planning, design, acquisition, construction, and improvement of water pollution control facilities and related activities in the achievement of state and federal water pollution control requirements for the protection of the state's waters.

It is the intent of the legislature that distribution of moneys for water pollution control facilities under this chapter be made on an equitable basis taking into consideration legal mandates, local effort, ratepayer impacts, and past distributions of state and federal moneys for water pollution control facilities.

It is the intent of this chapter that the cost of any water pollution control facility attributable to increased or additional capacity that exceeds one hundred ten percent of existing needs at the time of application for assistance under this chapter shall be entirely a local or private responsibility. It is the intent of this chapter that industrial pretreatment be paid by industries and that state funds shall not be used for such purposes. [2009 c 479 § 51; 1986 c 3 § 1. Formerly RCW 70.146.010.]

Additional notes found at www.leg.wa.gov

70A.135.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Department" means the department of ecology.
- (2) "Eligible cost" means the cost of that portion of a water pollution control facility that can be financed under this chapter excluding any portion of a facility's cost attributable to capacity that is in excess of that reasonably required to address one hundred ten percent of the applicant's needs for water pollution control existing at the time application is submitted for assistance under this chapter.
- (3) "Nonpoint source water pollution" means pollution that enters any waters of the state from any dispersed water-based or land-use activities, including, but not limited to, atmospheric deposition, surface water runoff from agricultural lands, urban areas, and forestlands, subsurface or underground sources, and discharges from boats or other marine vessels.
- (4) "Public body" means the state of Washington or any agency, county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, and those Indian tribes now or hereafter recognized as such by the federal government.
- (5) "Sole source aquifer" means the sole or principal source of public drinking water for an area designated by the administrator of the environmental protection agency pursuant to Public Law 93-523, Sec. 1424(b).

(6) "Water pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(7) "Water pollution control activities" means actions taken by a public body for the following purposes: (a) To prevent or mitigate pollution of underground water; (b) to control nonpoint sources of water pollution; (c) to restore the water quality of freshwater lakes; and (d) to maintain or improve water quality through the use of water pollution control facilities or other means. During the 1995-1997 fiscal biennium, "water pollution control activities" includes activities by state agencies to protect public drinking water supplies and sources.

(8) "Water pollution control facility" or "facilities" means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including but not limited to sanitary sewage, stormwater, residential, commercial, industrial, and agricultural wastes, which are causing water quality degradation due to concentrations of conventional, nonconventional, or toxic pollutants. Water pollution control facilities include all equipment, utilities, structures, real property, and interests in and improvements on real property necessary for or incidental to such purpose. Water pollution control facilities also include such facilities, equipment, and collection systems as are necessary to protect federally designated sole source aquifers. [2009 c 479 § 52; 1995 2nd sp.s. c 18 § 920; 1993 sp.s. c 24 § 923; 1987 c 436 § 5; 1986 c 3 § 2. Formerly RCW 70.146.020.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Additional notes found at www.leg.wa.gov

70A.135.030 Water pollution control facilities and activities—Grants or loans. The department may make grants or loans to public bodies, including grants to public bodies as cost-sharing moneys in any case where federal, local, or other funds are made available on a cost-sharing basis, for water pollution control facilities and activities, or for purposes of assisting a public body to obtain an ownership interest in water pollution control facilities and/or to defray a part of the payments made by a public body to a service provider under a service agreement entered into pursuant to RCW 70A.140.060, within the purposes of this chapter and for related administrative expenses. No more than three percent of the moneys may be used by the department to pay for the administration of the grant and loan program authorized by this chapter. [2020 c 20 § 1378; 2009 c 479 § 53; 2007 c 522 § 955. Prior: 2005 c 518 § 940; 2005 c 514 § 1108; 2004 c 277 § 909; 2003 1st sp.s. c 25 § 934; 2002 c 371 § 921; 2001 2nd sp.s. c 7 § 922; 1996 c 37 § 2; 1995 2nd sp.s. c 18 § 921; 1991 sp.s. c 13 § 61; prior: 1987 c 505 § 64; 1987 c 436 § 6; 1986 c 3 § 3. Formerly RCW 70.146.030.]

Additional notes found at www.leg.wa.gov

70A.135.040 Level of grant or loan not precedent.

No grant or loan made in this chapter for fiscal year 1987 shall be construed to establish a precedent for levels of grants or loans made under this chapter thereafter. [2009 c 479 § 54; 1986 c 3 § 6. Formerly RCW 70.146.040.]

Additional notes found at www.leg.wa.gov

70A.135.050 Compliance schedule for secondary treatment. The department of ecology may provide for a phased in compliance schedule for secondary treatment which addresses local factors that may impede compliance with secondary treatment requirements of the federal clean water act.

In determining the length of time to be granted for compliance, the department shall consider the criteria specified in the federal clean water act. [1986 c 3 § 8. Formerly RCW 70.146.050.]

Additional notes found at www.leg.wa.gov

70A.135.060 Use of funds—Limitations. Funds provided for facilities and activities under this chapter may be used for payments to a service provider under a service agreement pursuant to RCW 70A.140.060. If funds are to be used for such payments, the department may make periodic disbursements to a public body or may make a single lump sum disbursement. Disbursements of funds with respect to a facility owned or operated by a service provider shall be equivalent in value to disbursements that would otherwise be made if that facility were owned or operated by a public body. Payments under this chapter for waste disposal and management facilities made to public bodies entering into service agreements pursuant to RCW 70A.140.060 shall not exceed amounts paid to public bodies not entering into service agreements. [2020 c 20 § 1379; 2009 c 479 § 55. Prior: 1987 c 527 § 1; 1987 c 436 § 7; 1986 c 3 § 9. Formerly RCW 70.146.060.]

Additional notes found at www.leg.wa.gov

70A.135.070 Grants or loans for water pollution control facilities—Considerations. (1) When making grants or loans for water pollution control facilities, the department shall consider the following:

- (a) The protection of water quality and public health;
- (b) The cost to residential ratepayers if they had to finance water pollution control facilities without state assistance;
- (c) Actions required under federal and state permits and compliance orders;
- (d) The level of local fiscal effort by residential ratepayers since 1972 in financing water pollution control facilities;
- (e) Except as otherwise conditioned by RCW 70A.135.110, whether the entity receiving assistance is a Puget Sound partner, as defined in RCW 90.71.010;
- (f) Whether the project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310;
- (g) Except as otherwise provided in RCW 70A.135.120, and effective one calendar year following the development and statewide availability of urban forestry management

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plans and ordinances under RCW 76.15.090, whether the project is sponsored by an entity that has been recognized, and what gradation of recognition was received, in the ever-green community designation program created in RCW 76.15.090;

(h) The extent to which the applicant county or city, or if the applicant is another public body, the extent to which the county or city in which the applicant public body is located, has established programs to mitigate nonpoint pollution of the surface or subterranean water sought to be protected by the water pollution control facility named in the application for state assistance; and

(i) The recommendations of the Puget Sound partnership, created in RCW 90.71.210, and any other board, council, commission, or group established by the legislature or a state agency to study water pollution control issues in the state.

(2) Except where necessary to address a public health need or substantial environmental degradation, a county, city, or town planning under RCW 36.70A.040 may not receive a grant or loan for water pollution control facilities unless it has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by RCW 36.70A.040. A county, city, or town that has adopted a comprehensive plan and development regulations as provided in RCW 36.70A.040 may request a grant or loan for water pollution control facilities. This subsection does not require any county, city, or town planning under RCW 36.70A.040 to adopt a comprehensive plan or development regulations before requesting a grant or loan under this chapter if such request is made before the expiration of the time periods specified in RCW 36.70A.040. A county, city, or town planning under RCW 36.70A.040 that has not adopted a comprehensive plan and development regulations within the time periods specified in RCW 36.70A.040 is not prohibited from receiving a grant or loan under this chapter if the comprehensive plan and development regulations are adopted as required by RCW 36.70A.040 before the department executes a contractual agreement for the grant or loan.

(3) Whenever the department is considering awarding grants or loans for public facilities to special districts requesting funding for a proposed facility located in a county, city, or town planning under RCW 36.70A.040, it shall consider whether the county, city, or town planning under RCW 36.70A.040 in whose planning jurisdiction the proposed facility is located has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040.

(4) After January 1, 2010, any project designed to address the effects of water pollution on Puget Sound may be funded under this chapter only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310. [2021 c 209 § 18; 2020 c 20 § 1380; 2013 c 275 § 4; 2008 c 299 § 26. Prior: 2007 c 341 § 60; 2007 c 341 § 26; 1999 c 164 § 603; 1997 c 429 § 30; 1991 sp.s. c 32 § 24; 1986 c 3 § 10. Formerly RCW 70.146.070.]

Findings—Intent—2021 c 209: See note following RCW 76.15.005.

Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164: See notes following RCW 43.160.010.

Additional notes found at www.leg.wa.gov

70A.135.080 Extended grant payments. (1) The department of ecology may enter into contracts with local jurisdictions which provide for extended grant payments under which eligible costs may be paid on an advanced or deferred basis.

(2) Extended grant payments shall be in equal annual payments, the total of which does not exceed, on a net present value basis, fifty percent of the total eligible cost of the project incurred at the time of design and construction. The duration of such extended grant payments shall be for a period not to exceed twenty years. The total of federal and state grant moneys received for the eligible costs of the project shall not exceed fifty percent of the eligible costs.

(3) Any moneys appropriated by the legislature for the purposes of this section shall be first used by the department of ecology to satisfy the conditions of the extended grant payment contracts. [2009 c 479 § 56; 1987 c 516 § 1. Formerly RCW 70.146.075.]

Additional notes found at www.leg.wa.gov

70A.135.090 Grants and loans to local governments—Statement of environmental benefits—Development of outcome-focused performance measures. In providing grants and loans to local governments, the department shall require recipients to incorporate the environmental benefits of the project into their applications, and the department shall utilize the statement of environmental benefits in its grant and loan prioritization and selection process. The department shall also develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grant and loan program. To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270. The department shall consult with affected interest groups in implementing this section. [2001 c 227 § 6. Formerly RCW 70.146.090.]

Findings—Intent—2001 c 227: See note following RCW 43.41.270.

70A.135.100 Water quality capital account—Expenditures. (1) The water quality capital account is created in the state treasury. Moneys in the water quality capital account may be spent only after appropriation.

(2) Expenditures from the water quality capital account may only be used: (a) To make grants or loans to public bodies, including grants to public bodies as cost-sharing moneys in any case where federal, local, or other moneys are made available on a cost-sharing basis, for the capital component of water pollution control facilities and activities; (b) for purposes of assisting a public body to obtain an ownership interest in water pollution control facilities; or (c) to defray any part of the capital component of the payments made by a public body to a service provider under a service agreement entered into under RCW 70A.140.060. During the 2009-2011 fiscal biennium, the legislature may transfer from the water quality capital account to the state general fund such amounts as reflect the excess fund balance of the account. [2020 c 20 § 1381; 2010 1st sp.s. c 37 § 948; 2007 c 233 § 1. Formerly RCW 70.146.100.]

Additional notes found at www.leg.wa.gov

70A.135.110 Puget Sound partners. When making grants or loans for water pollution control facilities under RCW 70A.135.070, the department shall give preference only to Puget Sound partners, as defined in RCW 90.71.010, in comparison to other entities that are eligible to be included in the definition of Puget Sound partner. Entities that are not eligible to be a Puget Sound partner due to geographic location, composition, exclusion from the scope of the action agenda developed by the Puget Sound partnership under RCW 90.71.310, or for any other reason, shall not be given less preferential treatment than Puget Sound partners. [2020 c 20 § 1382; 2007 c 341 § 27. Formerly RCW 70.146.110.]

Additional notes found at www.leg.wa.gov

70A.135.120 Administering funds—Preference to an evergreen community. When administering funds under this chapter, the department shall give preference only to an evergreen community recognized under *RCW 35.105.030 in comparison to other entities that are eligible to receive evergreen community designation. Entities not eligible for designation as an evergreen community shall not be given less preferential treatment than an evergreen community. [2008 c 299 § 31. Formerly RCW 70.146.120.]

*Reviser's note: RCW 35.105.030 was repealed by 2021 c 209 § 26.

Additional notes found at www.leg.wa.gov

Chapter 70A.140 RCW WATER QUALITY JOINT DEVELOPMENT ACT

Sections

70A.140.010	Purpose—Legislative intent.
70A.140.020	Definitions.
70A.140.030	Agreements with service providers—Contents—Sources of funds for periodic payments under agreements.
70A.140.040	Service agreements and related agreements—Procedural requirements.
70A.140.050	Sale, lease, or assignment of public property to service provider—Use for services to public body.
70A.140.060	Public body eligible for grants or loans—Use of grants or loans.
70A.140.070	RCW 70A.140.030 through 70A.140.060 to be additional method of providing services.
70A.140.080	Application of other chapters to service agreements under this chapter—Prevailing wages.
70A.140.900	Short title.

70A.140.010 Purpose—Legislative intent. The long-range health and economic and environmental goals for the state of Washington require the protection of the state's surface and underground waters for the health, safety, use, and enjoyment of its people. It is the purpose of this chapter to provide public bodies an additional means by which to provide for financing, development, and operation of water pollution control facilities needed for achievement of state and federal water pollution control requirements for the protection of the state's waters.

It is the intent of the legislature that public bodies be authorized to provide service from water pollution control facilities by means of service agreements with public or private parties as provided in this chapter. [1986 c 244 § 1. Formerly RCW 70.150.010.]

70A.140.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Water pollution control facilities" or "facilities" means any facilities, systems, or subsystems owned or operated by a public body, or owned or operated by any person or entity for the purpose of providing service to a public body, for the control, collection, storage, treatment, disposal, or recycling of wastewater, including but not limited to sanitary sewage, stormwater, residential wastes, commercial wastes, industrial wastes, and agricultural wastes, that are causing or threatening the degradation of subterranean or surface bodies of water due to concentrations of conventional, nonconventional, or toxic pollutants. Water pollution control facilities do not include dams or water supply systems.

(2) "Public body" means the state of Washington or any agency, county, city or town, political subdivision, municipal corporation, or quasi-municipal corporation.

(3) "Water pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any surface or subterranean waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(4) "Agreement" means any agreement to which a public body and a service provider are parties by which the service provider agrees to deliver service to such public body in connection with its design, financing, construction, ownership, operation, or maintenance of water pollution control facilities in accordance with this chapter.

(5) "Service provider" means any privately owned or publicly owned profit or nonprofit corporation, partnership, joint venture, association, or other person or entity that is legally capable of contracting for and providing service with respect to the design, financing, ownership, construction, operation, or maintenance of water pollution control facilities in accordance with this chapter. [1986 c 244 § 2. Formerly RCW 70.150.020.]

70A.140.030 Agreements with service providers—Contents—Sources of funds for periodic payments under agreements. (1) Public bodies may enter into agreements with service providers for the furnishing of service in connection with water pollution control facilities pursuant to the process set forth in RCW 70A.140.040. The agreements may provide that a public body pay a minimum periodic fee in consideration of the service actually available without regard to the amount of service actually used during all or any part of the contractual period. Agreements may be for a term not to exceed forty years or the life of the facility, whichever is longer, and may be renewable.

(2) The source of funds to meet periodic payment obligations assumed by a public body pursuant to an agreement permitted under this section may be paid from taxes, or solely from user fees, charges, or other revenues pledged to the payment of the periodic obligations, or any of these sources. [2020 c 20 § 1390; 1986 c 244 § 3. Formerly RCW 70.150.030.]

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70A.140.040 Service agreements and related agreements—Procedural requirements. The legislative authority of a public body may secure services by means of an agreement with a service provider. Such an agreement may obligate a service provider to perform one or more of the following services: Design, finance, construct, own, operate, or maintain water pollution control facilities by which services are provided to the public body. Service agreements and related agreements under this chapter shall be entered into in accordance with the following procedure:

(1) The legislative authority of the public body shall publish notice that it is seeking to secure certain specified services by means of entering into an agreement with a service provider. The notice shall be published in the official newspaper of the public body, or if there is no official newspaper then in a newspaper in general circulation within the boundaries of the public body, at least once each week for two consecutive weeks. The final notice shall appear not less than thirty days before the date for submission of proposals. The notice shall state (a) the nature of the services needed, (b) the location in the public body's offices where the requirements and standards for construction, operation, or maintenance of projects needed as part of the services are available for inspection, and (c) the final date for the submission of proposals. The legislative authority may undertake a prequalification process by the same procedure set forth in this subsection.

(2) The request for proposals shall (a) indicate the time and place responses are due, (b) include evaluation criteria to be considered in selecting a service provider, (c) specify minimum requirements or other limitations applying to selection, (d) insofar as practicable, set forth terms and provisions to be included in the service agreement, and (e) require the service provider to demonstrate in its proposal to the public body's satisfaction that it is in the public interest to enter into the service agreement and that the service agreement is financially sound and advantageous to the public body from the standpoint of annual costs, quality of services, experience of the provider, reduction of risk, and other factors.

(3) The criteria set forth in the request for proposals shall be those determined to be relevant by the legislative authority of the public body, which may include but shall not be limited to: The respondent's prior experience, including design, construction, or operation of other similar facilities; respondent's management capability, schedule availability, and financial resources; cost of the service; nature of facility design proposed by respondents; system reliability; performance standards required for the facilities; compatibility with existing service facilities operated by the public body or other providers of service to the public body; project performance warranties; penalty and other enforcement provisions; environmental protection measures to be used; and allocation of project risks. The legislative authority may designate persons or entities within or outside the public body (a) to assist it in issuing the request for proposals to ensure that proposals will be responsive to its needs, and (b) to assist it in evaluating the proposals received.

(4) After proposals under subsections (1) through (3) of this section have been received, the legislative authority or its designee shall determine, on the basis of its review of the proposals, whether one or more proposals have been received

from respondents which are (a) determined to be qualified to provide the requested services, and (b) responsive to the notice and evaluation criteria, which shall include, but not be limited to, cost of services. These chosen respondents may, at the discretion of the public body, be aggregated into a short list of qualified respondents, who shall be referred to as the selected respondents in this section. The legislative authority or its designee shall conduct a bidder's conference to include all these selected respondents to assure a full understanding of the proposals. The bidder's conference shall make these selected respondents aware of any changes in the request for proposal. Any information related to revisions in the request for proposal shall be made available to all these selected respondents. Any selected respondent shall be accorded a reasonable opportunity for revision of its proposal prior to commencement of the negotiation provided in subsection (5) of this section, for the purpose of obtaining best and final proposals.

(5) After such conference is held, the legislative authority or its designee may negotiate with the selected respondent whose proposal it determines to be the most advantageous to the public body, considering the criteria set forth in the request for proposals. If negotiations are conducted by the designee, the legislative authority shall continue to oversee the negotiations and provide direction to its designee. If the negotiation is unsuccessful, the legislative authority may commence negotiations with any other selected respondent. On completion of this process, and after the department of ecology review and comments as provided for in subsection (9) of this section, and after public hearing as provided for in subsection (10) of this section, the legislative authority may approve a contract with its chosen respondent.

(6) Any person aggrieved by the legislative authority's approval of a contract may appeal the determination to an appeals board selected by the public body, which shall consist of not less than three persons determined by the legislative authority to be qualified for such purposes. Such board shall promptly hear and determine whether the public body entered into the agreement in accordance with this chapter and other applicable law. The board shall have the power only to affirm or void the agreement.

(7) Notwithstanding the foregoing, where contracting for design services by the public body is done separately from contracting for other services permitted under this chapter, the contracting for design services shall be done in accordance with chapter 39.80 RCW.

(8) If a public body elects to enter into an agreement whereby the service provider will own all or a portion of the water pollution control facilities it constructs, the service agreement shall include provision for an option by which a public body may acquire at fair market value facilities dedicated to such service.

(9) Before any service agreement is entered into by the public body, it shall be reviewed by the department of ecology to ensure consistency with the purposes of chapters 90.46 and 90.48 RCW.

The department of ecology has thirty days from receipt of the proposed service agreement to complete its review and provide the public body with comments. A review under this section is not intended to replace any additional permitting or

regulatory reviews and approvals that may be required under other applicable laws.

(10) Prior to entering into any service agreement under this chapter, the public body must have made written findings, after holding a public hearing on the proposal, that it is in the public interest to enter into the service agreement and that the service agreement is financially sound and advantageous compared to other methods.

(11) Each service agreement shall include project performance bonds or other security by the service provider which in the judgment of the public body is sufficient to secure adequate performance by the service provider. [2005 c 469 § 1; 1989 c 175 § 136; 1986 c 244 § 4. Formerly RCW 70.150.040.]

Competitive bids—Inapplicability to certain agreements: RCW 35.22.625 and 36.32.265.

Additional notes found at www.leg.wa.gov

70A.140.050 Sale, lease, or assignment of public property to service provider—Use for services to public body. A public body may sell, lease, or assign public property for fair market value to any service provider as part of a service agreement entered into under the authority of this chapter. The property sold or leased shall be used by the provider, directly or indirectly, in providing services to the public body. Such use may include demolition, modification, or other use of the property as may be necessary to execute the purposes of the service agreement. [1986 c 244 § 5. Formerly RCW 70.150.050.]

70A.140.060 Public body eligible for grants or loans—Use of grants or loans. A public body that enters into a service agreement pursuant to this chapter, under which a facility is owned wholly or partly by a service provider, shall be eligible for grants or loans to the extent permitted by law or regulation as if the entire portion of the facility dedicated to service to such public body were publicly owned. The grants or loans shall be made to and shall inure to the benefit of the public body and not the service provider. Such grants or loans shall be used by the public body for all or part of its ownership interest in the facility, and/or to defray a part of the payments it makes to the service provider under a service agreement if such uses are permitted under the grant or loan program. [1986 c 244 § 6. Formerly RCW 70.150.060.]

70A.140.070 RCW 70A.140.030 through 70A.140.060 to be additional method of providing services. RCW 70A.140.030 through 70A.140.060 shall be deemed to provide an additional method for the provision of services from and in connection with facilities and shall be regarded as supplemental and additional to powers conferred by other state laws and by federal laws. [2020 c 20 § 1391; 2007 c 494 § 505; 2005 c 469 § 2; 1986 c 244 § 7. Formerly RCW 70.150.070.]

Additional notes found at www.leg.wa.gov

70A.140.080 Application of other chapters to service agreements under this chapter—Prevailing wages. (1) The provisions of chapters 39.12, 39.19, and *39.25 RCW shall apply to a service agreement entered into under this

chapter to the same extent as if the facilities dedicated to such service were owned by a public body.

(2) Subsection (1) of this section shall not be construed to apply to agreements or actions by persons or entities which are not undertaken pursuant to this chapter.

(3) Except for RCW 39.04.175, this chapter shall not be construed as a limitation or restriction on the application of Title 39 RCW to public bodies.

(4) Prevailing wages shall be established as the prevailing wage in the largest city of the county in which facilities are built. [1986 c 244 § 8. Formerly RCW 70.150.080.]

*Reviser's note: Chapter 39.25 RCW was repealed by 1994 c 138 § 2.

70A.140.900 Short title. This chapter may be cited as the water quality joint development act. [1986 c 244 § 9. Formerly RCW 70.150.900.]

Chapter 70A.145 RCW

WATER PURVEYORS—FIRE SUPPRESSION WATER FACILITIES

Sections

70A.145.010	Findings and declaration of purpose.
70A.145.020	Definitions.
70A.145.030	Cost allocation and recovery.
70A.145.040	Contracts to provide for facilities and services.
70A.145.050	Payment by counties.
70A.145.060	Liability protection for fire suppression water facilities and services.
70A.145.900	Liberal construction.
70A.145.901	Powers conferred by chapter are supplemental.
70A.145.902	Ratification of prior acts.

70A.145.010 Findings and declaration of purpose.

(1) The legislature finds that historically governmental and nongovernmental water purveyors have played two key public service roles: Providing safe drinking water and providing water for fire protection. This dual function approach is a deeply embedded and state-regulated feature of water system planning, engineering, operation, and maintenance. This dual function enables purveyors to provide these critical public services in a cost-effective way that protects public health and safety, promotes economic development, and supports appropriate land use planning.

(2) The legislature finds that the provision of integrated, dual function water facilities and services benefits all customers of a purveyor, similar to other benefits provided to water system customers in response to regulation regarding safe drinking water such as treatment and water quality monitoring.

(3) The legislature finds that water purveyors plan, construct, acquire, operate, and maintain fire suppression water facilities in response to regulatory requirements, including without limitation the public water system coordination act, RCW 70A.100.080, the design of public water systems and water system operations requirements, chapter 246-290 WAC, Parts 3 and 5, the state building code, chapter 19.27 RCW, and the international fire code. The availability of infrastructure and water to fight fires allows for the development and habitability of property, increases property values, and benefits customers and property through lower casualty insurance rates.

(4) The legislature finds that recent Washington supreme court decisions, including *Lane v. City of Seattle*, 164 Wn.2d 875 (2008), and *City of Tacoma v. City of Bonney Lake, et al.*, 173 Wn.2d 584 (2012), have created uncertainty and confusion as to the role, responsibilities, cost allocation, and recovery authority of water purveyors. If left unresolved, the absence of legal clarity will adversely affect the availability and condition of fire suppression infrastructure necessary to protect life and property.

(5) It is the legislature's intent to determine appropriate methods of organizing public services and the authority of water purveyors with respect to critical public services. The legislature further intends this chapter to clarify the authority of water purveyors to provide fire suppression water facilities and services and to recover the costs for those facilities and services. The legislature also intends to provide liability protections appropriate for water purveyors engaged in this vital public service. [2020 c 20 § 1429; 2013 c 127 § 1. Formerly RCW 70.315.010.]

70A.145.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Fire suppression water facilities" means water supply transmission and distribution facilities, interties, pipes, valves, control systems, lines, storage, pumps, fire hydrants, and other facilities, or any part thereof, used or usable for the delivery of water for fire suppression purposes.

(2) "Fire suppression water services" or "services" means operation and maintenance of fire suppression water facilities and the delivery of water for fire suppression purposes.

(3) "Municipal corporation" means any city, town, county, water-sewer district, port district, public utility district, irrigation district, and any other municipal corporation, quasi-municipal corporation, or political subdivision of the state.

(4) "Purveyor" has the same meaning as set forth in RCW 70A.100.030(4). [2020 c 20 § 1430; 2013 c 127 § 2. Formerly RCW 70.315.020.]

70A.145.030 Cost allocation and recovery. A purveyor may allocate and recover the costs of fire suppression water facilities and services from all customers as costs of complying with state laws and regulations, or from customers based on service to, benefits conferred upon, and burdens and impacts caused by various classes of customers, or both. [2013 c 127 § 3. Formerly RCW 70.315.030.]

70A.145.040 Contracts to provide for facilities and services. A city, town, or county may contract with purveyors for the provision of fire suppression water facilities, services, or both. The contract may take the form of a franchise agreement, an interlocal agreement pursuant to chapter 39.34 RCW, or an agreement under other contracting authority, and may provide for funding or cost recovery of fire suppression water facilities, services, or both, as the parties may agree. [2013 c 127 § 4. Formerly RCW 70.315.040.]

70A.145.050 Payment by counties. A county is not required to pay for fire suppression water facilities or services

except: (1) As a customer of a purveyor; (2) in areas where a county is acting as a purveyor; or (3) where a county has agreed to do so consistent with RCW 70A.145.040. [2020 c 20 § 1431; 2013 c 127 § 5. Formerly RCW 70.315.050.]

70A.145.060 Liability protection for fire suppression water facilities and services. (1) A purveyor that is a municipal corporation is not liable for any damages that arise out of a fire event and relate to the operation, maintenance, and provision of fire suppression water facilities and services that are located within or outside its corporate boundaries.

(2) A purveyor that is not a municipal corporation is not liable for any damages that arise out of a fire event and relate to the operation, maintenance, and provision of fire suppression water facilities and services if the purveyor has a description of fire hydrant maintenance measures. The description of fire hydrant maintenance measures must be kept on file by the water purveyor and be available to the public, and may be included within the purveyor's most recently approved water system plan or small water system management program.

(3) Consistent with RCW 36.55.060, with respect to counties and notwithstanding the provisions of subsections (1) and (2) of this section, agreements or franchises may, as the parties mutually agree, include indemnification, hold harmless, or other risk management provisions under which purveyors indemnify and hold harmless cities, towns, and counties against damages arising from fire suppression activities during fire events. Such provisions are unaffected by subsections (1) and (2) of this section. [2013 c 127 § 6. Formerly RCW 70.315.060.]

70A.145.900 Liberal construction. This chapter is exempted from the rule of strict construction and must be liberally construed to give full effect to the objectives and purposes for which it was enacted. [2013 c 127 § 7. Formerly RCW 70.315.900.]

70A.145.901 Powers conferred by chapter are supplemental. (1) The powers and authority conferred by this chapter are supplemental to powers and authority conferred by other law, and nothing contained in this chapter may be construed as limiting any other powers or authority of any municipal corporation or other entity under applicable law.

(2) As to water companies that are regulated by the utilities and transportation commission under Title 80 RCW, nothing in this chapter is intended to change or limit the authority or jurisdiction of the utilities and transportation commission. [2013 c 127 § 8. Formerly RCW 70.315.901.]

70A.145.902 Ratification of prior acts. To the extent that they provide for or address funding, cost allocation, and recovery of fire suppression water facilities and services, all ordinances, resolutions, and contracts adopted, entered, implemented, or performed prior to July 28, 2013, are hereby validated, ratified, and confirmed. This chapter must not affect or impair any ordinance, resolution, or contract lawfully entered into prior to July 28, 2013. [2013 c 127 § 9. Formerly RCW 70.315.902.]

Chapter 70A.200 RCW WASTE REDUCTION, RECYCLING, AND MODEL LITTER CONTROL ACT

Sections

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Reviser's note: Throughout chapter 70A.200 RCW, the term "this 1971 amendatory act" has been changed to "this chapter"; "this 1971 amendatory act" [1971 ex.s. c 307] consists of this chapter, the 1971 amendment to RCW 46.61.655 and the repeal of RCW 9.61.120, 9.66.060, 9.66.070, and 46.61.650.

Local adopt-a-highway programs: RCW 47.40.105.

Solid waste management, recovery and recycling: Chapter 70A.205 RCW.

State parks: RCW 79A.05.045.

70A.200.010 Legislative findings. (1) The legislature finds:

(a) Washington state is experiencing rapid population growth and its citizens are increasingly mobile;

(b) There is a fundamental need for a healthful, clean, and beautiful environment;

(c) The proliferation and accumulation of litter discarded throughout this state impairs this need and constitutes a public health hazard;

(d) There is a need to conserve energy and natural resources, and the effective litter control and recovery and recycling of litter materials will serve to accomplish such conservation;

(e) In addition to effective litter control, there must be effective programs to accomplish waste reduction, the state's highest waste management priority; and

(f) There must also be effective systems to accomplish all components of recycling, including collection and processing.

(2) Recognizing the multifaceted nature of the state's solid waste management problems, the legislation enacted in 1971 and entitled the "Model Litter Control and Recycling Act" is hereby renamed the "waste reduction, recycling, and model litter control act." [1998 c 257 § 1; 1992 c 175 § 1; 1979 c 94 § 1; 1971 ex.s. c 307 § 1. Formerly RCW 70.93.010.]

Additional notes found at www.leg.wa.gov

70A.200.020 Declaration of purpose. (1) The purpose of this chapter is to accomplish litter control, increase waste reduction, and stimulate all components of recycling and composting throughout this state by delegating to the department of ecology the authority to:

- (a) Conduct a permanent and continuous program to control and remove litter from this state to the maximum practical extent possible;
- (b) Recover and recycle waste materials related to litter and littering;
- (c) Foster public and private recycling of recyclable materials and composting of compostable materials;
- (d) Increase public awareness of the need for waste reduction, recycling, litter control, and composting;
- (e) Coordinate the litter collection efforts by other agencies identified in this chapter; and
- (f) Coordinate and expend funds collected under chapter 82.19 RCW with priority given to products identified under RCW 82.19.020 and solely for the purposes of waste reduction, recycling, composting, and litter collection and control programs.

(2) It is further the intent and purpose of this chapter to: (a) Create jobs for employment of youth in litter cleanup and related activities; (b) stimulate and encourage recycling; and (c) encourage proper and appropriate composting. This program shall include the compatible goal of recovery of recyclable materials to conserve energy and natural resources wherever practicable. Every other department of state government and all local governmental units and agencies of this state shall cooperate with the department of ecology in the administration and enforcement of this chapter. The intent of this chapter is to add to and to coordinate existing recycling and litter control and removal efforts and not terminate or supplant such efforts. [2015 c 15 § 1; 1998 c 257 § 2; 1992 c 175 § 2; 1991 c 319 § 101; 1979 c 94 § 2; 1975-'76 2nd ex.s. c 41 § 7; 1971 ex.s. c 307 § 2. Formerly RCW 70.93.020.]

Solid waste disposal, recovery and recycling: Chapter 70A.205 RCW.

Additional notes found at www.leg.wa.gov

70A.200.030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Conveyance" means a boat, airplane, or vehicle.
- (2) "Department" means the department of ecology.
- (3) "Director" means the director of the department of ecology.
- (4) "Disposable package or container" means all packages or containers defined as such by rules adopted by the department of ecology.
- (5) "Junk vehicle" has the same meaning as defined in RCW 46.55.010.
- (6) "Litter" means all waste material including but not limited to disposable packages or containers thrown or deposited as herein prohibited and solid waste that is illegally dumped, but not including the wastes of the primary processes of mining, logging, sawmilling, farming, or manufacturing. "Litter" includes the material described in subsection (11) of this section as "potentially dangerous litter."
- (7) "Litter bag" means a bag, sack, or other container made of any material which is large enough to serve as a receptacle for litter inside the vehicle or watercraft of any

person. It is not necessarily limited to the state approved litter bag but must be similar in size and capacity.

(8) "Litter receptacle" means those containers adopted by the department of ecology and which may be standardized as to size, shape, capacity, and color and which shall bear the state anti-litter symbol, as well as any other receptacles suitable for the depositing of litter.

(9) "Official gathering" means an event where authorization to hold the event is approved, recognized, or issued by a government, public body, or authority, including but not limited to fairs, musical concerts, athletic games, festivals, tournaments, or any other formal or ceremonial event, during which beverages are sold by a vendor or vendors in single-use aluminum, glass, or plastic bottles or cans.

(10) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or other entity whatsoever.

(11) "Potentially dangerous litter" means litter that is likely to injure a person or cause damage to a vehicle or other property. "Potentially dangerous litter" means:

- (a) Cigarettes, cigars, or other tobacco products that are capable of starting a fire;
- (b) Glass;
- (c) A container or other product made predominantly or entirely of glass;
- (d) A hypodermic needle or other medical instrument designed to cut or pierce;
- (e) Raw human waste, including soiled baby diapers, regardless of whether or not the waste is in a container of any sort; and
- (f) Nails or tacks.

(12) "Public place" means any area that is used or held out for use by the public whether owned or operated by public or private interests.

(13) "Recycling" means transforming or remanufacturing waste materials into a finished product for use other than landfill disposal or incineration.

(14) "Recycling center" means a central collection point for recyclable materials.

(15) "Sports facility" means an outdoor recreational sports facility, including but not limited to athletic fields and ballparks, at which beverages are sold by a vendor or vendors in single-use aluminum, glass, or plastic bottles or cans.

(16) "To litter" means a single or cumulative act of disposing of litter.

(17) "Vehicle" includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(18) "Waste reduction" means reducing the amount or toxicity of waste generated or reusing materials.

(19) "Watercraft" means any boat, ship, vessel, barge, or other floating craft. [2007 c 244 § 1; 2003 c 337 § 2; 2000 c 154 § 1; 1998 c 257 § 3; 1991 c 319 § 102; 1979 c 94 § 3; 1971 ex.s. c 307 § 3. Formerly RCW 70.93.030.]

Findings—2003 c 337: See note following RCW 70A.200.060.

Additional notes found at www.leg.wa.gov

70A.200.040 Administrative procedure act—Application to chapter. In addition to his or her other powers and duties, the director shall have the power to propose and to adopt pursuant to chapter 34.05 RCW rules and regulations necessary to carry out the provisions, purposes, and intent of this chapter. [2012 c 117 § 404; 1971 ex.s. c 307 § 4. Formerly RCW 70.93.040.]

70A.200.050 Enforcement of chapter. The director shall designate trained employees of the department to be vested with police powers to enforce and administer the provisions of this chapter and all rules adopted thereunder. The director shall also have authority to contract with other state and local governmental agencies having law enforcement capabilities for services and personnel reasonably necessary to carry out the enforcement provisions of this chapter. In addition, state patrol officers, fish and wildlife officers, fire wardens, deputy fire wardens and forest rangers, sheriffs and marshals and their deputies, and police officers, and those employees of the department of ecology and the parks and recreation commission vested with police powers all shall enforce the provisions of this chapter and all rules adopted thereunder and are hereby empowered to issue citations to and/or arrest without warrant, persons violating any provision of this chapter or any of the rules adopted hereunder. All of the foregoing enforcement officers may serve and execute all warrants, citations, and other process issued by the courts in enforcing the provisions of this chapter and rules adopted hereunder. In addition, mailing by registered mail of such warrant, citation, or other process to his or her last known place of residence shall be deemed as personal service upon the person charged. [2001 c 253 § 8; 1980 c 78 § 132; 1979 c 94 § 4; 1971 ex.s. c 307 § 5. Formerly RCW 70.93.050.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

70A.200.060 Littering prohibited—Penalties—Litter cleanup restitution payment. (1) It is a violation of this section to abandon a junk vehicle upon any property. In addition, no person shall throw, drop, deposit, discard, or otherwise dispose of litter upon any public property in the state or upon private property in this state not owned by him or her or in the waters of this state whether from a vehicle or otherwise including but not limited to any public highway, public park, beach, campground, forestland, recreational area, trailer park, highway, road, street, or alley except:

(a) When the property is designated by the state or its agencies or political subdivisions for the disposal of garbage and refuse, and the person is authorized to use such property for that purpose;

(b) Into a litter receptacle in a manner that will prevent litter from being carried away or deposited by the elements upon any part of the private or public property or waters.

(2)(a) Except as provided in subsection (4) of this section, it is a class 3 civil infraction as provided in RCW 7.80.120 for a person to litter in an amount less than or equal to one cubic foot.

(b) It is a misdemeanor for a person to litter in an amount greater than one cubic foot but less than one cubic yard. The person shall also pay a litter cleanup restitution payment equal to twice the actual cost of cleanup, or fifty dollars per

cubic foot of litter, whichever is greater. The court shall distribute one-half of the restitution payment to the landowner and one-half of the restitution payment to the law enforcement agency investigating the incident. The court may, in addition to or in lieu of part or all of the cleanup restitution payment, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section, if the person cleans up and properly disposes of the litter.

(c) It is a gross misdemeanor for a person to litter in an amount of one cubic yard or more. The person shall also pay a litter cleanup restitution payment equal to twice the actual cost of cleanup, or one hundred dollars per cubic foot of litter, whichever is greater. The court shall distribute one-half of the restitution payment to the landowner and one-half of the restitution payment to the law enforcement agency investigating the incident. The court may, in addition to or in lieu of part or all of the cleanup restitution payment, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section, if the person cleans up and properly disposes of the litter.

(d) If a junk vehicle is abandoned in violation of this section, RCW 46.55.230 governs the vehicle's removal, disposal, and sale, and the penalties that may be imposed against the person who abandoned the vehicle.

(3) If the violation occurs in a state park, the court shall, in addition to any other penalties assessed, order the person to perform twenty-four hours of community restitution in the state park where the violation occurred if the state park has stated an intent to participate as provided in RCW 79A.05.050.

(4) It is a class 1 civil infraction as provided in RCW 7.80.120 for a person to discard, in violation of this section, potentially dangerous litter in any amount. [2003 c 337 § 3; 2002 c 175 § 45; 2001 c 139 § 1; 2000 c 154 § 2; 1997 c 159 § 1; 1996 c 263 § 1; 1993 c 292 § 1; 1983 c 277 § 1; 1979 ex.s. c 39 § 1; 1971 ex.s. c 307 § 6. Formerly RCW 70.93.060.]

Findings—2003 c 337: "(1) The legislature finds that the littering of potentially dangerous products poses a greater danger to the public safety than other classes of litter. Broken glass, human waste, and other dangerous materials along roadways, within parking lots, and on pedestrian, bicycle, and recreation trails elevates the risk to public safety, such as vehicle tire punctures, and the risk to the community volunteers who spend their time gathering and properly disposing of the litter left behind by others. As such, the legislature finds that a higher penalty should be imposed on those who improperly dispose of potentially dangerous products, such as is imposed on those who improperly dispose of tobacco products.

(2) The legislature further finds that litter is a nuisance, and, in order to alleviate such a nuisance, counties must be provided statutory authority to declare what shall be a nuisance, to abate a nuisance, and to impose and collect fines upon parties who may create, cause, or commit a nuisance." [2003 c 337 § 1.]

Lighted material, etc.—Receptacles in conveyances: RCW 76.04.455.

Throwing materials on highway prohibited—Removal: RCW 46.61.645.

Additional notes found at www.leg.wa.gov

70A.200.070 Collection of fines and forfeitures. The director may prescribe the procedures for the collection of penalties, costs, and other charges allowed by chapter 7.80 RCW for violations of this chapter. [1996 c 263 § 2; 1993 c 292 § 2; 1983 c 277 § 2; 1971 ex.s. c 307 § 7. Formerly RCW 70.93.070.]

70A.200.080 Notice to public—Contents of chapter—Required. Pertinent portions of this chapter shall be posted along the public highways of this state and in all campgrounds and trailer parks, at all entrances to state parks, forestlands, and recreational areas, at all public beaches, and at other public places in this state where persons are likely to be informed of the existence and content of this chapter and the penalties for violating its provisions. [1971 ex.s. c 307 § 8. Formerly RCW 70.93.080.]

70A.200.090 Litter receptacles—Use of anti-litter symbol—Distribution—Placement—Violations—Penalties. The department shall design and the director shall adopt by rule or regulation one or more types of litter receptacles which are reasonably uniform as to size, shape, capacity and color, for wide and extensive distribution throughout the public places of this state. Each such litter receptacle shall bear an anti-litter symbol as designed and adopted by the department. In addition, all litter receptacles shall be designed to attract attention and to encourage the depositing of litter.

Litter receptacles of the uniform design shall be placed along the public highways of this state and at all parks, campgrounds, trailer parks, drive-in restaurants, gasoline service stations, tavern parking lots, shopping centers, grocery store parking lots, parking lots of major industrial firms, marinas, boat launching areas, boat moorage and fueling stations, public and private piers, beaches and bathing areas, and such other public places within this state as specified by rule or regulation of the director adopted pursuant to chapter 34.05 RCW. The number of such receptacles required to be placed as specified herein shall be determined by a formula related to the need for such receptacles.

It shall be the responsibility of any person owning or operating any establishment or public place in which litter receptacles of the uniform design are required by this section to procure and place such receptacles at their own expense on the premises in accord with rules and regulations adopted by the department.

Any person, other than a political subdivision, government agency, or municipality, who fails to place such litter receptacles on the premises in the numbers required by rule or regulation of the department, violating the provisions of this section or rules or regulations adopted thereunder shall be subject to a fine of ten dollars for each day of violation. [1998 c 257 § 4; 1979 c 94 § 5; 1971 ex.s. c 307 § 9. Formerly RCW 70.93.090.]

70A.200.100 Official gatherings and sports facilities—Recycling. In communities where there is an established curbside service and where recycling service is available to businesses, a recycling program must be provided at every official gathering and at every sports facility by the vendors who sell beverages in single-use aluminum, glass, or plastic bottles or cans. A recycling program includes provi-

sion of receptacles or reverse vending machines, and provisions to transport and recycle the collected materials. Facility managers or event coordinators may choose to work with vendors to coordinate the recycling program. The recycling receptacles or reverse vending machines must be clearly marked, and must be provided for the aluminum, glass, or plastic bottles or cans that contain the beverages sold by the vendor. [2007 c 244 § 2. Formerly RCW 70.93.093.]

70A.200.110 Marinas and airports—Recycling. (1) Each marina with thirty or more slips and each airport providing regularly scheduled commercial passenger service shall provide adequate recycling receptacles on, or adjacent to, its facility. The receptacles shall be clearly marked for the disposal of at least two of the following recyclable materials: Aluminum, glass, newspaper, plastic, and tin.

(2) Marinas and airports subject to this section shall not be required to provide recycling receptacles until the city or county in which it is located adopts a waste reduction and recycling element of a solid waste management plan pursuant to RCW 70A.205.045. [2020 c 20 § 1075; 1991 c 11 § 2. Formerly RCW 70.93.095.]

70A.200.120 Transported waste must be covered or secured. (1) By January 1, 1994, each county or city with a staffed transfer station or landfill in its jurisdiction shall adopt an ordinance to reduce litter from vehicles. The ordinance shall require the operator of a vehicle transporting solid waste to a staffed transfer station or landfill to secure or cover the vehicle's waste in a manner that will prevent spillage. The ordinance may provide exemptions for vehicle operators transporting waste that is unlikely to spill from a vehicle.

The ordinance shall, in the absence of an exemption, require a fee, in addition to other landfill charges, for a person arriving at a staffed landfill or transfer station without a cover on the vehicle's waste or without the waste secured.

(2) The fee collected under subsection (1) of this section shall be deposited, no less often than quarterly, with the city or county in which the landfill or transfer station is located.

(3) A vehicle transporting sand, dirt, or gravel in compliance with the provisions of RCW 46.61.655 shall not be required to secure or cover a load pursuant to ordinances adopted under this section. [1993 c 399 § 1. Formerly RCW 70.93.097.]

70A.200.130 Removal of litter—Responsibility. Responsibility for the removal of litter from receptacles placed at parks, beaches, campgrounds, trailer parks, and other public places shall remain upon those state and local agencies performing litter removal. Removal of litter from litter receptacles placed on private property which is used by the public shall remain the responsibility of the owner of such private property. [1971 ex.s. c 307 § 11. Formerly RCW 70.93.110.]

70A.200.140 Waste reduction, recycling, and litter control account—Distribution. (1) There is hereby created an account within the state treasury to be known as the waste reduction, recycling, and litter control account. Moneys in the account may be spent only after appropriation. Expenditures

from the waste reduction, recycling, and litter control account shall be used as follows:

(a) Forty percent to the department of ecology, primarily for use by the departments of ecology, natural resources, revenue, transportation, and corrections, and the parks and recreation commission, for litter collection programs under RCW 70A.200.170. The amount to the department of ecology shall also be used for a central coordination function for litter control efforts statewide; to support employment of youth in litter cleanup as intended in RCW 70A.200.020, and for litter pick up using other authorized agencies; and for statewide public awareness programs under RCW 70A.200.150(7). The amount to the department shall also be used to defray the costs of administering the funding, coordination, and oversight of local government programs for waste reduction, litter control, recycling, and composting so that local governments can apply one hundred percent of their funding to achieving program goals. The amount to the department of revenue shall be used to enforce compliance with the litter tax imposed in chapter 82.19 RCW;

(b)(i) Twenty percent to the department for local government funding programs for waste reduction, litter control, recycling activities, and composting activities by cities and counties under RCW 70A.200.190, to be administered by the department of ecology; (ii) any unspent funds under (b)(i) of this subsection may be used to create and pay for a matching fund competitive grant program to be used by local governments for the development and implementation of contamination reduction and outreach plans for inclusion in comprehensive solid waste management plans or by local governments and nonprofit organizations for local or statewide education programs designed to help the public with litter control, waste reduction, recycling, and composting of primarily the products taxed under chapter 82.19 RCW. Recipients under this subsection include programs to reduce wasted food and food waste that are designed to achieve the goals established in RCW 70A.205.715(1) and that are consistent with the plan developed in RCW 70A.205.715(3). Grants must adhere to the following requirements: (A) No grant may exceed sixty thousand dollars; (B) grant recipients shall match the grant funding allocated by the department by an amount equal to twenty-five percent of eligible expenses. A local government's share of these costs may be met by cash or contributed services; (C) the obligation of the department to make grant payments is contingent upon the availability of the amount of money appropriated for this subsection (1)(b); and (D) grants are managed under the guidelines for existing grant programs; and

(c) Forty percent to the department of ecology to: (i) Implement activities under RCW 70A.200.150 for waste reduction, recycling, and composting efforts; (ii) provide technical assistance to local governments and commercial businesses to increase recycling markets and recycling and composting programs primarily for the products taxed under chapter 82.19 RCW designed to educate citizens about waste reduction, litter control, and recyclable and compostable products and programs; (iii) increase access to waste reduction, composting, and recycling programs, particularly for food packaging and plastic bags and appropriate composting techniques; and (iv) for programs to reduce wasted food and food waste that are designed to achieve the goals established

in RCW 70A.205.715(1) and that are consistent with the plan developed in RCW 70A.205.715(3).

(2) All taxes imposed in RCW 82.19.010 and fines and bail forfeitures collected or received pursuant to this chapter shall be deposited in the waste reduction, recycling, and litter control account and used for the programs under subsection (1) of this section.

(3) Not less than five percent and no more than ten percent of the amount appropriated into the waste reduction, recycling, and litter control account every biennium shall be reserved for capital needs, including the purchase of vehicles for transporting crews and for collecting litter and solid waste. Capital funds shall be distributed among state agencies and local governments according to the same criteria provided in RCW 70A.200.170 for the remainder of the funds, so that the most effective waste reduction, litter control, recycling, and composting programs receive the most funding. The intent of this subsection is to provide funds for the purchase of equipment that will enable the department to account for the greatest return on investment in terms of reaching a zero litter goal.

(4) Funds in the waste reduction, recycling, and litter control account, collected under chapter 82.19 RCW, must be prioritized for the products identified under RCW 82.19.020 solely for the purposes of recycling, composting, and litter collection, reduction, and control programs.

(5) During the 2021-2023 fiscal biennium, Washington State University may use funds in the waste reduction, recycling, and litter control account, collected under chapter 82.19 RCW, to conduct an organic waste study.

(6) During the 2021-2023 fiscal biennium, and as an exception to the distribution of expenditures otherwise required in this section, the department of ecology may use funds in the waste reduction, recycling, and litter control account to continue a series of food waste reduction campaigns, to continue to invest in litter prevention campaigns, to conduct a recycling study, and to increase litter control on state highways. [2022 c 297 § 963; 2021 c 334 § 987; 2020 c 20 § 1076. Prior: 2019 c 255 § 3; 2019 c 166 § 5; 2015 c 15 § 3; (2015 c 15 § 2 expired June 30, 2019); prior: 2013 2nd sp.s. c 15 § 6; 2013 2nd sp.s. c 4 § 989; 2011 1st sp.s. c 50 § 963; 2010 1st sp.s. c 37 § 945; 2009 c 564 § 950; 2005 c 518 § 939; 1998 c 257 § 5; 1992 c 175 § 8; 1991 sp.s. c 13 § 40; 1985 c 57 § 68; 1983 c 277 § 3; 1971 ex.s. c 307 § 18. Formerly RCW 70.93.180.]

Effective date—2022 c 297: See note following RCW 43.79.565.

Conflict with federal requirements—Effective date—2021 c 334: See notes following RCW 43.79.555.

Finding—Intent—2019 c 255: See note following RCW 70A.205.715.

Effective date—2019 c 166: See note following RCW 70A.240.010.

Effective date—2017 3rd sp.s. c 1; 2015 c 15 §§ 3 and 6: "Sections 3 and 6 of this act take effect June 30, 2019." [2017 3rd sp.s. c 1 § 994; 2015 c 15 § 9.]

Expiration date—2017 3rd sp.s. c 1; 2015 c 15 §§ 2 and 5: "Sections 2 and 5 of this act expire June 30, 2019." [2017 3rd sp.s. c 1 § 993; 2015 c 15 § 8.]

Effective date—Expiration date—2013 2nd sp.s. c 15 §§ 5-7: See note following RCW 82.19.040.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Additional notes found at www.leg.wa.gov

70A.200.150 Department of ecology—Administration of anti-litter and recycling programs. In addition to the foregoing, the department of ecology shall use the moneys from RCW 70A.200.140 of the waste reduction, recycling, and litter control account to:

(1) Serve as the coordinating agency between the various industry organizations seeking to aid in the waste reduction, anti-litter, recycling, and composting efforts;

(2) Serve as the coordinating and administrating agency for all state agencies and local governments receiving funds for waste reduction, litter control, recycling, and composting under this chapter;

(3) Recommend to the governing bodies of all local governments that they adopt ordinances similar to the provisions of this chapter;

(4) Cooperate with all local governments to accomplish coordination of local waste reduction, anti-litter, recycling, and composting efforts;

(5) Encourage, organize, and coordinate all voluntary local waste reduction, anti-litter, and recycling campaigns seeking to focus the attention of the public on the programs of this state to reduce waste, control and remove litter, and foster recycling and composting;

(6) Investigate the availability of, and apply for funds available from any private or public source to be used in the program outlined in this chapter;

(7) Develop statewide programs by working with local governments, payers of the waste reduction, recycling, and litter control tax, and industry organizations that are active in waste reduction, anti-litter, recycling, and composting efforts to:

(a) Increase public awareness of and participation in recycling and composting; and

(b) Stimulate and encourage local private recycling and composting centers, public participation in recycling and composting, and research and development in the field of litter control, and recycling, removal, and disposal of litter-related recycling materials, and composting; and

(8) Provide on the department's website a summary of all waste reduction, litter control, recycling, and composting efforts statewide including those of the department and other state agencies and local governments funded for such programs under this chapter. [2020 c 20 § 1077; 2015 c 15 § 4; 2014 c 76 § 2; 1998 c 257 § 8; 1979 c 94 § 7; 1971 ex.s. c 307 § 20. Formerly RCW 70.93.200.]

70A.200.160 Waste reduction, anti-litter, and recycling campaign—Industrial cooperation requested. To aid in the statewide waste reduction, anti-litter, and recycling campaign, the state legislature requests that the payers of the waste reduction, recycling, and litter control tax and the various industry organizations which are active in waste reduction, anti-litter, and recycling efforts provide active cooperation with the department of ecology so that additional effect may be given to the waste reduction, anti-litter, and recycling campaign of the state of Washington. [1998 c 257 § 9; 1979 c 94 § 8; 1971 ex.s. c 307 § 21. Formerly RCW 70.93.210.]

70A.200.170 Litter collection programs—Department of ecology—Coordinating agency—Use of funds—Reporting by agencies. (1) The department is the coordinat-

ing and administrative agency working with the departments of natural resources, revenue, transportation, and corrections, and the parks and recreation commission in developing a biennial budget request for funds for the various agencies' litter collection programs.

(2) Funds may be used to meet the needs of efficient and effective litter collection and illegal dumping programs identified by the various agencies. The department shall develop criteria for evaluating the effectiveness and efficiency of the waste reduction, litter control, and recycling programs being administered by the various agencies listed in RCW 70A.200.140, and shall distribute funds according to the effectiveness and efficiency of those programs. In addition, the department shall approve funding requests for efficient and effective waste reduction, litter control, and recycling programs, provide funds, and monitor the results of all agency programs.

(3) All agencies are responsible for reporting information on their litter collection programs as requested by the department.

(4) The department shall contract with the department of transportation to schedule litter prevention messaging and coordination of litter emphasis patrols with the Washington state patrol. Additionally, the department of transportation may coordinate with the department to conduct litter pickup during scheduled maintenance closures as situations allow. [2021 c 231 § 1; 2020 c 20 § 1078; 2014 c 76 § 3; 1998 c 257 § 6. Formerly RCW 70.93.220.]

Short title—2021 c 231: "This act may be known and cited as the welcome to Washington act." [2021 c 231 § 3.]

70A.200.180 Violations of chapter—Penalties. Every person convicted of a violation of this chapter for which no penalty is specially provided for shall be punished by a fine of not more than fifty dollars for each such violation. [1983 c 277 § 4; 1971 ex.s. c 307 § 23. Formerly RCW 70.93.230.]

70A.200.190 Funding to local governments—Reports. (1) The department shall provide funding to local units of government to establish, conduct, and evaluate community restitution and other programs for waste reduction, litter and illegal dump cleanup, and recycling. Programs eligible for funding under this section shall include, but not be limited to, programs established pursuant to RCW 72.09.260.

(2) Funds may be offered for costs associated with community waste reduction, litter cleanup and prevention, and recycling activities. The funding program must be flexible, allowing local governments to use funds broadly to meet their needs to reduce waste, control litter and illegal dumping, and promote recycling. Local governments are required to contribute resources or in-kind services. The department shall evaluate funding requests from local government according to the same criteria as those developed in RCW 70A.200.170, provide funds according to the effectiveness and efficiency of local government litter control programs, and monitor the results of all local government programs under this section.

(3) Local governments may initiate and apply to the department for reimbursement of litter clean-up activities on state highway ramps located within the jurisdiction of the local government.

(4) Local governments shall report information as requested by the department in funding agreements entered into by the department and a local government. [2021 c 231 § 2; 2020 c 20 § 1079; 2014 c 76 § 4; 2002 c 175 § 46. Prior: 1998 c 257 § 10; 1998 c 245 § 128; 1990 c 66 § 3. Formerly RCW 70.93.250.]

Short title—2021 c 231: See note following RCW 70A.200.170.

Findings—Intent—1990 c 66: See note following RCW 72.09.260.

Additional notes found at www.leg.wa.gov

70A.200.900 Alternative to Initiative 40—Placement on ballot—Force and effect of chapter. This 1971 amendatory act constitutes an alternative to Initiative 40. The secretary of state is directed to place this 1971 amendatory act on the ballot in conjunction with Initiative 40 at the next general election.

This 1971 amendatory act shall continue in force and effect until the secretary of state certifies the election results on this 1971 amendatory act. If affirmatively approved at the general election, this 1971 amendatory act shall continue in effect thereafter. [1971 ex.s. c 307 § 27. Formerly RCW 70.93.910.]

Reviser's note: Chapter 70.93 RCW [1971 ex.s. c 307] was approved and validated at the November 7, 1972, general election as Alternative Initiative Measure 40B. Chapter 70.93 RCW was recodified as chapter 70A.200 RCW pursuant to 2020 c 20 § 2009.

Chapter 70A.205 RCW

SOLID WASTE MANAGEMENT—REDUCTION AND RECYCLING

Sections

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- 70A.205.715 Food waste reduction—Goal—Plan—Definitions.
- 70A.205.900 Authority and responsibility of utilities and transportation commission not changed.
- 70A.205.901 Application of chapter—Collection and transportation of recyclable materials by recycling companies or nonprofit entities—Reuse or reclamation.
- 70A.205.902 Application of chapter—Steel slag.

Airports: RCW 70A.200.110.

Commercial fertilizer: Chapter 15.54 RCW.

Environmental certification programs—Fees—Rules—Liability: RCW 43.21A.175.

Marinas: RCW 70A.200.110.

Solid waste collection tax: Chapter 82.18 RCW.

State parks: RCW 79A.05.045.

Waste reduction, recycling, litter control: Chapter 70A.200 RCW.

70A.205.005 Legislative finding—Priorities—Goals.

The legislature finds:

(1) Continuing technological changes in methods of manufacture, packaging, and marketing of consumer products, together with the economic and population growth of this state, the rising affluence of its citizens, and its expanding industrial activity have created new and ever-mounting problems involving disposal of garbage, refuse, and solid waste materials resulting from domestic, agricultural, and industrial activities.

(2) Traditional methods of disposing of solid wastes in this state are no longer adequate to meet the ever-increasing problem. Improper methods and practices of handling and disposal of solid wastes pollute our land, air and water resources, blight our countryside, adversely affect land values, and damage the overall quality of our environment.

(3) Considerations of natural resource limitations, energy shortages, economics and the environment make necessary the development and implementation of solid waste recovery and/or recycling plans and programs.

(4) Waste reduction must become a fundamental strategy of solid waste management. It is therefore necessary to change manufacturing and purchasing practices and waste generation behaviors to reduce the amount of waste that becomes a governmental responsibility.

(5) Source separation of waste must become a fundamental strategy of solid waste management. Collection and handling strategies should have, as an ultimate goal, the source separation of all materials with resource value or environmental hazard.

(6)(a) It should be the goal of every person and business to minimize their production of wastes and to separate recyclable or hazardous materials from mixed waste.

(b) It is the responsibility of state, county, and city governments to provide for a waste management infrastructure to fully implement waste reduction and source separation strategies and to process and dispose of remaining wastes in a manner that is environmentally safe and economically sound. It is further the responsibility of state, county, and city governments to monitor the cost-effectiveness and environmental safety of combusting separated waste, processing mixed municipal solid waste, and recycling programs.

(c) It is the responsibility of county and city governments to assume primary responsibility for solid waste management and to develop and implement aggressive and effective waste reduction and source separation strategies.

(d) It is the responsibility of state government to ensure that local governments are providing adequate source reduction and separation opportunities and incentives to all, including persons in both rural and urban areas, and nonresidential waste generators such as commercial, industrial, and institutional entities, recognizing the need to provide flexibility to accommodate differing population densities, distances to and availability of recycling markets, and collection and disposal costs in each community; and to provide county and city governments with adequate technical resources to accomplish this responsibility.

(7) Environmental and economic considerations in solving the state's solid waste management problems requires strong consideration by local governments of regional solutions and intergovernmental cooperation.

(8) The following priorities for the collection, handling, and management of solid waste are necessary and should be followed in descending order as applicable:

- (a) Waste reduction;
- (b) Recycling, with source separation of recyclable materials as the preferred method;
- (c) Energy recovery, incineration, or landfill of separated waste;
- (d) Energy recovery, incineration, or landfill of mixed municipal solid wastes.

(9) It is the state's goal to achieve a fifty percent recycling rate by 2007.

(10) It is the state's goal that programs be established to eliminate residential or commercial yard debris in landfills by 2012 in those areas where alternatives to disposal are readily available and effective.

(11) Steps should be taken to make recycling at least as affordable and convenient to the ratepayer as mixed waste disposal.

(12) It is necessary to compile and maintain adequate data on the types and quantities of solid waste that are being generated and to monitor how the various types of solid waste are being managed.

(13) Vehicle batteries should be recycled and the disposal of vehicle batteries into landfills or incinerators should be discontinued.

(14) Excessive and nonrecyclable packaging of products should be avoided.

(15) Comprehensive education should be conducted throughout the state so that people are informed of the need to reduce, source separate, and recycle solid waste.

(16) All governmental entities in the state should set an example by implementing aggressive waste reduction and recycling programs at their workplaces and by purchasing products that are made from recycled materials and are recyclable.

(17) To ensure the safe and efficient operations of solid waste disposal facilities, it is necessary for operators and regulators of landfills and incinerators to receive training and certification.

(18) It is necessary to provide adequate funding to all levels of government so that successful waste reduction and recycling programs can be implemented.

(19) The development of stable and expanding markets for recyclable materials is critical to the long-term success of the state's recycling goals. Market development must be encouraged on a state, regional, and national basis to maximize its effectiveness. The state shall assume primary responsibility for the development of a multifaceted market development program to carry out the purposes of chapter 431, Laws of 1989.

(20) There is an imperative need to anticipate, plan for, and accomplish effective storage, control, recovery, and recycling of discarded tires and other problem wastes with the subsequent conservation of resources and energy. [2002 c 299 § 3; 1989 c 431 § 1; 1985 c 345 § 1; 1984 c 123 § 1; 1975-'76 2nd ex.s. c 41 § 1; 1969 ex.s. c 134 § 1. Formerly RCW 70.95.010.]

70A.205.007 Landfill disposal of organic materials—Goal. (1)(a) The state establishes a goal for the landfill disposal of organic materials at a level representing a 75 percent reduction by 2030 in the statewide disposal of organic material waste, relative to 2015 levels.

(b) The state establishes a goal that no less than 20 percent of the volume of edible food that was disposed of as of 2015 be recovered for human consumption by 2025.

(2) The provisions of subsection (1) of this section are in addition to the food waste reduction goals of RCW 70A.205.715(1). [2022 c 180 § 101.]

Findings—Intent—2022 c 180: "(1) The legislature finds that landfills are a significant source of emissions of methane, a potent greenhouse gas. Among other economic and environmental benefits, the diversion of organic materials to productive uses will reduce methane emissions.

(2) In order to reduce methane emissions associated with organic materials, the legislature finds that it will be beneficial to improve a variety of aspects of how organic materials and organic material wastes are reduced, managed, incentivized, and regulated under state law. Therefore, it is the intent of the legislature to support the diversion of organic materials from landfills through a variety of interventions to support productive uses of organic material wastes, including by:

(a) Requiring some local governments to begin providing separated organic material collection services within their jurisdictions in order to increase volumes of organic materials collected and delivered to composting and other organic material management facilities and reduce the volumes of organic materials collected in conjunction with other solid waste and delivered to landfills;

(b) Requiring local governments to consider state organic material management goals and requirements in the development of their local solid waste plans;

(c) Requiring some businesses to manage their organic material wastes in a manner that does not involve landfilling them, in order to address one significant source of organic materials that currently frequently end up in landfills;

(d) Reducing legal liability risk barriers to the donation of edible food in order to encourage the recovery of foods that might otherwise be landfilled;

(e) Establishing the Washington center for sustainable food management within the department of ecology in order to coordinate and improve statewide food waste reduction and diversion efforts;

(f) Establishing various new funding and financial incentives intended to increase composting and other forms of productive organic materials management, helping to make the responsible management of organic materials more cost-competitive with landfilling of organic material wastes;

(g) Facilitating the siting of organic material management facilities in order to ensure that adequate capacity exists to process organic materials at the volumes necessary to achieve state organic material diversion goals;

(h) Encouraging cities and counties to procure more of the compost and finished products created from their organic material wastes in order to support the economic viability of processes to turn organic materials into finished products, and increasing the likelihood that composting and other responsible organic material management options are economically viable; and

(i) Amending standards related to the labeling of plastic and compostable products in order to reduce contamination of the waste streams handled by compost and organic material management facilities and improve the economic viability of those responsible organic material management options." [2022 c 180 § 1.]

Scope of authority of chapter 180, Laws of 2022—2022 c 180: "Nothing in this act changes or limits the authority of the Washington utilities and transportation commission to regulate the collection of solid waste, including curbside collection of residential recyclable materials, nor does this section change or limit the authority of a city or town to provide the service itself or by contract under RCW 81.77.020." [2022 c 180 § 902.]

70A.205.010 Purpose. The purpose of this chapter is to establish a comprehensive statewide program for solid waste handling, and solid waste recovery and/or recycling which will prevent land, air, and water pollution and conserve the natural, economic, and energy resources of this state. To this end it is the purpose of this chapter:

(1) To assign primary responsibility for adequate solid waste handling to local government, reserving to the state, however, those functions necessary to assure effective programs throughout the state;

(2) To provide for adequate planning for solid waste handling by local government;

(3) To provide for the adoption and enforcement of basic minimum performance standards for solid waste handling, including that all sites where recyclable materials are generated and transported from shall provide a separate container for solid waste;

(4) To encourage the development and operation of waste recycling facilities needed to accomplish the management priority of waste recycling, to promote consistency in the requirements for such facilities throughout the state, and to ensure that recyclable materials diverted from the waste stream for recycling are routed to facilities in which recycling occurs;

(5) To provide technical and financial assistance to local governments in the planning, development, and conduct of solid waste handling programs;

(6) To encourage storage, proper disposal, and recycling of discarded vehicle tires and to stimulate private recycling programs throughout the state; and

(7) To encourage the development and operation of waste recycling facilities and activities needed to accomplish the management priority of waste recycling and to promote consistency in the permitting requirements for such facilities and activities throughout the state.

It is the intent of the legislature that local governments be encouraged to use the expertise of private industry and to contract with private industry to the fullest extent possible to carry out solid waste recovery and/or recycling programs. [2005 c 394 § 2. Prior: 1998 c 156 § 1; 1998 c 90 § 1; 1985 c 345 § 2; 1975-'76 2nd ex.s. c 41 § 2; 1969 ex.s. c 134 § 2. Formerly RCW 70.95.020.]

Intent—Severability—2005 c 394: See notes following RCW 70A.205.300.

70A.205.015 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "City" means every incorporated city and town.

(2) "Commission" means the utilities and transportation commission.

(3) "Composted material" means organic solid waste that has been subjected to controlled aerobic degradation at a solid waste facility in compliance with the requirements of this chapter. Natural decay of organic solid waste under uncontrolled conditions does not result in composted material.

(4) "Department" means the department of ecology.

(5) "Director" means the director of the department of ecology.

(6) "Disposal site" means the location where any final treatment, utilization, processing, or deposit of solid waste occurs.

(7) "Energy recovery" means a process operating under federal and state environmental laws and regulations for converting solid waste into usable energy and for reducing the volume of solid waste.

(8) "Functional standards" means criteria for solid waste handling expressed in terms of expected performance or solid waste handling functions.

(9) "Incineration" means a process of reducing the volume of solid waste operating under federal and state environmental laws and regulations by use of an enclosed device using controlled flame combustion.

(10) "Inert waste landfill" means a landfill that receives only inert waste, as determined under RCW 70A.205.030, and includes facilities that use inert wastes as a component of fill.

(11) "Jurisdictional health department" means city, county, city-county, or district public health department.

(12) "Landfill" means a disposal facility or part of a facility at which solid waste is placed in or on land and which is not a land treatment facility.

(13) "Local government" means a city, town, or county.

(14) "Modify" means to substantially change the design or operational plans including, but not limited to, removal of a design element previously set forth in a permit application or the addition of a disposal or processing activity that is not approved in the permit.

(15) "Multiple-family residence" means any structure housing two or more dwelling units.

(16)(a)(i) "Organic materials" means any solid waste that is a biological substance of plant or animal origin capable of microbial degradation.

(ii) Organic materials include, but are not limited to, manure, yard debris, food waste, food processing waste, wood waste, and garden waste.

(b) "Organic materials" does not include any materials contaminated by herbicides, pesticides, pests, or other sources of chemical or biological contamination that would render a finished product of an organic material management process unsuitable for general public or agricultural use.

(17) "Organic materials management" means management of organic materials through composting, anaerobic digestion, vermiculture, black soldier fly, or similar technologies.

(18) "Person" means individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(19) "Recyclable materials" means those solid wastes that are separated for recycling or reuse, such as papers, metals, and glass, that are identified as recyclable material pursuant to a local comprehensive solid waste plan. Prior to the adoption of the local comprehensive solid waste plan, adopted pursuant to RCW 70A.205.075(2), local governments may identify recyclable materials by ordinance from July 23, 1989.

(20) "Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration.

(21) "Residence" means the regular dwelling place of an individual or individuals.

(22) "Sewage sludge" means a semisolid substance consisting of settled sewage solids combined with varying amounts of water and dissolved materials, generated from a wastewater treatment system, that does not meet the requirements of chapter 70A.226 RCW.

(23) "Soil amendment" means any substance that is intended to improve the physical characteristics of the soil, except composted material, commercial fertilizers, agricultural liming agents, unmanipulated animal manures, unmanipulated vegetable manures, food wastes, food processing wastes, and materials exempted by rule of the department, such as biosolids as defined in chapter 70A.226 RCW and wastewater as regulated in chapter 90.48 RCW.

(24) "Solid waste" or "wastes" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials.

(25) "Solid waste handling" means the management, storage, collection, transportation, treatment, utilization, processing, and final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the

recovery of energy resources from solid wastes or the conversion of the energy in solid wastes to more useful forms or combinations thereof.

(26) "Source separation" means the separation of different kinds of solid waste at the place where the waste originates.

(27) "Vehicle" includes every device physically capable of being moved upon a public or private highway, road, street, or watercourse and in, upon, or by which any person or property is or may be transported or drawn upon a public or private highway, road, street, or watercourse, except devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(28) "Waste-derived soil amendment" means any soil amendment as defined in this chapter that is derived from solid waste as defined in this section, but does not include biosolids or biosolids products regulated under chapter 70A.226 RCW or wastewaters regulated under chapter 90.48 RCW.

(29) "Waste reduction" means reducing the amount or toxicity of waste generated or reusing materials.

(30) "Yard debris" means plant material commonly created in the course of maintaining yards and gardens, and through horticulture, gardening, landscaping, or similar activities. Yard debris includes but is not limited to grass clippings, leaves, branches, brush, weeds, flowers, roots, windfall fruit, vegetable garden debris, holiday trees, and tree prunings four inches or less in diameter. [2022 c 180 § 105; 2020 c 20 § 1161; 2010 1st sp.s. c 7 § 86; 2004 c 101 § 1; 2002 c 299 § 4; 1998 c 36 § 17; 1997 c 213 § 1; 1992 c 174 § 16; 1991 c 298 § 2; 1989 c 431 § 2; 1985 c 345 § 3; 1984 c 123 § 2; 1975-'76 2nd ex.s. c 41 § 3; 1970 ex.s. c 62 § 60; 1969 ex.s. c 134 § 3. Formerly RCW 70.95.030.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Findings—Intent—Scope of authority of chapter 180, Laws of 2022—2022 c 180: See notes following RCW 70A.205.007.

Intent—1998 c 36: See RCW 15.54.265.

Finding—1991 c 298: "The legislature finds that curbside recycling services should be provided in multiple-family residences. The county and city comprehensive solid waste management plans should include provisions for such service." [1991 c 298 § 1.]

Solid waste disposal—Powers and duties of state board of health as to environmental contaminants: RCW 43.20.050.

Additional notes found at www.leg.wa.gov

70A.205.020 Environmental excellence program agreements—Effect on chapter. Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 22. Formerly RCW 70.95.055.]

Purpose—1997 c 381: See RCW 43.21K.005.

70A.205.025 Standards for solid waste handling—Areas—Landfill location. (1) The department shall adopt rules establishing minimum functional standards for solid waste handling, consistent with the standards specified in this section. The department may classify areas of the state with

respect to population density, climate, geology, status under a quarantine as defined in RCW 17.24.007, and other relevant factors bearing on solid waste disposal standards.

(2) In addition to the minimum functional standards adopted by the department under subsection (1) of this section, each landfill facility whose area at its design capacity will exceed one hundred acres and whose horizontal height at design capacity will average one hundred feet or more above existing site elevations shall comply with the standards of this subsection. This subsection applies only to wholly new solid waste landfill facilities, no part or unit of which has had construction commence before April 27, 1999.

(a) No landfill specified in this subsection may be located:

(i) So that the active area is closer than five miles to any national park or a public or private nonprofit zoological park displaying native animals in their native habitats; or

(ii) Over a sole source aquifer designated under the federal safe drinking water act, if such designation was effective before January 1, 1999.

(b) Each landfill specified in this subsection (2) shall be constructed with an impermeable berm around the entire perimeter of the active area of the landfill of such height, thickness, and design as will be sufficient to contain all material disposed in the event of a complete failure of the structural integrity of the landfill. [2016 c 119 § 1; 1999 c 116 § 1; 1969 ex.s. c 134 § 6. Formerly RCW 70.95.060.]

Additional notes found at www.leg.wa.gov

70A.205.030 Inert waste landfills. (1) The department shall, as part of the minimum functional standards for solid waste handling required under RCW 70A.205.025, develop specific criteria for the types of solid wastes that are allowed to be received by inert waste landfills that seek to continue operation after February 10, 2003.

(2) The criteria for inert waste developed under this section must, at a minimum, contain a list of substances that an inert waste landfill located in a county with fewer than forty-five thousand residents is permitted to receive if it was operational before February 10, 2003, and is located at a site with a five-year annual rainfall of twenty-five inches or less. The substances permitted for the inert waste landfills satisfying the criteria listed in this subsection must include the following types of solid waste if the waste has not been tainted, through exposure from chemical, physical, biological, or radiological substances, such that it presents a threat to human health or the environment greater than that inherent to the material:

(a) Cured concrete, including any embedded steel reinforcing and wood;

(b) Asphaltic materials, including road construction asphalt;

(c) Brick and masonry;

(d) Ceramic materials produced from fired clay or porcelain;

(e) Glass;

(f) Stainless steel and aluminum; and

(g) Other materials as defined in chapter 173-350 WAC.

(3) The department shall work with the owner or operators of landfills that do not meet the minimum functional standards for inert waste landfills to explore and implement

appropriate means of transition into a limited purpose landfill that is able to accept additional materials as specified in WAC 173-350-400. [2020 c 20 § 1162; 2004 c 101 § 2. Formerly RCW 70.95.065.]

70A.205.035 Implementation of standards—Assessment—Analyses—Proposals. In order to implement the minimum functional standards for solid waste handling, evaluate the effectiveness of the minimum functional standards, evaluate the cost of implementation, and develop a mechanism to finance the implementation, the department shall prepare:

(1) An assessment of local health agencies' information on all existing permitted landfill sites, including (a) measures taken and facilities installed at each landfill to mitigate surface water and groundwater contamination, (b) proposed measures taken and facilities to be constructed at each landfill to mitigate surface water and groundwater contamination, and (c) the costs of such measures and facilities;

(2) An analysis of the effectiveness of the minimum functional standards for new landfills in lessening surface water and groundwater contamination, and a comparison with the effectiveness of the prior standards;

(3) An analysis of the costs of conforming with the new functional standards for new landfills compared with the costs of conforming to the prior standards; and

(4) Proposals for methods of financing the costs of conforming with the new functional standards. [1986 c 81 § 1. Formerly RCW 70.95.075.]

70A.205.040 County comprehensive solid waste management plan—Joint plans—Requirements when updating—Duties of cities. (1) Each county within the state, in cooperation with the various cities located within such county, shall prepare a coordinated, comprehensive solid waste management plan. Such plan may cover two or more counties. The purpose is to plan for solid waste and materials reduction, collection, and handling and management services and programs throughout the state, as designed to meet the unique needs of each county and city in the state. When updating a solid waste management plan developed under this chapter, after June 10, 2010, local comprehensive plans must consider and plan for the following handling methods or services:

(a) Source separation of recyclable materials and products, organic materials, and wastes by generators;

(b) Collection of source separated materials;

(c) Handling and proper preparation of materials for reuse or recycling;

(d) Handling and proper preparation of organic materials for organic materials management; and

(e) Handling and proper disposal of nonrecyclable wastes.

(2) When updating a solid waste management plan developed under this chapter, after June 10, 2010, each local comprehensive plan must, at a minimum, consider methods that will be used to address the following:

(a) Construction and demolition waste for recycling or reuse;

(b) Organic material including yard debris, food waste, and food contaminated paper products for organic materials management;

(c) Recoverable paper products for recycling;

(d) Metals, glass, and plastics for recycling; and

(e) Waste reduction strategies.

(3)(a) When newly developing, updating, or amending a comprehensive solid waste management plan developed under this chapter, after July 1, 2024, each local comprehensive solid waste management plan must consider the transition to the requirements of RCW 70A.205.540, and each comprehensive solid waste management plan implemented by a county must identify:

(i) The priority areas within the county for the establishment of organic materials management facilities. Priority areas must be in industrial zones, agricultural zones, or rural zones, and may not be located in overburdened communities identified by the department of ecology under chapter 70A.02 RCW. Priority areas should be designated with an attempt to minimize incompatible uses and potential impacts on residential areas; and

(ii) Organic materials management facility volumetric capacity required to manage the county's organic materials in a manner consistent with the goals of RCW 70A.205.007.

(b) When newly developing, updating, or amending a comprehensive solid waste management plan developed under this chapter, after January 1, 2027, each local comprehensive solid waste management plan must be consistent with the requirements of RCW 70A.205.540.

(c)(i) Notwithstanding (a) and (b) of this subsection, and except as provided in (c)(ii) of this subsection, a jurisdiction implementing a local comprehensive solid waste management plan under this chapter may not site the increase or expansion of any existing organic materials management facility that processed more than 200,000 tons of material, relative to 2019 levels.

(ii) The limitation in (c)(i) of this subsection does not apply to the siting of any anaerobic digester or anaerobic digestion facility.

(4) Each city shall:

(a) Prepare and deliver to the county auditor of the county in which it is located its plan for its own solid waste management for integration into the comprehensive county plan;

(b) Enter into an agreement with the county pursuant to which the city shall participate in preparing a joint city-county plan for solid waste management; or

(c) Authorize the county to prepare a plan for the city's solid waste management for inclusion in the comprehensive county plan.

(5) Two or more cities may prepare a plan for inclusion in the county plan. With prior notification of its home county of its intent, a city in one county may enter into an agreement with a city in an adjoining county, or with an adjoining county, or both, to prepare a joint plan for solid waste management to become part of the comprehensive plan of both counties.

(6) After consultation with representatives of the cities and counties, the department shall establish a schedule for the development of the comprehensive plans for solid waste management. In preparing such a schedule, the department

shall take into account the probable cost of such plans to the cities and counties.

(7) Local governments shall not be required to include a hazardous waste element in their solid waste management plans. [2022 c 180 § 103; 2010 c 154 § 2; 1985 c 448 § 17; 1969 ex.s. c 134 § 8. Formerly RCW 70.95.080.]

Findings—Intent—Scope of authority of chapter 180, Laws of 2022—2022 c 180: See notes following RCW 70A.205.007.

Intent—2010 c 154: "Increasing available residential curbside service for solid waste, recyclable, and compostable materials provides enumerable public benefits for all of Washington. Not only will increased service provide better systemwide efficiency, but it will also result in job creation, pollution reduction, and energy conservation, all of which serve to improve the quality of life in Washington communities.

It is therefore the intent of the legislature that Washington strive[s] to significantly increase current residential recycling rates by 2020." [2010 c 154 § 1.]

Additional notes found at www.leg.wa.gov

70A.205.045 County and city comprehensive solid waste management plans—Contents. Each county and city comprehensive solid waste management plan shall include the following:

(1) A detailed inventory and description of all existing solid waste handling facilities including an inventory of any deficiencies in meeting current solid waste handling needs.

(2) The estimated long-range needs for solid waste handling facilities projected twenty years into the future.

(3) A program for the orderly development of solid waste handling facilities in a manner consistent with the plans for the entire county which shall:

(a) Meet the minimum functional standards for solid waste handling adopted by the department and all laws and regulations relating to air and water pollution, fire prevention, flood control, and protection of public health;

(b) Take into account the comprehensive land use plan of each jurisdiction;

(c) Contain a six year construction and capital acquisition program for solid waste handling facilities; and

(d) Contain a plan for financing both capital costs and operational expenditures of the proposed solid waste management system.

(4) A program for surveillance and control.

(5) A current inventory and description of solid waste collection needs and operations within each respective jurisdiction which shall include:

(a) Any franchise for solid waste collection granted by the utilities and transportation commission in the respective jurisdictions including the name of the holder of the franchise and the address of his or her place of business and the area covered by the franchise;

(b) Any city solid waste operation within the county and the boundaries of such operation;

(c) The population density of each area serviced by a city operation or by a franchised operation within the respective jurisdictions;

(d) The projected solid waste collection needs for the respective jurisdictions for the next six years.

(6) A comprehensive waste reduction and recycling element that, in accordance with the priorities established in RCW 70A.205.005, provides programs that (a) reduce the amount of waste generated, (b) provide incentives and mech-

anisms for source separation, and (c) establish recycling opportunities for the source separated waste.

(7) The waste reduction and recycling element shall include the following:

(a) Waste reduction strategies, which may include strategies to reduce wasted food and food waste that are designed to achieve the goals established in RCW 70A.205.715(1) and that are consistent with the plan developed in RCW 70A.205.715(3);

(b) Source separation strategies, including:

(i) Programs for the collection of source separated materials from residences in urban and rural areas. In urban areas, these programs shall include collection of source separated recyclable materials from single and multiple-family residences, unless the department approves an alternative program, according to the criteria in the planning guidelines. Such criteria shall include: Anticipated recovery rates and levels of public participation, availability of environmentally sound disposal capacity, access to markets for recyclable materials, unreasonable cost impacts on the ratepayer over the six-year planning period, utilization of environmentally sound waste reduction and recycling technologies, and other factors as appropriate. In rural areas, these programs shall include but not be limited to drop-off boxes, buy-back centers, or a combination of both, at each solid waste transfer, processing, or disposal site, or at locations convenient to the residents of the county. The drop-off boxes and buy-back centers may be owned or operated by public, nonprofit, or private persons;

(ii) Programs to monitor the collection of source separated waste at nonresidential sites where there is sufficient density to sustain a program;

(iii) Programs to collect yard waste and food waste, if the county or city submitting the plan finds that there are adequate markets or capacity for composted yard waste and food waste within or near the service area to consume the majority of the material collected; and

(iv) Programs to educate and promote the concepts of waste reduction and recycling;

(c) Recycling strategies, including a description of markets for recyclables, a review of waste generation trends, a description of waste composition, a discussion and description of existing programs and any additional programs needed to assist public and private sector recycling, and an implementation schedule for the designation of specific materials to be collected for recycling, and for the provision of recycling collection services;

(d) Other information the county or city submitting the plan determines is necessary.

(8) An assessment of the plan's impact on the costs of solid waste collection. The assessment shall be prepared in conformance with guidelines established by the utilities and transportation commission. The commission shall cooperate with the Washington state association of counties and the association of Washington cities in establishing such guidelines.

(9) A review of potential areas that meet the criteria as outlined in RCW 70A.205.110.

(10) A contamination reduction and outreach plan. The contamination reduction and outreach plan must address reducing contamination in recycling. Except for counties

with a population of twenty-five thousand or fewer, by July 1, 2021, a contamination reduction and outreach plan must be included in each solid waste management plan by a plan amendment or included when revising or updating a solid waste management plan developed under this chapter. Jurisdictions may adopt the state's contamination reduction and outreach plan as developed under RCW 70A.205.070 in lieu of creating their own plan. A recycling contamination reduction and outreach plan must include the following:

(a) A list of actions for reducing contamination in recycling programs for single-family and multiple-family residences, commercial locations, and drop boxes depending on the jurisdictions system components;

(b) A list of key contaminants identified by the jurisdiction or identified by the department;

(c) A discussion of problem contaminants and the contaminants' impact on the collection system;

(d) An analysis of the costs and other impacts associated with contaminants to the recycling system; and

(e) An implementation schedule and details of how outreach is to be conducted. Contamination reduction education methods may include sharing community-wide messaging through newsletters, articles, mailers, social media, websites, or community events, informing recycling drop box customers about contamination, and improving signage. [2020 c 20 § 1163. Prior: 2019 c 255 § 4; 2019 c 166 § 6; 1991 c 298 § 3; 1989 c 431 § 3; 1984 c 123 § 5; 1971 ex.s. c 293 § 1; 1969 ex.s. c 134 § 9. Formerly RCW 70.95.090.]

Finding—Intent—2019 c 255: See note following RCW 70A.205.715.

Effective date—2019 c 166: See note following RCW 70A.240.010.

Finding—1991 c 298: See note following RCW 70A.205.015.

Certain provisions not to detract from utilities and transportation commission powers, duties, and functions: RCW 80.01.300.

70A.205.050 County and city comprehensive solid waste management plans—Levels of service, reduction and recycling. Levels of service shall be defined in the waste reduction and recycling element of each local comprehensive solid waste management plan and shall include the services set forth in RCW 70A.205.045. In determining which service level is provided to residential and nonresidential waste generators in each community, counties and cities shall develop clear criteria for designating areas as urban or rural. In designating urban areas, local governments shall consider the planning guidelines adopted by the department, total population, population density, and any applicable land use or utility service plans. [2020 c 20 § 1164; 1989 c 431 § 4. Formerly RCW 70.95.092.]

70A.205.055 County and city comprehensive solid waste management plans—Review and approval process.

(1) The department and local governments preparing plans are encouraged to work cooperatively during plan development. Each county and city preparing a comprehensive solid waste management plan shall submit a preliminary draft plan to the department for technical review. The department shall review and comment on the draft plan within one hundred twenty days of receipt. The department's comments shall state specific actions or revisions that must be completed for plan approval.

(2) Each final draft solid waste management plan shall be submitted to the department for approval. The department will limit its comments on the final draft plans to those issues identified during its review of the draft plan and any other changes made between submittal of the preliminary draft and final draft plans. Disapproval of the local comprehensive solid waste management plan shall be supported by specific findings. A final draft plan shall be deemed approved if the department does not disapprove it within forty-five days of receipt.

(3) If the department disapproves a plan or any plan amendments, the submitting entity may appeal the decision to the pollution control hearings board as provided in RCW 43.21B.230. The appeal shall be limited to review of the specific findings which supported the disapproval under subsection (2) of this section. [2010 c 210 § 17; 1989 c 431 § 8. Formerly RCW 70.95.094.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

70A.205.060 County and city comprehensive solid waste management plans—Review by department of agriculture. Upon receipt by the department of a preliminary draft plan as provided in RCW 70A.205.055, the department shall immediately provide a copy of the preliminary draft plan to the department of agriculture. Within forty-five days after receiving the preliminary draft plan, the department of agriculture shall review the preliminary draft plan for compliance with chapter 17.24 RCW and the rules adopted under that chapter. The department of agriculture shall advise the local government submitting the preliminary draft plan and the department of the result of the review. [2020 c 20 § 1165; 2016 c 119 § 3. Formerly RCW 70.95.095.]

70A.205.065 Utilities and transportation commission to review local plan's assessment of cost impacts on rates. Upon receipt, the department shall immediately provide the utilities and transportation commission with a copy of each preliminary draft local comprehensive solid waste management plan. Within forty-five days after receiving a plan, the commission shall have reviewed the plan's assessment of solid waste collection cost impacts on rates charged by solid waste collection companies regulated under chapter 81.77 RCW and shall advise the county or city submitting the plan and the department of the probable effect of the plan's recommendations on those rates. [1989 c 431 § 12. Formerly RCW 70.95.096.]

70A.205.070 Technical assistance for plan preparation—Guidelines—Informational materials and programs.

(1) The department or the commission, as appropriate, shall provide to counties and cities technical assistance including, but not limited to, planning guidelines, in the preparation, review, and revision of solid waste management plans required by this chapter. Guidelines prepared under this section shall be consistent with the provisions of this chapter. Guidelines for the preparation of the waste reduction and recycling element of the comprehensive solid waste management plan shall be completed by the department by March 15, 1990. These guidelines shall provide recommendations to local government on materials to be considered for designa-

tion as recyclable materials. The state solid waste management plan prepared pursuant to RCW 70A.205.210 shall be consistent with these guidelines.

(2) The department shall be responsible for development and implementation of a comprehensive statewide public information program designed to encourage waste reduction, source separation, and recycling by the public. The department shall operate a toll-free hotline to provide the public information on waste reduction and recycling.

(3) The department shall provide technical assistance to local governments in the development and dissemination of informational materials and related activities to assure recognition of unique local waste reduction and recycling programs.

(4)(a) The department must create and implement a statewide recycling contamination reduction and outreach plan based on best management practices for recycling, developed with stakeholder input by July 1, 2020. Jurisdictions may use the statewide plan in lieu of developing their own plan.

(b) The department must provide technical assistance and create guidance to help local jurisdictions determine the extent of contamination in their regional recycling and to develop contamination reduction and outreach plans. Contamination means any material not included on the local jurisdiction's acceptance list.

(c) Contamination reduction education methods may include sharing community-wide messaging through newsletters, articles, mailers, social media, websites, or community events, informing recycling drop box customers about contamination, and improving signage.

(d) The department must cite the sources of information that it relied upon, including any peer-reviewed science, in the development of the best management practices for recycling under (a) of this subsection and the guidance developed under (b) of this subsection.

(5) Local governments shall make all materials and information developed with the assistance grants provided under RCW 70A.205.080 available to the department for potential use in other areas of the state. [2020 c 20 § 1166; 2019 c 166 § 7; 1989 c 431 § 6; 1984 c 123 § 6; 1969 ex.s. c 134 § 10. Formerly RCW 70.95.100.]

Effective date—2019 c 166: See note following RCW 70A.240.010.

70A.205.075 Maintenance of plans—Review, revisions—Implementation of source separation programs.

(1) The comprehensive county solid waste management plans and any comprehensive city solid waste management plans prepared in accordance with RCW 70A.205.040 shall be maintained in a current condition and reviewed and revised periodically by counties and cities as may be required by the department. Upon each review such plans shall be extended to show long-range needs for solid waste handling facilities for twenty years in the future, and a revised construction and capital acquisition program for six years in the future. Each revised solid waste management plan shall be submitted to the department.

Each plan shall be reviewed and revised within five years of July 1, 1984, and thereafter shall be reviewed, and revised if necessary according to the schedule provided in subsection (2) of this section.

(2) Cities and counties preparing solid waste management plans shall submit the waste reduction and recycling element required in RCW 70A.205.045 and any revisions to other elements of its comprehensive solid waste management plan to the department no later than:

(a) July 1, 1991, for class one areas: PROVIDED, That portions relating to multiple-family residences shall be submitted no later than July 1, 1992;

(b) July 1, 1992, for class two areas; and

(c) July 1, 1994, for class three areas.

Thereafter, each plan shall be reviewed and revised, if necessary, at least every five years. Nothing in chapter 431, Laws of 1989 shall prohibit local governments from submitting a plan prior to the dates listed in this subsection.

(3) The classes of areas are defined as follows:

(a) Class one areas are the counties of Spokane, Snohomish, King, Pierce, and Kitsap and all the cities therein.

(b) Class two areas are all other counties located west of the crest of the Cascade mountains and all the cities therein.

(c) Class three areas are the counties east of the crest of the Cascade mountains and all the cities therein, except for Spokane county.

(4) Cities and counties shall begin implementing the programs to collect source separated materials no later than one year following the adoption and approval of the waste reduction and recycling element and these programs shall be fully implemented within two years of approval. [2020 c 20 § 1167; 1991 c 298 § 4; 1989 c 431 § 5; 1984 c 123 § 7; 1969 ex.s. c 134 § 11. Formerly RCW 70.95.110.]

Finding—1991 c 298: See note following RCW 70A.205.015.

70A.205.080 Financial aid to counties and cities. Any county may apply to the department on a form prescribed thereby for financial aid for the preparation and implementation of the comprehensive county plan for solid waste management required by RCW 70A.205.040, including contamination reduction and outreach plans. Any city electing to prepare an independent city plan, a joint city plan, or a joint county-city plan for solid waste management for inclusion in the county comprehensive plan may apply for financial aid for such purpose through the county. Every city application for financial aid for planning shall be filed with the county auditor and shall be included as a part of the county's application for financial aid. Any city preparing an independent plan shall provide for disposal sites wholly within its jurisdiction.

The department shall allocate to the counties and cities applying for financial aid for planning and implementation, including contamination reduction and outreach plan development and implementation, such funds as may be available pursuant to legislative appropriations or from any federal grants for such purpose.

The department shall determine priorities and allocate available funds among the counties and cities applying for aid according to criteria established by regulations of the department considering population, urban development, environmental effects of waste disposal, existing waste handling practices, and the local justification of their proposed expenditures. [2020 c 20 § 1168; 2019 c 166 § 8; 1969 ex.s. c 134 § 13. Formerly RCW 70.95.130.]

Effective date—2019 c 166: See note following RCW 70A.240.010.

70A.205.085 Matching requirements. Counties and cities shall match their planning aid allocated by the director by an amount not less than twenty-five percent of the estimated cost of such planning. Any federal planning aid made directly to a county or city shall not be considered either a state or local contribution in determining local matching requirements. Counties and cities may meet their share of planning costs by cash and contributed services. [1969 ex.s. c 134 § 14. Formerly RCW 70.95.140.]

70A.205.090 Contracts with counties to assure proper expenditures. Upon the allocation of planning funds as provided in RCW 70A.205.080, the department shall enter into a contract with each county receiving a planning grant. The contract shall include such provisions as the director may deem necessary to assure the proper expenditure of such funds including allocations made to cities. The sum allocated to a county shall be paid to the treasurer of such county. [2020 c 20 § 1169; 1969 ex.s. c 134 § 15. Formerly RCW 70.95.150.]

70A.205.100 Local board of health regulations to implement the comprehensive plan—Section not to be construed to authorize counties to operate system. Each county, or any city, or jurisdictional board of health shall adopt regulations or ordinances governing solid waste handling implementing the comprehensive solid waste management plan covering storage, collection, transportation, treatment, utilization, processing and final disposal including but not limited to the issuance of permits and the establishment of minimum levels and types of service for any aspect of solid waste handling. County regulations or ordinances adopted regarding levels and types of service shall not apply within the limits of any city where the city has by local ordinance determined that the county shall not exercise such powers within the corporate limits of the city. Such regulations or ordinances shall assure that solid waste storage and disposal facilities are located, maintained, and operated in a manner so as properly to protect the public health, prevent air and water pollution, are consistent with the priorities established in RCW 70A.205.005, and avoid the creation of nuisances. Such regulations or ordinances may be more stringent than the minimum functional standards adopted by the department. Regulations or ordinances adopted by counties, cities, or jurisdictional boards of health shall be filed with the department.

Nothing in this section shall be construed to authorize the operation of a solid waste collection system by counties. [2020 c 20 § 1170; 1989 c 431 § 10; 1988 c 127 § 29; 1969 ex.s. c 134 § 16. Formerly RCW 70.95.160.]

70A.205.105 Local health departments may contract with the department of ecology. Any jurisdictional health department and the department of ecology may enter into an agreement providing for the exercise by the department of ecology of any power that is specified in the contract and that is granted to the jurisdictional health department under this chapter. However, the jurisdictional health department shall have the approval of the legislative authority or authorities it serves before entering into any such agreement with the

department of ecology. [1989 c 431 § 16. Formerly RCW 70.95.163.]

70A.205.110 Solid waste disposal facility siting—Site review—Local solid waste advisory committees—Membership. (1) Each county or city siting a solid waste disposal facility shall review each potential site for conformance with the standards as set by the department for:

- (a) Geology;
- (b) Groundwater;
- (c) Soil;
- (d) Flooding;
- (e) Surface water;
- (f) Slope;
- (g) Cover material;
- (h) Capacity;
- (i) Climatic factors;
- (j) Land use;
- (k) Toxic air emissions; and
- (l) Other factors as determined by the department.

(2) The standards in subsection (1) of this section shall be designed to use the best available technology to protect the environment and human health, and shall be revised periodically to reflect new technology and information.

(3) Each county shall establish a local solid waste advisory committee to assist in the development of programs and policies concerning solid waste handling and disposal and to review and comment upon proposed rules, policies, or ordinances prior to their adoption. Such committees shall consist of a minimum of nine members and shall represent a balance of interests including, but not limited to, citizens, public interest groups, business, the waste management industry, agriculture, and local elected public officials. The members shall be appointed by the county legislative authority. A county or city shall not apply for funds from the state and local improvements revolving account, Waste Disposal Facilities, 1980, under RCW 43.83.350, for the preparation, update, or major amendment of a comprehensive solid waste management plan unless the plan or revision has been prepared with the active assistance and participation of a local solid waste advisory committee. [2016 c 119 § 2; 2015 1st sp.s. c 4 § 49; 1989 c 431 § 11; 1984 c 123 § 4. Formerly RCW 70.95.165.]

70A.205.115 Private businesses involvement in source separated materials—Local solid waste advisory committee to examine. (1) Each local solid waste advisory committee shall conduct one or more meetings for the purpose of determining how local private recycling and solid waste collection businesses may participate in the development and implementation of programs to collect source separated materials from residences, and to process and market materials collected for recycling. The meetings shall include local private recycling businesses, private solid waste collection companies operating within the jurisdiction, and the local solid waste planning agencies. The meetings shall be held during the development of the waste reduction and recycling element or no later than one year prior to the date that a jurisdiction is required to submit the element under RCW 70A.205.075(2).

(2) The meeting requirement under subsection (1) of this section shall apply whenever a city or county develops or amends the waste reduction and recycling element required under this chapter. Jurisdictions having approved waste reduction and recycling elements or having initiated a process for the selection of a service provider as of May 21, 1991, do not have to comply with the requirements of subsection (1) of this section until the next revisions to the waste reduction and recycling element are made or required.

(3) After the waste reduction and recycling element is approved by the local legislative authority but before it is submitted to the department for approval, the local solid waste advisory committee shall hold at least one additional meeting to review the element.

(4) For the purpose of this section, "private recycling business" means any private for-profit or private not-for-profit business that engages in the processing and marketing of recyclable materials. [2020 c 20 § 1171; 1991 c 319 § 402. Formerly RCW 70.95.167.]

70A.205.120 Permit for solid waste handling facility—Required. Except as provided otherwise in RCW 70A.205.260, 70A.205.265, 70A.205.270, 70A.205.275, or 70A.205.290, after approval of the comprehensive solid waste plan by the department no solid waste handling facility or facilities shall be maintained, established, or modified until the county, city, or other person operating such site has obtained a permit pursuant to RCW 70A.205.125 or 70A.205.135. [2020 c 20 § 1172; 2009 c 178 § 4; 1998 c 156 § 3; 1997 c 213 § 2; 1969 ex.s. c 134 § 17. Formerly RCW 70.95.170.]

70A.205.125 Permit for solid waste handling facility—Applications, fee. (1) Applications for permits to operate a new or modified solid waste handling facility shall be on forms prescribed by the department and shall contain a description of the proposed facilities and operations at the site, plans and specifications for any new or additional facilities to be constructed, and such other information as the jurisdictional health department may deem necessary in order to determine whether the site and solid waste disposal facilities located thereon will comply with local regulations and state rules.

(2) Upon receipt of an application for a permit to establish or modify a solid waste handling facility, the jurisdictional health department shall refer one copy of the application to the department which shall report its findings to the jurisdictional health department. When the application is for a permit to establish or modify a solid waste handling facility located in an area that is not under a quarantine, as defined in RCW 17.24.007, and when the facility will receive material for composting from an area under a quarantine, the jurisdictional health department shall also provide a copy of the application to the department of agriculture. The department of agriculture shall review the application to determine whether it contains information demonstrating that the proposed facility presents a risk of spreading disease, plant pathogens, or pests to areas that are not under a quarantine. For the purposes of this subsection, "composting" means the biological degradation and transformation of organic solid

waste under controlled conditions designed to promote aerobic decomposition.

(3) The jurisdictional health department shall investigate every application as may be necessary to determine whether a proposed or modified site and facilities meet all solid waste, air, and other applicable laws and regulations, and conforms with the approved comprehensive solid waste handling plan, and complies with all zoning requirements.

(4) When the jurisdictional health department finds that the permit should be issued, it shall issue such permit. Every application shall be approved or disapproved within ninety days after its receipt by the jurisdictional health department.

(5) The jurisdictional board of health may establish reasonable fees for permits and renewal of permits. All permit fees collected by the health department shall be deposited in the treasury and to the account from which the health department's operating expenses are paid. [2016 c 119 § 4; 1997 c 213 § 3; 1988 c 127 § 30; 1969 ex.s. c 134 § 18. Formerly RCW 70.95.180.]

70A.205.130 Permit for solid waste disposal site or facilities—Review by department—Appeal of issuance—Validity of permits issued after June 7, 1984. Every permit issued by a jurisdictional health department under RCW 70A.205.125 shall be reviewed by the department to ensure that the proposed site or facility conforms with:

(1) All applicable laws and regulations including the minimal functional standards for solid waste handling; and

(2) The approved comprehensive solid waste management plan.

The department shall review the permit within thirty days after the issuance of the permit by the jurisdictional health department. The department may appeal the issuance of the permit by the jurisdictional health department to the pollution control hearings board, as described in chapter 43.21B RCW, for noncompliance with subsection (1) or (2) of this section.

No permit issued pursuant to RCW 70A.205.125 after June 7, 1984, shall be considered valid unless it has been reviewed by the department. [2020 c 20 § 1173; 1984 c 123 § 8. Formerly RCW 70.95.185.]

70A.205.135 Permit for solid waste handling facility—Renewal—Appeal—Validity of renewal—Review fees. (1) Every permit for an existing solid waste handling facility issued pursuant to RCW 70A.205.125 shall be renewed at least every five years on a date established by the jurisdictional health department having jurisdiction of the site and as specified in the permit. If a permit is to be renewed for longer than one year, the local jurisdictional health department may hold a public hearing before making such a decision. Prior to renewing a permit, the health department shall conduct a review as it deems necessary to assure that the solid waste handling facility or facilities located on the site continues to meet minimum functional standards of the department, applicable local regulations, and are not in conflict with the approved solid waste management plan. A jurisdictional health department shall approve or disapprove a permit renewal within forty-five days of conducting its review. The department shall review and may appeal the renewal as set forth for the approval of permits in RCW 70A.205.130.

(2) The jurisdictional board of health may establish reasonable fees for permits reviewed under this section. All permit fees collected by the health department shall be deposited in the treasury and to the account from which the health department's operating expenses are paid. [2020 c 20 § 1174; 1998 c 156 § 4; 1997 c 213 § 4; 1984 c 123 § 9; 1969 ex.s. c 134 § 19. Formerly RCW 70.95.190.]

70A.205.140 Permit for solid waste disposal site or facilities—Suspension. Any permit for a solid waste disposal site issued as provided herein shall be subject to suspension at any time the jurisdictional health department determines that the site or the solid waste disposal facilities located on the site are being operated in violation of this chapter, the regulations of the department, the rules of the department of agriculture, or local laws and regulations. [2016 c 119 § 5; 1969 ex.s. c 134 § 20. Formerly RCW 70.95.200.]

70A.205.145 Exemption from solid waste permit requirements—Waste-derived soil amendments—Application—Revocation of exemption—Appeal. (1) Waste-derived soil amendments that meet the standards and criteria in this section may apply for exemption from solid waste permitting as required under RCW 70A.205.120. The application shall be submitted to the department in a format determined by the department or an equivalent format. The application shall include:

(a) Analytical data showing that the waste-derived soil amendments meet standards established under RCW 15.54.800; and

(b) Other information deemed appropriate by the department to protect human health and the environment.

(2) After receipt of an application, the department shall review it to determine whether the application is complete, and forward a copy of the complete application to all interested jurisdictional health departments and the department of agriculture for review and comment. Within forty-five days, the jurisdictional health departments and the department of agriculture shall forward their comments and any other information they deem relevant to the department, which shall then give final approval or disapproval of the application. The department of agriculture's comments must be limited to addressing whether approving the application risks spreading disease, plant pathogens, or pests to areas that are not under a quarantine, as defined in RCW 17.24.007. Every complete application shall be approved or disapproved by the department within ninety days after receipt.

(3) The department, after providing opportunity for comments from the jurisdictional health departments and the department of agriculture, may at any time revoke an exemption granted under this section if the quality or use of the waste-derived soil amendment changes or the management, storage, or end use of the waste-derived soil amendment constitutes a threat to human health or the environment.

(4) Any aggrieved party may appeal the determination by the department in subsection (2) or (3) of this section to the pollution control hearings board. [2020 c 20 § 1175; 2016 c 119 § 7; 1998 c 36 § 18. Formerly RCW 70.95.205.]

Intent—1998 c 36: See RCW 15.54.265.

Additional notes found at www.leg.wa.gov

70A.205.150 Exemption from solid waste permit requirements—Medication disposal. An authorized collector regulated under chapter 69.48 RCW is not required to obtain a permit under RCW 70A.205.120 unless the authorized collector is required to obtain a permit under RCW 70A.205.120 as a consequence of activities that are not directly associated with the collection facility's activities under chapter 69.48 RCW. [2020 c 20 § 1176; 2018 c 196 § 24. Formerly RCW 70.95.207.]

70A.205.155 Hearing—Appeal—Denial, suspension—When effective. Whenever the jurisdictional health department denies a permit or suspends a permit for a solid waste disposal site, it shall, upon request of the applicant or holder of the permit, grant a hearing on such denial or suspension within thirty days after the request therefor is made. Notice of the hearing shall be given to all interested parties, including the county or city having jurisdiction over the site and the department. Within thirty days after the hearing, the health officer shall notify the applicant or the holder of the permit in writing of his or her determination and the reasons therefor. Any party aggrieved by such determination may appeal to the pollution control hearings board by filing with the hearings board a notice of appeal within thirty days after receipt of notice of the determination of the health officer. The hearings board shall hold a hearing in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW. If the jurisdictional health department denies a permit renewal or suspends a permit for an operating waste recycling facility that receives waste from more than one city or county, and the applicant or holder of the permit requests a hearing or files an appeal under this section, the permit denial or suspension shall not be effective until the completion of the appeal process under this section, unless the jurisdictional health department declares that continued operation of the waste recycling facility poses a very probable threat to human health and the environment. [2012 c 117 § 411; 1998 c 90 § 3; 1987 c 109 § 21; 1969 ex.s. c 134 § 21. Formerly RCW 70.95.210.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70A.205.160 Solid waste collection companies—Notice of changes in tipping fees and disposal rate schedules. To provide solid waste collection companies with sufficient time to prepare and submit tariffs and rate filings for public comment and commission approval, the owner or operator of a transfer station, landfill, or facility used to burn solid waste shall provide seventy-five days' notice to solid waste collection companies of any change in tipping fees and disposal rate schedules. The notice period shall begin on the date individual notice to a collection company is delivered to the company or is postmarked.

A collection company may agree to a shorter notice period: PROVIDED, That such agreement by a company shall not affect the notice requirements for rate filings under RCW 81.28.050.

The owner of a transfer station, landfill or facility used to burn solid waste may agree to provide companies with a longer notice period.

"Solid waste collection companies" as used in this section means the companies regulated by the commission pursuant to chapter 81.77 RCW. [1993 c 300 § 3. Formerly RCW 70.95.212.]

70A.205.165 Landfill disposal facilities—Reserve accounts required by July 1, 1987—Exception—Rules.

(1) By July 1, 1987, each holder or applicant of a permit for a landfill disposal facility issued under this chapter shall establish a reserve account to cover the costs of closing the facility in accordance with state and federal regulations. The account shall be designed to ensure that there will be adequate revenue available by the projected date of closure. A landfill disposal facility maintained on private property for the sole use of the entity owning the site and a landfill disposal facility operated and maintained by a government shall not be required to establish a reserve account if, to the satisfaction of the department, the entity or government provides another form of financial assurance adequate to comply with the requirements of this section.

(2) By July 1, 1986, the department shall adopt rules under chapter 34.05 RCW to implement subsection (1) of this section. The department is not required to adopt rules pertaining to other approved forms of financial assurance to cover the costs of closing a landfill disposal facility. The rules shall include but not be limited to:

(a) Methods to estimate closure costs, including postclosure monitoring, pollution prevention measures, and any other procedures required under state and federal regulations;

(b) Methods to ensure that reserve accounts receive adequate funds, including:

(i) Requirements that the reserve account be generated by user fees. However, the department may waive this requirement for existing landfills if user fees would be prohibitively high;

(ii) Requirements that moneys be placed in the reserve account on a regular basis and that the reserve account be kept separate from all other accounts; and

(iii) Procedures for the department to verify that adequate sums are deposited in the reserve account; and

(c) Methods to ensure that other types of financial assurance provided in accordance with subsection (1) of this section are adequate to cover the costs of closing the facility. [2000 c 114 § 1; 1985 c 436 § 1. Formerly RCW 70.95.215.]

70A.205.170 Waste generated outside the state—Findings. The legislature finds that:

(1) The state of Washington has responded to the increasing challenges of safe, affordable disposal of solid waste by an ambitious program of waste reduction, recycling and reuse, as well as strict standards to ensure the safe handling, transportation, and disposal of solid waste;

(2) All communities in Washington participate in these programs through locally available recycling services, increased source separation and material recovery requirements, programs for waste reduction and product reuse, and performance standards that apply to all solid waste disposal facilities in the state;

(3) New requirements for the siting and performance of disposal facilities have greatly decreased the number of such

facilities in Washington, and the state has a significant interest in ensuring adequate disposal capacity within the state;

(4) The landfilling, incineration, and other disposal of solid waste may adversely impact public health and environmental quality, and the state has a significant interest in decreasing volumes of the waste stream destined for disposal;

(5) Because of the decreasing number of disposal facilities and other reasons, solid waste is being transported greater distances, often beyond the community where generated and is increasingly being transported between states;

(6) Washington's waste management priorities and programs are a balanced approach of increased reuse, recycling and waste reduction, the strengthening of markets for recycled content products, and the safe disposal of the remaining waste stream, with the costs of these programs shared equitably by all persons generating waste in the state;

(7) Those residing in other states who generate waste destined for disposal within Washington should also share the costs of waste diversion and management of Washington's disposal facilities, so that the risks of waste disposal and the costs of mitigating those risks are shared equitably by all waste generators, regardless of their location;

(8) Because Washington state may not directly regulate waste handling, reduction, and recycling activities beyond its state boundaries, the only reasonable alternative to ensure this equitable treatment of waste being disposed within Washington is to implement a program of reviewing such activities as to waste originating outside of Washington, and to assign the additional costs, when necessary, to ensure that the waste meets standards substantially equivalent to those applicable to waste generated within the state, and, in some cases, to prohibit disposal of waste where its generation and management is not subject to standards substantially equivalent to those applicable to waste generated within the state. [1993 c 286 § 1. Formerly RCW 70.95.217.]

Additional notes found at www.leg.wa.gov

70A.205.175 Waste generated outside the state—Solid waste disposal site facility reporting requirements—Fees.

(1) At least sixty days prior to receiving solid waste generated from outside of the state, the operator of a solid waste disposal site facility shall report to the department the types and quantities of waste to be received from an out-of-state source. The department shall develop guidelines for reporting this information. The guidelines shall provide for less than sixty days notice for shipments of waste made on a short-term or emergency basis. The requirements of this subsection shall take effect upon completion of the guidelines.

(2) Upon notice under subsection (1) of this section, the department shall identify all activities and costs necessary to ensure that solid waste generated out-of-state meets standards relating to solid waste reduction, recycling, and management substantially equivalent to those required of solid waste generated within the state. The department may assess a fee on the out-of-state waste sufficient to recover the actual costs incurred in ensuring that the out-of-state waste meets equivalent state standards. The department may delegate, to a local health department, authority to implement the activities identified by the department under this subsection. All money received from fees imposed under this subsection shall be deposited into the account used to fund the activities required

by this section, and shall be used solely for the activities required by this section.

(3) The department may prohibit in-state disposal of solid waste generated from outside of the state, unless the generators of the waste meet: (a) Waste reduction and recycling requirements substantially equivalent to those applicable in Washington state; and (b) solid waste handling standards substantially equivalent to those applicable in Washington state.

(4) The department may adopt rules to implement this section. [2020 c 20 § 1177; 1993 c 286 § 2. Formerly RCW 70.95.218.]

Additional notes found at www.leg.wa.gov

70A.205.180 Financial aid to jurisdictional health departments—Applications—Allocations. Any jurisdictional health department may apply to the department for financial aid for the enforcement of rules and regulations promulgated under this chapter. Such application shall contain such information, including budget and program description, as may be prescribed by regulations of the department.

After receipt of such applications the department may allocate available funds according to criteria established by regulations of the department considering population, urban development, the number of the disposal sites, and geographical area.

The sum allocated to a jurisdictional health department shall be paid to the treasury from which the operating expenses of the health department are paid, and shall be used exclusively for inspections and administrative expenses necessary to enforce applicable regulations. [1969 ex.s. c 134 § 22. Formerly RCW 70.95.220.]

70A.205.185 Financial aid to jurisdictional health departments—Matching funds requirements. The jurisdictional health department applying for state assistance for the enforcement of this chapter shall match such aid allocated by the department in an amount not less than twenty-five percent of the total amount spent for such enforcement activity during the year. The local share of enforcement costs may be met by cash and contributed services. [1969 ex.s. c 134 § 23. Formerly RCW 70.95.230.]

70A.205.190 Diversion of recyclable material—Penalty. (1) No person may divert to personal use any recyclable material placed in a container as part of a recycling program, without the consent of the generator of such recyclable material or the solid waste collection company operating under the authority of a town, city, county, or the utilities and transportation commission, and no person may divert to commercial use any recyclable material placed in a container as part of a recycling program, without the consent of the person owning or operating such container.

(2) A violation of subsection (1) of this section is a class 1 civil infraction under chapter 7.80 RCW. Each violation of this section shall be a separate infraction. [1991 c 319 § 407. Formerly RCW 70.95.235.]

70A.205.195 Unlawful to dump or deposit solid waste without permit—Penalties—Litter cleanup restitution payment. (1) Except as otherwise provided in this section or

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at a solid waste disposal site for which there is a valid permit, after the adoption of regulations or ordinances by any county, city, or jurisdictional board of health providing for the issuance of permits as provided in RCW 70A.205.100, it is unlawful for any person to dump or deposit or permit the dumping or depositing of any solid waste onto or under the surface of the ground or into the waters of this state.

(2) This section does not:

(a) Prohibit a person from dumping or depositing solid waste resulting from his or her own activities onto or under the surface of ground owned or leased by him or her when such action does not violate statutes or ordinances, or create a nuisance;

(b) Apply to a person using a waste-derived soil amendment that has been approved by the department under RCW 70A.205.145; or

(c) Apply to the application of commercial fertilizer that has been registered with the department of agriculture as provided in RCW 15.54.325, and that is applied in accordance with the standards established in RCW 15.54.800(3).

(3)(a) It is a class 3 civil infraction as defined in RCW 7.80.120 for a person to litter in an amount less than or equal to one cubic foot.

(b)(i) It is a misdemeanor for a person to litter in an amount greater than one cubic foot but less than one cubic yard.

(ii) A person found to have littered in an amount greater than one cubic foot, but less than one cubic yard, shall also pay a litter cleanup restitution payment. This payment must be the greater of twice the actual cost of removing and properly disposing of the litter, or fifty dollars per cubic foot of litter.

(iii) The court shall distribute one-half of the restitution payment to the landowner where the littering occurred and one-half of the restitution payment to the jurisdictional health department investigating the incident. If the landowner provided written permission authorizing the littering on his or her property or assisted a person with littering on the landowner's property, the landowner is not entitled to any restitution ordered by the court and the full litter cleanup restitution payment must be provided to the jurisdictional health department investigating the incident.

(iv) A jurisdictional health department receiving all or a portion of a litter cleanup restitution payment must use the payment as follows:

(A) One-half of the payment may be used by the jurisdictional health department in the fulfillment of its responsibilities under this chapter; and

(B) One-half of the payment must be used to assist property owners located within the jurisdiction of the health department with the removal and proper disposal of litter in instances when the person responsible for the illegal dumping of the solid waste cannot be determined.

(v) The court may, in addition to the litter cleanup restitution payment, order the person to remove and properly dispose of the litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section if the person removes and properly disposes of the litter.

(c)(i) It is a gross misdemeanor for a person to litter in an amount of one cubic yard or more.

(ii) A person found to have littered in an amount greater than one cubic yard shall also pay a litter cleanup restitution payment. This payment must be the greater of twice the actual cost of removing and properly disposing of the litter, or one hundred dollars per cubic foot of litter.

(iii) The court shall distribute one-half of the restitution payment to the landowner where the littering occurred and one-half of the restitution payment to the jurisdictional health department investigating the incident. If the landowner provided written permission authorizing the littering on his or her property or assisted a person with littering on the landowner's property, the landowner is not entitled to any restitution ordered by the court and the full litter cleanup restitution payment must be provided to the jurisdictional health department investigating the incident.

(iv) A jurisdictional health department receiving all or a portion of a litter cleanup restitution payment must use the payment as follows:

(A) One-half of the payment may be used by the jurisdictional health department in the fulfillment of its responsibilities under this chapter; and

(B) One-half of the payment must be used to assist property owners located within the jurisdiction of the health department with the removal and proper disposal of litter in instances when the person responsible for the illegal dumping of the solid waste cannot be determined.

(v) The court may, in addition to the litter cleanup restitution payment, order the person to remove and properly dispose of the litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section if the person removes and properly disposes of the litter.

(4) If a junk vehicle is abandoned in violation of this chapter, RCW 46.55.230 governs the vehicle's removal, disposal, and sale, and the penalties that may be imposed against the person who abandoned the vehicle.

(5) When enforcing this section, the enforcing authority must take reasonable action to determine and identify the person responsible for illegally dumping solid waste before requiring the owner or lessee of the property where illegal dumping of solid waste has occurred to remove and properly dispose of the litter on the site. [2020 c 20 § 1178; 2011 c 279 § 1; 2001 c 139 § 2; 2000 c 154 § 3; 1998 c 36 § 19; 1997 c 427 § 4; 1993 c 292 § 3; 1969 ex.s. c 134 § 24. Formerly RCW 70.95.240.]

Intent—1998 c 36: See RCW 15.54.265.

Additional notes found at www.leg.wa.gov

70A.205.200 Name appearing on waste material—Presumption. Whenever solid wastes dumped in violation of RCW 70A.205.195 contain three or more items bearing the name of one individual, there shall be a rebuttable presumption that the individual whose name appears on such items committed the unlawful act of dumping. [2020 c 20 § 1179; 1969 ex.s. c 134 § 25. Formerly RCW 70.95.250.]

70A.205.205 Disposal of sewage sludge or septic tank sludge prohibited—Exemptions—Uses of sludge material permitted. After January 1, 1988, the department of ecology may prohibit disposal of sewage sludge or septic tank sludge (septage) in landfills for final disposal, except on a temporary, emergency basis, if the jurisdictional health department determines that a potentially unhealthful circumstance exists. Beneficial uses of sludge in landfill reclamation is acceptable utilization and not considered disposal.

The department of ecology shall adopt rules that provide exemptions from this section on a case-by-case basis. Exemptions shall be based on the economic infeasibility of using or disposing of the sludge material other than in a landfill.

The department of ecology, in conjunction with the department of health and the department of agriculture, shall adopt rules establishing labeling and notification requirements for sludge material sold commercially or given away to the public. The department shall specify mandatory wording for labels and notification to warn the public against improper use of the material. [1992 c 174 § 15; 1986 c 297 § 1. Formerly RCW 70.95.255.]

70A.205.210 Duties of department—State solid waste management plan—Assistance—Coordination—Tire recycling. The department shall in addition to its other powers and duties:

(1) Cooperate with the appropriate federal, state, interstate and local units of government and with appropriate private organizations in carrying out the provisions of this chapter.

(2) Coordinate the development of a solid waste management plan for all areas of the state in cooperation with local government, the *department of community, trade, and economic development, and other appropriate state and regional agencies. The plan shall relate to solid waste management for twenty years in the future and shall be reviewed biennially, revised as necessary, and extended so that perpetually the plan shall look to the future for twenty years as a guide in carrying out a state coordinated solid waste management program. The plan shall be developed into a single integrated document and shall be adopted no later than October 1990. The plan shall be revised regularly after its initial completion so that local governments revising local comprehensive solid waste management plans can take advantage of the data and analysis in the state plan.

(3) Provide technical assistance to any person as well as to cities, counties, and industries.

(4) Initiate, conduct, and support research, demonstration projects, and investigations, and coordinate research programs pertaining to solid waste management systems.

(5) Develop statewide programs to increase public awareness of and participation in tire recycling, and to stimulate and encourage local private tire recycling centers and public participation in tire recycling.

(6) May, under the provisions of the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended, from time to time promulgate such rules and regulations as are necessary to carry out the purposes of this chapter. [1995 c 399 § 189; 1989 c 431 § 9. Prior: 1985 c 345 § 8;

1985 c 6 § 23; 1969 ex.s. c 134 § 26. Formerly RCW 70.95.260.]

*Reviser's note: The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Additional notes found at www.leg.wa.gov

70A.205.215 Additional powers and duties of department. The department shall in addition to its other duties and powers under this chapter:

(1) Prepare the following:

(a) A management system for recycling waste paper generated by state offices and institutions in cooperation with such offices and institutions;

(b) An evaluation of existing and potential systems for recovery of energy and materials from solid waste with recommendations to affected governmental agencies as to those systems which would be the most appropriate for implementation;

(c) A data management system to evaluate and assist the progress of state and local jurisdictions and private industry in resource recovery;

(d) Identification of potential markets, in cooperation with private industry, for recovered resources and the impact of the distribution of such resources on existing markets;

(e) Studies on methods of transportation, collection, reduction, separation, and packaging which will encourage more efficient utilization of existing waste recovery facilities;

(f) Recommendations on incentives, including state grants, loans, and other assistance, to local governments which will encourage the recovery and recycling of solid wastes.

(2) Provide technical information and assistance to state and local jurisdictions, the public, and private industry on solid waste recovery and/or recycling.

(3) Procure and expend funds available from federal agencies and other sources to assist the implementation by local governments of solid waste recovery and/or recycling programs, and projects.

(4) Conduct necessary research and studies to carry out the purposes of this chapter.

(5) Encourage and assist local governments and private industry to develop pilot solid waste recovery and/or recycling projects.

(6) Monitor, assist with research, and collect data for use in assessing feasibility for others to develop solid waste recovery and/or recycling projects. [1998 c 245 § 131; 1975-'76 2nd ex.s. c 41 § 5. Formerly RCW 70.95.263.]

70A.205.220 Department to cooperate with public and private departments, agencies, and associations. The department shall work closely with the department of commerce, the department of enterprise services, and with other state departments and agencies, the Washington state association of counties, the association of Washington cities, and business associations, to carry out the objectives and purposes of chapter 41, Laws of 1975-'76 2nd ex. sess. [2015 c 225 § 106; 1995 c 399 § 190; 1985 c 466 § 69; 1975-'76 2nd ex.s. c 41 § 6. Formerly RCW 70.95.265.]

Additional notes found at www.leg.wa.gov

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70A.205.225 Department authorized to disburse referendum 26 (RCW 43.83.330) fund for local government solid waste projects. The department is authorized to use referendum 26 (RCW 43.83.330) funds of the Washington futures account to disburse to local governments in developing solid waste recovery and/or recycling projects. [2015 1st sp.s. c 4 § 50; 1975-'76 2nd ex.s. c 41 § 10. Formerly RCW 70.95.267.]

70A.205.230 Department authorized to disburse funds under RCW 43.83.350 for local government solid waste projects. The department is authorized to use funds under RCW 43.83.350 to disburse to local governments in developing solid waste recovery or recycling projects. Priority shall be given to those projects that use incineration of solid waste to produce energy and to recycling projects. [2015 1st sp.s. c 4 § 51; 1984 c 123 § 10. Formerly RCW 70.95.268.]

70A.205.235 Hazardous substance remedial actions—Procedural requirements not applicable. The procedural requirements of this chapter shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70A.305 RCW, or to the department of ecology when it conducts a remedial action under chapter 70A.305 RCW. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70A.305 RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70A.305.090. [2020 c 20 § 1180; 1994 c 257 § 16. Formerly RCW 70.95.270.]

Additional notes found at www.leg.wa.gov

70A.205.240 Determination of best solid waste management practices—Department to develop method to monitor waste stream—Collectors to report quantity and quality of waste—Confidentiality of proprietary information. The department of ecology shall determine the best management practices for categories of solid waste in accordance with the priority solid waste management methods established in RCW 70A.205.005. In order to make this determination, the department shall conduct a comprehensive solid waste stream analysis and evaluation. Following establishment of baseline data resulting from an initial in-depth analysis of the waste stream, the department shall develop a less intensive method of monitoring the disposed waste stream including, but not limited to, changes in the amount of waste generated and waste type. The department shall monitor curbside collection programs and other waste segregation and disposal technologies to determine, to the extent possible, the effectiveness of these programs in terms of cost and participation, their applicability to other locations, and their implications regarding rules adopted under this chapter. Persons who collect solid waste shall annually report to the department the types and quantities of solid waste that are collected and where it is delivered. The department shall adopt guidelines for reporting and for keeping proprietary information confidential. [2020 c 20 § 1181; 1989 c 431 § 13; 1988 c 184 § 1. Formerly RCW 70.95.280.]

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70A.205.245 Solid waste stream analysis. The comprehensive, statewide solid waste stream analysis under RCW 70A.205.240 shall be based on representative solid waste generation areas and solid waste generation sources within the state. The following information and evaluations shall be included:

- (1) Solid waste generation rates for each category;
- (2) The rate of recycling being achieved within the state for each category of solid waste;
- (3) The current and potential rates of solid waste reduction within the state;
- (4) A technological assessment of current solid waste reduction and recycling methods and systems, including cost/benefit analyses;
- (5) An assessment of the feasibility of segregating solid waste at: (a) The original source, (b) transfer stations, and (c) the point of final disposal;
- (6) A review of methods that will increase the rate of solid waste reduction; and
- (7) An assessment of new and existing technologies that are available for solid waste management including an analysis of the associated environmental risks and costs.

The data required by the analysis under this section shall be kept current and shall be available to local governments and the waste management industry. [2020 c 20 § 1182; 1988 c 184 § 2. Formerly RCW 70.95.285.]

70A.205.250 Solid waste stream evaluation. (1) The evaluation of the solid waste stream required in RCW 70A.205.240 shall include the following elements:

- (a) The department shall determine which management method for each category of solid waste will have the least environmental impact; and
- (b) The department shall evaluate the costs of various management options for each category of solid waste, including a review of market availability, and shall take into consideration the economic impact on affected parties;
- (c) Based on the results of (a) and (b) of this subsection, the department shall determine the best management for each category of solid waste. Different management methods for the same categories of waste may be developed for different parts of the state.

(2) The department shall give priority to evaluating categories of solid waste that, in relation to other categories of solid waste, comprise a large volume of the solid waste stream or present a high potential of harm to human health. At a minimum the following categories of waste shall be evaluated:

- (a) By January 1, 1989, yard waste and other biodegradable materials, paper products, disposable diapers, and batteries; and
- (b) By January 1, 1990, metals, glass, plastics, styrofoam or rigid lightweight cellular polystyrene, and tires. [2020 c 20 § 1183; 1988 c 184 § 3. Formerly RCW 70.95.290.]

70A.205.255 Analysis and evaluation to be incorporated in state solid waste management plan. The department shall incorporate the information from the analysis and evaluation conducted under RCW 70A.205.240 through 70A.205.250 to the state solid waste management plan under RCW 70A.205.210. The plan shall be revised periodically as

the evaluation and analysis is updated. [2020 c 20 § 1184; 1988 c 184 § 4. Formerly RCW 70.95.295.]

70A.205.260 Solid waste—Beneficial uses—Permitting requirement exemptions. (1) The department may by rule exempt a solid waste from the permitting requirements of this chapter for one or more beneficial uses. In adopting such rules, the department shall specify both the solid waste that is exempted from the permitting requirements and the beneficial use or uses for which the solid waste is so exempted. The department shall consider: (a) Whether the material will be beneficially used or reused; and (b) whether the beneficial use or reuse of the material will present threats to human health or the environment.

(2) The department may also exempt a solid waste from the permitting requirements of this chapter for one or more beneficial uses by approving an application for such an exemption. The department shall establish by rule procedures under which a person may apply to the department for such an exemption. The rules shall establish criteria for providing such an exemption, which shall include, but not be limited to: (a) The material will be beneficially used or reused; and (b) the beneficial use or reuse of the material will not present threats to human health or the environment. Rules adopted under this subsection shall identify the information that an application shall contain. Persons seeking such an exemption shall apply to the department under the procedures established by the rules adopted under this subsection.

(3) After receipt of an application filed under rules adopted under subsection (2) of this section, the department shall review the application to determine whether it is complete, and forward a copy of the completed application to all jurisdictional health departments and the department of agriculture for review and comment. Within forty-five days, the jurisdictional health departments and the department of agriculture shall forward to the department their comments and any other information they deem relevant to the department's decision to approve or disapprove the application. The department of agriculture's comments must be limited to addressing whether approving the application risks spreading disease, plant pathogens, or pests to areas that are not under a quarantine, as defined in RCW 17.24.007. Every complete application shall be approved or disapproved by the department within ninety days of receipt. If the application is approved by the department, the solid waste is exempt from the permitting requirements of this chapter when used anywhere in the state in the manner approved by the department. If the composition, use, or reuse of the solid waste is not consistent with the terms and conditions of the department's approval of the application, the use of the solid waste remains subject to the permitting requirements of this chapter.

(4) The department shall establish procedures by rule for providing to the public and the solid waste industry notice of and an opportunity to comment on each application for an exemption under subsection (2) of this section.

(5) Any jurisdictional health department or applicant may appeal the decision of the department to approve or disapprove an application under subsection (3) of this section. The appeal shall be made to the pollution control hearings board by filing with the hearings board a notice of appeal within thirty days of the decision of the department. The

hearings board's review of the decision shall be made in accordance with chapter 43.21B RCW and any subsequent appeal of a decision of the board shall be made in accordance with RCW 43.21B.180.

(6) This section shall not be deemed to invalidate the exemptions or determinations of nonapplicability in the department's solid waste rules as they exist on June 11, 1998, which exemptions and determinations are recognized and confirmed subject to the department's continuing authority to modify or revoke those exemptions or determinations by rule. [2016 c 119 § 6; 1998 c 156 § 2. Formerly RCW 70.95.300.]

70A.205.265 Solid waste handling permit—Exemption from requirements—Application of section—Rules.

(1) Notwithstanding any other provision of this chapter, the department may by rule exempt from the requirements to obtain a solid waste handling permit any category of solid waste handling facility that it determines to:

(a) Present little or no environmental risk; and
(b) Meet the environmental protection and performance requirements required for other similar solid waste facilities.

(2) This section does not apply to any facility or category of facilities that:

(a) Receives municipal solid waste destined for final disposal, including but not limited to transfer stations, landfills, and incinerators;

(b) Applies putrescible solid waste on land for final disposal purposes;

(c) Handles mixed solid wastes that have not been processed to segregate solid waste materials destined for disposal from other solid waste materials destined for a beneficial use or recycling;

(d) Receives or processes organic waste materials into compost in volumes that generally far exceed those handled by municipal park departments, master gardening programs, and households; or

(e) Receives solid waste destined for recycling or reuse, the operation of which is determined by the department to present risks to human health and the environment.

(3) Rules adopted under this section shall contain such terms and conditions as the department deems necessary to ensure compliance with applicable statutes and rules. If a facility does not operate in compliance with the terms and conditions established for an exemption under subsection (1) of this section, the facility is subject to the permitting requirements for solid waste handling under this chapter.

(4) This section shall not be deemed to invalidate the exemptions or determinations of nonapplicability in the department's solid waste rules as they exist on June 11, 1998, which exemptions and determinations are recognized and confirmed subject to the department's continuing authority to modify or revoke those exemptions or determinations by rule. [2005 c 394 § 3; 1998 c 156 § 5. Formerly RCW 70.95.305.]

Intent—Severability—2005 c 394: See notes following RCW 70A.205.300.

70A.205.270 Composting of bovine and equine carcasses—Guidelines—Exemption from solid waste handling rules. (1) By July 1, 2005, the department of ecology and the department of agriculture, in consultation with the department of health, shall make available to livestock pro-

ducers clearly written guidelines for the composting of bovine and equine carcasses for routine animal disposal.

(2) Composters of bovine and equine carcasses are exempt from the metals testing and permit requirements under the solid waste handling rules for compost that is distributed off-site if the following conditions are met:

(a) The carcasses to be composted are not known or suspected to be affected with a prion-protein disease such as bovine spongiform encephalopathy, a spore-forming disease such as anthrax or other diseases designated by the state veterinarian;

(b) The composter follows the written guidelines provided for in subsection (1) of this section;

(c) The composter does not accept for composting animal mortalities from other sources not directly affiliated with the composter's operation;

(d) The composter provides information to the end user that includes the source of the material; the quality of the compost as to its nutrient content, pathogens, and stability; and the restrictions on use of the compost as stated in (f) of this subsection;

(e) The composter reports annually to the department the number of bovines and equines and the amounts of other material composted, including the composter's best estimate of the tonnage or yardage involved; and

(f) The end user applies the compost only to agricultural lands that are not used for the production of root crops except as prescribed in the guidelines and ensures no compost comes into contact with the crops harvested from the lands where the compost is applied.

(3) If a compost production facility does not operate in compliance with the terms and conditions established for an exemption in this section, the facility shall be subject to the permitting requirements for solid waste handling under this chapter. [2005 c 510 § 6. Formerly RCW 70.95.306.]

70A.205.275 Rules—Department "deferring" to other permits—Application of section. (1) Notwithstanding any other provisions of this chapter, the department shall adopt rules:

(a) Describing when a jurisdictional health department may, at its discretion, waive the requirement that a permit be issued for a facility under this chapter if other air, water, or environmental permits are issued for the same facility. As used in this section, a jurisdictional health department's waiving the requirement that a permit be issued for a facility under this chapter based on the issuance of such other permits for the facility is the health department's "deferring" to the other permits; and

(b) Allowing deferral only if the applicant and the jurisdictional health department demonstrate that other permits for the facility will provide a comparable level of protection for human health and the environment that would be provided by a solid waste handling permit.

(2) This section does not apply to any transfer station, landfill, or incinerator that receives municipal solid waste destined for final disposal.

(3) If, before June 11, 1998, either the department or a jurisdictional health department has deferred solid waste permitting or regulation of a solid waste facility to permitting or regulation under other environmental permits for the same

facility, such deferral is valid and shall not be affected by the rules developed under subsection (1) of this section.

(4) Rules adopted under this section shall contain such terms and conditions as the department deems necessary to ensure compliance with applicable statutes and rules. [1998 c 156 § 6. Formerly RCW 70.95.310.]

70A.205.280 Penalty. (1) The department may assess a civil penalty in an amount not to exceed one thousand dollars per day per violation to any person exempt from solid waste permitting in accordance with RCW 70A.205.145, 70A.205.260, 70A.205.265, 70A.205.270, or 70A.205.290 who fails to comply with the terms and conditions of the exemption. Each such violation shall be a separate and distinct offense, and in the case of a continuing violation, each day's continuance shall be a separate and distinct violation. The penalty provided in this section shall be imposed pursuant to RCW 43.21B.300.

(2) If a person violates a provision of any of the sections referenced in subsection (1) of this section, the department may issue an appropriate order to ensure compliance with the conditions of the exemption. The order may be appealed pursuant to RCW 43.21B.310. [2020 c 20 § 1185; 2016 c 119 § 8; 2009 c 178 § 5; 2005 c 510 § 7; 1998 c 156 § 7. Formerly RCW 70.95.315.]

70A.205.285 Construction. Nothing in chapter 156, Laws of 1998 may be construed to affect chapter 81.77 RCW and the authority of the utilities and transportation commission. [1998 c 156 § 9. Formerly RCW 70.95.320.]

70A.205.290 Qualified anaerobic digesters exempt from permitting requirements of chapter—Definitions.

(1) An anaerobic digester that complies with the conditions specified in this section is exempt from the permitting requirements of this chapter. To qualify for the exemption, an anaerobic digester must meet the following conditions:

(a) The owner or operator must provide the department or the jurisdictional health department with at least thirty days' notice of intent to operate under the conditions specified in this section and comply with any guidelines issued under subsection (2) of this section;

(b) The anaerobic digester must process at least fifty percent livestock manure by volume;

(c) The anaerobic digester may process no more than thirty percent imported organic waste-derived material by volume, and must comply with subsection (3) of this section;

(d) The anaerobic digester must comply with design and operating standards in the natural resources conservation service's conservation practice standard code 366 in effect as of July 26, 2009;

(e) Digestate must:

(i) Be managed in accordance with a dairy nutrient management plan under chapter 90.64 RCW that includes elements addressing management and use of digestate;

(ii) Meet compost quality standards concerning pathogens, stability, nutrient testing, and metals before it is distributed for off-site use, or be sent to an off-site permitted compost facility for further treatment to meet compost quality standards; or

(iii) Be processed or managed in an alternate manner approved by the department;

(f) The owner or operator must allow inspection by the department or jurisdictional health department at reasonable times to verify compliance with the conditions specified in this section; and

(g) The owner or operator must submit an annual report to the department or the jurisdictional health department concerning use of nonmanure material in the anaerobic digester and any required compliance testing.

(2) By August 1, 2009, the department and the department of agriculture, in consultation with the department of health, shall make available to anaerobic digester owners and operators clearly written guidelines for the anaerobic codigestion of livestock manure and organic waste-derived material. The guidelines must explain the steps necessary for an owner or operator to meet the conditions specified in this section for an exemption from the permitting requirements of this chapter.

(3) Any imported organic waste-derived material must:

(a) Be preconsumer in nature;

(b) Be fed into the anaerobic digester within thirty-six hours of receipt at the anaerobic digester;

(c) If it is likely to contain animal by-products, be previously source separated at a facility licensed to process food by the United States department of agriculture, the United States food and drug administration, the Washington state department of agriculture, or other applicable regulatory agency;

(d) If it contains bovine processing waste, be derived from animals approved by the United States department of agriculture food safety and inspection service and not contain any specified risk material;

(e) If it contains sheep carcasses or sheep processing waste, not be fed into the anaerobic digester;

(f) Be stored and handled in a manner that protects surface water and groundwater and complies with best management practices;

(g) Be received or stored in structures that:

(i) Comply with the natural resources conservation service's conservation practice standard code 313 in effect as of July 26, 2009;

(ii) Are certified to be effective by a representative of the natural resources conservation service; or

(iii) Meet applicable construction industry standards adopted by the American concrete institute or the American institute of steel construction and in effect as of July 26, 2009; and

(h) Be managed to prevent migration of nuisance odors beyond property boundaries and minimize attraction of flies, rodents, and other vectors.

(4) Digestate that is managed in accordance with a dairy nutrient management plan under chapter 90.64 RCW that includes elements addressing management and use of digestate shall no longer be considered a solid waste. Use of digestate from an anaerobic digester that complies with the conditions specified in this section is exempt from the permitting requirements of this chapter.

(5) An anaerobic digester that does not comply with the conditions specified in this section may be subject to the permitting requirements of this chapter. In addition, violations of

the conditions specified in this section are subject to provisions in RCW 70A.205.280.

(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise:

(a) "Anaerobic digester" means a vessel that processes organic material into biogas and digestate using microorganisms in a decomposition process within a closed, oxygen-free container.

(b) "Best management practices" means managerial practices that prevent or reduce water pollution.

(c) "Digestate" means both solid and liquid substances that remain following anaerobic digestion of organic material in an anaerobic digester.

(d) "Imported" means originating off of the farm or other site where the anaerobic digester is being operated.

(e) "Organic waste-derived material" has the same meaning as defined in RCW 15.54.270 and any other organic wastes approved by the department, except for organic waste-derived material collected through municipal commercial and residential solid waste collection programs. [2020 c 20 § 1186; 2009 c 178 § 1. Formerly RCW 70.95.330.]

70A.205.300 Transporters—Definition—Registration required—Penalties. (1) For the purposes of this section and RCW 70A.205.310, "transporter" means any person or entity that transports recyclable materials from commercial or industrial generators over the public highways of the state of Washington for compensation, and who are required to possess a permit to operate from the Washington utilities and transportation commission under chapter 81.80 RCW. "Transporter" includes commercial recycling operations of certificated solid waste collection companies as provided in chapter 81.77 RCW. "Transporter" does not include:

(a) Carriers of commercial recyclable materials, when such materials are owned or being bought or sold by the entity or person, and being carried in their own vehicle, when such activity is incidental to the conduct of an entity or person's primary business;

(b) Entities or persons hauling their own recyclables or hauling recyclables they generated or purchased and transported in their own vehicles;

(c) Nonprofit or charitable organizations collecting and transporting recyclable materials from a buyback center, drop box, or from a commercial or industrial generator of recyclable materials;

(d) City municipal solid waste departments or city solid waste contractors; or

(e) Common carriers under chapter 81.80 RCW whose primary business is not the transportation of recyclable materials.

(2) All transporters shall register with the department prior to the transportation of recyclable materials. The department shall supply forms for registration.

(3) A transporter who transports recyclable materials within the state without a transporter registration required by this section is subject to a civil penalty in an amount up to one thousand dollars per violation. [2020 c 20 § 1187; 2005 c 394 § 4. Formerly RCW 70.95.400.]

Intent—2005 c 394: "It is the intent of the legislature to improve recycling, eliminate illegal disposal of recyclable materials, protect consumers from sham recycling, and to further the purposes of RCW 70.95.020 and the

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goal of consistency in jurisdictional treatment of the statewide solid waste management plan adopted by the department of ecology." [2005 c 394 § 1.]

Additional notes found at www.leg.wa.gov

70A.205.310 Transporters—Delivery of recyclable materials to transfer station or landfill prohibited—Records—Penalty. (1) A transporter may not deliver any recyclable materials for disposal to a transfer station or landfill.

(2) A transporter shall keep records of locations and quantities specifically identified in relation to a generator's name, service date, address, and invoice, documenting where recyclables have been sold, delivered for processing, or otherwise marketed. These records must be retained for two years from the date of collection, and must be made accessible for inspection by the department and the local health department.

(3) A transporter who violates the provisions of this section is subject to a civil penalty of up to one thousand dollars per violation. [2005 c 394 § 5. Formerly RCW 70.95.410.]

Intent—Severability—2005 c 394: See notes following RCW 70A.205.300.

70A.205.320 Damages. Any person damaged by a violation of RCW 70A.205.300 through 70A.205.340 may bring a civil action for such a violation by seeking either injunctive relief or damages, or both, in the superior court of the county in which the violation took place or in Thurston county. The prevailing party in such an action is entitled to reasonable costs and attorneys' fees, including those on appeal. [2020 c 20 § 1188; 2005 c 394 § 6. Formerly RCW 70.95.420.]

Intent—Severability—2005 c 394: See notes following RCW 70A.205.300.

70A.205.330 Solid waste recyclers—Notice—Report—Penalty. (1) All facilities that recycle solid waste, except for those facilities with a current solid waste handling permit issued under RCW 70A.205.120, must notify the department in writing within thirty days prior to operation, or ninety days from July 24, 2005, for existing recycling operations, of the intent to conduct recycling in accordance with this section. Notification must be in writing, and include:

(a) Contact information for the person conducting the recycling activity;

(b) A general description of the recycling activity;

(c) A description of the types of solid waste being recycled; and

(d) A general explanation of the recycling processes and methods.

(2) Each facility that recycles solid waste, except those facilities with a current solid waste handling permit issued under RCW 70A.205.120, shall prepare and submit an annual report to the department by April 1st on forms supplied by the department. The annual report must detail recycling activities during the previous calendar year and include the following information:

(a) The name and address of the recycling operation;

(b) The calendar year covered by the report;

(c) The annual quantities and types of waste received, recycled, and disposed, in tons, for purposes of determining progress towards achieving the goals of waste reduction,

waste recycling, and treatment in accordance with RCW 70A.205.005(4); and

(d) Any additional information required by written notification of the department that is needed to determine progress towards achieving the goals of waste reduction, waste recycling, and treatment in accordance with RCW 70A.205.005(4).

(3) Any facility, except for product take-back centers, that recycles solid waste materials within the state without first obtaining a solid waste handling permit under RCW 70A.205.120 or completing a notification under this section is subject to a civil penalty of up to one thousand dollars per violation. [2020 c 20 § 1189; 2005 c 394 § 7. Formerly RCW 70.95.430.]

Intent—Severability—2005 c 394: See notes following RCW 70A.205.300.

70A.205.340 Financial assurance requirements. (1) The department may adopt rules that establish financial assurance requirements for recycling facilities that do not already have financial assurance requirements under this chapter, or are not already specifically exempted from financial assurance requirements under this chapter. The financial assurance requirements must take into consideration the amounts and types of recyclable materials recycled at the facility, and the potential closure and postclosure costs associated with the recycling facility; which assurance may consist of posting of a surety bond in an amount sufficient to meet these requirements or other financial instrument, but in no case less than ten thousand dollars.

(2) A recycling facility is required to meet financial assurance requirements adopted by the department by rule, unless the facility is already required to provide financial assurance under other provisions of this chapter.

(3) Facilities that collect, recover, process, or otherwise recycle scrap metal, processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal are exempt from the requirements of this section. [2005 c 394 § 8. Formerly RCW 70.95.440.]

Intent—Severability—2005 c 394: See notes following RCW 70A.205.300.

70A.205.400 Disposal of vehicle tires outside designated area prohibited—Penalty—Exemption. (1) No person may drop, deposit, discard, or otherwise dispose of vehicle tires on any public property or private property in this state or in the waters of this state whether from a vehicle or otherwise, including, but not limited to, any public highway, public park, beach, campground, forestland, recreational area, trailer park, highway, road, street, or alley unless:

(a) The property is designated by the state, or by any of its agencies or political subdivisions, for the disposal of discarded vehicle tires; and

(b) The person is authorized to use the property for such purpose.

(2) A violation of this section is punishable by a civil penalty, which shall not be less than two hundred dollars nor more than two thousand dollars for each offense.

(3) This section does not apply to the storage or deposit of vehicle tires in quantities deemed exempt under rules adopted by the department of ecology under its functional

standards for solid waste. [1985 c 345 § 4. Formerly RCW 70.95.500.]

70A.205.405 Fee on the retail sale of new replacement vehicle tires. (1) There is levied a one dollar per tire fee on the retail sale of new replacement vehicle tires. The fee imposed in this section must be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the fee. The fee collected from the buyer by the seller less the ten percent amount retained by the seller as provided in RCW 70A.205.430(1) must be paid to the department of revenue in accordance with RCW 82.32.045.

(2) The department of revenue shall incorporate into the agency's regular audit cycle a reconciliation of the number of tires sold and the amount of revenue collected by the businesses selling new replacement vehicle tires at retail. The department of revenue shall collect on the business excise tax return from the businesses selling new replacement vehicle tires at retail:

(a) The number of tires sold; and

(b) The fee levied in this section.

(3) All other applicable provisions of chapter 82.32 RCW have full force and application with respect to the fee imposed under this section. The department of revenue shall administer this section.

(4) For the purposes of this section, "new replacement vehicle tires" means tires that are newly manufactured for vehicle purposes and does not include retreaded vehicle tires. [2020 c 20 § 1190; 2009 c 261 § 2; 2005 c 354 § 2; 1989 c 431 § 92; 1985 c 345 § 5. Formerly RCW 70.95.510.]

Intent—2009 c 261: "The legislature restates its goal to fully clean up unauthorized waste tire piles in Washington state in an expeditious fashion. In partnership with local governments and the private sector, the legislature encourages ongoing efforts to prevent the creation of future unauthorized waste tire piles. The legislature notes a positive trend in tire recycling in recent years and encourages all parties to continue these strong recycling efforts." [2009 c 261 § 1.]

Finding—Intent—2005 c 354: "The legislature finds that discarded tires in unauthorized dump sites pose a health and safety risk to the public. Many of these tire piles have been in existence for a significant amount of time and are a continuing challenge to state and local officials responsible for cleaning up unauthorized dump sites and preventing further accumulation of waste tires. Therefore it is the intent of the legislature to document the extent of the problem, create and fund an effective program to eliminate unauthorized tire piles, and minimize potential future problems and costs." [2005 c 354 § 1.]

Additional notes found at www.leg.wa.gov

70A.205.410 Fee on the retail sale of new replacement vehicle tires—Failure to collect, pay to department—Penalties. (1) The fee required by this chapter, to be collected by the seller, shall be deemed to be held in trust by the seller until paid to the department of revenue, and any seller who appropriates or converts the fee collected to his or her own use or to any use other than the payment of the fee to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(2) In case any seller fails to collect the fee imposed in this chapter or, having collected the fee, fails to pay it to the department of revenue in the manner prescribed by this chapter, whether such failure is the result of his or her own acts or the result of acts or conditions beyond his or her control, he

or she shall, nevertheless, be personally liable to the state for the amount of the fee.

(3) The amount of the fee, until paid by the buyer to the seller or to the department of revenue, shall constitute a debt from the buyer to the seller and any seller who fails or refuses to collect the fee as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any buyer who refuses to pay any fee due under this chapter is guilty of a misdemeanor. [2005 c 354 § 4. Formerly RCW 70.95.515.]

Finding—Intent—Severability—Effective date—2005 c 354: See notes following RCW 70A.205.405.

70A.205.415 Waste tire removal account. The waste tire removal account is created in the state treasury. Expenditures from the account may be used for the cleanup of unauthorized waste tire piles, measures that prevent future accumulation of unauthorized waste tire piles, and road wear related maintenance on state and local public highways. During the 2007-2009 fiscal biennium, the legislature may transfer from the waste tire removal account to the motor vehicle fund such amounts as reflect the excess fund balance of the waste tire removal account. During the 2021-2023 fiscal biennium, appropriations from the waste tire removal account may be made for the department of transportation to address the risks to safety and public health associated with homeless encampments on department owned rights-of-way. [2022 c 186 § 705; 2009 c 261 § 3; 2007 c 518 § 708; 2005 c 354 § 3. Formerly RCW 70.95.521.]

Effective date—2022 c 186: See note following RCW 47.01.071.

Intent—2009 c 261: See note following RCW 70A.205.405.

Finding—Intent—Severability—Effective date—2005 c 354: See notes following RCW 70A.205.405.

Additional notes found at www.leg.wa.gov

70A.205.420 Waste tire removal account—Use—Information required to be posted to department's website. (1) Moneys in the waste tire removal account may be appropriated to the department of ecology:

(a) To provide for funding to state and local governments for the removal of discarded vehicle tires from unauthorized tire dump sites; and

(b) To accomplish the other purposes of RCW 70A.205.010 as they relate to waste tire cleanup under this chapter.

(2) In spending funds in the account under this section, the department shall identify communities with the most severe problems with waste tires and provide funds first to those communities to remove accumulations of waste tires.

(3) The department shall provide on its website a summary of state and local government efforts funded using the waste tire removal account, a list of authorized waste tire storage sites and transporters, and tire recycling and reuse rates in the state for each calendar year. [2020 c 20 § 1191; 2014 c 76 § 6; 2009 c 261 § 5; 2005 c 354 § 5; 1988 c 250 § 1; 1985 c 345 § 7. Formerly RCW 70.95.530.]

Intent—2009 c 261: See note following RCW 70A.205.405.

Finding—Intent—Severability—Effective date—2005 c 354: See notes following RCW 70A.205.405.

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70A.205.425 Waste tire removal account—Use of moneys—Transfer of any balance in excess of one million dollars to the motor vehicle account. (1) All receipts from tire fees imposed under RCW 70A.205.405, except as provided in subsection (2) of this section, must be deposited in the waste tire removal account created under RCW 70A.205.415. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used for the cleanup of unauthorized waste tire piles and measures that prevent future accumulation of unauthorized waste tire piles.

(2) On September 1st of odd-numbered years, the state treasurer must transfer any cash balance in excess of one million dollars from the waste tire removal account created under RCW 70A.205.415 to the motor vehicle fund for the purpose of road wear related maintenance on state and local public highways. [2020 c 20 § 1192; 2017 3rd sp.s. c 25 § 10; 2010 c 247 § 704; 2009 c 261 § 4. Formerly RCW 70.95.532.]

Intent—2009 c 261: See note following RCW 70A.205.405.

Additional notes found at www.leg.wa.gov

70A.205.430 Disposition of fee. (1) Every person engaged in making retail sales of new replacement vehicle tires in this state shall retain ten percent of the collected one dollar fee. The moneys retained may be used for costs associated with the proper management of the waste vehicle tires by the retailer.

(2) The department of ecology will administer the funds for the purposes specified in RCW 70A.205.010(6) including, but not limited to:

(a) Making grants to local governments for pilot demonstration projects for on-site shredding and recycling of tires from unauthorized dump sites;

(b) Grants to local government for enforcement programs;

(c) Implementation of a public information and education program to include posters, signs, and informational materials to be distributed to retail tire sales and tire service outlets;

(d) Product marketing studies for recycled tires and alternatives to land disposal. [2020 c 20 § 1193; 1989 c 431 § 93. Formerly RCW 70.95.535.]

70A.205.435 Cooperation with department to aid tire recycling. To aid in the statewide tire recycling campaign, the legislature strongly encourages various industry organizations which are active in resource recycling efforts to provide active cooperation with the department of ecology so that additional technology can be developed for the tire recycling campaign. [1985 c 345 § 9. Formerly RCW 70.95.540.]

70A.205.440 Waste tires—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 70A.205.445 through 70A.205.455.

(1) "Storage" or "storing" means the placing of more than eight hundred waste tires in a manner that does not constitute final disposal of the waste tires.

(2) "Transportation" or "transporting" means picking up or transporting waste tires for the purpose of storage or final disposal.

(3) "Waste tires" means tires that are no longer suitable for their original intended purpose because of wear, damage, or defect. [2020 c 20 § 1194; 1988 c 250 § 3. Formerly RCW 70.95.550.]

70A.205.445 Waste tires—License for transport or storage business—Requirements. Any person engaged in the business of transporting or storing waste tires shall be licensed by the department. To obtain a license, each applicant must:

(1) Provide assurances that the applicant is in compliance with this chapter and the rules regarding waste tire storage and transportation;

(2) Accept liability for and authorize the department to recover any costs incurred in any cleanup of waste tires transported or newly stored by the applicant in violation of this section, or RCW 70A.205.450, 70A.205.410, or 70A.205.460, or rules adopted thereunder, after July 1, 2005;

(3) After January 1, 2006, for waste tires transported or stored before July 1, 2005, or for waste tires transported or stored after July 1, 2005, post a bond in an amount to be determined by the department sufficient to cover the liability for the cost of cleanup of the transported or stored waste tires, in favor of the state of Washington. In lieu of the bond, the applicant may submit financial assurances acceptable to the department;

(4) Be registered in the state of Washington as a business and be in compliance with all state laws, rules, and local ordinances;

(5) Have a federal tax identification number and be in compliance with all applicable federal codes and regulations; and

(6) Report annually to the department the amount of tires transported and their disposition. Failure to report shall result in revocation of the license. [2020 c 20 § 1195; 2009 c 261 § 6; 2005 c 354 § 6; 1988 c 250 § 4. Formerly RCW 70.95.555.]

Intent—2009 c 261: See note following RCW 70A.205.405.

Finding—Intent—Severability—Effective date—2005 c 354: See notes following RCW 70A.205.405.

70A.205.450 Waste tires—Violation of RCW 70A.205.445—Penalty. (1) Any person who transports or stores waste tires without a license in violation of RCW 70A.205.445 shall be guilty of a gross misdemeanor and upon conviction shall be punished under RCW 9A.20.021(2).

(2) Any person who transports or stores waste tires without a license in violation of RCW 70A.205.445 is liable for the costs of cleanup of any and all waste tires transported or stored. This subsection does not apply to the storage of waste tires when the storage of the tires occurred before July 1, 2005, and the storage was licensed in accordance with RCW 70A.205.445 at the time the tires were stored. [2020 c 20 § 1196; 2005 c 354 § 7; 1989 c 431 § 95; 1988 c 250 § 5. Formerly RCW 70.95.560.]

Finding—Intent—Severability—Effective date—2005 c 354: See notes following RCW 70A.205.405.

70A.205.455 Waste tires—Contracts with unlicensed persons prohibited. No business may enter into a contract for:

(1) Transportation of waste tires with an unlicensed waste tire transporter; or

(2) Waste tire storage with an unlicensed owner or operator of a waste tire storage site. [1988 c 250 § 6. Formerly RCW 70.95.565.]

70A.205.460 Limitations on liability. No person or business, having documented proof that it legally transferred possession of waste tires to a validly licensed transporter or storer of waste tires or to a validly permitted recycler, has any further liability related to the waste tires legally transferred. [2005 c 354 § 8. Formerly RCW 70.95.570.]

Finding—Intent—Severability—Effective date—2005 c 354: See notes following RCW 70A.205.405.

70A.205.500 Educational material promoting household waste reduction and recycling. The department of ecology, at the request of a local government jurisdiction, may periodically provide educational material promoting household waste reduction and recycling to public and private refuse haulers. The educational material shall be distributed to households receiving refuse collection service by local governments or the refuse hauler providing service. The refuse hauler may distribute the educational material by any means that assures timely delivery.

Reasonable expenses incurred in the distribution of this material shall be considered, for rate-making purposes, as legitimate operating expenses of garbage and refuse haulers regulated under chapter 81.77 RCW. [1988 c 175 § 3. Formerly RCW 70.95.600.]

Additional notes found at www.leg.wa.gov

70A.205.505 Battery disposal—Restrictions—Violators subject to fine—"Vehicle battery" defined. (1) No person may knowingly dispose of a vehicle battery except by delivery to: A person or entity selling lead acid batteries, a person or entity authorized by the department to accept the battery, or to a secondary lead smelter.

(2) No owner or operator of a solid waste disposal site shall knowingly accept for disposal used vehicle batteries except when authorized to do so by the department or by the federal government.

(3) Any person who violates this section shall be subject to a fine of up to one thousand dollars. Each battery will constitute a separate violation. Nothing in this section and RCW 70A.205.510 through 70A.205.530 shall supersede the provisions under chapter 70A.300 RCW.

(4) For purposes of this section and RCW 70A.205.510 through 70A.205.530, "vehicle battery" means batteries capable for use in any vehicle, having a core consisting of elemental lead, and a capacity of six or more volts. [2020 c 20 § 1197; 1989 c 431 § 37. Formerly RCW 70.95.610.]

70A.205.510 Identification procedure for persons accepting used vehicle batteries. The department shall establish a procedure to identify, on an annual basis, those persons accepting used vehicle batteries from retail establishments. [1989 c 431 § 38. Formerly RCW 70.95.620.]

70A.205.515 Requirements for accepting used batteries by retailers of vehicle batteries—Notice. A person selling vehicle batteries at retail in the state shall:

(1) Accept, at the time of purchase of a replacement battery, in the place where the new batteries are physically transferred to the purchasers, and in a quantity at least equal to the number of new batteries purchased, used vehicle batteries from the purchasers, if offered by the purchasers. When a purchaser fails to provide an equivalent used battery or batteries, the purchaser may reclaim the core charge paid under RCW 70A.205.520 by returning, to the point of purchase within thirty days, a used battery or batteries and a receipt showing proof of purchase from the establishment where the replacement battery or batteries were purchased; and

(2) Post written notice which must be at least eight and one-half inches by eleven inches in size and must contain the universal recycling symbol and the following language:

(a) "It is illegal to put a motor vehicle battery or other vehicle battery in your garbage."

(b) "State law requires us to accept used motor vehicle batteries or other vehicle batteries for recycling, in exchange for new batteries purchased."

(c) "When you buy a battery, state law also requires us to include a core charge of five dollars or more if you do not return your old battery for exchange." [2020 c 20 § 1198; 1989 c 431 § 39. Formerly RCW 70.95.630.]

70A.205.520 Retail core charge. Each retail sale of a vehicle battery shall include, in the price of the battery for sale, a core charge of not less than five dollars. When a purchaser offers the seller a used battery of equivalent size, the seller shall omit the core charge from the price of the battery. [1989 c 431 § 40. Formerly RCW 70.95.640.]

70A.205.525 Vehicle battery wholesalers—Obligations regarding used batteries—Noncompliance procedure. (1) A person selling vehicle batteries at wholesale to a retail establishment in this state shall accept, at the time and place of transfer, used vehicle batteries in a quantity at least equal to the number of new batteries purchased, if offered by the purchaser.

(2) When a battery wholesaler, or agent of the wholesaler, fails to accept used vehicle batteries as provided in this section, a retailer may file a complaint with the department and the department shall investigate any such complaint.

(3)(a) The department shall issue an order suspending any of the provisions of RCW 70A.205.515 through 70A.205.530 whenever it finds that the market price of lead has fallen to the extent that new battery wholesalers' estimated statewide average cost of transporting used batteries to a smelter or other person or entity in the business of purchasing used batteries is clearly greater than the market price paid for used lead batteries by such smelter or person or entity.

(b) The order of suspension shall only apply to batteries that are sold at retail during the period in which the suspension order is effective.

(c) The department shall limit its suspension order to a definite period not exceeding six months, but shall revoke the order prior to its expiration date should it find that the reasons for its issuance are no longer valid. [2020 c 20 § 1199; 1989 c 431 § 41. Formerly RCW 70.95.650.]

(2022 Ed.)

70A.205.530 Department to distribute printed notice—Issuance of warnings and citations—Fines. The department shall produce, print, and distribute the notices required by RCW 70A.205.515 to all places where vehicle batteries are offered for sale at retail and in performing its duties under this section the department may inspect any place, building, or premise governed by RCW 70A.205.520. Authorized employees of the agency may issue warnings and citations to persons who fail to comply with the requirements of RCW 70A.205.505 through 70A.205.535. Failure to conform to the notice requirements of RCW 70A.205.515 shall subject the violator to a fine imposed by the department not to exceed one thousand dollars. However, no such fine shall be imposed unless the department has issued a warning of infraction for the first offense. Each day that a violator does not comply with the requirements of chapter 431, Laws of 1989 following the issuance of an initial warning of infraction shall constitute a separate offense. [2020 c 20 § 1200; 1989 c 431 § 42. Formerly RCW 70.95.660.]

70A.205.535 Rules. The department shall adopt rules providing for the implementation and enforcement of RCW 70A.205.505 through 70A.205.530. [2020 c 20 § 1201; 1989 c 431 § 43. Formerly RCW 70.95.670.]

70A.205.540 Organic solid waste collection services—Fees—Exceptions. (1) Beginning January 1, 2027, in each jurisdiction that implements a local solid waste plan under RCW 70A.205.040:

(a) Source-separated organic solid waste collection services must be provided at least every other week or at least 26 weeks annually to:

(i) All residents; and

(ii) Nonresidential customers that generate more than .25 cubic yard per week of organic materials for management; and

(b) All organic solid waste collected from residents and businesses under (a) of this subsection must be managed through organic materials management.

(2) A jurisdiction may charge and collect fees or rates for the services provided under subsection (1) of this section, consistent with the jurisdiction's authority to impose fees and rates under chapters 35.21, 35A.21, 36.58, and 36.58A RCW.

(3)(a) Except as provided in (d) of this subsection, the requirements of this section do not apply in a jurisdiction if the department determines that the following apply:

(i) The jurisdiction disposed of less than 5,000 tons of solid waste in the most recent year for which data is available;

(ii) The jurisdiction has a total population of less than 25,000 people; or

(iii) The jurisdiction has a total population between 25,000 and 50,000 people and curbside organic solid waste collection services are not offered in any area within the jurisdiction, as of July 1, 2022.

(b) The requirements of this section do not apply:

(i) In census tracts that have a population density of less than 75 people per square mile that are serviced by the jurisdiction and located in unincorporated portions of a county, as determined by the department, in counties not planning under chapter 36.70A RCW; and

(ii) Outside of urban growth areas designated pursuant to RCW 36.70A.110 in unincorporated portions of a county planning under chapter 36.70A RCW.

(c) In addition to the exemptions in (a) and (b) of this subsection, the department may issue a renewable waiver to jurisdictions or portions of a jurisdiction under this subsection for up to five years, based on consideration of factors including the distance to organic materials management facilities, the sufficiency of the capacity to manage organic materials at facilities to which organic materials could feasibly and economically be delivered from the jurisdiction, and restrictions in the transport of organic materials under chapter 17.24 RCW. The department may adopt rules to specify the type of information that a waiver applicant must submit to the department and to specify the department's process for reviewing and approving waiver applications.

(d) Beginning January 1, 2030, the department may adopt a rule to require that the provisions of this section apply in the jurisdictions identified in (b) and (c) of this subsection, but only if the department determines that the goals established in RCW 70A.205.007(1) have not or will not be achieved.

(4) Any city that newly begins implementing an independent solid waste plan under RCW 70A.205.040 after July 1, 2022, must meet the requirements of subsection (1) of this section. [2022 c 180 § 102.]

Findings—Intent—Scope of authority of chapter 180, Laws of 2022—2022 c 180: See notes following RCW 70A.205.007.

70A.205.545 Certain businesses must arrange for organic materials management services—Requirements—Limitations of this section—Definitions. (1)(a) Beginning July 1, 2023, and each July 1st thereafter, the department must determine which counties and any cities preparing independent solid waste management plans:

(i) Provide for businesses to be serviced by providers that collect food waste and organic material waste for delivery to solid waste facilities that provide for the organic materials management of organic material waste and food waste; and

(ii) Are serviced by solid waste facilities that provide for the organic materials management of organic material waste and food waste and have capacity to accept increased volumes of organic materials deliveries.

(b)(i) The department must determine and designate that the restrictions of this section apply to businesses in a jurisdiction unless the department determines that the businesses in some or all portions of the city or county have:

(A) No available businesses that collect and deliver organic materials to solid waste facilities that provide for the organic materials management of organic material waste and food waste; or

(B) No available capacity at the solid waste facilities to which businesses that collect and deliver organic materials could feasibly and economically deliver organic materials from the jurisdiction.

(ii)(A) In the event that a county or city provides written notification to the department indicating that the criteria of (b)(i)(A) of this subsection are met, then the restrictions of this section apply only in those portions of the jurisdiction that have available service-providing businesses.

(B) In the event that a county or city provides written notification to the department indicating that the criteria of (b)(i)(B) of this subsection are met, then the restrictions of this section do not apply to the jurisdiction.

(c) The department must make the result of the annual determinations required under this section available on its website.

(d) The requirements of this section may be enforced by jurisdictional health departments consistent with this chapter, except that:

(i) A jurisdictional health department may not charge a fee to permit holders to cover the costs of the jurisdictional health department's administration or enforcement of the requirements of this section; and

(ii) Prior to issuing a penalty under this section, a jurisdictional health department must provide at least two written notices of noncompliance with the requirements of this section to the owner or operator of a business subject to the requirements of this section.

(2)(a)(i) Beginning January 1, 2024, a business that generates at least eight cubic yards of organic material waste per week must arrange for organic materials management services specifically for organic material waste;

(ii) Beginning January 1, 2025, a business that generates at least four cubic yards of organic material waste per week must arrange for organic materials management services specifically for organic material waste; and

(iii) Beginning January 1, 2026, a business that generates at least four cubic yards of solid waste per week shall arrange for organic materials management services specifically for organic material waste, unless the department determines, by rule, that additional reductions in the landfilling of organic materials would be more appropriately and effectively achieved, at reasonable cost to regulated businesses, through the establishment of a different volumetric threshold of solid waste or organic material waste than the threshold of four cubic yards of solid waste per week.

(b) The following wastes do not count for purposes of determining waste volumes in (a) of this subsection:

(i) Wastes that are managed on-site by the generating business;

(ii) Wastes generated from the growth and harvest of food or fiber that are managed off-site by another business engaged in the growth and harvest of food or fiber;

(iii) Wastes that are managed by a business that enters into a voluntary agreement to sell or donate organic materials to another business for off-site use; and

(iv) Wastes generated in exceptional volumes as a result of a natural disaster or other infrequent and unpreventable event.

(3) A business may fulfill the requirements of this section by:

(a) Source separating organic material waste from other waste, subscribing to a service that includes organic material waste collection and organic materials management, and using such a service for organic material waste generated by the business;

(b) Managing its organic material waste on-site or self-hauling its own organic material waste for organic materials management;

(c) Qualifying for exclusion from the requirements of this section consistent with subsection (1)(b) of this section; or

(d) For a business engaged in the growth, harvest, or processing of food or fiber, entering into a voluntary agreement to sell or donate organic materials to another business for off-site use.

(4)(a) A business generating organic material waste shall arrange for any services required by this section in a manner that is consistent with state and local laws and requirements applicable to the collection, handling, or recycling of solid and organic material waste.

(b) Nothing in this section requires a business to dispose of materials in a manner that conflicts with federal or state public health or safety requirements. Nothing in this section requires businesses to dispose of wastes generated in exceptional volumes as a result of a natural disaster or other infrequent and unpreventable event through the options established in subsection (3) of this section.

(5) When arranging for gardening or landscaping services, the contract or work agreement between a business subject to this section and a gardening or landscaping service must require that the organic material waste generated by those services be managed in compliance with this chapter.

(6)(a) This section does not limit the authority of a local governmental agency to adopt, implement, or enforce a local organic material waste recycling requirement, or a condition imposed upon a self-hauler, that is more stringent or comprehensive than the requirements of this chapter.

(b) This section does not modify, limit, or abrogate in any manner any of the following:

(i) A franchise granted or extended by a city, county, city and county, or other local governmental agency;

(ii) A contract, license, certificate, or permit to collect solid waste previously granted or extended by a city, county, city and county, or other local governmental agency;

(iii) The right of a business to sell or donate its organic materials; and

(iv) A certificate of convenience and necessity issued to a solid waste collection company under chapter 81.77 RCW.

(c) Nothing in this section modifies, limits, or abrogates the authority of a local jurisdiction with respect to land use, zoning, or facility siting decisions by or within that local jurisdiction.

(d) Nothing in this section changes or limits the authority of the Washington utilities and transportation commission to regulate collection of solid waste, including curbside collection of residential recyclable materials, nor does this section change or limit the authority of a city or town to provide the service itself or by contract under RCW 81.77.020.

(7) The definitions in this subsection apply throughout this section unless the context clearly indicates otherwise.

(a)(i) "Business" means a commercial or public entity including, but not limited to, a firm, partnership, proprietorship, joint stock company, corporation, or association that is organized as a for-profit or nonprofit entity.

(ii) "Business" does not include a multifamily residential entity.

(b) "Food waste" has the same meaning as defined in RCW 70A.205.715. [2022 c 180 § 201.]

(2022 Ed.)

Findings—Intent—Scope of authority of chapter 180, Laws of 2022—2022 c 180: See notes following RCW 70A.205.007.

70A.205.550 Data to support the goals of the Washington center for sustainable food management—Voluntary reporting protocols. (1) In order to obtain data as necessary to support the goals of the Washington center for sustainable food management created in RCW 70A.207.020 and to achieve the goals of RCW 70A.205.715(1), the department may establish a voluntary reporting protocol for the receipt of reports by businesses that donate food under RCW 69.80.031 and recipients of the donated food, and may encourage the use of this voluntary reporting protocol by the businesses and recipients. The department may also request that a donating business or recipient of donated food provide information to the department regarding the volumes, types, and timing of food managed by the donating facility or business, and food waste and wasted food generated by the donating facility or business. To the extent practicable, the department must seek to obtain information under this section in a manner compatible with any information reported to the department of agriculture under RCW 43.23.290, and in a manner that minimizes the reporting and information-provision burdens of donating businesses and recipients.

(2) For the purposes of this subsection, "food waste" and "wasted food" have the same meaning as defined in RCW 70A.205.715. [2022 c 180 § 403.]

Findings—Intent—Scope of authority of chapter 180, Laws of 2022—2022 c 180: See notes following RCW 70A.205.007.

70A.205.600 Solid waste incineration or energy recovery facility—Environmental impact statement requirements. No solid waste incineration or energy recovery facility shall be operated prior to the completion of an environmental impact statement containing the considerations required under RCW 43.21C.030(2)(c) and prepared pursuant to the procedures of chapter 43.21C RCW. This section does not apply to a facility operated prior to January 1, 1989, as a solid waste incineration facility or energy recovery facility burning solid waste. [1989 c 431 § 55. Formerly RCW 70.95.700.]

70A.205.605 Incineration of medical waste. Incineration of medical waste shall be conducted under sufficient burning conditions to reduce all combustible material to a form such that no portion of the combustible material is visible in its uncombusted state. [1989 c 431 § 77. Formerly RCW 70.95.710.]

70A.205.610 Sharps waste—Drop-off sites—Pharmacy return program. (1) A solid waste planning jurisdiction may designate sharps waste container drop-off sites.

(2) A pharmacy return program shall not be considered a solid waste handling facility and shall not be required to obtain a solid waste permit. A pharmacy return program is required to register, at no cost, with the department. To facilitate designation of sharps waste drop-off sites, the department shall share the name and location of registered pharmacy return programs with jurisdictional health departments and local solid waste management officials.

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(3) A public or private provider of solid waste collection service may provide a program to collect source separated residential sharps waste containers as provided in chapter 70A.228 RCW.

(4) For the purpose of this section, "sharps waste," "sharps waste container," and "pharmacy return program" shall have the same meanings as provided in RCW 70A.228.010. [2020 c 20 § 1202; 1994 c 165 § 5. Formerly RCW 70.95.715.]

Findings—Purposes—Intent—1994 c 165: See note following RCW 70A.228.010.

70A.205.615 Closure of energy recovery and incineration facilities—Recordkeeping requirements. The department shall require energy recovery and incineration facilities to retain records of monitoring and operation data for a minimum of ten years after permanent closure of the facility. [1990 c 114 § 4. Formerly RCW 70.95.720.]

70A.205.620 Paper conservation program—Paper recycling program. By July 1, 2010, each state agency shall develop and implement:

(1) A paper conservation program. Each state agency shall endeavor to conserve paper by at least thirty percent of their current paper use.

(2) A paper recycling program to encourage recycling of all paper products with the goal of recycling one hundred percent of all copy and printing paper in all buildings with twenty-five employees or more.

(3) For the purposes of this section, "state agencies" include, but are not limited to, colleges, universities, offices of elected and appointed officers, the supreme court, court of appeals, and administrative departments of state government. [2009 c 356 § 1. Formerly RCW 70.95.725.]

70A.205.700 Develop and establish objectives and strategies for the reuse and recycling of construction aggregate and recycled concrete materials. (1) The department of transportation and its implementation partners must collaboratively develop and establish objectives and strategies for the reuse and recycling of construction aggregate and recycled concrete materials. This process must include the development of criteria for the successful and sustainable long-term recycling of construction aggregate and recycled concrete materials in Washington state transportation, roadway, street, highway, and other transportation infrastructure projects.

(2) The department of transportation must, unless construction aggregate and recycled concrete materials are not readily available and cost-effective, specify and annually use a minimum of twenty-five percent construction aggregate and recycled concrete materials on its cumulative transportation, roadway, street, highway, and other transportation infrastructure projects.

(3)(a) All local governmental entities with a population of one hundred thousand residents or more must, as part of their contracting process, request and accept bids that include the use of construction aggregate and recycled concrete materials for each transportation, roadway, street, highway, and other transportation infrastructure project.

(b) Prior to awarding a contract for a transportation, roadway, street, highway, or other transportation infrastructure project, the local governmental entity must compare the lowest responsible bid proposing to use construction aggregate and recycled concrete materials with the lowest responsible bid not proposing to use construction aggregate and recycled concrete materials, and award the contract to the bidder proposing to use the highest percentage of construction aggregate and recycled concrete materials if that bid is the same as, or less than, a bidder not proposing to use construction aggregate and recycled concrete materials or proposing to use a lower percentage of construction aggregate and recycled concrete materials.

(4) Any local governmental entity with a population of less than one hundred thousand residents must:

(a) Review and determine the capacity for recycling and reuse of construction aggregate and recycled concrete materials for roadway, street, highway, and other transportation infrastructure projects in its jurisdiction;

(b) Establish practical and applicable strategies to recycle and reuse construction aggregate and recycled concrete materials for roadway, street, highway, and other transportation infrastructure projects in its jurisdiction; and

(c) Upon the completion of the review and strategy development, begin implementing the strategies to achieve the recycling and reuse objectives established for its jurisdiction.

(5) The applications and related specification standards for state and local transportation and infrastructure projects that reuse and recycle construction aggregate and recycled concrete materials to be used in the implementation of this section are outlined in the department of transportation's standard specifications for road, bridge, and municipal construction, section 9-03.21, table 9-03.21(1)E.

(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Construction aggregate and recycled concrete materials" means reclaimed coarse and fine aggregate cement and concrete mixtures as commonly defined by the American public works association, the federal highway administration, and department of transportation specifications.

(b) "Implementation partners" means local governmental entities and interested Washington-based associations representing the appropriate sectors of the construction industry.

(c) "Local governmental entities" means cities or counties. [2015 c 142 § 2. Formerly RCW 70.95.805.]

Findings—2015 c 142: "(1) The legislature finds that the Washington state highway system is extensive, with over one hundred seventy-five thousand miles of public, city, county, and state highway pavements and over eight thousand seven hundred built structures, built using large quantities of construction aggregates, asphalt, concrete, steel, and cement. Much of our transportation and infrastructure system is in need of major rehabilitation or total reconstruction. These natural resource construction materials used to build our existing system are too valuable to be wasted and landfilled. Some of the best natural construction materials produced in Washington state are already in use for highways, bridges, and building construction. Effective and responsible recycling is an effective life-cycle strategy to reuse these construction materials in the construction of new state and local transportation and infrastructure projects as well as to repair, reconstruct, and maintain them.

(2) The legislature further finds that the recycling of aggregates and other transportation construction materials makes sound economic, environmental, and engineering sense and is in keeping with meeting Washington state's greenhouse gas reduction priorities. The economic benefits from the

reuse and recycling of these valuable, finite, and nonrenewable materials can be very effective in reducing the cost of designing, engineering, and construction of new transportation projects and will make greater use of limited state and local transportation funds for additional highway construction, rehabilitation, preservation, or maintenance projects.

(3) The legislature further finds that the reuse of construction aggregate and recycled concrete materials into new transportation and infrastructure structure projects is known to:

(a) Promote the conservation and protection of permitted and unpermitted construction aggregate resources;

(b) Reduce the need for the consumption of new construction aggregate materials;

(c) Encourage the reuse and recycling of currently classified waste materials and discourage landfilling of valuable natural resources;

(d) Reduce waste, preserve finite landfill space, and reduce illegal dumping by encouraging reuse and recycling through sound and practical environmental best management and handling practices;

(e) Reduce truck trips and related transportation emissions;

(f) Reduce greenhouse gases related to the construction of new transportation projects, reduce embodied energy, and improve and advance the sustainable principles and practices of the state of Washington and its transportation system;

(g) Reduce project material and construction costs for state and local level projects; and

(h) Be consistent with the governor's executive order No. 13-04 (September 2013), the state department of transportation sustainability executive order No. E1082.00 (August 2012), and presidential executive order No. 13423 (January 2007)." [2015 c 142 § 1.]

Effective date—2015 c 142: "This act takes effect January 1, 2016." [2015 c 142 § 4.]

70A.205.710 Composting food and yard wastes—Grants and study. (1) In order to establish the feasibility of composting food and yard wastes, the department shall provide funds, as available, to local governments submitting a proposal to compost such wastes.

(2) The department, in cooperation with the *department of community, trade, and economic development, may approve an application if the project can demonstrate the essential parameters for successful composting, including, but not limited to, cost-effectiveness, handling and safety requirements, and current and potential markets. [1998 c 245 § 132; 1995 c 399 § 191; 1989 c 431 § 97. Formerly RCW 70.95.810.]

*Reviser's note: The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

70A.205.715 Food waste reduction—Goal—Plan—Definitions. (1) A goal is established for the state to reduce by fifty percent the amount of food waste generated annually by 2030, relative to 2015 levels. A subset of this goal must include a prevention goal to reduce the amount of edible food that is wasted.

(2) The department may estimate 2015 levels of wasted food in Washington using any combination of solid waste reporting data obtained under this chapter and surveys and studies measuring wasted food and food waste in other jurisdictions. For the purposes of measuring progress towards the goal in subsection (1) of this section, the department must adopt standardized metrics and processes for measuring or estimating volumes of wasted food and food waste generated in the state.

(3) By October 1, 2020, the department, in consultation with the department of agriculture and the department of health, must develop and adopt a state wasted food reduction and food waste diversion plan designed to achieve the goal established in subsection (1) of this section.

(a) The wasted food reduction and food waste diversion plan must include strategies, in descending order of priority, to:

(i) Prevent and reduce the wasting of edible food by residents and businesses;

(ii) Help match and support the capacity for edible food that would otherwise be wasted with food banks and other distributors that will ensure the food reaches those who need it; and

(iii) Support productive uses of inedible food materials, including using it for animal feed, energy production through anaerobic digestion, or other commercial uses, and for off-site or on-site management systems including composting, vermicomposting, or other biological systems.

(b) The wasted food reduction and food waste diversion plan must be designed to:

(i) Recommend a regulatory environment that optimizes activities and processes to rescue safe, nutritious, edible food;

(ii) Recommend a funding environment in which stable, predictable resources are provided to wasted food prevention and rescue and food waste recovery activities in such a way as to allow the development of additional capacity and the use of new technologies;

(iii) Avoid placing burdensome regulations on the hunger relief system, and ensure that organizations involved in wasted food prevention and rescue, and food waste recovery, retain discretion to accept or reject donations of food when appropriate;

(iv) Provide state technical support to wasted food prevention and rescue and food waste recovery organizations;

(v) Support the development and distribution of equitable materials to support food waste and wasted food educational and programmatic efforts in K-12 schools, in collaboration with the office of the superintendent of public instruction, and aligned with the Washington state science and social studies learning standards; and

(vi) Facilitate and encourage restaurants and other retail food establishments to safely donate food to food banks and food assistance programs through education and outreach to retail food establishment operators regarding safe food donation opportunities, practices, and benefits.

(c) The wasted food reduction and food waste diversion plan must include suggested best practices that local governments may incorporate into solid waste management plans developed under RCW 70A.205.040.

(d) The department must solicit feedback from the public and interested stakeholders throughout the process of developing and adopting the wasted food reduction and food waste diversion plan. To assist with its food waste reduction plan development responsibilities, the department may designate a stakeholder advisory panel. If the department designates a stakeholder advisory panel, it must consist of local government health departments, local government solid waste departments, food banks, hunger-focused nonprofit organizations, waste-focused nonprofit organizations, K-12 public education, and food businesses or food business associations.

(e) The department must identify the sources of scientific, economic, or other technical information it relied upon in developing the plan required under this section, including peer-reviewed science.

(f) In conjunction with the development of the wasted food reduction and food waste diversion plan, the department and the departments of agriculture and health must consider recommending changes to state law, including changes to food quality, labeling, and inspection requirements under chapter 69.80 RCW and any changes in laws relating to the donation of food waste or wasted food for animals, in order to achieve the goal established in subsection (1) of this section. Any such recommendations must be explained via a report to the legislature submitted consistent with RCW 43.01.036 by December 1, 2020. Prior to any implementation of the plan, for the activities, programs, or policies in the plan that would impose new obligations on state agencies, local governments, businesses, or citizens, the December 1, 2020, report must outline the plan for making regulatory changes identified in the report. This outline must include the department or the appropriate state agency's plan to make recommendations for statutory or administrative rule changes identified. In combination with any identified statutory or administrative rule changes, the department or the appropriate state agency must include expected cost estimates for both government entities and private persons or businesses to comply with any recommended changes.

(4) In support of the development of the plan in subsection (3) of this section, the department of commerce must contract for an independent evaluation of the state's food waste and wasted food management system.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a)(i) "Food waste" means waste from fruits, vegetables, meats, dairy products, fish, shellfish, nuts, seeds, grains, and similar materials that results from the storage, preparation, cooking, handling, selling, or serving of food for human consumption.

(ii) "Food waste" includes, but is not limited to, excess, spoiled, or unusable food and includes inedible parts commonly associated with food preparation such as pits, shells, bones, and peels. "Food waste" does not include dead animals not intended for human consumption or animal excrement.

(b) "Prevention" refers to avoiding the wasting of food in the first place and represents the greatest potential for cost savings and environmental benefits for businesses, governments, and consumers.

(c) "Recovery" refers to processing inedible food waste to extract value from it, through composting, anaerobic digestion, or for use as animal feedstock.

(d) "Rescue" refers to the redistribution of surplus edible food to other users.

(e) "Wasted food" means the edible portion of food waste. [2020 c 20 § 1204; 2019 c 255 § 2. Formerly RCW 70.95.815.]

Finding—Intent—2019 c 255: "(1) The legislature finds that the wasting of food represents a misuse of resources, including the water, land, energy, labor, and capital that go into growing, harvesting, processing, transporting, and retailing food for human consumption. Wasting edible food occurs all along the food production supply chain, and reducing the waste of edible food is a goal that can be achieved only with the collective efforts of growers, processors, distributors, retailers, consumers of food, and food bankers and related charities. Inedible food waste can be managed in ways that reduce negative environmental impacts and provide beneficial results to the land, air, soil, and energy infrastructure. Efforts to reduce the waste of food and expand the diversion of food waste to beneficial end uses will also require the mindful support of government policies that shape the behavior

and waste reduction opportunities of each of those participants in the food supply chain.

(2) Every year, American consumers, businesses, and farms spend billions of dollars growing, processing, transporting, and disposing of food that is never eaten. That represents tens of millions of tons of food sent to landfills annually, plus millions of tons more that are discarded or left unharvested on farms. Worldwide, the United Nations food and agriculture organization has estimated that if one-fourth of the food lost or wasted globally could be saved, it would be enough to feed eight hundred seventy million hungry people. Meanwhile, one in eight Americans is food insecure, including one in six children. Recent data from the department of ecology indicate that Washington is not immune to food waste problems, and recent estimates indicate that seventeen percent of all garbage sent to Washington disposal facilities is food waste, including eight percent that is food that was determined to be edible at the time of disposal. In recognition of the widespread benefits that would accrue from reductions in food waste, in 2015, the administrator of the United States environmental protection agency and the secretary of the United States department of agriculture announced a national goal of reducing food waste by fifty percent by 2030. The Pacific Coast collaborative recently agreed to a similar commitment of halving food waste by 2030, including efforts to prevent, rescue, and recover wasted food.

(3) By establishing state wasted food reduction goals and developing a state wasted food reduction strategy, it is the intent of the legislature to continue its national leadership in solid waste reduction efforts by:

(a) Improving efficiencies in the food production and distribution system in order to reduce the cradle to grave greenhouse gas emissions associated with wasted food;

(b) Fighting hunger by more efficiently diverting surplus food to feed hungry individuals and families in need; and

(c) Supporting expansion of management facilities for inedible food waste to improve access and facility performance while reducing the volumes of food that flow through those facilities." [2019 c 255 § 1.]

70A.205.900 Authority and responsibility of utilities and transportation commission not changed. Nothing in this act shall be deemed to change the authority or responsibility of the Washington utilities and transportation commission to regulate all intrastate carriers. [1969 ex.s. c 134 § 27. Formerly RCW 70.95.900.]

70A.205.901 Application of chapter—Collection and transportation of recyclable materials by recycling companies or nonprofit entities—Reuse or reclamation. Nothing in this chapter shall prevent a recycling company or nonprofit entity from collecting and transporting recyclable materials from a buy-back center, drop-box, or from a commercial or industrial generator of recyclable materials, or upon agreement with a solid waste collection company.

Nothing in this chapter shall be construed as prohibiting a commercial or industrial generator of commercial recyclable materials from selling, conveying, or arranging for transportation of such material to a recycler for reuse or reclamation. [1989 c 431 § 32. Formerly RCW 70.95.903.]

70A.205.902 Application of chapter—Steel slag. Nothing in this chapter is applicable to steel slag that is a primary product of production in the electric arc steel-making process, produced to specification, managed as an item of commercial value, and placed in commerce for general public consumption, provided that such steel slag material is not abandoned, discarded, or placed in the solid waste stream. [2016 c 165 § 1. Formerly RCW 70.95.904.]

Chapter 70A.207 RCW

WASHINGTON CENTER FOR SUSTAINABLE FOOD MANAGEMENT

Sections

- 70A.207.010 Definitions.
 70A.207.020 Washington center for sustainable food management—Established—Purpose—Authorized activities—Rules.
 70A.207.030 Model ordinances—Mechanisms for commercial solid waste collection and disposal.

70A.207.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Center" means the Washington center for sustainable food management.
 (2) "Department" means the department of ecology.
 (3) "Organic material" has the same definition as provided in RCW 70A.205.015.
 (4) "Plan" means the use food well Washington plan developed under RCW 70A.205.715. [2022 c 180 § 401.]

Findings—Intent—Scope of authority of chapter 180, Laws of 2022—2022 c 180: See notes following RCW 70A.205.007.

70A.207.020 Washington center for sustainable food management—Established—Purpose—Authorized activities—Rules. (1) The Washington center for sustainable food management is established within the department, to begin operations by January 1, 2024.

- (2) The purpose of the center is to help coordinate statewide food waste reduction.
 (3) The center may perform the following activities:
 (a) Coordinate the implementation of the plan;
 (b) Draft plan updates and measure progress towards actions, strategies, and the statewide goals established in RCW 70A.205.007 and 70A.205.715(1);
 (c) Maintain a website with current food waste reduction information and guidance for food service establishments, consumers, food processors, hunger relief organizations, and other sources of food waste;
 (d) Provide staff support to multistate food waste reduction initiatives in which the state is participating;
 (e) Maintain the consistency of the plan and other food waste reduction activities with the work of the Washington state conservation commission's food policy forum;
 (f) Facilitate and coordinate public-private and nonprofit partnerships focused on food waste reduction, including through voluntary working groups;
 (g) Collaborate with federal, state, and local government partners on food waste reduction initiatives;
 (h) Develop and maintain maps or lists of locations of the food systems of Washington that identify food flows, where waste occurs, and opportunities to prevent food waste;
 (i)(i) Collect and maintain data on food waste and wasted food in a manner that is generally consistent with the methods of collecting and maintaining such data used by federal agencies or in other jurisdictions, or both, to the greatest extent practicable;
 (ii) Develop measurement methodologies and tools to uniformly track food donation data, food waste prevention data, and associated climate impacts resultant from food waste reduction efforts;

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(j) Research and develop emerging organic materials and food waste reduction markets;

(k)(i) Develop and maintain statewide food waste reduction and food waste contamination reduction campaigns, in consultation with other state agencies and other stakeholders, including the development of waste prevention and food waste recovery promotional materials for distribution. These promotional materials may include online information, newsletters, bulletins, or handouts that inform food service establishment operators about the protections from civil and criminal liability under federal law and under RCW 69.80.031 when donating food; and

(ii) Develop guidance to support the distribution of promotional materials, including distribution by:

(A) Local health officers, at no cost to regulated food service establishments, including as part of normal, routine inspections of food service establishments; and

(B) State agencies, including the department of health and the department of agriculture, in conjunction with their statutory roles and responsibilities in regulating, monitoring, and supporting safe food supply chains and systems;

(l) Distribute and monitor grants dedicated to food waste prevention, rescue, and recovery; and

(m) Research and provide education, outreach, and technical assistance to local governments in support of the adoption of solid waste ordinances or policies that establish a financial disincentive for the generation of organic waste and for the ultimate disposal of organic materials in landfills.

(4) The department may enter into an interagency agreement with the department of health, the department of agriculture, or other state agencies as necessary to fulfill the responsibilities of the center.

(5) The department may adopt any rules necessary to implement this chapter including, but not limited to, measures for the center's performance. [2022 c 180 § 402.]

Findings—Intent—Scope of authority of chapter 180, Laws of 2022—2022 c 180: See notes following RCW 70A.205.007.

70A.207.030 Model ordinances—Mechanisms for commercial solid waste collection and disposal. (1) By January 1, 2025, and in consultation with the office of the attorney general, the department must research and adopt several model ordinances for optional use by counties and cities that provide for model mechanisms for commercial solid waste collection and disposal that are designed, in part, to establish a financial disincentive or other disincentives for the generation of organic waste and for the ultimate disposal of organic materials in landfills. The model ordinances must be designed to provide options that might be preferred by jurisdictions of different sizes and consider other key criteria applicable to local solid waste management circumstances.

(2)(a) The department must review the model ordinances created in this section under the provisions of chapter 43.21C RCW.

(b) A county or city that adopts a model ordinance created by the department under this section and that has been reviewed by the department under the provisions of chapter 43.21C RCW is not required to review the ordinance under the provisions of chapter 43.21C RCW.

(3) No city, town, or county is required to adopt the model ordinances created in this section. [2022 c 180 § 405.]

Findings—Intent—Scope of authority of chapter 180, Laws of 2022—2022 c 180: See notes following RCW 70A.205.007.

Chapter 70A.210 RCW
POLLUTION CONTROL—MUNICIPAL BONDING
AUTHORITY

Sections

70A.210.010	Legislative declaration—Liberal construction.
70A.210.020	Definitions.
70A.210.030	Municipalities—Powers.
70A.210.040	Actions by municipalities validated.
70A.210.050	Municipalities—Revenue bonds for pollution control facilities—Authorized—Construction—Sale, conditions—Form, terms.
70A.210.060	Proceeds of bonds are separate trust funds—Municipal treasurer, compensation.
70A.210.070	Revenue bonds—Security—Scope—Default—Authorization proceedings.
70A.210.080	Facilities—Leases authorized.
70A.210.090	Facilities—Revenue bonds—Refunding provisions.
70A.210.100	Revenue bonds—Disposition of proceeds.
70A.210.110	Facilities—Sale or lease—Certain restrictions on municipalities not applicable.
70A.210.120	Facilities—Department of ecology certification.
70A.210.900	Construction—1973 c 132.
70A.210.901	Construction—1975 c 6.
70A.210.902	Acquisitions by port districts under RCW 53.08.040—Prior rights or obligations.

70A.210.010 Legislative declaration—Liberal construction. The legislature finds:

(1) That environmental damage seriously endangers the public health and welfare;

(2) That such environmental damage results from air, water, and other resources pollution and from solid waste disposal, noise and other environmental problems;

(3) That to abate or control such environmental damage antipollution devices, equipment, and facilities must be acquired, constructed and installed;

(4) That the tax exempt financing permitted by Section 103 of the Internal Revenue Code of 1954, as amended, and authorized by this chapter results in lower costs of installation of pollution control facilities;

(5) That such lower costs benefit the public with no measurable cost impact;

(6) That the method of financing provided in this chapter is in the public interest and its use serves a public purpose in (a) protecting and promoting the health and welfare of the citizens of the cities, towns, counties, and port districts and of this state by encouraging and accelerating the installation of facilities for abating or controlling and preventing environmental damage and (b) in attracting and retaining environmentally sound industry in this state which reduces unemployment and provides a more diversified tax base.

(7) For the reasons set forth in subsection (6) of this section, the provisions of this chapter relating to port districts and all proceedings heretofore or hereafter taken by port districts pursuant thereto are, and shall be deemed to be, for industrial development as authorized by Article 8, section 8 of the Washington state Constitution.

This chapter shall be liberally construed to accomplish the intentions expressed in this section. [1975 c 6 § 1; 1973 c 132 § 2. Formerly RCW 70.95A.010.]

70A.210.020 Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Department" shall mean the state department of ecology;

(2) "Facility" or "facilities" shall mean any land, building, structure, machinery, system, fixture, appurtenance, equipment or any combination thereof, or any interest therein, and all real and personal properties deemed necessary in connection therewith whether or not now in existence, which is used or to be used by any person, corporation or municipality in furtherance of the purpose of abating, controlling or preventing pollution;

(3) "Governing body" shall mean the body or bodies in which the legislative powers of the municipality are vested;

(4) "Mortgage" shall mean a mortgage or a mortgage and deed of trust or other security device;

(5) "Municipality" shall mean any city, town, county, port district, or water-sewer district in the state; and

(6) "Pollution" shall mean any form of environmental pollution, including but not limited to water pollution, air pollution, land pollution, solid waste disposal, thermal pollution, radiation contamination, or noise pollution. [2017 c 314 § 3; 1973 c 132 § 3. Formerly RCW 70.95A.020.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

70A.210.030 Municipalities—Powers. In addition to any other powers which it may now have, each municipality shall have the following powers:

(1) To acquire, whether by construction, purchase, devise, gift or lease, or any one or more of such methods, one or more facilities which shall be located within, or partially within the municipality;

(2) To lease, lease with option to purchase, sell or sell by installment sale, any or all of the facilities upon such terms and conditions as the governing body may deem advisable but which shall at least fully reimburse the municipality for all debt service on any bonds issued to finance the facilities and for all costs incurred by the municipality in financing and operating the facilities and as shall not conflict with the provisions of this chapter;

(3) To issue revenue bonds for the purpose of defraying the cost of acquiring or improving any facility or facilities or refunding any bonds issued for such purpose and to secure the payment of such bonds as provided in this chapter. Revenue bonds may be issued in one or more series or issues where deemed advisable, and each such series or issue may have the same or different maturity dates, interest rates, priorities on revenues available for payment of such bonds and priorities on security available for assuring payment thereof, and such other differing terms and conditions as are deemed necessary and are not in conflict with the provisions of this chapter. [1973 c 132 § 4. Formerly RCW 70.95A.030.]

70A.210.040 Actions by municipalities validated. All actions heretofore taken by any municipality in conformity with the provisions of this chapter and the provisions of chapter 6, Laws of 1975 hereby made applicable thereto relating to pollution control facilities, including but not limited to all bonds issued for such purposes, are hereby declared to be valid, legal and binding in all respects. [1975 c 6 § 4. Formerly RCW 70.95A.035.]

*Port districts—Pollution control facilities or other industrial development—
Validation: RCW 53.08.041.*

70A.210.050 Municipalities—Revenue bonds for pollution control facilities—Authorized—Construction—Sale, conditions—Form, terms. (1) All bonds issued by a municipality under the authority of this chapter shall be secured solely by revenues derived from the lease or sale of the facility. Bonds and any interest coupons issued under the authority of this chapter shall not constitute nor give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers. Such limitation shall be plainly stated upon the face of each of such bonds. The use of the municipality's name on revenue bonds authorized hereunder shall not be construed to be the giving or lending of the municipality's financial guarantee or pledge, i.e. credit to any private person, firm, or corporation as the term credit is used in Article 8, section 7 of the Washington state Constitution.

(2) The bonds referred to in subsection (1) of this section, may (a) be executed and delivered at any time and from time to time, (b) be in such form and denominations, (c) be of such tenor, (d) be in bearer or registered form either as to principal or interest or both, as provided in RCW 39.46.030, and may provide for conversion between registered and coupon bonds of varying denominations, (e) be payable in such installments and at such time or times not exceeding forty years from their date, (f) be payable at such place or places, (g) bear interest at such rate or rates as may be determined by the governing body, payable at such place or places within or without this state and evidenced in such manner, (h) be redeemable prior to maturity, with or without premium, and (i) contain such provisions not inconsistent herewith, as shall be deemed for the best interest of the municipality and provided for in the proceedings of the governing body whereunder the bonds shall be authorized to be issued.

(3) Any bonds issued under the authority of this chapter, may be sold at public or private sale in such manner and at such time or times as may be determined by the governing body to be most advantageous. The municipality may pay all expenses, premiums and commissions which the governing body may deem necessary or advantageous in connection with the authorization, sale and issuance thereof from the proceeds of the sale of said bonds or from the revenues of the facilities.

(4) All bonds issued under the authority of this chapter, and any interest coupons applicable thereto shall be investment securities within the meaning of the uniform commercial code and shall be deemed to be issued by a political subdivision of the state.

(5) The proceeds from any bonds issued under this chapter shall be used only for purposes qualifying under Section 103(c)(4)(f) of the Internal Revenue Code of 1954, as amended.

(6) Notwithstanding subsections (2) and (3) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 174; 1975 c 6 § 3; 1973 c 132 § 5. Formerly RCW 70.95A.040.]

*Port districts—Pollution control facilities or other industrial development—
Validation: RCW 53.08.041.*

Additional notes found at www.leg.wa.gov

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70A.210.060 Proceeds of bonds are separate trust funds—Municipal treasurer, compensation. The proceeds of any bonds heretofore or hereafter issued in conformity with the authority of this chapter, together with interest and premiums thereon, and any revenues used to pay or redeem any of such bonds, together with interest and any premiums thereon, shall be separate trust funds and used only for the purposes permitted herein and shall not be considered to be money of the municipality. The services of the treasurer of a municipality, if such treasurer is or has been used, were and are intended to be for the administrative convenience of receipt and payment of nonpublic moneys only for which reasonable compensation may be charged by such treasurer or municipality. [1975 c 6 § 2. Formerly RCW 70.95A.045.]

*Port districts—Pollution control facilities or other industrial development—
Validation: RCW 53.08.041.*

70A.210.070 Revenue bonds—Security—Scope—Default—Authorization proceedings. (1) The principal of and interest on any bonds issued under the authority of this chapter (a) shall be secured by a pledge of the revenues derived from the sale or lease of the facilities out of which such bonds shall be made payable, (b) may be secured by a mortgage covering all or any part of the facilities, (c) may be secured by a pledge or assignment of the lease of such facilities, or (d) may be secured by a trust agreement or such other security device as may be deemed most advantageous by the governing body.

(2) The proceedings under which the bonds are authorized to be issued under the provisions of this chapter, and any mortgage given to secure the same may contain any agreements and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting (a) the fixing and collection of rents for any facilities covered by such proceedings or mortgage, (b) the terms to be incorporated in the lease of such facilities, (c) the maintenance and insurance of such facilities, (d) the creation and maintenance of special funds from the revenues of such facilities, and (e) the rights and remedies available in the event of a default to the bond owners or to the trustee under a mortgage or trust agreement, all as the governing body shall deem advisable and as shall not be in conflict with the provisions of this chapter: PROVIDED, That in making any such agreements or provisions a municipality shall not have the power to obligate itself except with respect to the facilities and the application of the revenues therefrom, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers.

(3) The proceedings authorizing any bonds under the provisions of this chapter and any mortgage securing such bonds may provide that, in the event of a default in the payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or mortgage, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the facilities in accordance with such proceedings or the provisions of such mortgage.

(4) Any mortgage made under the provisions of this chapter, to secure bonds issued thereunder, may also provide

that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and the mortgaged property sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the owner of any of the bonds secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor. No breach of any such agreement shall impose any pecuniary liability upon a municipality or any charge upon their general credit or against their taxing powers.

(5) The proceedings authorizing the issuance of bonds hereunder may provide for the appointment of a trustee or trustees for the protection of the owners of the bonds, whether or not a mortgage is entered into as security for such bonds. Any such trustee may be a bank with trust powers or a trust company and shall be located in the United States, within or without the state of Washington, shall have the immunities, powers and duties provided in said proceedings, and may, to the extent permitted by such proceedings, hold and invest funds deposited with it in direct obligations of the United States, obligations guaranteed by the United States or certificates of deposit of a bank (including the trustee) which are continuously secured by such obligations of or guaranteed by the United States. Any bank acting as such trustee may, to the extent permitted by such proceedings, buy bonds issued hereunder to the same extent as if it were not such trustee. Said proceedings may provide for one or more co-trustees, and any co-trustee may be any competent individual over the age of twenty-one years or a bank having trust powers or trust company within or without the state. The proceedings authorizing the bonds may provide that some or all of the proceeds of the sale of the bonds, the revenues of any facilities, the proceeds of the sale of any part of a facility, of any insurance policy or of any condemnation award be deposited with the trustee or a co-trustee and applied as provided in said proceedings. [1983 c 167 § 175; 1973 c 132 § 6. Formerly RCW 70.95A.050.]

Additional notes found at www.leg.wa.gov

70A.210.080 Facilities—Leases authorized. Prior to the issuance of the bonds authorized by this chapter, the municipality may lease the facilities to a lessee or lessees under an agreement providing for payment to the municipality of such rentals as will be sufficient (a) to pay the principal of and interest on the bonds issued to finance the facilities, (b) to pay the taxes on the facilities, (c) to build up and maintain any reserves deemed by the governing body to be advisable in connection therewith, and (d) unless the agreement of lease obligates the lessees to pay for the maintenance and insurance of the facilities, to pay the costs of maintaining the facilities in good repair and keeping the same properly insured. Subject to the limitations of this chapter, the lease or extensions or modifications thereof may contain such other terms and conditions as may be mutually acceptable to the parties, and notwithstanding any other provisions of law relating to the sale of property owned by municipalities, such lease may contain an option for the lessees to purchase the facilities on such terms and conditions with or without consideration as may be mutually acceptable to the parties. [1973 c 132 § 7. Formerly RCW 70.95A.060.]

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70A.210.090 Facilities—Revenue bonds—Refunding provisions. Any bonds issued under the provisions of this chapter and at any time outstanding may at any time and from time to time be refunded by a municipality by the issuance of its refunding bonds in such amount as the governing body may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds to be so refunded, together with any unpaid interest thereon and any premiums and commissions necessary to be paid in connection therewith: PROVIDED, That an issue of refunding bonds may be combined with an issue of additional revenue bonds on any facilities. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby: PROVIDED FURTHER, That the owners of any bonds to be so refunded shall not be compelled without their consent to surrender their bonds for payment or exchange except on the terms expressed on the face thereof. Any refunding bonds issued under the authority of this chapter shall be subject to the provisions contained in RCW 70A.210.050 and may be secured in accordance with the provisions of RCW 70A.210.070. [2020 c 20 § 1205; 1983 c 167 § 176; 1973 c 132 § 8. Formerly RCW 70.95A.070.]

Additional notes found at www.leg.wa.gov

70A.210.100 Revenue bonds—Disposition of proceeds. The proceeds from the sale of any bonds issued under authority of this chapter shall be applied only for the purpose for which the bonds were issued: PROVIDED, That any accrued interest and premium received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold: AND PROVIDED FURTHER, That if for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then such unneeded portion of said proceeds shall be applied to the payment of the principal of or the interest on said bonds. The cost of acquiring or improving any facilities shall be deemed to include the following: The actual cost of acquiring or improving real estate for any facilities; the actual cost of construction of all or any part of the facilities which may be constructed, including architects' and engineers' fees, all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition or improvements; and the interest on such bonds for a reasonable time prior to construction, during construction, and for a time not exceeding six months after completion of construction. [1973 c 132 § 9. Formerly RCW 70.95A.080.]

70A.210.110 Facilities—Sale or lease—Certain restrictions on municipalities not applicable. The facilities shall be constructed, reconstructed, and improved and shall be leased, sold or otherwise disposed of in the manner determined by the governing body in its sole discretion and any requirement of competitive bidding, lease performance bonds or other restriction imposed on the procedure for award of contracts for such purpose or the lease, sale or other disposition of a municipality is not applicable to any

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action taken under authority of this chapter. [1973 c 132 § 10. Formerly RCW 70.95A.090.]

70A.210.120 Facilities—Department of ecology certification. Upon request by a municipality or by a user of the facilities the department of ecology may in relation to chapter 54, Laws of 1972 ex. sess. and this chapter issue its certificate stating that the facilities (1) as designed are in furtherance of the purpose of abating, controlling or preventing pollution, and/or (2) as designed or as operated meet state and local requirements for the control of pollution. This section shall not be construed as modifying the provisions of RCW 82.34.030; chapter 70A.15 RCW; or chapter 90.48 RCW. [2020 c 20 § 1206; 1973 c 132 § 11. Formerly RCW 70.95A.100.]

70A.210.900 Construction—1973 c 132. Nothing in this chapter shall be construed as a restriction or limitation upon any powers which a municipality might otherwise have under any laws of this state, but shall be construed as cumulative. [1973 c 132 § 12. Formerly RCW 70.95A.910.]

70A.210.901 Construction—1975 c 6. This 1975 amendatory act shall be liberally construed to accomplish the intention expressed herein. [1975 c 6 § 6. Formerly RCW 70.95A.912.]

Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.

70A.210.902 Acquisitions by port districts under RCW 53.08.040—Prior rights or obligations. All acquisitions by port districts pursuant to RCW 53.08.040 may, at the option of a port commission, be deemed to be made under this chapter, or under both: PROVIDED, That nothing contained in this chapter shall impair rights or obligations under contracts entered into before March 19, 1973. [1973 c 132 § 14. Formerly RCW 70.95A.930.]

Chapter 70A.212 RCW DOMESTIC WASTE TREATMENT PLANTS— OPERATORS

Sections

70A.212.010	Legislative declaration.
70A.212.020	Definitions.
70A.212.030	Wastewater treatment plant operators—Certification required.
70A.212.040	Administration of chapter—Rules and regulations—Director's duties.
70A.212.050	Wastewater treatment plants—Classification.
70A.212.060	Criteria and guidelines.
70A.212.070	Ad hoc advisory committees.
70A.212.080	Certificates—When examination not required.
70A.212.090	Certificates—Issuance and renewal conditions.
70A.212.100	Certificates—Fees—Department duties.
70A.212.110	Certificates—Revocation procedures.
70A.212.120	Administration of chapter—Powers and duties of director.
70A.212.130	Licenses or certificates—Suspension for noncompliance with support order—Reissuance.
70A.212.140	Violations.
70A.212.150	Certificates—Reciprocity with other states.
70A.212.160	Penalties for violations—Injunctions.
70A.212.170	Wastewater treatment plant operator certification account—Administration of chapter—Receipts.
70A.212.900	Effective date—1973 c 139.

Public water supply systems—Certification and regulation of operators: Chapter 70A.120 RCW.

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70A.212.010 Legislative declaration. The legislature declares that competent operation of waste treatment plants plays an important part in the protection of the environment of the state and therefore it is of vital interest to the public. In order to protect the public health and to conserve and protect the water resources of the state, it is necessary to provide for the classifying of all domestic wastewater treatment plants; to require the examination and certification of the persons responsible for the supervision and operation of such systems; and to provide for the promulgation of rules and regulations to carry out this chapter. [1973 c 139 § 1. Formerly RCW 70.95B.010.]

70A.212.020 Definitions. As used in this chapter unless context requires another meaning:

(1) "Certificate" means a certificate of competency issued by the director stating that the operator has met the requirements for the specified operator classification of the certification program.

(2) "Department" means the department of ecology.

(3) "Director" means the director of the department of ecology.

(4) "Nationally recognized association of certification authorities" shall mean that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of potable water treatment plants, water distribution systems and wastewater facilities and certification of operators, facilitates reciprocity between state programs and assists authorities in establishing new certification programs and updating existing ones.

(5) "Operating experience" means routine performance of duties, on-site in a wastewater treatment plant, that affects plant performance or effluent quality.

(6) "Operator in responsible charge" means an individual who is designated by the owner as the person on-site in responsible charge of the routine operation of a wastewater treatment plant.

(7) "Owner" means in the case of a town or city, the city or town acting through its chief executive officer or the lessee if operated pursuant to a lease or contract; in the case of a county, the chair of the county legislative authority or the chair's designee; in the case of a water-sewer district, board of public utilities, association, municipality, or other public body, the president or chair of the body or the president's or chair's designee; in the case of a privately owned wastewater treatment plant, the legal owner.

(8) "Wastewater certification program coordinator" means an employee of the department who administers the wastewater treatment plant operators' certification program.

(9) "Wastewater collection system" means any system of lines, pipes, manholes, pumps, liftstations, or other facilities used for the purpose of collecting and transporting wastewater.

(10) "Wastewater treatment plant" means a facility used to treat any liquid or waterborne waste of domestic origin or a combination of domestic, commercial, or industrial origin, and which by its design requires the presence of an operator for its operation. It shall not include any facility used exclusively by a single-family residence, septic tanks with subsoil absorption, industrial wastewater treatment plants, or waste-

water collection systems. [2012 c 117 § 412; 1999 c 153 § 66; 1995 c 269 § 2901; 1987 c 357 § 1; 1973 c 139 § 2. Formerly RCW 70.95B.020.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Additional notes found at www.leg.wa.gov

70A.212.030 Wastewater treatment plant operators—Certification required. As provided for in this chapter, the individual on-site at a wastewater treatment plant who is designated by the owner as the operator in responsible charge of the operation and maintenance of the plant on a routine basis shall be certified at a level equal to or higher than the classification rating of the plant being operated.

If a wastewater treatment plant is operated on more than one daily shift, the operator in charge of each shift shall be certified at a level no lower than one level lower than the classification rating of the plant being operated and shall be subordinate to the operator in responsible charge who is certified at a level equal to or higher than the plant. This requirement for shift operator certification shall be met by January 1, 1989.

Operators not required to be certified by this chapter are encouraged to become certified on a voluntary basis. [1987 c 357 § 2; 1973 c 139 § 3. Formerly RCW 70.95B.030.]

70A.212.040 Administration of chapter—Rules and regulations—Director's duties. The director shall adopt and enforce such rules and regulations as may be necessary for the administration of this chapter. The rules and regulations shall include, but not be limited to, provisions for the qualification and certification of operators for different classifications of wastewater treatment plants. [1995 c 269 § 2902; 1987 c 357 § 3; 1973 c 139 § 4. Formerly RCW 70.95B.040.]

Additional notes found at www.leg.wa.gov

70A.212.050 Wastewater treatment plants—Classification. The director shall classify all wastewater treatment plants with regard to the size, type, and other conditions affecting the complexity of such treatment plants and the skill, knowledge, and experience required of an operator to operate such facilities to protect the public health and the state's water resources. [1987 c 357 § 4; 1973 c 139 § 5. Formerly RCW 70.95B.050.]

70A.212.060 Criteria and guidelines. The director is authorized when taking action pursuant to RCW 70A.212.040 and 70A.212.050 to consider generally applicable criteria and guidelines developed by a nationally recognized association of certification authorities. [2020 c 20 § 1207; 1973 c 139 § 6. Formerly RCW 70.95B.060.]

70A.212.070 Ad hoc advisory committees. The director, in cooperation with the secretary of health, may establish ad hoc advisory committees, as necessary, to obtain advice and technical assistance regarding the examination and certification of operators of wastewater treatment plants. [1995 c 269 § 2908. Formerly RCW 70.95B.071.]

Additional notes found at www.leg.wa.gov

70A.212.080 Certificates—When examination not required. Certificates shall be issued without examination under the following conditions:

(1) Certificates, in appropriate classifications, shall be issued without application fee to operators who, on July 1, 1973, hold certificates of competency attained by examination under the voluntary certification program sponsored jointly by the state department of social and health services, health services division, and the Pacific Northwest pollution control association.

(2) Certificates, in appropriate classifications, shall be issued to persons certified by a governing body or owner to have been the operator in responsible charge of a waste treatment plant on July 1, 1973. A certificate so issued will be valid only for the existing plant.

(3) A nonrenewable certificate, temporary in nature, may be issued for a period not to exceed twelve months, to an operator who fills a vacated position required to be filled by a certified operator. Only one such certificate may be issued subsequent to each instance of vacation of any such position. [1987 c 357 § 5; 1973 c 139 § 8. Formerly RCW 70.95B.080.]

70A.212.090 Certificates—Issuance and renewal conditions. The issuance and renewal of a certificate shall be subject to the following conditions:

(1) A certificate shall be issued if the operator has satisfactorily passed a written examination, or has met the requirements of RCW 70A.212.080, and has met the requirements specified in the rules and regulations as authorized by this chapter, and has paid the department an application fee as established by the department under RCW 70A.212.100.

(2) The term for all certificates shall be from the first of January of the year of issuance until the thirty-first of December of the renewal year. The renewal period, not to exceed three years, shall be set by agency rule. Every certificate shall be renewed upon the payment of a renewal fee as established by the department under RCW 70A.212.100 and satisfactory evidence presented to the director that the operator demonstrates continued professional growth in the field.

(3) Individuals who fail to renew their certificates before December 31 of the renewal year, upon notice by the director shall have their certificates suspended for sixty days. If, during the suspension period, the renewal is not completed, the director shall give notice of revocation to the employer and to the operator and the certificate will be revoked ten days after such notice is given. An operator whose certificate has been revoked must reapply for certification and will be requested to meet the requirements of a new applicant. [2020 c 20 § 1208; 2018 c 213 § 1; 1987 c 357 § 6; 1973 c 139 § 9. Formerly RCW 70.95B.090.]

70A.212.100 Certificates—Fees—Department duties. (1) The department shall establish and collect fees for the issuance and renewal of wastewater treatment plant operator certificates as provided for in RCW 70A.212.090. The department, with the advice of an advisory committee, shall establish an initial fee schedule by rule. Fees shall be established in amounts to fully recover and not to exceed expenses incurred by the department to administer the wastewater operator certification program, to include evaluating applica-

tions necessary to verify compliance with certification requirements, maintaining and administering credible examinations, ensuring operators receive necessary training, outreach, and technical assistance, enforcing certification program requirements, providing necessary education and training to program staff, and supporting the overhead expenses related to administering the wastewater operator certification program.

(2) Once the initial fee schedule is adopted by rule, the department shall conduct a workload analysis and prepare a biennial budget estimate for the wastewater treatment plant operator certification program. Thereafter, the department shall assess and collect fees from all wastewater treatment plant operators at a level that fully recovers the costs identified in its biennial operating budget.

(3) If fee increases above the state's fiscal growth factor are proposed, due to an expansion of the wastewater operator certification program, the department must submit a report to the legislature describing the need for the increase. [2020 c 20 § 1209; 2018 c 213 § 2; 1987 c 357 § 9. Formerly RCW 70.95B.095.]

70A.212.110 Certificates—Revocation procedures.

The director may, after conducting a hearing, revoke a certificate found to have been obtained by fraud or deceit, or for gross negligence in the operation of a waste treatment plant, or for violating the requirements of this chapter or any lawful rule, order or regulation of the department. No person whose certificate is revoked under this section shall be eligible to apply for a certificate for one year from the effective date of this final order or revocation. [1995 c 269 § 2903; 1973 c 139 § 10. Formerly RCW 70.95B.100.]

Additional notes found at www.leg.wa.gov

70A.212.120 Administration of chapter—Powers and duties of director. To carry out the provisions and purposes of this chapter, the director is authorized and empowered to:

(1) Enter into agreements, contracts, or cooperative arrangements, under such terms and conditions as the director deems appropriate with other state, federal, or interstate agencies, municipalities, education institutions, or other organizations or individuals.

(2) Receive financial and technical assistance from the federal government and other public or private agencies.

(3) Participate in related programs of the federal government, other states, interstate agencies, or other public or private agencies or organizations.

(4) Upon request, furnish reports, information, and materials relating to the certification program authorized by this chapter to federal, state, or interstate agencies, municipalities, education institutions, and other organizations and individuals.

(5) Establish adequate fiscal controls and accounting procedures to assure proper disbursement of and accounting for funds appropriated or otherwise provided for the purpose of carrying out the provisions of this chapter. [1987 c 357 § 7; 1973 c 139 § 11. Formerly RCW 70.95B.110.]

70A.212.130 Licenses or certificates—Suspension for noncompliance with support order—Reissuance. The

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director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 876. Formerly RCW 70.95B.115.]

***Reviser's note:** 1997 c 58 § 886 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

70A.212.140 Violations. On and after one year following July 1, 1973, it shall be unlawful for any person, firm, corporation, municipal corporation, or other governmental subdivision or agency to operate a wastewater treatment plant unless the individuals identified in RCW 70A.212.030 are duly certified by the director under the provisions of this chapter or any lawful rule, order, or regulation of the department. It shall also be unlawful for any person to perform the duties of an operator as defined in this chapter, or in any lawful rule, order, or regulation of the department, without being duly certified under the provisions of this chapter. [2020 c 20 § 1210; 1987 c 357 § 8; 1973 c 139 § 12. Formerly RCW 70.95B.120.]

70A.212.150 Certificates—Reciprocity with other states. On or after July 1, 1973, certification of operators by any state which, as determined by the director, accepts certifications made or certification requirements deemed satisfied pursuant to the provisions of this chapter, shall be accorded reciprocal treatment and shall be recognized as valid and sufficient within the purview of this chapter, if in the judgment of the director the certification requirements of such state are substantially equivalent to the requirements of this chapter or any rules or regulations promulgated hereunder.

In making determinations pursuant to this section, the director shall consult with the *board and may consider any generally applicable criteria and guidelines developed by the nationally recognized association of certification authorities. [1973 c 139 § 13. Formerly RCW 70.95B.130.]

***Reviser's note:** RCW 70.95B.070, which created the water and wastewater operator certification board of examiners, was repealed by 1995 c 269 § 2907, effective July 1, 1995.

70A.212.160 Penalties for violations—Injunctions. Any person, including any firm, corporation, municipal corporation, or other governmental subdivision or agency violating any provisions of this chapter or the rules and regulations adopted hereunder, is guilty of a misdemeanor. Each day of operation in such violation of this chapter or any rules or regulations adopted hereunder shall constitute a separate offense. Upon conviction, violators shall be fined an amount

not exceeding one hundred dollars for each offense. It shall be the duty of the prosecuting attorney or the attorney general, as appropriate, to secure injunctions of continuing violations of any provisions of this chapter or the rules and regulations adopted hereunder. [1973 c 139 § 14. Formerly RCW 70.95B.140.]

70A.212.170 Wastewater treatment plant operator certification account—Administration of chapter—Receipts. The wastewater treatment plant operator certification account is created in the state treasury. All fees paid pursuant to RCW 70A.212.100 and any other receipts realized in the administration of this chapter must be deposited into the account. Moneys in the account may be spent only after appropriation. Moneys from the account must be used by the department to carry out the purposes of the wastewater treatment plant operator certification program. [2020 c 20 § 1211; 2017 c 35 § 1. Formerly RCW 70.95B.151.]

70A.212.900 Effective date—1973 c 139. This 1973 act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1973. [1973 c 139 § 17. Formerly RCW 70.95B.900.]

Chapter 70A.214 RCW WASTE REDUCTION

Sections

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70A.214.010 Legislative findings. The legislature finds that land disposal and incineration of solid and hazardous waste can be both harmful to the environment and costly to those who must dispose of the waste. In order to address this problem in the most cost-effective and environmentally sound manner, and to implement the highest waste management priority as articulated in RCW 70A.205.005 and 70A.300.260, public and private efforts should focus on reducing the generation of waste. Waste reduction can be achieved by encouraging voluntary efforts to redesign industrial, commercial, production, and other processes to result in the reduction or elimination of waste by-products and to

maximize the in-process reuse or reclamation of valuable spent material.

In the interest of protecting the public health, safety, and the environment, the legislature declares that it is the policy of the state of Washington to encourage reduction in the use of hazardous substances and reduction in the generation of hazardous waste whenever economically and technically practicable.

The legislature finds that hazardous wastes are generated by numerous different sources including, but not limited to, large and small business, households, and state and local government. The legislature further finds that a goal against which efforts at waste reduction may be measured is essential for an effective hazardous waste reduction program. The Pacific Northwest hazardous waste advisory council has endorsed a goal of reducing, through hazardous substance use reduction and waste reduction techniques, the generation of hazardous waste by fifty percent by 1995. The legislature adopts this as a policy goal for the state of Washington. The legislature recognizes that many individual businesses have already reduced the generation of hazardous waste through appropriate hazardous waste reduction techniques. The legislature also recognizes that there are some basic industrial processes which by their nature have limited potential for significantly reducing the use of certain raw materials or substantially reducing the generation of hazardous wastes. Therefore, the goal of reducing hazardous waste generation by fifty percent cannot be applied as a regulatory requirement. [2020 c 20 § 1212; 1990 c 114 § 1; 1988 c 177 § 1. Formerly RCW 70.95C.010.]

70A.214.020 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

- (1) "Department" means the department of ecology.
- (2) "Director" means the director of the department of ecology or the director's designee.
- (3) "Dangerous waste" shall have the same definition as set forth in RCW 70A.300.010(1) and shall specifically include those wastes designated as dangerous by rules adopted pursuant to chapter 70A.300 RCW.
- (4) "EPA/state identification number" means the number assigned by the EPA (environmental protection agency) or by the department of ecology to each generator and/or transporter and treatment, storage, and/or disposal facility.
- (5) "Extremely hazardous waste" shall have the same definition as set forth in RCW 70A.300.010(7) and shall specifically include those wastes designated as extremely hazardous by rules adopted pursuant to chapter 70A.300 RCW.
- (6) "Fee" means the annual hazardous waste fees imposed under RCW 70A.218.020 and 70A.218.030.
- (7) "Generate" means any act or process which produces hazardous waste or first causes a hazardous waste to become subject to regulation.
- (8) "Hazardous substance" means any hazardous substance listed as a hazardous substance as of March 21, 1990, pursuant to section 313 of Title III of the Superfund Amendments and Reauthorization Act, any other substance determined by the director by rule to present a threat to human health or the environment, and all ozone depleting compounds as defined by the Montreal Protocol of October 1987.

(9)(a) "Hazardous substance use reduction" means the reduction, avoidance, or elimination of the use or production of hazardous substances without creating substantial new risks to human health or the environment.

(b) "Hazardous substance use reduction" includes proportionate changes in the usage of hazardous substances as the usage of a hazardous substance or hazardous substances changes as a result of production changes or other business changes.

(10) "Hazardous substance user" means any facility required to report under section 313 of Title III of the Superfund Amendments and Reauthorization Act, except for those facilities which only distribute or use fertilizers or pesticides intended for commercial agricultural applications.

(11) "Hazardous waste" means and includes all dangerous and extremely hazardous wastes, but does not include radioactive wastes or a substance composed of both radioactive and hazardous components and does not include any hazardous waste generated as a result of a remedial action under state or federal law.

(12) "Hazardous waste generator" means any person generating hazardous waste regulated by the department.

(13) "Office" means the office of waste reduction.

(14) "Plan" means the plan provided for in RCW 70A.214.110.

(15) "Person" means an individual, trust, firm, joint stock company, partnership, association, state, public or private or municipal corporation, commission, political subdivision of a state, interstate body, the federal government, including any agency or officer thereof, and any Indian tribe or authorized tribal organization.

(16) "Process" means all industrial, commercial, production, and other processes that result in the generation of waste.

(17) "Recycled for beneficial use" means the use of hazardous waste, either before or after reclamation, as a substitute for a commercial product or raw material, but does not include: (a) Use constituting disposal; (b) incineration; or (c) use as a fuel.

(18) "Recycling" means reusing waste materials and extracting valuable materials from a waste stream. Recycling does not include burning for energy recovery.

(19) "Treatment" means the physical, chemical, or biological processing of waste to render it completely innocuous, produce a recyclable by-product, reduce toxicity, or substantially reduce the volume of material requiring disposal as described in the priorities established in RCW 70A.300.260. Treatment does not include incineration.

(20) "Used oil" means (a) lubricating fluids that have been removed from an engine crankcase, transmission, gearbox, hydraulic device, or differential of an automobile, bus, truck, vessel, plane, heavy equipment, or machinery powered by an internal combustion engine; (b) any oil that has been refined from crude oil, used, and as a result of use, has been contaminated with physical or chemical impurities; and (c) any oil that has been refined from crude oil and, as a consequence of extended storage, spillage, or contamination, is no longer useful to the original purchaser. "Used oil" does not include used oil to which hazardous wastes have been added.

(21) "Waste" means any solid waste as defined under RCW 70A.205.015, any hazardous waste, any air contami-

nant as defined under RCW 70A.15.1030, and any organic or inorganic matter that shall cause or tend to cause water pollution as defined under RCW 90.48.020.

(22) "Waste generator" means any individual, business, government agency, or any other organization that generates waste.

(23) "Waste reduction" means all in-plant practices that reduce, avoid, or eliminate the generation of wastes or the toxicity of wastes, prior to generation, without creating substantial new risks to human health or the environment. As used in RCW 70A.214.110 through 70A.214.150, "waste reduction" refers to hazardous waste only. [2020 c 20 § 1213; 1991 c 319 § 313; 1990 c 114 § 2; 1988 c 177 § 2. Formerly RCW 70.95C.020.]

70A.214.030 Office of waste reduction—Duties.

(1) There is established in the department an office of waste reduction. The office shall use its authorities to encourage the voluntary reduction of hazardous substance usage and waste generation by waste generators and hazardous substance users. The office shall prepare and submit a quarterly progress report to the director.

(2) The office shall be the coordinating center for all state agency programs that provide technical assistance to waste generators and hazardous substance users and shall serve as the state's lead agency and promoter for such programs. In addition to this coordinating function, the office shall encourage hazardous substance use reduction and waste reduction by:

(a) Providing for the rendering of advice and consultation to waste generators and hazardous substance users on hazardous substance use reduction and waste reduction techniques, including assistance in preparation of plans provided for in RCW 70A.214.110;

(b) Sponsoring or co-sponsoring with public or private organizations technical workshops and seminars on waste reduction and hazardous substance use reduction;

(c) Administering a waste reduction and hazardous substance use reduction database and hotline providing comprehensive referral services to waste generators and hazardous substance users;

(d) Administering a waste reduction and hazardous substance use reduction research and development program;

(e) Coordinating a waste reduction and hazardous substance use reduction public education program that includes the utilization of existing publications from public and private sources, as well as publishing necessary new materials on waste reduction;

(f) Recommending to institutions of higher education in the state courses and curricula in areas related to waste reduction and hazardous substance use reduction; and

(g) Operating an intern program in cooperation with institutions of higher education and other outside resources to provide technical assistance on hazardous substance use reduction and waste reduction techniques and to carry out research projects as needed within the office. [2020 c 20 § 1214; 1998 c 245 § 133; 1990 c 114 § 3; 1988 c 177 § 3. Formerly RCW 70.95C.030.]

70A.214.040 Waste reduction and hazardous substance use reduction consultation program.

(1) The office

shall establish a waste reduction and hazardous substance use reduction consultation program to be coordinated with other state waste reduction and hazardous substance use reduction consultation programs.

(2) The director may grant a request by any waste generator or hazardous substance user for advice and consultation on waste reduction and hazardous substance use reduction techniques and assistance in preparation or modification of a plan, executive summary, or annual progress report, or assistance in the implementation of a plan required by RCW 70A.214.110. Pursuant to a request from a facility such as a business, governmental entity, or other process site in the state, the director may visit the facility making the request for the purposes of observing hazardous substance use and the waste-generating process, obtaining information relevant to waste reduction and hazardous substance use reduction, rendering advice, and making recommendations. No such visit may be regarded as an inspection or investigation, and no notices or citations may be issued, or civil penalty be assessed, upon such a visit. A representative of the director providing advisory or consultative services under this section may not have any enforcement authority.

(3) Consultation and advice given under this section shall be limited to the matters specified in the request and shall include specific techniques of waste reduction and hazardous substance use reduction tailored to the relevant process. In granting any request for advisory or consultative services, the director may provide for an alternative means of affording consultation and advice other than on-site consultation.

(4) Any proprietary information obtained by the director while carrying out the duties required under this section shall remain confidential and shall not be publicized or become part of the database established under RCW 70A.214.060 without written permission of the requesting party. [2020 c 20 § 1215; 1990 c 114 § 5; 1988 c 177 § 4. Formerly RCW 70.95C.040.]

70A.214.050 Waste reduction techniques—Workshops and seminars. The office, in coordination with all other state waste reduction technical assistance programs, shall sponsor technical workshops and seminars on waste reduction techniques that have been successfully used to eliminate or reduce substantially the amount of waste or toxicity of hazardous waste generated, or that use in-process reclamation or reuse of spent material. [1988 c 177 § 5. Formerly RCW 70.95C.050.]

70A.214.060 Waste reduction hotline—Database system. (1) The office shall establish a statewide waste reduction hotline with the capacity to refer waste generators and the public to sources of information on specific waste reduction techniques and procedures. The hotline shall coordinate with all other state waste hotlines.

(2) The director shall work with the state library to establish a database system that shall include proven waste reduction techniques and case studies of effective waste reduction. The database system shall be: (a) Coordinated with all other state agency databases on waste reduction; (b) administered in conjunction with the statewide waste reduction hotline;

and (c) readily accessible to the public. [1988 c 177 § 6. Formerly RCW 70.95C.060.]

70A.214.070 Waste reduction research and development program—Contracts. (1) The office may administer a waste reduction research and development program. The director may contract with any public or private organization for the purpose of developing methods and technologies that achieve waste reduction. All research performed and all methods or technologies developed as a result of a contract entered into under this section shall become the property of the state and shall be incorporated into the database system established under RCW 70A.214.060.

(2) Any contract entered into under this section shall be awarded only after requests for proposals have been circulated to persons, firms, or organizations who have requested that their names be placed on a proposal list. The director shall establish a proposal list and shall review and evaluate all proposals received. [2020 c 20 § 1216; 1988 c 177 § 7. Formerly RCW 70.95C.070.]

70A.214.080 Director's authority. (1) The director may solicit and accept gifts, grants, conveyances, bequests, and devises, in trust or otherwise, to be directed to the office of waste reduction.

(2) The director may enter into contracts with any public or private organization to carry out the purposes of this chapter. [1988 c 177 § 8. Formerly RCW 70.95C.080.]

70A.214.090 Waste reduction and recycling program to promote activities by state agencies—Recycled paper goal. The legislature finds and declares that the buildings and facilities owned and leased by state government produce significant amounts of solid and hazardous wastes, and actions must be taken to reduce and recycle these wastes and thus reduce the costs associated with their disposal. In order for the operations of state government to provide the citizens of the state an example of positive waste management, the legislature further finds and declares that state government should undertake an aggressive program designed to reduce and recycle solid and hazardous wastes produced in the operations of state buildings and facilities to the maximum extent possible.

The office of waste reduction, in cooperation with the department of enterprise services, shall establish an intensive waste reduction and recycling program to promote the reduction of waste produced by state agencies and to promote the source separation and recovery of recyclable and reusable materials.

All state agencies, including but not limited to, colleges, community colleges, universities, offices of elected and appointed officers, the supreme court, court of appeals, and administrative departments of state government shall fully cooperate with the office of waste reduction and recycling in all phases of implementing the provisions of this section. The office shall establish a coordinated state plan identifying each agency's participation in waste reduction and recycling. The office shall develop the plan in cooperation with a multi-agency committee on waste reduction and recycling. Appointments to the committee shall be made by the director of the department of enterprise services. The director shall notify

each agency of the committee, which shall implement the applicable waste reduction and recycling plan elements. All state agencies are to use maximum efforts to achieve a goal of increasing the use of recycled paper by fifty percent by July 1, 1993. [2015 c 225 § 107; 1989 c 431 § 53. Formerly RCW 70.95C.110.]

70A.214.100 Waste reduction and recycling awards program in K-12 public schools—Encouraging waste reduction and recycling in private schools. The office of waste reduction shall develop, in consultation with the superintendent of public instruction, an awards program to achieve waste reduction and recycling in public schools, and to encourage waste reduction and recycling in private schools, grades kindergarten through high school. The office shall develop guidelines for program development and implementation. Each public school shall, and each private school may, implement a waste reduction and recycling program conforming to guidelines developed by the office.

For the purpose of granting awards, the office may group all participating schools into not more than three classes, based upon student population, distance to markets for recyclable materials, and other criteria, as deemed appropriate by the office. Except as otherwise provided, five or more awards may be granted to each of the three classes. Each award shall be no more than five thousand dollars. Awards shall be granted each year to the schools that achieve the greatest levels of waste reduction and recycling. A single award of not less than five thousand dollars may be presented to the school having the best recycling program as measured by the total amount of materials recycled, including materials generated outside of the school. A single award of not less than five thousand dollars may be presented to the school having the best waste reduction program as determined by the office.

The superintendent of public instruction shall distribute guidelines and other materials developed by the office to implement programs to reduce and recycle waste generated in administrative offices, classrooms, laboratories, cafeterias, and maintenance operations. [2008 c 178 § 1; 1991 c 319 § 114; 1989 c 431 § 54. Formerly RCW 70.95C.120.]

70A.214.110 Hazardous waste generators and users—Voluntary reduction plan. (1) Each hazardous waste generator who generates more than two thousand six hundred forty pounds of hazardous waste per year and each hazardous substance user, except for those facilities that are primarily permitted treatment, storage, and disposal facilities or recycling facilities, shall prepare a plan for the voluntary reduction of the use of hazardous substances and the generation of hazardous wastes. Hazardous waste generated and recycled for beneficial use, including initial amount of hazardous substances introduced into a process and subsequently recycled for beneficial use, shall not be used in the calculation of hazardous waste generated for purposes of this section. The department may develop reporting requirements, consistent with existing reporting, to establish recycling for beneficial use under this section. Used oil to be re-refined or burned for energy or heat recovery shall not be used in the calculation of hazardous wastes generated for purposes of this section, and is not required to be addressed by plans prepared under this section. A person with multiple interrelated

facilities where the processes in the facilities are substantially similar, may prepare a single plan covering one or more of those facilities.

(2) Each user or generator required to write a plan is encouraged to advise its employees of the planning process and solicit comments or suggestions from its employees on hazardous substance use and waste reduction options.

(3) The department shall adopt by April 1, 1991, rules for preparation of plans. The rules shall require the plan to address the following options, according to the following order of priorities: Hazardous substance use reduction, waste reduction, recycling, and treatment. In the planning process, first consideration shall be given to hazardous substance use reduction and waste reduction options. Consideration shall be given next to recycling options. Recycling options may be considered only after hazardous substance use reduction options and waste reduction options have been thoroughly researched and shown to be inappropriate. Treatment options may be considered only after hazardous substance use reduction, waste reduction, and recycling options have been thoroughly researched and shown to be inappropriate. Documentation of the research shall be available to the department upon request. The rules shall also require the plans to discuss the hazardous substance use reduction, waste reduction, and closed loop recycling options separately from other recycling and treatment options. All plans shall be written in conformance with the format prescribed in the rules adopted under this section. The rules shall require the plans to include, but not be limited to:

(a) A written policy articulating management and corporate support for the plan and a commitment to implementing planned activities and achieving established goals;

(b) The plan scope and objectives;

(c) Analysis of current hazardous substance use and hazardous waste generation, and a description of current hazardous substance use reduction, waste reduction, recycling, and treatment activities;

(d) An identification of further hazardous substance use reduction, waste reduction, recycling, and treatment opportunities, and an analysis of the amount of hazardous substance use reduction and waste reduction that would be achieved, and the costs. The analysis of options shall demonstrate that the priorities provided for in this section have been followed;

(e) A selection of options to be implemented in accordance with the priorities established in this section;

(f) An analysis of impediments to implementing the options. Impediments that shall be considered acceptable include, but are not limited to: Adverse impacts on product quality, legal or contractual obligations, economic practicality, and technical feasibility;

(g) A written policy stating that in implementing the selected options, whenever technically and economically practicable, risks will not be shifted from one part of a process, environmental media, or product to another;

(h) Specific performance goals in each of the following categories, expressed in numeric terms:

(i) Hazardous substances to be reduced or eliminated from use;

(ii) Wastes to be reduced or eliminated through waste reduction techniques;

(iii) Materials or wastes to be recycled; and

(iv) Wastes to be treated;

If the establishment of numeric performance goals is not practicable, the performance goals shall include a clearly stated list of objectives designed to lead to the establishment of numeric goals as soon as is practicable. Goals shall be set for a five-year period from the first reporting date;

(i) A description of how the wastes that are not recycled or treated and the residues from recycling and treatment processes are managed may be included in the plan;

(j) Hazardous substance use and hazardous waste accounting systems that identify hazardous substance use and waste management costs and factor in liability, compliance, and oversight costs;

(k) A financial description of the plan;

(l) Personnel training and employee involvement programs;

(m) A five-year plan implementation schedule;

(n) Documentation of hazardous substance use reduction and waste reduction efforts completed before or in progress at the time of the first reporting date; and

(o) An executive summary of the plan, which shall include, but not be limited to:

(i) The information required by (c), (e), (h), and (n) of this subsection; and

(ii) A summary of the information required by (d) and (f) of this subsection.

(4) Upon completion of a plan, the owner, chief executive officer, or other person with the authority to commit management to the plan shall sign and submit an executive summary of the plan to the department.

(5) Plans shall be completed and executive summaries submitted in accordance with the following schedule:

(a) Hazardous waste generators who generated more than fifty thousand pounds of hazardous waste in calendar year 1991 and hazardous substance users who were required to report in 1991, by September 1, 1992;

(b) Hazardous waste generators who generated between seven thousand and fifty thousand pounds of hazardous waste in calendar year 1992 and hazardous substance users who were required to report for the first time in 1992, by September 1, 1993;

(c) Hazardous waste generators who generated between two thousand six hundred forty and seven thousand pounds of hazardous waste in 1993 and hazardous substance users who were required to report for the first time in 1993, by September 1, 1994;

(d) Hazardous waste generators who have not been required to complete a plan on or prior to September 1, 1994, must complete a plan by September 1 of the year following the first year that they generate more than two thousand six hundred forty pounds of hazardous waste; and

(e) Hazardous substance users who have not been required to complete a plan on or prior to September 1, 1994, must complete a plan by September 1 of the year following the first year that they are required to report under section 313 of Title III of the Superfund Amendments and Reauthorization Act.

(6) Annual progress reports, including a description of the progress made toward achieving the specific performance goals established in the plan, shall be prepared and submitted to the department in accordance with rules developed under

this section. Upon the request of two or more users or generators belonging to similar industrial classifications, the department may aggregate data contained in their annual progress reports for the purpose of developing a public record.

(7) Every five years, each plan shall be updated, and a new executive summary shall be submitted to the department. [1991 c 319 § 314; 1990 c 114 § 6. Formerly RCW 70.95C.200.]

70A.214.120 Voluntary reduction plan—Exemption.

A person required to prepare a plan under RCW 70A.214.110 because of the quantity of hazardous waste generated may petition the director to be excused from this requirement. The person must demonstrate to the satisfaction of the director that the quantity of hazardous waste generated was due to unique circumstances not likely to be repeated and that the person is unlikely to generate sufficient hazardous waste to require a plan in the next five years. [2020 c 20 § 1217; 1990 c 114 § 7. Formerly RCW 70.95C.210.]

70A.214.130 Voluntary reduction plan, executive summary, or progress report—Department review.

(1) The department may review a plan, executive summary, or an annual progress report to determine whether the plan, executive summary, or annual progress report is adequate pursuant to the rules developed under this section and with the provisions of RCW 70A.214.110. In determining the adequacy of any plan, executive summary, or annual progress report, the department shall base its determination solely on whether the plan, executive summary, or annual progress report is complete and prepared in accordance with the provisions of RCW 70A.214.110.

(2) Plans developed under RCW 70A.214.110 shall be retained at the facility of the hazardous substance user or hazardous waste generator preparing a plan. The plan is not a public record under the public records act, chapter 42.56 RCW. A user or generator required to prepare a plan shall permit the director or a representative of the director to review the plan to determine its adequacy. No visit made by the director or a representative of the director to a facility for the purposes of this subsection may be regarded as an inspection or investigation, and no notices or citations may be issued, nor any civil penalty assessed, upon such a visit.

(3) If a hazardous substance user or hazardous waste generator fails to complete an adequate plan, executive summary, or annual progress report, the department shall notify the user or generator of the inadequacy, identifying specific deficiencies. For the purposes of this section, a deficiency may include failure to develop a plan, failure to submit an executive summary pursuant to the schedule provided in RCW 70A.214.110(5), and failure to submit an annual progress report pursuant to the rules developed under RCW 70A.214.110(6). The department shall specify a reasonable time frame, of not less than ninety days, within which the user or generator shall complete a modified plan, executive summary, or annual progress report addressing the specified deficiencies.

(4) If the department determines that a modified plan, executive summary, or annual progress report is inadequate, the department may, within its discretion, either require fur-

ther modification or enter an order pursuant to subsection (5)(a) of this section.

(5)(a) If, after having received a list of specified deficiencies from the department, a hazardous substance user or hazardous waste generator required to prepare a plan fails to complete modification of a plan, executive summary, or annual progress report within the time period specified by the department, the department may enter an order pursuant to chapter 34.05 RCW finding the user or generator not in compliance with the requirements of RCW 70A.214.110. When the order is final, the department shall notify the department of revenue to charge a penalty fee. The penalty fee shall be the greater of one thousand dollars or three times the amount of the user's or generator's previous year's fee, in addition to the current year's fee. If no fee was assessed the previous year, the penalty shall be the greater of one thousand dollars or three times the amount of the current year's fee. The penalty assessed under this subsection shall be collected each year after the year for which the penalty was assessed until an adequate plan or executive summary is completed.

(b) If a hazardous substance user or hazardous waste generator required to prepare a plan fails to complete an adequate plan, executive summary, or annual progress report after the department has levied against the user or generator the penalty provided in (a) of this subsection, the user or generator shall be required to pay a surcharge to the department whenever the user or generator disposes of a hazardous waste at any hazardous waste incinerator or hazardous waste landfill facility located in Washington state, until a plan, executive summary, or annual progress report is completed and determined to be adequate by the department. The surcharge shall be equal to three times the fee charged for disposal. The department shall furnish the incinerator and landfill facilities in this state with a list of environmental protection agency/state identification numbers of the hazardous waste generators that are not in compliance with the requirements of RCW 70A.214.110. [2020 c 20 § 1218; 2005 c 274 § 338; 1990 c 114 § 8. Formerly RCW 70.95C.220.]

70A.214.140 Appeal of department order or surcharge. A user or generator may appeal from a department order or a surcharge under RCW 70A.214.130 to the pollution control hearings board pursuant to chapter 43.21B RCW. [2020 c 20 § 1219; 1990 c 114 § 9. Formerly RCW 70.95C.230.]

70A.214.150 Public inspection of plans, summaries, progress reports. (1) The department shall make available for public inspection any executive summary or annual progress report submitted to the department. Any hazardous substance user or hazardous waste generator required to prepare an executive summary or annual progress report who believes that disclosure of any information contained in the executive summary or annual progress report may adversely affect the competitive position of the user or generator may request the department pursuant to RCW 43.21A.160 to delete from the public record those portions of the executive summary or annual progress report that may affect the user's or generator's competitive position. The department shall not disclose any information contained in an executive summary or annual progress report pending a determination of whether

the department will delete any information contained in the report from the public record.

(2) Any ten persons residing within ten miles of a hazardous substance user or hazardous waste generator required to prepare a plan may file with the department a petition requesting the department to examine a plan to determine its adequacy. The department shall report its determination of adequacy to the petitioners and to the user or generator within a reasonable time. The department may deny a petition if the department has within the previous year determined the plan of the user or generator named in the petition to be adequate.

(3) The department shall maintain a record of each plan, executive summary, or annual progress report it reviews, and a list of all plans, executive summaries, or annual progress reports the department has determined to be inadequate, including descriptions of corrective actions taken. This information shall be made available to the public. [1990 c 114 § 10. Formerly RCW 70.95C.240.]

70A.214.160 Multimedia permit pilot program—Air, water, hazardous waste management. (1) Not later than January 1, 1995, the department shall designate an industry type and up to ten individual facilities within that industry type to be the focus of a pilot multimedia program. The program shall be designed to coordinate department actions related to environmental permits, plans, approvals, certificates, registrations, technical assistance, and inspections. The program shall also investigate the feasibility of issuing facility-wide permits. The director shall determine the industry type and facilities based on:

- (a) A review of at least three industry types; and
- (b) Criteria which shall include at least the following factors:
 - (i) The potential for the industry to serve as a statewide model for multimedia environmental programs including pollution prevention;
 - (ii) Whether the industry type is subject to regulatory requirements relating to at least two of the following subject areas: Air quality, water quality, or hazardous waste management;
 - (iii) The existence within the industry type of a range of business sizes; and
 - (iv) Voluntary participation in the program.

(2) In developing the program, the department shall consult with and seek the cooperation of the environmental protection agency.

(3) For purposes of this section, "facility-wide permit" means a single multimedia permit issued by the department to the owner or operator of a facility incorporating the permits and any other relevant department approvals previously issued to the owner or operator or currently required by the department. [1998 c 245 § 134; 1994 c 248 § 1. Formerly RCW 70.95C.250.]

Additional notes found at www.leg.wa.gov

Chapter 70A.216 RCW SOLID WASTE INCINERATOR AND LANDFILL OPERATORS

Sections

70A.216.010 Definitions.

70A.216.020	Incineration facilities—Owner and operator certification requirements.
70A.216.030	Landfills—Owner and operator certification requirements.
70A.216.040	Certification process—Suspension of license or certificate for noncompliance with support order.
70A.216.050	Ad hoc advisory committees.
70A.216.060	Revocation of certification.
70A.216.070	Certification of inspectors.
70A.216.080	Authority of director.
70A.216.090	Unlawful acts—Variance from requirements.
70A.216.100	Penalties.
70A.216.110	Deposit of receipts.

70A.216.010 Definitions. Unless the context clearly requires otherwise the definitions in this section apply throughout this chapter.

(1) "Certificate" means a certificate of competency issued by the director stating that the operator has met the requirements for the specified operator classification of the certification program.

(2) "Department" means the department of ecology.

(3) "Director" means the director of ecology.

(4) "Incinerator" means a facility which has the primary purpose of burning or which is designed with the primary purpose of burning solid waste or solid waste derived fuel, but excludes facilities that have the primary purpose of burning hog fuel.

(5) "Landfill" means a landfill as defined under RCW 70A.205.015.

(6) "Owner" means, in the case of a town or city, the city or town acting through its chief executive officer or the lessee if operated pursuant to a lease or contract; in the case of a county, the chief elected official of the county legislative authority or the chief elected official's designee; in the case of a board of public utilities, association, municipality, or other public body, the president or chief elected official of the body or the president's or chief elected official's designee; in the case of a privately owned landfill or incinerator, the legal owner.

(7) "Solid waste" means solid waste as defined under RCW 70A.205.015. [2020 c 20 § 1220; 1995 c 269 § 2801; 1989 c 431 § 65. Formerly RCW 70.95D.010.]

Additional notes found at www.leg.wa.gov

70A.216.020 Incineration facilities—Owner and operator certification requirements. (1) By January 1, 1992, the owner or operator of a solid waste incineration facility shall employ a certified operator. At a minimum, the individual on-site at a solid waste incineration facility who is designated by the owner as the operator in responsible charge of the operation and maintenance of the facility on a routine basis shall be certified by the department.

(2) If a solid waste incinerator is operated on more than one daily shift, the operator in charge of each shift shall be certified.

(3) Operators not required to be certified are encouraged to become certified on a voluntary basis.

(4) The department shall adopt and enforce such rules as may be necessary for the administration of this section. [1989 c 431 § 66. Formerly RCW 70.95D.020.]

70A.216.030 Landfills—Owner and operator certification requirements. (1) By January 1, 1992, the owner or

operator of a landfill shall employ a certified landfill operator.

(2) For each of the following types of landfills defined in existing regulations: Inert, demolition waste, problem waste, and municipal solid waste, the department shall adopt rules classifying all landfills in each class. The factors to be considered in the classification shall include, but not be limited to, the type and amount of waste in place and projected to be disposed of at the site, whether the landfill currently meets state and federal operating criteria, the location of the landfill, and such other factors as may be determined to affect the skill, knowledge, and experience required of an operator to operate the landfill in a manner protective of human health and the environment.

(3) The rules shall identify the landfills in each class in which the owner or operator will be required to employ a certified landfill operator who is on-site at all times the landfill is operating. At a minimum, the rule shall require that owners and operators of landfills are required to employ a certified landfill operator who is on call at all times the landfill is operating. [1989 c 431 § 67. Formerly RCW 70.95D.030.]

70A.216.040 Certification process—Suspension of license or certificate for noncompliance with support order.

(1) The department shall establish a process to certify incinerator and landfill operators. To the greatest extent possible, the department shall rely on the certification standards and procedures developed by national organizations and the federal government.

(2) Operators shall be certified if they:

(a) Attend the required training sessions;

(b) Successfully complete required examinations; and

(c) Pay the prescribed fee.

(3) By January 1, 1991, the department shall adopt rules to require incinerator and appropriate landfill operators to:

(a) Attend a training session concerning the operation of the relevant type of landfill or incinerator;

(b) Demonstrate sufficient skill and competency for proper operation of the incinerator or landfill by successfully completing an examination prepared by the department; and

(c) Renew the certificate of competency at reasonable intervals established by the department.

(4) The department shall provide for the collection of fees for the issuance and renewal of certificates. These fees shall be sufficient to recover the costs of the certification program.

(5) The department shall establish an appeals process for the denial or revocation of a certificate.

(6) The department shall establish a process to automatically certify operators who have received comparable certification from another state, the federal government, a local government, or a professional association.

(7) Upon July 23, 1989, and prior to January 1, 1992, the owner or operator of an incinerator or landfill may apply to the department for interim certification. Operators shall receive interim certification if they:

(a) Have received training provided by a recognized national organization, educational institution, or the federal government that is acceptable to the department; or

(b) Have received individualized training in a manner approved by the department; and

(c) Have successfully completed any required examinations.

(8) No interim certification shall be valid after January 1, 1992, and interim certification shall not automatically qualify operators for certification pursuant to subsections (2) through (4) of this section.

(9) The department shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 875; 1989 c 431 § 68. Formerly RCW 70.95D.040.]

***Reviser's note:** 1997 c 58 § 886 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

70A.216.050 Ad hoc advisory committees. The director may establish ad hoc advisory committees, as necessary, to obtain advice and technical assistance on the certification of solid waste incinerator and landfill operators. [1995 c 269 § 2804. Formerly RCW 70.95D.051.]

Additional notes found at www.leg.wa.gov

70A.216.060 Revocation of certification. (1) The director may revoke a certificate:

(a) If it were found to have been obtained by fraud or deceit;

(b) For gross negligence in the operation of a solid waste incinerator or landfill;

(c) For violating the requirements of this chapter or any lawful rule or order of the department; or

(d) If the facility operated by the certified employee is operated in violation of state or federal environmental laws.

(2) A person whose certificate is revoked under this section shall not be eligible to apply for a certificate for one year from the effective date of the final order of revocation. [1995 c 269 § 2802; 1989 c 431 § 70. Formerly RCW 70.95D.060.]

Additional notes found at www.leg.wa.gov

70A.216.070 Certification of inspectors. Any person who is employed by a public agency to inspect the operation of a landfill or a solid waste incinerator to determine the compliance of the facility with state or local laws or rules shall be required to be certified in the same manner as an operator under this chapter. [1989 c 431 § 71. Formerly RCW 70.95D.070.]

70A.216.080 Authority of director. To carry out the provisions and purposes of this chapter, the director may:

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(1) Enter into agreements, contracts, or cooperative arrangements, under such terms and conditions as the director deems appropriate, with other state, federal, or interstate agencies, municipalities, educational institutions, or other organizations or individuals.

(2) Receive financial and technical assistance from the federal government, other public agencies, and private agencies.

(3) Participate in related programs of the federal government, other states, interstate agencies, other public agencies, or private agencies or organizations.

(4) Upon request, furnish reports, information, and materials relating to the certification program authorized by this chapter to federal, state, or interstate agencies, municipalities, educational institutions, and other organizations and individuals.

(5) Establish adequate fiscal controls and accounting procedures to assure proper disbursement of and accounting for funds appropriated or otherwise provided for the purpose of carrying out this chapter.

(6) Adopt rules under chapter 34.05 RCW. [1989 c 431 § 72. Formerly RCW 70.95D.080.]

70A.216.090 Unlawful acts—Variance from requirements. After January 1, 1992, it is unlawful for any person, firm, corporation, municipal corporation, or other governmental subdivision or agency to operate a solid waste incineration or landfill facility unless the operators are duly certified by the director under this chapter or any lawful rule or order of the department. It is unlawful for any person to perform the duties of an operator without being duly certified under this chapter. The department shall adopt rules that allow the owner or operator of a landfill or solid waste incineration facility to request a variance from this requirement under emergency conditions. The department may impose such conditions as may be necessary to protect human health and the environment during the term of the variance. [1989 c 431 § 73. Formerly RCW 70.95D.090.]

70A.216.100 Penalties. (1) Any person, including any firm, corporation, municipal corporation, or other governmental subdivision or agency, with the exception of incinerator operators, violating any provision of this chapter or the rules adopted under this chapter, is guilty of a misdemeanor.

(2) Any incinerator operator who violates any provision of this chapter is guilty of a gross misdemeanor.

(3) Each day of operation in violation of this chapter or any rules adopted under this chapter shall constitute a separate offense.

(4) The prosecuting attorney or the attorney general, as appropriate, shall secure injunctions of continuing violations of any provisions of this chapter or the rules adopted under this chapter. [2003 c 53 § 356; 1989 c 431 § 74. Formerly RCW 70.95D.100.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

70A.216.110 Deposit of receipts. All receipts realized in the administration of this chapter shall be paid into the general fund. [1989 c 431 § 75. Formerly RCW 70.95D.110.]

Chapter 70A.218 RCW
HAZARDOUS WASTE FEES

Sections

70A.218.010	Definitions.
70A.218.020	Hazardous waste generation—Fee.
70A.218.030	Voluntary reduction plan—Fees.
70A.218.040	Fees—Generally.
70A.218.050	Administration of fees.
70A.218.060	Hazardous waste assistance account.
70A.218.070	Technical assistance and compliance education—Grants.
70A.218.080	Exclusion from chapter.

70A.218.010 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Dangerous waste" shall have the same definition as set forth in RCW 70A.300.010(1) and shall include those wastes designated as dangerous by rules adopted pursuant to chapter 70A.300 RCW.

(2) "Department" means the department of ecology.

(3) "EPA/state identification number" means the number assigned by the EPA (environmental protection agency) or by the department of ecology to each generator and/or transporter and treatment, storage, and/or disposal facility.

(4) "Extremely hazardous waste" shall have the same definition as set forth in RCW 70A.300.010(7) and shall specifically include those wastes designated as extremely hazardous by rules adopted pursuant to chapter 70A.300 RCW.

(5) "Fee" means the annual fees imposed under this chapter.

(6) "Generate" means any act or process which produces hazardous waste or first causes a hazardous waste to become subject to regulation.

(7) "Hazardous waste" means and includes all dangerous and extremely hazardous wastes but for the purposes of this chapter excludes all radioactive wastes or substances composed of both radioactive and hazardous components.

(8) "Hazardous waste generator" means all persons whose primary business activities are identified by the department to generate any quantity of hazardous waste in the calendar year for which the fee is imposed.

(9) "Person" means an individual, trust, firm, joint stock company, partnership, association, state, public or private or municipal corporation, commission, political subdivision of a state, interstate body, the federal government including any agency or officer thereof, and any Indian tribe or authorized tribal organization.

(10) "Price deflator" means the United States department of commerce bureau of economic analysis, "Implicit Price Deflator for Gross National Product" for "Government Purchases of Goods and Services," for "State and Local Government."

(11) "Recycled for beneficial use" means the use of hazardous waste, either before or after reclamation, as a substitute for a commercial product or raw material, but does not include: (a) Use constituting disposal; (b) incineration; or (c) use as a fuel.

(12) "Waste generation site" means any geographical area that has been assigned an EPA/state identification number. [2020 c 20 § 1221; 1995 c 207 § 1; 1994 c 136 § 1; 1990 c 114 § 11. Formerly RCW 70.95E.010.]

Additional notes found at www.leg.wa.gov

70A.218.020 Hazardous waste generation—Fee. A fee is imposed for the privilege of generating hazardous waste in the state. The annual amount of the fee shall be thirty-five dollars upon every hazardous waste generator doing business in Washington in the current calendar year or any part thereof. This fee shall be collected by the department or its designee. A hazardous waste generator shall be exempt from the fee imposed under this section if the value of products, gross proceeds of sales, or gross income of the business, from all business activities of the hazardous waste generator, is less than twelve thousand dollars in the current calendar year. The department shall, subject to appropriation, use the funds collected from the fees assessed in this subsection to support the activities of the office of waste reduction as specified in RCW 70A.214.030. The fee imposed pursuant to this section is due annually by July 1 of the year following the calendar year for which the fee is imposed. [2020 c 20 § 1222; 1995 c 207 § 2. Prior: 1994 sp.s. c 2 § 3; 1994 c 136 § 2; 1990 c 114 § 12. Formerly RCW 70.95E.020.]

Additional notes found at www.leg.wa.gov

70A.218.030 Voluntary reduction plan—Fees. Hazardous waste generators and hazardous substance users required to prepare plans under RCW 70A.214.110 shall pay an annual fee to support implementation of RCW 70A.214.110 and 70A.214.040. These fees are to be used by the department, subject to appropriation, for plan review, technical assistance to facilities that are required to prepare plans, other activities related to plan development and implementation, and associated indirect costs. The total fees collected under this subsection shall not exceed the department's costs of implementing RCW 70A.214.110 and 70A.214.040 and shall not exceed one million dollars per year. The annual fee for a facility shall not exceed ten thousand dollars per year. Any facility that generates less than two thousand six hundred forty pounds of hazardous waste per waste generation site in the previous calendar year shall be exempt from the fee imposed by this section. The annual fee for a facility generating at least two thousand six hundred forty pounds but not more than four thousand pounds of hazardous waste per waste generation site in the previous calendar year shall not exceed fifty dollars. A person that develops a plan covering more than one interrelated facility as provided for in RCW 70A.214.110 shall be assessed fees only for the number of plans prepared. The department shall adopt a fee schedule by rule after consultation with typical affected businesses and other interested parties. Hazardous waste generated and recycled for beneficial use, including initial amount of hazardous substances introduced into a process and subsequently recycled for beneficial use, shall not be used in the calculations of hazardous waste generated for purposes of this section.

The annual fee imposed by this section shall be first due on July 1st of the year prior to the year that the facility is required to prepare a plan, and by July 1st of each year thereafter. [2020 c 20 § 1223; 1994 c 136 § 3; 1990 c 114 § 13. Formerly RCW 70.95E.030.]

70A.218.040 Fees—Generally. On an annual basis, the department shall adjust the fees provided for in RCW 70A.218.020 and 70A.218.030, including the maximum annual fee, and maximum total fees, by conducting the calcu-

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lation in subsection (1) of this section and taking the actions set forth in subsection (2) of this section:

(1) In November of each year, the fees, annual fee, and maximum total fees imposed in RCW 70A.218.020 and 70A.218.030, or as subsequently adjusted by this section, shall be multiplied by a factor equal to the most current quarterly "price deflator" available, divided by the "price deflator" used in the numerator the previous year. However, the "price deflator" used in the denominator for the first adjustment shall be defined by the second quarter "price deflator" for 1990.

(2) Each year by March 1st the fee schedule, as adjusted in subsection (1) of this section will be published. The department will round the published fees to the nearest dollar. [2020 c 20 § 1224; 1990 c 114 § 14. Formerly RCW 70.95E.040.]

70A.218.050 Administration of fees. In administration of this chapter for the enforcement and collection of the fees due and owing under RCW 70A.218.020 and 70A.218.030, the department may apply RCW 43.17.240. [2020 c 20 § 1225; 1995 c 207 § 3; 1994 c 136 § 4; 1990 c 114 § 15. Formerly RCW 70.95E.050.]

Additional notes found at www.leg.wa.gov

70A.218.060 Hazardous waste assistance account. The hazardous waste assistance account is hereby created in the state treasury. The following moneys shall be deposited into the hazardous waste assistance account:

(1) Those revenues which are raised by the fees imposed under RCW 70A.218.020 and 70A.218.030;

(2) Penalties and surcharges collected under chapter 70A.214 RCW and this chapter; and

(3) Any other moneys appropriated or transferred to the account by the legislature. Moneys in the hazardous waste assistance account may be spent only for the purposes of this chapter following legislative appropriation. [2020 c 20 § 1226; 1991 sp.s. c 13 § 75; 1990 c 114 § 18. Formerly RCW 70.95E.080.]

Additional notes found at www.leg.wa.gov

70A.218.070 Technical assistance and compliance education—Grants. The department may use funds in the hazardous waste assistance account to provide technical assistance and compliance education assistance to hazardous substance users and waste generators, to provide grants to local governments, and for administration of this chapter.

Technical assistance may include the activities authorized under chapter 70A.214 RCW and RCW 70A.300.290 to encourage hazardous waste reduction and hazardous use reduction and the assistance provided for by RCW 70A.300.140(2).

Compliance education may include the activities authorized under RCW 70A.300.140(2) to train local agency officials and to inform hazardous substance users and hazardous waste generators and owners and operators of hazardous waste management facilities of the requirements of chapter 70A.300 RCW and related federal laws and regulations. To the extent practicable, the department shall contract with private businesses to provide compliance education.

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Grants to local governments shall be used for small quantity generator technical assistance and compliance education components of their moderate risk waste plans as required by RCW 70A.300.350. [2020 c 20 § 1227; 1995 c 207 § 4; 1990 c 114 § 19. Formerly RCW 70.95E.090.]

Additional notes found at www.leg.wa.gov

70A.218.080 Exclusion from chapter. Nothing in this chapter relates to radioactive wastes or substances composed of both radioactive and hazardous components, and the department is precluded from using the funds of the hazardous waste assistance account for the regulation and control of such wastes. [1990 c 114 § 20. Formerly RCW 70.95E.100.]

Chapter 70A.220 RCW LABELING OF PLASTICS

Sections

70A.220.010 Definitions.

70A.220.020 Plastic bottle or rigid plastic container—Labeling requirements.

70A.220.030 Violations, penalty.

70A.220.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Container," unless otherwise specified, refers to "rigid plastic container" or "plastic bottle" as those terms are defined in this section.

(2) "Distributors" means those persons engaged in the distribution of packaged goods for sale in the state of Washington, including manufacturers, wholesalers, and retailers.

(3) "Label" means a molded, imprinted, or raised symbol on or near the bottom of a plastic container or bottle.

(4) "Person" means an individual, sole proprietor, partnership, association, or other legal entity.

(5) "Plastic" means a material made of polymeric organic compounds and additives that can be shaped by flow.

(6) "Plastic bottle" means a plastic container intended for single use that has a neck that is smaller than the body of the container, accepts a screw-type, snap cap, or other closure and has a capacity of sixteen fluid ounces or more, but less than five gallons.

(7) "Rigid plastic container" means a formed or molded container, other than a bottle, intended for single use, composed predominantly of plastic resin, and having a relatively inflexible finite shape or form with a capacity of eight ounces or more but less than five gallons. [1991 c 319 § 103. Formerly RCW 70.95F.010.]

70A.220.020 Plastic bottle or rigid plastic container—Labeling requirements. Except as provided in RCW 70A.220.030(2), after January 1, 1992, no person may distribute, sell, or offer for sale in this state a plastic bottle or rigid plastic container unless the container is labeled with a code identifying the appropriate resin type used to produce the structure of the container. The numbers and letters used shall be as follows:

- (a) [(1)] 1.= PETE (polyethylene terephthalate)
- (b) [(2)] 2.= HDPE (high-density polyethylene)
- (c) [(3)] 3.= V (vinyl) or PVC (polyvinyl chloride)

- (d) [(4)] 4.= LDPE (low density polyethylene)
- (e) [(5)] 5.= PP (polypropylene)
- (f) [(6)] 6.= PS (polystyrene)
- (g) [(7)] 7.= OTHER [2021 c 313 § 18; 2020 c 20 § 1228; 1991 c 319 § 104. Formerly RCW 70.95F.020.]

Finding—Intent—2021 c 313: See note following RCW 70A.245.010.

70A.220.030 Violations, penalty. (1) A person who, after written notice from the department, violates RCW 70A.220.020 is subject to a civil penalty of fifty dollars for each violation up to a maximum of five hundred dollars and may be enjoined from continuing violations. Each distribution constitutes a separate offense.

(2) Retailers and distributors shall have two years from May 21, 1991, to clear current inventory, delivered or received and held in their possession as of May 21, 1991. [2020 c 20 § 1229; 1991 c 319 § 105. Formerly RCW 70.95F.030.]

Chapter 70A.222 RCW PACKAGES CONTAINING METALS AND TOXIC CHEMICALS

Sections

70A.222.005	Finding.
70A.222.010	Definitions.
70A.222.020	Concentration levels.
70A.222.030	Exemptions.
70A.222.040	Certificate of compliance.
70A.222.050	Certificate of compliance—Public access.
70A.222.060	Prohibition of sale of package.
70A.222.070	Prohibition on the manufacture, sale, or distribution of certain food packaging—Safer alternatives assessment by department of ecology—Publication of findings—Report to legislature—Prohibition effective date contingent on findings.

70A.222.005 Finding. The legislature finds and declares that:

(1) The management of solid waste can pose a wide range of hazards to public health and safety and to the environment;

(2) Packaging comprises a significant percentage of the overall solid waste stream;

(3) The presence of heavy metals in packaging is a part of the total concern in light of their likely presence in emissions or ash when packaging is incinerated, or in leachate when packaging is landfilled;

(4) Lead, mercury, cadmium, and hexavalent chromium, on the basis of available scientific and medical evidence, are of particular concern;

(5) The intent of this chapter is to achieve a reduction in toxicity without impeding or discouraging the expanded use of postconsumer materials in the production of packaging and its components. [1991 c 319 § 106. Formerly RCW 70.95G.005.]

70A.222.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Food package" means a package or packaging component that is intended for direct food contact and is comprised, in substantial part, of paper, paperboard, or other materials originally derived from plant fibers.

(2) "Manufacturer" means a person, firm, partnership, organization, joint venture, or corporation that applies a package to a product for distribution or sale.

(3) "Package" means a container providing a means of marketing, protecting, or handling a product and shall include a unit package, an intermediate package, and a shipping container. "Package" also means and includes unsealed receptacles such as carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags, and tubs.

(4) "Packaging component" means an individual assembled part of a package such as, but not limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, and labels.

(5) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS chemicals" means, for the purposes of food packaging, a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

(6) "Safer alternative" means an alternative substance or chemical, demonstrated by an alternatives assessment, that meets improved hazard and exposure considerations and can be practically and economically substituted for the original chemical. [2018 c 138 § 1; 1991 c 319 § 107. Formerly RCW 70.95G.010.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

70A.222.020 Concentration levels. The sum of the concentration levels of lead, cadmium, mercury, and hexavalent chromium present in any package or packaging component shall not exceed the following:

(1) Six hundred parts per million by weight effective July 1, 1993;

(2) Two hundred fifty parts per million by weight effective July 1, 1994; and

(3) One hundred parts per million by weight effective July 1, 1995.

This section shall apply only to lead, cadmium, mercury, and hexavalent chromium that has been intentionally introduced as an element during manufacturing or distribution. [1992 c 131 § 1; 1991 c 319 § 108. Formerly RCW 70.95G.020.]

70A.222.030 Exemptions. All packages and packaging components shall be subject to this chapter except the following:

(1) Those packages or package components with a code indicating date of manufacture that were manufactured prior to May 21, 1991;

(2) Those packages or packaging components that have been purchased by, delivered to, or are possessed by a retailer on or before twenty-four months following May 21, 1991, to permit opportunity to clear existing inventory of the prescribed packaging material;

(3) Those packages or packaging components to which lead, cadmium, mercury, or hexavalent chromium have been added in the manufacturing, forming, printing, or distribution process in order to comply with health or safety requirements of federal law or for which there is no feasible alternative; or

(4) Those packages and packaging components that would not exceed the maximum contaminant levels set forth in RCW 70A.222.020(1) but for the addition of postcon-

sumer materials; and provided that the exemption for this subsection shall expire six years after May 21, 1991. [2020 c 20 § 1230; 1991 c 319 § 109. Formerly RCW 70.95G.030.]

70A.222.040 Certificate of compliance. A certificate of compliance stating that a package or packaging component is in compliance with the requirements of this chapter shall be developed by its manufacturer. For food packaging, a manufacturer shall develop a compliance certificate by the date of a prohibition taking effect under RCW 70A.222.070. If compliance is achieved under the exemption or exemptions provided in RCW 70A.222.030, the certificate shall state the specific basis upon which the exemption is claimed. The certificate of compliance shall be signed by an authorized official of the manufacturing company. The certificate of compliance shall be kept on file by the manufacturer for as long as the package or packaging component is in use, and for three years from the date of the last sale or distribution by the manufacturer. Certificates of compliance, or copies thereof, shall be furnished to the department of ecology upon request within sixty days. If manufacturers are required under any other state statute to provide a certificate of compliance, one certificate may be developed containing all required information.

If the manufacturer or supplier of the package or packaging component reformulates or creates a new package or packaging component, the manufacturer shall develop an amended or new certificate of compliance for the reformulated or new package or packaging component. [2020 c 20 § 1231; 2018 c 138 § 3; 1991 c 319 § 110. Formerly RCW 70.95G.040.]

70A.222.050 Certificate of compliance—Public access. Requests from a member of the public for any certificate of compliance shall be:

- (1) Made in writing to the department of ecology;
- (2) Made specific as to package or packaging component information requested; and
- (3) Responded to by the department of ecology within ninety days. [1991 c 319 § 111. Formerly RCW 70.95G.050.]

70A.222.060 Prohibition of sale of package. The department of ecology may prohibit the sale of any package for which a manufacturer has failed to respond to a request by the department for a certificate of compliance within the allotted period of time pursuant to RCW 70A.222.040. [2020 c 20 § 1232; 1991 c 319 § 112. Formerly RCW 70.95G.060.]

70A.222.070 Prohibition on the manufacture, sale, or distribution of certain food packaging—Safer alternatives assessment by department of ecology—Publication of findings—Report to legislature—Prohibition effective date contingent on findings. (1) Beginning January 1, 2022, no person may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state food packaging to which PFAS chemicals have been intentionally added in any amount. This prohibition may not take effect until the department of ecology completes the following: (a) Identifies that safer alternatives are available, and the safer alternative determination is supported by feedback from an

external peer review of the department's alternatives assessment; and (b) publishes findings, as required under subsection (3) of this section.

(2) To determine whether safer alternatives to PFAS chemicals exist, the department of ecology must conduct an alternatives assessment as part of the PFAS chemical action plan that:

- (a) Evaluates less toxic chemicals and nonchemical alternatives to replace the use of a chemical;
- (b) Follows the guidelines for alternatives assessments issued by the interstate chemicals clearinghouse; and
- (c) Includes, at a minimum, an evaluation of chemical hazards, exposure, performance, cost, and availability.

(3) By January 1, 2020, the department of ecology must publish its findings in the Washington State Register on whether safer alternatives to PFAS chemicals in specific applications of food packaging are available for each assessed application and submit a report with the findings and the feedback from the peer review of the department's alternatives assessment to the appropriate committees of the legislature. In order to determine that safer alternatives are available, the safer alternatives must be readily available in sufficient quantity and at a comparable cost, and perform as well as or better than PFAS chemicals in a specific food packaging application. If an alternative is a chemical, it must have previously been approved for food contact by the United States food and drug administration, such as through the issuance of a determination that the chemical has a reasonable certainty of causing no harm.

(4) The prohibition on the use of PFAS chemicals in food packaging:

- (a) Becomes effective January 1, 2022, if the report required under subsection (3) of this section finds that safer alternatives are available for specific food packaging applications;
- (b) Does not take effect January 1, 2022, if the report required under subsection (3) of this section does not find that safer alternatives are available for specific food packaging applications.

(5) If the department of ecology does not find that a safer alternative is available for some or all categories of food packaging applications, beginning January 1, 2021, and each year following, the department of ecology must review and report on alternatives as described in subsection (2) of this section. The prohibition in this section for specific food packaging applications takes effect two years after a report submitted to the legislature required under subsection (3) of this section finds that safer alternatives are available. [2018 c 138 § 2. Formerly RCW 70.95G.070.]

Chapter 70A.224 RCW USED OIL RECYCLING

Sections

70A.224.005	Finding.
70A.224.010	Definitions.
70A.224.020	Used oil recycling element.
70A.224.030	Used oil recycling element guidelines—Waiver—Statewide goals.
70A.224.040	Oil sellers—Education responsibility—Penalty.
70A.224.050	Statewide education.
70A.224.060	Disposal of used oil—Penalty.

- 70A.224.070 Used oil transporter and processor requirements—Civil penalties.
 70A.224.080 Above-ground used oil collection tanks.
 70A.224.900 Short title.

70A.224.005 Finding. (1) The legislature finds that:

(a) Millions of gallons of used oil are generated each year in this state, and used oil is a valuable petroleum resource that can be recycled;

(b) The improper collection, transportation, recycling, use, or disposal of used oil contributes to the pollution of air, water, and land, and endangers public health and welfare;

(c) The private sector is a vital resource in the collection and recycling of used oil and should be involved in its collection and recycling whenever practicable.

(2) In light of the harmful consequences of improper disposal and use of used oil, and its value as a resource, the legislature declares that the collection, recycling, and reuse of used oil is in the public interest.

(3) The department, when appropriate, should promote the rerefining of used oil in its grants, public education, regulatory, and other programs. [1991 c 319 § 301. Formerly RCW 70.95I.005.]

Hazardous waste: Chapter 70A.214 RCW.

70A.224.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of ecology.

(2) "Local government" means a city or county developing a local hazardous waste plan under RCW 70A.300.350.

(3) "Lubricating oil" means any oil designed for use in, or maintenance of, a vehicle, including, but not limited to, motor oil, gear oil, and hydraulic oil. "Lubricating oil" does not mean petroleum hydrocarbons with a flash point below one hundred degrees Centigrade.

(4) "Public used oil collection site" means a site where a used oil collection tank has been placed for the purpose of collecting household generated used oil. "Public used oil collection site" also means a vehicle designed or operated to collect used oil from the public.

(5) "Rerefining used oil" means the reclaiming of base lube stock from used oil for use again in the production of lube stock. Rerefining used oil does not mean combustion or landfilling.

(6) "Used oil" means (a) lubricating fluids that have been removed from an engine crankcase, transmission, gearbox, hydraulic device, or differential of an automobile, bus, truck, vessel, plane, heavy equipment, or machinery powered by an internal combustion engine; (b) any oil that has been refined from crude oil, used, and as a result of use, has been contaminated with physical or chemical impurities; and (c) any oil that has been refined from crude oil and, as a consequence of extended storage, spillage, or contamination, is no longer useful to the original purchaser. "Used oil" does not include used oil to which hazardous wastes have been added.

(7) "Vehicle" includes every device physically capable of being moved upon a public or private highway, road, street, watercourse, or trail, and in, upon, or by which any person or property is or may be transported or drawn upon a public or private highway, road, street, watercourse, or trail,

except devices moved by human or animal power. [2020 c 20 § 1233; 1991 c 319 § 302. Formerly RCW 70.95I.010.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

70A.224.020 Used oil recycling element. (1) Each local government and its local hazardous waste plan under RCW 70A.300.350 is required to include a used oil recycling element. This element shall include:

(a) A plan to reach the local goals for household used oil recycling established by the local government and the department under RCW 70A.224.030. The plan shall, to the maximum extent possible, incorporate voluntary agreements with the private sector and state agencies to provide sites for the collection of used oil. Where provided, the plan shall also incorporate residential collection of used oil;

(b) A plan for enforcing the sign and container ordinances required by RCW 70A.224.040;

(c) A plan for public education on used oil recycling;

(d) A plan for addressing best management practices as provided for under RCW 70A.224.030; and

(e) An estimate of funding needed to implement the requirements of this chapter. This estimate shall include a budget reserve for disposal of contaminated oil detected at any public used oil collection site administered by the local government.

(2) By July 1, 1993, each local government or combination of contiguous local governments shall submit its used oil recycling element to the department. The department shall approve or disapprove the used oil recycling element by January 1, 1994, or within ninety days of submission, whichever is later. The department shall approve or disapprove the used oil recycling element if it determines that the element is consistent with this chapter and the guidelines developed by the department under RCW 70A.224.030.

(3) Each local government, or combination of contiguous local governments, shall submit an annual statement to the department describing the number of used oil collection sites and the quantity of household used oil recycled for the jurisdiction during the previous calendar year. The first statement shall be due April 1, 1994. Subsequent statements shall be due April 1st of each year.

(4) Nothing in this section shall be construed to require a city or county to construct or operate a public used oil collection site. [2020 c 20 § 1234; 2014 c 173 § 1; 1991 c 319 § 303. Formerly RCW 70.95I.020.]

70A.224.030 Used oil recycling element guidelines—Waiver—Statewide goals. (1) The department shall, in consultation with local governments, maintain guidelines for the used oil recycling elements required by RCW 70A.224.020 and, by July 1, 2015, shall develop best management practices for preventing and managing polychlorinated biphenyl contamination at public used oil collection sites.

(a) The guidelines shall:

(i) Require development of local collection and rerefining goals for household used oil for each entity preparing a used oil recycling element under RCW 70A.224.020;

(ii) Require local government to recommend the number of used oil collection sites needed to meet the local goals. The

department shall establish criteria regarding minimum levels of used oil collection sites;

(iii) Require local government to identify locations suitable as public used oil collection sites as described under RCW 70A.224.020(1)(a).

(b) The best management practices for preventing and managing polychlorinated biphenyl contamination at public used oil collection sites must include, at a minimum:

- (i) Tank testing requirements;
- (ii) Contaminated tank labeling and security measures;
- (iii) Contaminated tank cleanup standards;
- (iv) Proper contaminated used oil disposal as required under chapter 70A.300 RCW and 40 C.F.R. Part 761;
- (v) Spill control measures; and
- (vi) Model contract language for contracts with used oil collection vendors.

(2) The department may waive all or part of the specific requirements of RCW 70A.224.020 if a local government demonstrates to the satisfaction of the department that the objectives of this chapter have been met.

(3) The department may prepare and implement a used oil recycling plan for any local government failing to complete the used oil recycling element of the plan.

(4) The department shall develop statewide collection and rerefining goals for household used oil for each calendar year beginning with calendar year 1994. Goals shall be based on the estimated statewide collection and rerefining rate for calendar year 1993, and shall increase each year until calendar year 1996, when the rate shall be eighty percent.

(5) By July 1, 2015, the department shall update the guidelines establishing statewide equipment and operating standards for public used oil collection sites. The updated guidelines must include the best management practices for prevention and management of contaminated used oil developed pursuant to subsection (1) of this section and a process for how to petition the legislature for relief of extraordinary costs incurred with the management and disposal of contaminated used oil. In addition, the standards shall:

(a) Allow the use of used oil collection igloos and other types of portable used oil collection tanks;

(b) Prohibit the disposal of nonhousehold-generated used oil;

(c) Limit the amount of used oil deposited to five gallons per household per day;

(d) Ensure adequate protection against leaks and spills; and

(e) Include other requirements deemed appropriate by the department. [2020 c 20 § 1235; 2014 c 173 § 2; 1991 c 319 § 304. Formerly RCW 70.951.030.]

70A.224.040 Oil sellers—Education responsibility—Penalty. (1) A person annually selling one thousand or more gallons of lubricating oil to ultimate consumers for use or installation off the premises, or five hundred or more vehicle oil filters to ultimate consumers for use or installation off the premises within a city or county having an approved used oil recycling element, shall:

(a) Post and maintain at or near the point of sale, durable and legible signs informing the public of the importance of used oil recycling and how and where used oil may be properly recycled; and

(b) Provide for sale at or near the display location of the lubricating oil or vehicle oil filters, household used oil recycling containers. The department shall design and print the signs required by this section, and shall make them available to local governments and retail outlets.

(2) A person, who, after notice, violates this section is guilty of a misdemeanor and on conviction is subject to a fine not to exceed one thousand dollars.

(3) The department is responsible for notifying retailers subject to this section.

(4) A city or county may adopt household used oil recycling container standards in order to ensure compatibility with local recycling programs.

(5) Each local government preparing a used oil recycling element of a local hazardous waste plan pursuant to RCW 70A.224.020 shall adopt ordinances within its jurisdiction to enforce subsections (1) and (4) of this section. [2020 c 20 § 1236; 1991 c 319 § 305. Formerly RCW 70.951.040.]

70A.224.050 Statewide education. The department shall conduct a public education program to inform the public of the needs for and benefits of collecting and recycling used oil in order to conserve resources and protect the environment. As part of this program, the department shall:

(1) Establish and maintain a statewide list of public used oil collection sites, and a list of all persons coordinating local government used oil programs;

(2) Establish a statewide media campaign describing used oil recycling;

(3) Assist local governments in providing public education and awareness programs concerning used oil by providing technical assistance and education materials; and

(4) Encourage the establishment of voluntary used oil collection and recycling programs, including public-private partnerships, and provide technical assistance to persons organizing such programs. [1991 c 319 § 306. Formerly RCW 70.951.050.]

70A.224.060 Disposal of used oil—Penalty. (1) Effective January 1, 1992, the use of used oil for dust suppression or weed abatement is prohibited.

(2) Effective July 1, 1992, no person may sell or distribute absorbent-based kits, intended for home use, as a means for collecting, recycling, or disposing of used oil.

(3) Effective January 1, 1994, no person may knowingly dispose of used oil except by delivery to a person collecting used oil for recycling, treatment, or disposal, subject to the provisions of this chapter and chapter 70A.300 RCW.

(4) Effective January 1, 1994, no owner or operator of a solid waste landfill may knowingly accept used oil for disposal in the landfill.

(5) A person who violates this section is guilty of a misdemeanor. [2020 c 20 § 1237; 1991 c 319 § 307. Formerly RCW 70.951.060.]

70A.224.070 Used oil transporter and processor requirements—Civil penalties. (1) By January 1, 1993, the department shall adopt rules requiring any transporter of used oil to comply with minimum notification, invoicing, record-keeping, and reporting requirements. For the purpose of this section, a transporter means a person engaged in the off-site

transportation of used oil in quantities greater than twenty-five gallons per day.

(2) By January 1, 1993, the department shall adopt minimum standards for used oil that is blended into fuels. Standards shall, at a minimum, establish testing and recordkeeping requirements. Unless otherwise exempted, a processor is any person involved in the marketing, blending, mixing, or processing of used oil to produce fuel to be burned for energy recovery.

(3) Any person who knowingly transports used oil without meeting the requirements of this section shall be subject to civil penalties under chapter 70A.300 RCW.

(4) Rules developed under this section shall not require a manifest from individual residences served by a waste oil curbside collection program. [2020 c 20 § 1238; 1991 c 319 § 308. Formerly RCW 70.951.070.]

70A.224.080 Above-ground used oil collection tanks.

By January 1, 1987, the state fire protection board, in cooperation with the department of ecology, shall develop a statewide standard for the placement of above-ground tanks to collect used oil from private individuals for recycling purposes. [1986 c 37 § 1. Formerly RCW 70.951.080, 19.114.040.]

70A.224.900 Short title. This chapter shall be known and may be cited as the used oil recycling act. [1991 c 319 § 310. Formerly RCW 70.951.901.]

Chapter 70A.226 RCW

MUNICIPAL SEWAGE SLUDGE—BIOSOLIDS

Sections

70A.226.005	Findings—Municipal sewage sludge as a beneficial commodity.
70A.226.007	Purpose—Federal requirements.
70A.226.010	Definitions.
70A.226.020	Biosolid management program—Transportation of biosolids and sludge.
70A.226.030	Biosolids permits—Fees—Biosolids permit account.
70A.226.040	Beneficial uses for biosolids and glassified sewage sludge.
70A.226.050	Violations—Orders.
70A.226.060	Enforcement of chapter.
70A.226.070	Violations—Punishment.
70A.226.080	Violations—Monetary penalty.
70A.226.090	Delegation to local health department—Generally.
70A.226.100	Delegation to local health department—Review.

70A.226.005 Findings—Municipal sewage sludge as a beneficial commodity. (1) The legislature finds that:

(a) Municipal sewage sludge is an unavoidable by-product of the wastewater treatment process;

(b) Population increases and technological improvements in wastewater treatment processes will double the amount of sludge generated within the next ten years;

(c) Sludge management is often a financial burden to municipalities and to ratepayers;

(d) Properly managed municipal sewage sludge is a valuable commodity and can be beneficially used in agriculture, silviculture, and in landscapes as a soil conditioner; and

(e) Municipal sewage sludge can contain metals and microorganisms that, under certain circumstances, may pose a risk to public health.

(2) The legislature declares that a program shall be established to manage municipal sewage sludge and that the program shall, to the maximum extent possible, ensure that municipal sewage sludge is reused as a beneficial commodity and is managed in a manner that minimizes risk to public health and the environment. [1992 c 174 § 1. Formerly RCW 70.951.005.]

70A.226.007 Purpose—Federal requirements. The purpose of this chapter is to provide the department of ecology and local governments with the authority and direction to meet federal regulatory requirements for municipal sewage sludge. The department of ecology may seek delegation and administer the sludge permit program required by the federal clean water act as it existed February 4, 1987. [1992 c 174 § 2. Formerly RCW 70.951.007.]

70A.226.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Biosolids" means municipal sewage sludge that is a primarily organic, semisolid product resulting from the wastewater treatment process, that can be beneficially recycled and meets all requirements under this chapter. For the purposes of this chapter, "biosolids" includes septic tank sludge, also known as septage, that can be beneficially recycled and meets all requirements under this chapter.

(2) "Department" means the department of ecology.

(3) "Local health department" has the same meaning as "jurisdictional health department" in RCW 70A.205.015.

(4) "Municipal sewage sludge" means a semisolid substance consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from a publicly owned wastewater treatment plant. [2020 c 20 § 1239; 1992 c 174 § 3. Formerly RCW 70.951.010.]

70A.226.020 Biosolid management program—Transportation of biosolids and sludge. (1) The department shall adopt rules to implement a biosolid management program within twelve months of the adoption of federal rules, 40 C.F.R. Sec. 503, relating to technical standards for the use and disposal of sewage sludge. The biosolid management program shall, at a minimum, conform with all applicable federal rules adopted pursuant to the federal clean water act as it existed on February 4, 1987.

(2) In addition to any federal requirements, the state biosolid management program may include, but not be limited to, an education program to provide relevant legal and scientific information to local governments and citizen groups.

(3) Rules adopted by the department under this section shall provide for public input and involvement for all state and local permits.

(4) Materials that have received a permit as a biosolid shall be regulated pursuant to this chapter.

(5) The transportation of biosolids and municipal sewage sludge shall be governed by Title 81 RCW. Certificates issued by the utilities and transportation commission before June 11, 1992, that include or authorize transportation of municipal sewage sludge shall continue in force and effect and be interpreted to include biosolids. [1992 c 174 § 4. Formerly RCW 70.951.020.]

70A.226.030 Biosolids permits—Fees—Biosolids permit account. (1) The department shall establish annual fees to collect expenses for issuing and administering biosolids permits under this chapter. An initial fee schedule shall be established by rule and shall be adjusted no more often than once every two years. This fee schedule applies to all permits, regardless of date of issuance, and fees shall be assessed prospectively. Fees shall be established in amounts to recover expenses incurred by the department in processing permit applications and modifications, reviewing related plans and documents, monitoring, evaluating, conducting inspections, overseeing performance of delegated program elements, providing technical assistance and supporting overhead expenses that are directly related to these activities.

(2) The annual fee paid by a permittee for any permit issued under this chapter shall be determined by the number of residences or residential equivalents contributing to the permittee's biosolids management system. If residences or residential equivalents cannot be determined or reasonably estimated, fees shall be based on other appropriate criteria.

(3) The biosolids permit account is created in the state treasury. All receipts from fees under this section must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes of administering permits under this chapter.

(4) The department shall make available on the website information on fees collected, actual expenses incurred, and anticipated expenses for the current and following fiscal years.

(5) The department shall work with the regulated community and local health departments to study the feasibility of modifying the fee schedule to support delegated local health departments and reduce local health department fees paid by biosolids permittees. [2014 c 76 § 7; 1997 c 398 § 1. Formerly RCW 70.95J.025.]

70A.226.040 Beneficial uses for biosolids and glassified sewage sludge. The department may work with all appropriate state agencies, local governments, and private entities to establish beneficial uses for biosolids and glassified sewage sludge. [1992 c 174 § 5. Formerly RCW 70.95J.030.]

70A.226.050 Violations—Orders. If a person violates any provision of this chapter, or a permit issued or rule adopted pursuant to this chapter, the department may issue an appropriate order to assure compliance with the chapter, permit, or rule. [1992 c 174 § 6. Formerly RCW 70.95J.040.]

70A.226.060 Enforcement of chapter. The department, with the assistance of the attorney general, may bring an action at law or in equity, including an action for injunctive relief, to enforce this chapter or a permit issued or rule adopted by the department pursuant to this chapter. [1992 c 174 § 7. Formerly RCW 70.95J.050.]

70A.226.070 Violations—Punishment. A person who willfully violates, without sufficient cause, any of the provisions of this chapter, or a permit or order issued pursuant to this chapter, is guilty of a gross misdemeanor. Willful viola-

tion of this chapter, or a permit or order issued pursuant to this chapter is a gross misdemeanor punishable by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment for up to three hundred sixty-four days, or by both. Each day of violation may be deemed a separate violation. [2011 c 96 § 50; 1992 c 174 § 8. Formerly RCW 70.95J.060.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

70A.226.080 Violations—Monetary penalty. In addition to any other penalty provided by law, a person who violates this chapter or rules or orders adopted or issued pursuant to it shall be subject to a penalty in an amount of up to five thousand dollars a day for each violation. Each violation shall be a separate violation. In the case of a continuing violation, each day of violation is a separate violation. An act of commission or omission that procures, aids, or abets in the violation shall be considered a violation under this section. [1992 c 174 § 9. Formerly RCW 70.95J.070.]

70A.226.090 Delegation to local health department—Generally. The department may delegate to a local health department the powers necessary to issue and enforce permits to use or dispose of biosolids. A delegation may be withdrawn if the department finds that a local health department is not effectively administering the permit program. [1992 c 174 § 10. Formerly RCW 70.95J.080.]

70A.226.100 Delegation to local health department—Review. (1) Any permit issued by a local health department under RCW 70A.226.090 may be reviewed by the department to ensure that the proposed site or facility conforms with all applicable laws, rules, and standards under this chapter.

(2) If the department does not approve or disapprove a permit within sixty days, the permit shall be considered approved.

(3) A local health department may appeal the department's decision to disapprove a permit to the pollution control hearings board, as provided in chapter 43.21B RCW. [2020 c 20 § 1240; 1992 c 174 § 11. Formerly RCW 70.95J.090.]

Chapter 70A.228 RCW BIOMEDICAL WASTE

Sections

70A.228.005	Findings.
70A.228.010	Definitions.
70A.228.020	State definition preempts local definitions.
70A.228.030	Waste treatment technologies.
70A.228.040	Residential sharps—Disposal—Violation.
70A.228.050	Residential sharps waste collection.
70A.228.900	Section headings.
70A.228.901	Effective dates—1992 c 14.

70A.228.005 Findings. The legislature finds and declares that:

(1) It is a matter of statewide concern that biomedical waste be handled in a manner that protects the health, safety, and welfare of the public, the environment, and the workers who handle the waste.

(2) Infectious disease transmission has not been identified from improperly disposed biomedical waste, but the potential for such transmission may be present.

(3) A uniform, statewide definition of biomedical waste will simplify compliance with local regulations while preserving local control of biomedical waste management. [1992 c 14 § 1. Formerly RCW 70.95K.005.]

70A.228.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Biomedical waste" means, and is limited to, the following types of waste:

(a) "Animal waste" is waste animal carcasses, body parts, and bedding of animals that are known to be infected with, or that have been inoculated with, human pathogenic microorganisms infectious to humans.

(b) "Biosafety level 4 disease waste" is waste contaminated with blood, excretions, exudates, or secretions from humans or animals who are isolated to protect others from highly communicable infectious diseases that are identified as pathogenic organisms assigned to biosafety level 4 by the centers for disease control, national institute of health, biosafety in microbiological and biomedical laboratories, current edition.

(c) "Cultures and stocks" are wastes infectious to humans and includes specimen cultures, cultures and stocks of etiologic agents, wastes from production of biologicals and serums, discarded live and attenuated vaccines, and laboratory waste that has come into contact with cultures and stocks of etiologic agents or blood specimens. Such waste includes but is not limited to culture dishes, blood specimen tubes, and devices used to transfer, inoculate, and mix cultures.

(d) "Human blood and blood products" is discarded waste human blood and blood components, and materials containing free-flowing blood and blood products.

(e) "Pathological waste" is waste human source biopsy materials, tissues, and anatomical parts that emanate from surgery, obstetrical procedures, and autopsy. "Pathological waste" does not include teeth, human corpses, remains, and anatomical parts that are intended for final disposition.

(f) "Sharps waste" is all hypodermic needles, syringes with needles attached, IV tubing with needles attached, scalpel blades, and lancets that have been removed from the original sterile package.

(2) "Local government" means city, town, or county.

(3) "Local health department" means the city, county, city-county, or district public health department.

(4) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, or local government.

(5) "Treatment" means incineration, sterilization, or other method, technique, or process that changes the character or composition of a biomedical waste so as to minimize the risk of transmitting an infectious disease.

(6) "Residential sharps waste" has the same meaning as "sharps waste" in subsection (1) of this section except that the sharps waste is generated and prepared for disposal at a residence, apartment, dwelling, or other noncommercial habitat.

(7) "Sharps waste container" means a leak-proof, rigid, puncture-resistant red container that is taped closed or tightly lidded to prevent the loss of the residential sharps waste.

(8) "Mail programs" means those programs that provide sharps users with a multiple barrier protection kit for the placement of a sharps container and subsequent mailing of the wastes to an approved disposal facility.

(9) "Pharmacy return programs" means those programs where sharps containers are returned by the user to designated return sites located at a pharmacy to be transported by a biomedical or solid waste collection company approved by the utilities and transportation commission.

(10) "Drop-off programs" means those program sites designated by the solid waste planning jurisdiction where sharps users may dispose of their sharps containers.

(11) "Source separation" has the same meaning as in RCW 70A.205.015.

(12) "Unprotected sharps" means residential sharps waste that are not disposed of in a sharps waste container. [2020 c 20 § 1241; 2019 c 432 § 32; 1994 c 165 § 2; 1992 c 14 § 2. Formerly RCW 70.95K.010.]

Effective date—2019 c 432: See note following RCW 68.05.175.

Findings—Purpose—Intent—1994 c 165: "The legislature finds that the improper disposal and labeling of sharps waste from residences poses a potential health risk and perceived threat to the waste generators, public, and workers in the waste and recycling industry. The legislature further finds that a uniform method for handling sharps waste generated at residences will reduce confusion and injuries, and enhance public and waste worker confidence.

It is the purpose and intent of this act that residential generated sharps waste be contained in easily identified containers and separated from the regular solid waste stream to ensure worker safety and promote proper disposal of these wastes in a manner that is environmentally safe and economically sound." [1994 c 165 § 1.]

70A.228.020 State definition preempts local definitions. The definition of biomedical waste set forth in RCW 70A.228.010 shall be the sole state definition for biomedical waste within the state, and shall preempt biomedical waste definitions established by a local health department or local government. [2020 c 20 § 1242; 1992 c 14 § 3. Formerly RCW 70.95K.011.]

70A.228.030 Waste treatment technologies. (1) At the request of an applicant, the department of health, in consultation with the department of ecology and local health departments, may evaluate the environmental and public health impacts of biomedical waste treatment technologies. The department shall make available the results of any evaluation to local health departments.

(2) All direct costs associated with the evaluation shall be paid by the applicant to the department of health or to a state or local entity designated by the department of health.

(3) For the purposes of this section, "applicant" means any person representing a biomedical waste treatment technology that seeks an evaluation under subsection (1) of this section.

(4) The department of health may adopt rules to implement this section. [1992 c 14 § 4. Formerly RCW 70.95K.020.]

70A.228.040 Residential sharps—Disposal—Violation. (1) A person shall not intentionally place unprotected

sharps or a sharps waste container into: (a) Recycling containers provided by a city, county, or solid waste collection company, or any other recycling collection site unless that site is specifically designated by a local health department as a drop-off site for sharps waste containers; or (b) cans, carts, drop boxes, or other containers in which refuse, trash, or solid waste has been placed for collection if a source separated collection service is provided for residential sharps waste.

(2) Local health departments shall enforce this section, primarily through an educational approach regarding proper disposal of residential sharps. On the first and second violation, the health department shall provide a warning to the person that includes information on proper disposal of residential sharps. A subsequent violation shall be a class 3 infraction under chapter 7.80 RCW.

(3) It is not a violation of this section to place a sharps waste container into a household refuse receptacle if the utilities and transportation commission determines that such placement is necessary to reduce the potential for theft of the sharps waste container. [1994 c 165 § 3. Formerly RCW 70.95K.030.]

Findings—Purpose—Intent—1994 c 165: See note following RCW 70A.228.010.

Additional notes found at www.leg.wa.gov

70A.228.050 Residential sharps waste collection. (1) A public or private provider of solid waste collection service may provide a program to collect source separated residential sharps waste containers in conjunction with regular collection services.

(2) A company collecting source separated residential sharps waste containers shall notify the public, in writing, on the availability of this service. Notice shall occur at least forty-five days prior to the provision of this service and shall include the following information: (a) How to properly dispose of residential sharps waste; (b) how to obtain sharps waste containers; (c) the cost of the program; (d) options to home collection of sharps waste; and (e) the legal requirements of residential sharps waste disposal.

(3) A company under the jurisdiction of the utilities and transportation commission may provide the service authorized under subsection (1) of this section only under tariff.

The commission may require companies collecting sharps waste containers to implement practices that will protect the containers from theft. [1994 c 165 § 4. Formerly RCW 70.95K.040.]

Findings—Purpose—Intent—1994 c 165: See note following RCW 70A.228.010.

70A.228.900 Section headings. Section headings as used in this chapter do not constitute any part of the law. [1992 c 14 § 5. Formerly RCW 70.95K.900.]

70A.228.901 Effective dates—1992 c 14. (1) Sections 2 and 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 20, 1992].

(2) Section 4 of this act shall take effect October 1, 1992. [1992 c 14 § 7. Formerly RCW 70.95K.920.]

(2022 Ed.)

Chapter 70A.230 RCW MERCURY

Sections

70A.230.010	Definitions.
70A.230.020	Fluorescent lamps—Labeling requirements.
70A.230.030	Mercury disposal education plan.
70A.230.040	Schools—Purchase of mercury prohibited.
70A.230.050	Prohibited sales—Novelties, manometers, thermometers, thermostats, motor vehicles, bulk mercury.
70A.230.060	Rules—Product preference.
70A.230.070	Clearinghouse—Department participation.
70A.230.080	Penalties.
70A.230.090	Crematories—Nonapplicability of chapter.
70A.230.100	Prescription drugs and devices, biological products, over-the-counter items—Nonapplicability of chapter.
70A.230.110	Medical equipment, research tests—Nonapplicability of chapter.
70A.230.120	Vaccines.
70A.230.130	Fiscal impact—Model toxics control operating account.
70A.230.140	National mercury repository site.
70A.230.150	Requirement to recycle end-of-life mercury-containing lights.

70A.230.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Bulk mercury" includes any elemental, nonamalgamated mercury, regardless of volume quantity or weight and does not include mercury-added products as defined in this section or products containing mercury collected for recycling or disposal at a permitted disposal facility.

(2) "Department" means the department of ecology.

(3) "Director" means the director of the department of ecology.

(4) "Health care facility" includes a hospital, nursing home, extended care facility, long-term care facility, clinical or medical laboratory, state or private health or mental institution, clinic, physician's office, or health maintenance organization.

(5) "Manufacturer" includes any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a mercury-added product or an importer or domestic distributor of a mercury-added product produced in a foreign country. In the case of a multicomponent product containing mercury, the manufacturer is the last manufacturer to produce or assemble the product. If the multicomponent product or mercury-added product is produced in a foreign country, the manufacturer is the first importer or domestic distributor.

(6) "Mercury-added button-cell battery" means a button-cell battery to which the manufacturer intentionally introduces mercury for the operation of the battery.

(7) "Mercury-added novelty" means a mercury-added product intended mainly for personal or household enjoyment or adornment. Mercury-added novelties include, but are not limited to, items intended for use as practical jokes, figurines, adornments, toys, games, cards, ornaments, yard statues and figures, candles, jewelry, holiday decorations, items of apparel, and other similar products. Mercury-added novelty does not include games, toys, or products that require a button-cell or lithium battery, liquid crystal display screens, or a lamp that contains mercury.

(8) "Mercury-added product" means a product, commodity, or chemical, or a product with a component that contains mercury or a mercury compound intentionally added to the

product, commodity, or chemical in order to provide a specific characteristic, appearance, or quality, or to perform a specific function, or for any other reason. Mercury-added products include those products listed in the interstate mercury education and reduction clearinghouse mercury-added products database, but are not limited to, mercury thermometers, mercury thermostats, mercury barometers, lamps, and mercury switches or relays.

(9) "Mercury manometer" means a mercury-added product that is used for measuring blood pressure.

(10) "Mercury thermometer" means a mercury-added product that is used for measuring temperature.

(11) "Retailer" means a retailer of a mercury-added product.

(12) "Switch" means any device, which may be referred to as a switch, sensor, valve, probe, control, transponder, or any other apparatus, that directly regulates or controls the flow of electricity, gas, or other compounds, such as relays or transponders. "Switch" includes all components of the unit necessary to perform its flow control function. "Automotive mercury switch" includes a convenience switch, such as a switch for a trunk or hood light, and a mercury switch in anti-lock brake systems. "Utility switch" includes, but is not limited to, all devices that open or close an electrical circuit, or a liquid or gas valve. "Utility relay" includes, but is not limited to, all products or devices that open or close electrical contacts to control the operation of other devices in the same or other electrical circuit.

(13) "Wholesaler" means a wholesaler of a mercury-added product. [2012 c 119 § 1; 2010 c 130 § 18; 2003 c 260 § 2. Formerly RCW 70.95M.010.]

Additional notes found at www.leg.wa.gov

70A.230.020 Fluorescent lamps—Labeling requirements. (1) Effective January 1, 2004, a manufacturer, wholesaler, or retailer may not knowingly sell at retail a fluorescent lamp if the fluorescent lamp contains mercury and was manufactured after November 30, 2003, unless the fluorescent lamp is labeled in accordance with the guidelines listed under subsection (2) of this section. Primary responsibility for affixing labels required under this section is on the manufacturer, and not on the wholesaler or retailer.

(2) Except as provided in subsection (3) of this section, a lamp is considered labeled pursuant to subsection (1) of this section if the lamp has all of the following:

(a) A label affixed to the lamp that displays the internationally recognized symbol for the element mercury; and

(b) A label on the lamp's packaging that: (i) Clearly informs the purchaser that mercury is present in the item; (ii) explains that the fluorescent lamp should be disposed of according to applicable federal, state, and local laws; and (iii) provides a toll-free telephone number, and a uniform resource locator internet address to a website, that contains information on applicable disposal laws.

(3) The manufacturer of a mercury-added lamp is in compliance with the requirements of this section if the manufacturer is in compliance with the labeling requirements of another state.

(4) The provisions of this section do not apply to products containing mercury-added lamps. [2003 c 260 § 3. Formerly RCW 70.95M.020.]

70A.230.030 Mercury disposal education plan. The department of health must develop an educational plan for schools, local governments, businesses, and the public on the proper disposal methods for mercury and mercury-added products. [2003 c 260 § 4. Formerly RCW 70.95M.030.]

70A.230.040 Schools—Purchase of mercury prohibited. A school may not purchase for use in a primary or secondary classroom bulk elemental mercury or chemical mercury compounds. By January 1, 2006, all primary and secondary schools in the state must remove and properly dispose of all bulk elemental mercury, chemical mercury, and bulk mercury compounds used as teaching aids in science classrooms, not including barometers. [2003 c 260 § 5. Formerly RCW 70.95M.040.]

70A.230.050 Prohibited sales—Novelties, manometers, thermometers, thermostats, motor vehicles, bulk mercury. (1) Effective January 1, 2006, no person may sell, offer for sale, or distribute for sale or use in this state a mercury-added novelty. A manufacturer of mercury-added novelties must notify all retailers that sell the product about the provisions of this section and how to properly dispose of any remaining mercury-added novelty inventory.

(2)(a) Effective January 1, 2006, no person may sell, offer for sale, or distribute for sale or use in this state a manometer used to measure blood pressure or a thermometer that contains mercury. This subsection (2)(a) does not apply to:

(i) An electronic thermometer with a button-cell battery containing mercury;

(ii) A thermometer that contains mercury and that is used for food research and development or food processing, including meat, dairy products, and pet food processing;

(iii) A thermometer that contains mercury and that is a component of an animal agriculture climate control system or industrial measurement system or for veterinary medicine until such a time as the system is replaced or a nonmercury component for the system or application is available;

(iv) A thermometer or manometer that contains mercury that is used for calibration of other thermometers, manometers, apparatus, or equipment, unless a nonmercury calibration standard is approved for the application by the national institute of standards and technology;

(v) A thermometer that is provided by prescription. A manufacturer of a mercury thermometer shall supply clear instructions on the careful handling of the thermometer to avoid breakage and proper cleanup should a breakage occur; or

(vi) A manometer or thermometer sold or distributed to a hospital, or a health care facility controlled by a hospital, if the hospital has adopted a plan for mercury reduction consistent with the goals of the mercury chemical action plan developed by the department under section 302, chapter 371, Laws of 2002.

(b) A manufacturer of thermometers that contain mercury must notify all retailers that sell the product about the provisions of this section and how to properly dispose of any remaining thermometer inventory.

(3) Effective January 1, 2006, no person may sell, install, or reinstall a commercial or residential thermostat that con-

tains mercury unless the manufacturer of the thermostat conducts or participates in a thermostat recovery or recycling program designed to assist contractors in the proper disposal of thermostats that contain mercury in accordance with 42 U.S.C. Sec. 6901, et seq., the federal resource conservation and recovery act.

(4) No person may sell, offer for sale, or distribute for sale or use in this state a motor vehicle manufactured after January 1, 2006, if the motor vehicle contains an automotive mercury switch.

(5) Nothing in this section restricts the ability of a manufacturer, importer, or domestic distributor from transporting products through the state, or storing products in the state for later distribution outside the state.

(6) Effective June 30, 2012, the sale or purchase and delivery of bulk mercury is prohibited, including sales through the internet or sales by private parties. However, the prohibition in this subsection does not apply to immediate dangerous waste recycling facilities or treatment, storage, and disposal facilities as approved by the department and sales to research facilities, or industrial facilities that provide products or services to entities exempted from this chapter. [2012 c 119 § 2; 2010 c 130 § 19; 2003 c 260 § 6. Formerly RCW 70.95M.050.]

Additional notes found at www.leg.wa.gov

70A.230.060 Rules—Product preference. (1) The *department of general administration must, by January 1, 2005, revise its rules, policies, and guidelines to implement the purpose of this chapter.

(2) The department of enterprise services must give priority and preference to the purchase of equipment, supplies, and other products that contain no mercury-added compounds or components, unless: (a) There is no economically feasible nonmercury-added alternative that performs a similar function; or (b) the product containing mercury is designed to reduce electricity consumption by at least forty percent and there is no nonmercury or lower mercury alternative available that saves the same or a greater amount of electricity as the exempted product. In circumstances where a nonmercury-added product is not available, preference must be given to the purchase of products that contain the least amount of mercury added to the product necessary for the required performance. [2015 c 225 § 109; 2003 c 260 § 7. Formerly RCW 70.95M.060.]

*Reviser's note: The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

70A.230.070 Clearinghouse—Department participation. The department is authorized to participate in a regional or multistate clearinghouse to assist in carrying out any of the requirements of this chapter. A clearinghouse may also be used for examining notification and label requirements, developing education and outreach activities, and maintaining a list of all mercury-added products. [2003 c 260 § 8. Formerly RCW 70.95M.070.]

70A.230.080 Penalties. A violation of this chapter is punishable by a civil penalty not to exceed one thousand dollars for each violation in the case of a first violation. Repeat violators are liable for a civil penalty not to exceed five thou-

sand dollars for each repeat violation. Penalties collected under this section must be deposited in the model toxics control operating account created in RCW 70A.305.180. [2020 c 20 § 1245; 2019 c 422 § 405; 2003 c 260 § 9. Formerly RCW 70.95M.080.]

Effective date—Intent—2019 c 422: See notes following RCW 82.21.010.

70A.230.090 Crematories—Nonapplicability of chapter. Nothing in this chapter applies to crematories as defined in RCW 68.04.070, alkaline hydrolysis, or natural organic reduction facilities as defined in RCW 68.04.320. [2019 c 432 § 33; 2003 c 260 § 10. Formerly RCW 70.95M.090.]

Effective date—2019 c 432: See note following RCW 68.05.175.

70A.230.100 Prescription drugs and devices, biological products, over-the-counter items—Nonapplicability of chapter. Nothing in this chapter applies to prescription drugs and devices regulated by the food and drug administration under the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.), to biological products regulated by the food and drug administration under the public health service act (42 U.S.C. Sec. 262 et seq.), or to any substance that may be lawfully sold over-the-counter without a prescription under the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.). [2012 c 119 § 3; 2003 c 260 § 12. Formerly RCW 70.95M.100.]

70A.230.110 Medical equipment, research tests—Nonapplicability of chapter. Nothing in RCW 70A.230.020, 70A.230.050 (1), (3), or (4), or 70A.230.060 applies to medical equipment or reagents used in medical or research tests regulated by the food and drug administration under the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.). [2020 c 20 § 1246; 2003 c 260 § 13. Formerly RCW 70.95M.110.]

70A.230.120 Vaccines. (1) Beginning July 1, 2007, a person who is known to be pregnant or who is under three years of age shall not be vaccinated with a mercury-containing vaccine or injected with a mercury-containing product that contains more than 0.5 micrograms of mercury per 0.5 milliliter dose.

(2) Notwithstanding subsection (1) of this section, an influenza vaccine may contain up to 1.0 micrograms of mercury per 0.5 milliliter dose.

(3) The secretary of the department of health may, upon the secretary's or local public health officer's declaration of an outbreak of vaccine-preventable disease or of a shortage of vaccine that complies with subsection (1) or (2) of this section, suspend the requirements of this section for the duration of the outbreak or shortage. A person who is known to be pregnant or lactating or a parent or legal guardian of a child under eighteen years of age shall be informed if the person or child is to be vaccinated or injected with any mercury-containing product that contains more than the mercury limits per dose in subsections (1) and (2) of this section.

(4) All vaccines and products referenced under this section must meet food and drug administration licensing

requirements. [2007 c 268 § 1; 2006 c 231 § 2. Formerly RCW 70.95M.115.]

Findings—2006 c 231: "The legislature finds that vaccinations and immunizations are among the most important public health innovations of the last one hundred years. The centers for disease control and prevention placed vaccinations at the top of its list of the ten greatest public health achievements of the twentieth century. In its efforts to improve public health in the world's poorest countries, the Bill and Melinda Gates foundation has identified childhood immunization as a cost-effective method of improving public health and saving the lives of millions of children around the world.

Fortunately, in Washington, safe and cost-effective vaccinations against childhood diseases are widely available through both public and private resources. The vaccines that the Washington state department of health provides to meet the requirements for the recommended childhood vaccination schedule through its universal childhood vaccine program are screened for thimerosal and preference is given toward the purchase of thimerosal-free products. The department of health currently provides thimerosal-free products for all routinely recommended childhood vaccines. Regardless of the absence of thimerosal in childhood vaccines in Washington, scientifically reputable organizations such as the centers for disease control and prevention, the national institute of medicine, the American academy of pediatrics, the food and drug administration, and the world health organization have all determined that there is no credible evidence that the use of thimerosal in vaccines poses a threat to the health and safety of children.

Notwithstanding these assurances of the safety of the vaccine supply, the legislature finds that where there is public concern over the safety of vaccines, vaccination rates may be reduced to the point that deadly, vaccine-preventable, childhood diseases return. This measure is being enacted to maintain public confidence in vaccine programs, so that the public will continue to seek vaccinations and their health benefits may continue to protect the people of Washington." [2006 c 231 § 1.]

70A.230.130 Fiscal impact—Model toxics control operating account. Any fiscal impact on the department or the department of health that results from the implementation of this chapter must be paid for out of funds that are appropriated by the legislature from the model toxics control operating account for the implementation of the department's persistent bioaccumulative toxic chemical strategy. [2019 c 422 § 406; 2003 c 260 § 11. Formerly RCW 70.95M.120.]

Effective date—Intent—2019 c 422: See notes following RCW 82.21.010.

70A.230.140 National mercury repository site. The department of ecology shall petition the United States environmental protection agency requesting development of a national mercury repository site. [2003 c 260 § 14. Formerly RCW 70.95M.130.]

70A.230.150 Requirement to recycle end-of-life mercury-containing lights. (Effective July 1, 2026, subject to the recodification contingency in 2014 c 119 § 10.) Effective January 1, 2013:

(1) All persons, residents, government, commercial, industrial, and retail facilities and office buildings must recycle their end-of-life mercury-containing lights.

(2) No mercury-containing lights may knowingly be placed in waste containers for disposal at incinerators, waste to energy facilities, or landfills.

(3) No mercury-containing lights may knowingly be placed in a container for mixed recyclables unless there is a separate location or compartment for the mercury-containing lights that complies with local government collection standards or guidelines.

(4) No owner or operator of a solid waste facility may be found in violation of this section if the facility has posted in a

conspicuous location a sign stating that mercury-containing lights must be recycled and are not accepted for disposal.

(5) No solid waste collector may be found in violation of this section for mercury-containing lights placed in a disposal container by the generator of the mercury-containing light. [2010 c 130 § 8. Formerly RCW 70.95M.140, 70.275.080.]

Chapter 70A.235 RCW BEVERAGE CONTAINERS

Sections

70A.235.010	Legislative findings.
70A.235.020	Definitions.
70A.235.030	Sale of containers with detachable metal rings or tabs prohibited.
70A.235.040	Enforcement—Rules.
70A.235.050	Penalty.
70A.235.900	Effective date—Implementation—1982 c 113.

70A.235.010 Legislative findings. The legislature finds that beverage containers designed to be opened through the use of detachable metal rings or tabs are hazardous to the health and welfare of the citizens of this state and detrimental to certain wildlife. The detachable parts are susceptible to ingestion by human beings and wildlife. The legislature intends to eliminate the danger posed by these unnecessary containers by prohibiting their retail sale in this state. [1982 c 113 § 1. Formerly RCW 70.132.010.]

70A.235.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Beverage" means beer or other malt beverage or mineral water, soda water, or other drink in liquid form and intended for human consumption. The term does not include milk-based, soy-based, or similar products requiring heat and pressure in the canning process.

(2) "Beverage container" means a separate and sealed can containing a beverage.

(3) "Department" means the department of ecology created under chapter 43.21A RCW. [1983 c 257 § 1; 1982 c 113 § 2. Formerly RCW 70.132.020.]

70A.235.030 Sale of containers with detachable metal rings or tabs prohibited. No person may sell or offer to sell at retail in this state any beverage container so designed and constructed that a metal part of the container is detachable in opening the container through use of a metal ring or tab. Nothing in this section prohibits the sale of a beverage container which container's only detachable part is a piece of pressure sensitive or metallic tape. [1982 c 113 § 3. Formerly RCW 70.132.030.]

70A.235.040 Enforcement—Rules. The department shall administer and enforce this chapter. The department shall adopt rules interpreting and implementing this chapter. Any rule adopted under this section shall be adopted under the administrative procedure act, chapter 34.05 RCW. [1982 c 113 § 4. Formerly RCW 70.132.040.]

70A.235.050 Penalty. Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, any person who

violates any provision of this chapter or any rule adopted under this chapter is subject to a civil penalty not exceeding five hundred dollars for each violation. Each day of a continuing violation is a separate violation. [1995 c 403 § 632; 1982 c 113 § 5. Formerly RCW 70.132.050.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

70A.235.900 Effective date—Implementation—1982 c 113. This act shall take effect on July 1, 1983. The director of the department of ecology is authorized to take such steps prior to such date as are necessary to ensure that this act is implemented on its effective date. [1982 c 113 § 7. Formerly RCW 70.132.900.]

Chapter 70A.240 RCW RECYCLING DEVELOPMENT CENTER

Sections

70A.240.010	Findings.
70A.240.020	Definitions.
70A.240.030	Recycling development center—Creation—Purpose and duties—Report to the legislature and governor—Interagency agreement—Rules.
70A.240.040	Advisory board—Duties—Membership.

70A.240.010 Findings. (1) The legislature finds that:

(a) Recycling reduces greenhouse gas emissions, conserves energy and landfill space, provides jobs and valuable feedstock materials to industry, promotes health, and protects the environment;

(b) Washington has long been a leader in sound management of recyclable materials and solid waste;

(c) Waste import restrictions worldwide are having huge implications for state and local recycling programs and operations in Washington state, requiring immediate action by the legislature;

(d) In order to maintain our leadership in recycling and create regional domestic markets, Washington must be innovative and implement best practices for recycling and waste reduction;

(e) Washington's environment and economy will benefit from expanding the number of industries that process recycled materials and use recycled feedstocks in their manufacturing;

(f) Washington recognizes the value of manufacturing incentives to encourage recycling industries to locate and operate in Washington and provide manufacturer incentives to improve the recyclability of their products;

(g) Many local governments and private entities cumulatively affect, and are affected by, the market for recycled commodities but have limited jurisdiction and cannot adequately address the problems of market development that are complex, wide-ranging, and regional in nature;

(h) A sustainable recycling system is one that is economically sustainable, in addition to environmentally sustainable;

(i) The private sector has the greatest capacity for creating and expanding markets for recycled commodities and the development of private markets for recycled commodities is in the public interest; and

(j) Washington must create a center to facilitate business assistance, provide basic and applied research and develop-

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ment, as well as policy analysis, to further the development of domestic processing and markets for recycled commodities.

(2) Therefore, it is the policy of the state to create the recycling development center to research, incentivize, and develop new markets and expand existing markets for recycled commodities and recycling facilities. [2019 c 166 § 1. Formerly RCW 70.370.010.]

Effective date—2019 c 166: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2019." [2019 c 166 § 10.]

70A.240.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Center" means recycling development center.

(2) "Department" means the department of ecology.

(3) "Director" means the director of the department of ecology.

(4) "Local government" means a city, town, or county.

(5) "Recyclable materials" means those solid wastes that are separated for recycling or reuse, such as papers, metals, and glass, that are identified as recyclable material pursuant to a local comprehensive solid waste plan.

(6) "Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration.

(7) "Secondary materials" means any materials that are not the primary products from manufacturing and other industrial sectors. These materials may include scrap and residuals from production processes and products that have been recovered at the end of their useful life.

(8) "Solid waste" or "wastes" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials. [2019 c 166 § 2. Formerly RCW 70.370.020.]

Effective date—2019 c 166: See note following RCW 70A.240.010.

70A.240.030 Recycling development center—Creation—Purpose and duties—Report to the legislature and governor—Interagency agreement—Rules. (1) The recycling development center is created within the department of ecology.

(2) The purpose of the center is to provide or facilitate basic and applied research and development, marketing, and policy analysis in furthering the development of markets and processing for recycled commodities and products. As used in this chapter, market development consists of public and private activities that are used to overcome impediments preventing full and productive use of secondary materials diverted from the waste stream, and that encourage and expand use of those materials and subsequent products. In fulfilling this mission, the center must initially direct its services to businesses that transform or remanufacture waste materials into usable or marketable materials or products for use rather than disposal.

(3) The center must perform the following activities:

(a) Develop an annual work plan. The work plan must describe actions and recommendations for developing mar-

kets for commodities comprising a significant percentage of the waste stream and having potential for use as an industrial or commercial feedstock, with initial focus on mixed waste paper and plastics;

(b) Evaluate, analyze, and make recommendations on state policies that may affect markets for recyclable materials. Such recommendations must include explicit consideration of the costs and benefits of the market-effecting policies, including estimates of the anticipated: Rate impacts on solid waste utility ratepayers; impacts on the prices of consumer goods affected by the recommended policies; and impacts on rates of recycling or utilization of postconsumer materials;

(c) Work with manufacturers and producers of packaging and other potentially recyclable materials on their work to increase the ability of their products to be recycled or reduced in Washington;

(d) Initiate, conduct, or contract for studies relating to market development for recyclable materials, including but not limited to applied research, technology transfer, life-cycle analysis, and pilot demonstration projects;

(e) Obtain and disseminate information relating to market development for recyclable materials from other state and local agencies and other sources;

(f) Contract with individuals, corporations, trade associations, and research institutions for the purposes of this chapter;

(g) Provide grants or contracts to local governments, state agencies, or other public institutions to further the development or revitalization of recycling markets in accordance with applicable rules and regulations;

(h) Provide business and marketing assistance to public and private sector entities within the state;

(i) Represent the state in regional and national market development issues and work to create a regional recycling development council that will work across either state or provincial borders, or both;

(j) Wherever necessary, the center must work with: Material recovery facility operators; public and private sector recycling and solid waste industries; packaging manufacturers and retailers; local governments; environmental organizations; interested colleges and universities; and state agencies, including the department of commerce and the utilities and transportation commission; and

(k) Report to the legislature and the governor each even-numbered year on the progress of achieving the center's purpose and performing the center's activities, including any effects on state recycling rates or rates of utilization of post-consumer materials in manufactured products that can reasonably be attributed, at least in part, to the activities of the center.

(4) In order to carry out its responsibilities under this chapter, the department must enter into an interagency agreement with the department of commerce to perform or contract for the following activities:

(a) Provide targeted business assistance to recycling businesses, including:

(i) Development of business plans;

(ii) Market research and planning information;

(iii) Referral and information on market conditions; and

(iv) Information on new technology and product development;

(b) Conduct outreach to negotiate voluntary agreements with manufacturers to increase the use of recycled materials in products and product development;

(c) Support, promote, and identify research and development to stimulate new technologies and products using recycled materials;

(d) Actively promote manufacturing with recycled commodities, as well as purchasing of recycled products by state agencies consistent with and in addition to the requirements of chapter 43.19A RCW and RCW 39.26.255, local governments, and the private sector;

(e) Undertake studies on the unmet capital and other needs of reprocessing and manufacturing firms using recycled materials, such as financing and incentive programs; and

(f) Conduct research to understand the waste stream supply chain and incentive strategies for retention, expansion, and attraction of innovative recycling technology businesses.

(5) The department may adopt any rules necessary to implement and enforce this chapter including, but not limited to, measures for the center's performance. [2019 c 166 § 3. Formerly RCW 70.370.030.]

Effective date—2019 c 166: See note following RCW 70A.240.010.

70A.240.040 Advisory board—Duties—Membership. (1) The center's activities must be guided by an advisory board.

(2) The duties of the advisory board are to:

(a) Provide advice and guidance on the annual work plan of the center; and

(b) Evaluate, analyze, and make recommendations on state policies that may affect markets for recyclable materials to the director and the department of commerce.

(3) Except as otherwise provided, advisory board members must be appointed by the director in consultation with the department of commerce as follows:

(a) One member to represent cities;

(b) One member appointed by the Washington association of county solid waste managers to represent counties east of the crest of the Cascade mountains;

(c) One member appointed by the Washington association of county solid waste managers to represent counties west of the crest of the Cascade mountains;

(d) One member to represent public interest groups;

(e) Three members from universities or state and federal research institutions;

(f) Up to seven private sector members to represent all aspects of the recycling materials system, including but not limited to manufacturing and packaging, solid waste management, and at least one not-for-profit organization familiar with innovative recycling solutions that are being used internationally in Scandinavia, China, and other countries;

(g) The chair of the utilities and transportation commission or the chair's designee as a nonvoting member; and

(h) Nonvoting, temporary appointments to the board may be made by the chair of the advisory board where specific expertise is needed.

(4) The initial appointments of the seven private sector members are as follows: Three members with three-year

terms and four members with two-year terms. Thereafter, members serve two-year renewable terms.

(5) The advisory board must meet at least quarterly.

(6) The chair of the advisory board must be elected from among the members by a simple majority vote.

(7) The advisory board may adopt bylaws and a charter for the operation of its business for the purposes of this chapter.

(8) The department shall provide staff support to the advisory board. [2019 c 166 § 4. Formerly RCW 70.370.040.]

Effective date—2019 c 166: See note following RCW 70A.240.010.

Chapter 70A.245 RCW

RECYCLING, WASTE, AND LITTER REDUCTION

Sections

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70A.245.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Beverage" means beverages identified in (a) through (f) of this subsection, intended for human or animal consumption, and in a quantity more than or equal to two fluid ounces and less than or equal to one gallon:

- (a) Water and flavored water;
- (b) Beer or other malt beverages;
- (c) Wine;
- (d) Distilled spirits;

(e) Mineral water, soda water, and similar carbonated soft drinks; and

(f) Any beverage other than those specified in (a) through (e) of this subsection, except infant formula as defined in 21 U.S.C. Sec. 321(z), medical food as defined in 21 U.S.C. Sec. 360ee(b)(3), or fortified oral nutritional supplements used for persons who require supplemental or sole source nutritional needs due to special dietary needs directly related to cancer, chronic kidney disease, diabetes, or other medical conditions as determined by the department.

(2) "Beverage manufacturing industry" means an association that represents beverage producers.

(3) "Condiment packaging" means packaging used to deliver single-serving condiments to customers. Condiment packaging includes, but is not limited to, single-serving packaging for ketchup, mustard, relish, mayonnaise, hot sauce, coffee creamer, salad dressing, jelly, jam, and soy sauce.

(4)(a) "Covered product" means an item in one of the following categories subject to minimum postconsumer recycled content requirements:

- (i) Plastic trash bags;

(ii) Household cleaning and personal care products that use plastic household cleaning and personal care product containers; and

(iii) Beverages that use plastic beverage containers.

(b) "Covered product" does not include any type of container or bag for which the state is preempted from regulating content of the container material or bag material under federal law.

(5) "Dairy milk" means a beverage that designates milk as the predominant (first) ingredient in the ingredient list on the container's label.

(6) "Department" means the department of ecology.

(7) "Expanded polystyrene" means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene).

(8) "Food service business" means a business selling or providing food for consumption on or off the premises, and includes full-service restaurants, fast food restaurants, cafes, delicatessens, coffee shops, grocery stores, vending trucks or carts, home delivery services, delivery services provided through an online application, and business or institutional cafeterias.

(9) "Food service product" means a product intended for one-time use and used for food or drink offered for sale or use. Food service products include, but are not limited to, containers, plates, bowls, cups, lids, beverage containers, meat trays, deli rounds, utensils, sachets, straws, condiment packaging, clamshells and other hinged or lidded containers, wrap, and portion cups.

(10) "Household cleaning and personal care product" means any of the following:

- (a) Laundry detergents, softeners, and stain removers;
- (b) Household cleaning products;
- (c) Liquid soap;
- (d) Shampoo, conditioner, styling sprays and gels, and other hair care products; or
- (e) Lotion, moisturizer, facial toner, and other skin care products.

(11) "Household cleaning and personal care product manufacturing industry" means an association that represents companies that manufacture household cleaning and personal care products.

(12) "Licensee" means a manufacturer or entity who licenses a brand and manufactures a covered product under that brand.

(13) "Oral nutritional supplement" means a manufactured liquid, powder capable of being reconstituted, or solid product that contains a combination of carbohydrates, proteins, fats, fiber, vitamins, and minerals intended to supplement a portion of a patient's nutrition intake.

(14) "Plastic beverage container" means a bottle or other rigid container that is capable of maintaining its shape when empty, comprised solely of one or multiple plastic resins designed to contain a beverage. Plastic beverage container does not include:

- (a) Refillable beverage containers, such as containers that are sufficiently durable for multiple rotations of their

original or similar purpose and are intended to function in a system of reuse;

(b) Rigid plastic containers or plastic bottles that are or are used for medical devices, medical products that are required to be sterile, nonprescription and prescription drugs, or dietary supplements as defined in RCW 82.08.0293;

(c) Bladders or pouches that contain wine; or

(d) Liners, caps, corks, closures, labels, and other items added externally or internally but otherwise separate from the structure of the bottle or container.

(15)(a) "Plastic household cleaning and personal care product container" means a bottle, jug, or other rigid container with a neck or mouth narrower than the base, and:

(i) A minimum capacity of eight fluid ounces or its equivalent volume;

(ii) A maximum capacity of five fluid gallons or its equivalent volume;

(iii) That is capable of maintaining its shape when empty;

(iv) Comprised solely of one or multiple plastic resins; and

(v) Containing a household cleaning or personal care product.

(b) "Plastic household cleaning and personal care product container" does not include:

(i) Refillable household cleaning and personal care product containers, such as containers that are sufficiently durable for multiple rotations of their original or similar purpose and are intended to function in a system of reuse; and

(ii) Rigid plastic containers or plastic bottles that are medical devices, medical products that are required to be sterile, and nonprescription and prescription drugs, dietary supplements as defined in RCW 82.08.0293, and packaging used for those products.

(16) "Plastic trash bag" means a bag that is made of non-compostable plastic, is at least 0.70 mils thick, and is designed and manufactured for use as a container to hold, store, or transport materials to be discarded or recycled, and includes, but is not limited to, a garbage bag, recycling bag, lawn or leaf bag, can liner bag, kitchen bag, or compactor bag. "Plastic trash bag" does not include any compostable bags meeting the requirements of chapter 70A.455 RCW.

(17) "Plastic trash bag manufacturing industry" means an association that represents companies that manufacture plastic trash bags.

(18) "Postconsumer recycled content" means the content of a covered product made of recycled materials derived specifically from recycled material generated by households or by commercial, industrial, and institutional facilities in their role as end users of a product that can no longer be used for its intended purpose. "Postconsumer recycled content" includes returns of material from the distribution chain.

(19)(a) "Producer" means the following person responsible for compliance with minimum postconsumer recycled content requirements under this chapter for a covered product sold, offered for sale, or distributed in or into this state:

(i) If the covered product is sold under the manufacturer's own brand or lacks identification of a brand, the producer is the person who manufactures the covered product;

(ii) If the covered product is manufactured by a person other than the brand owner, the producer is the person who is

the licensee of a brand or trademark under which a covered product is sold, offered for sale, or distributed in or into this state, whether or not the trademark is registered in this state, unless the manufacturer or brand owner of the covered product has agreed to accept responsibility under this chapter; or

(ii) If there is no person described in (a)(i) and (ii) of this subsection over whom the state can constitutionally exercise jurisdiction, the producer is the person who imports or distributes the covered product in or into the state.

(b) "Producer" does not include:

(i) Government agencies, municipalities, or other political subdivisions of the state;

(ii) Registered 501(c)(3) charitable organizations and 501(c)(4) social welfare organizations; or

(iii) De minimis producers that annually sell, offer for sale, distribute, or import in or into the country for sale in Washington:

(A) Less than one ton of a single category of plastic beverage containers, plastic household cleaning and personal care containers, or plastic trash bags each year; or

(B) A single category of a covered product that in aggregate generates less than \$1,000,000 each year in revenue.

(20)(a) "Retail establishment" means any person, corporation, partnership, business, facility, vendor, organization, or individual that sells or provides merchandise, goods, or materials directly to a customer.

(b) "Retail establishment" includes, but is not limited to, food service businesses, grocery stores, department stores, hardware stores, home delivery services, pharmacies, liquor stores, restaurants, catering trucks, convenience stores, or other retail stores or vendors, including temporary stores or vendors at farmers markets, street fairs, and festivals.

(21)(a) "Utensil" means a product designed to be used by a consumer to facilitate the consumption of food or beverages, including knives, forks, spoons, cocktail picks, chopsticks, splash sticks, and stirrers.

(b) "Utensil" does not include plates, bowls, cups, and other products used to contain food or beverages. [2021 c 313 § 2.]

Finding—Intent—2021 c 313: "(1) The legislature finds that minimum recycled content requirements for plastic beverage containers, trash bags, and household cleaning and personal care product containers, bans on problematic and unnecessary plastic packaging, and standards for customer opt-in for food service packaging and accessories are among actions needed to improve the state's recycling system as well as reduce litter.

(2) By implementing a minimum recycled content requirement for plastic beverage containers, trash bags, and household cleaning and personal care product containers; prohibiting the sale and distribution of certain expanded polystyrene products; and establishing optional serviceware requirements as provided for in this chapter; the legislature intends to take another step towards ensuring plastic packaging and other packaging materials are reduced, recycled, and reused." [2021 c 313 § 1.]

70A.245.020 Postconsumer recycled content. (1)(a) Beginning January 1, 2023, producers that offer for sale, sell, or distribute in or into Washington:

(i) Beverages other than wine in 187 milliliter plastic beverage containers and dairy milk in plastic beverage containers must meet minimum postconsumer recycled content requirements established under subsection (4) of this section; and

(ii) Plastic trash bags must meet minimum postconsumer recycled content requirements established under subsection (6) of this section.

(b) Beginning January 1, 2025, producers that offer for sale, sell, or distribute in or into Washington household cleaning and personal care products in plastic household cleaning and personal care product containers must meet minimum postconsumer recycled content as required under subsection (5) of this section.

(c) Beginning January 1, 2028, producers that offer for sale, sell, or distribute in or into Washington wine in 187 milliliter plastic beverage containers or dairy milk in plastic beverage containers must meet minimum postconsumer recycled content as required under subsection (4) of this section.

(2)(a) On or before April 1, 2022, and annually thereafter, a producer that offers for sale, sells, or distributes in or into Washington covered products must register with the department individually or through a third-party representative registering on behalf of a group of producers.

(b) The registration information submitted to the department under this section must include a list of the producers of covered products and the brand names of the covered products represented in the registration submittal. Beginning April 1, 2024, for plastic trash bags and plastic beverage containers other than wine in 187 milliliter plastic beverage containers and dairy milk in plastic beverage containers, April 1, 2026, for plastic household and personal care product containers, and April 1, 2029, for wine in 187 milliliter plastic beverage containers and dairy milk, a producer may submit registration information at the same time as the information submitted through the annual reporting required under RCW 70A.245.030.

(3)(a) By January 31, 2022, and every January 31st thereafter, the department must:

(i) Prepare an annual workload analysis for public comment that identifies the annual costs it expects to incur to implement, administer, and enforce this section and RCW 70A.245.030 through 70A.245.060 and 70A.245.090 (1), (2), and (4), including rule making, in the next fiscal year for each category of covered products;

(ii) Determine a total annual fee payment by producers or their third-party representatives for each category of covered products that is adequate to cover, but not exceed, the workload identified in (a)(i) of this subsection;

(iii) Until rules are adopted under (a)(iv) of this subsection, issue a general order to all entities falling within the definition of producer. The department must equitably determine fee amounts for an individual producer or third-party representatives within each category of covered product;

(iv) By 2024, adopt rules to equitably determine annual fee payments by producers or their third-party representatives within each category of covered product. Once such rules are adopted, the general order issued under (a)(iii) of this subsection is no longer effective; and

(v) Send notice to producers or their third-party representatives of fee amounts due consistent with either the general order issued under (a)(iii) of this subsection or rules adopted under (a)(iv) of this subsection.

(b) The department must:

(i) Apply any remaining annual payment funds from the current year to the annual payment for the coming year, if the

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collected annual payment exceeds the department's costs for a given year; and

(ii) Increase annual payments for the coming year to cover the department's costs, if the collected annual payment was less than the department's costs for a given year.

(c) By April 1, 2022, and every April 1st thereafter, producers or their third-party representative must submit a fee payment as determined by the department under (a) of this subsection.

(4) A producer of a beverage in a plastic beverage container must meet the following annual minimum postconsumer recycled content percentage on average for the total quantity of plastic beverage containers, by weight, that are sold, offered for sale, or distributed in or into Washington by the producer effective:

(a) For beverages except wine in 187 milliliter plastic beverage containers and dairy milk:

(i) January 1, 2023, through December 31, 2025: No less than 15 percent postconsumer recycled content plastic by weight;

(ii) January 1, 2026, through December 31, 2030: No less than 25 percent postconsumer recycled content plastic by weight; and

(iii) On and after January 1, 2031: No less than 50 percent postconsumer recycled content plastic by weight.

(b) For wine in 187 milliliter plastic beverage containers and dairy milk:

(i) January 1, 2028, through December 31, 2030: No less than 15 percent postconsumer recycled content plastic by weight;

(ii) January 1, 2031, through December 31, 2035: No less than 25 percent postconsumer recycled content plastic by weight; and

(iii) On and after January 1, 2036: No less than 50 percent postconsumer recycled content plastic by weight.

(5) A producer of household cleaning and personal care products in plastic containers must meet the following annual minimum postconsumer recycled content percentage on average for the total quantity of plastic containers, by weight, that are sold, offered for sale, or distributed in or into Washington by the producer effective:

(a) January 1, 2025, through December 31, 2027: No less than 15 percent postconsumer recycled content plastic by weight;

(b) January 1, 2028, through December 31, 2030: No less than 25 percent postconsumer recycled content plastic by weight; and

(c) On and after January 1, 2031: No less than 50 percent postconsumer recycled content plastic by weight.

(6) A producer of plastic trash bags must meet the following annual minimum postconsumer recycled content percentage on average for the total quantity of plastic trash bags, by weight, that are sold, offered for sale, or distributed in or into Washington by the producer effective:

(a) January 1, 2023, through December 31, 2024: No less than 10 percent postconsumer recycled content plastic by weight;

(b) January 1, 2025, through December 31, 2026: No less than 15 percent postconsumer recycled content plastic by weight; and

(c) On and after January 1, 2027: No less than 20 percent postconsumer recycled content plastic by weight.

(7)(a) Beginning January 1, 2024, or when rule making is complete, whichever is sooner, the department may, on an annual basis on January 1st, review and determine for the following year whether to adjust the minimum postconsumer recycled content percentage required for a type of container or product or category of covered products pursuant to subsection (4), (5), or (6) of this section. The department's review may be initiated by the department or at the petition of a producer or a covered product manufacturing industry not more than once annually. When submitting a petition, producers or a producer manufacturing industry must provide necessary information that will allow the department to make a determination under (b) of this subsection.

(b) In making a determination pursuant to this subsection, the department must consider, at a minimum, all of the following factors:

(i) Changes in market conditions, including supply and demand for postconsumer recycled content plastics, collection rates, and bale availability both domestically and globally;

(ii) Recycling rates;

(iii) The availability of recycled plastic suitable to meet the minimum postconsumer recycled content requirements pursuant to subsection (4), (5), or (6) of this section, including the availability of high quality recycled plastic, and food-grade recycled plastic from recycling programs;

(iv) The capacity of recycling or processing infrastructure;

(v) The technical feasibility of achieving the minimum postconsumer recycled content requirements in covered products that are regulated under 21 C.F.R., chapter I, subchapter G, 7 U.S.C. Sec. 136, 15 U.S.C. Sec. 1471-1477, 49 C.F.R. Sec. 178.33b, 49 C.F.R. Sec. 173, 40 C.F.R. Sec. 152.10, 15 U.S.C. Sec. 1261-1278, 49 U.S.C. 5101 et seq., 49 C.F.R. Sec. 178.509, 49 C.F.R. Sec. 179.522, 49 C.F.R. Sec. 178.600-609, and other federal laws; and

(vi) The progress made by producers in achieving the goals of this section.

(c) Under (a) of this subsection:

(i) The department may not adjust the minimum postconsumer recycled content requirements above the minimum postconsumer recycled content percentages for the year under review required pursuant to subsection (4), (5), or (6) of this section.

(ii) For plastic household cleaning and personal care product containers, the department may not adjust the minimum postconsumer recycled content requirements above the minimum postconsumer recycled content percentages for the year under review required pursuant to subsection (5) of this section or below a minimum of 10 percent.

(iii) For plastic trash bags, the department may not adjust the minimum postconsumer recycled content requirements above the minimum postconsumer recycled content percentages for the year under review required pursuant to subsection (6) of this section or below the minimum percentage required in subsection (6)(a) of this section.

(d) A producer or the manufacturing industry for a covered product may appeal a decision by the department to adjust postconsumer recycled content percentages under (a)

of this subsection or to temporarily exclude covered products from minimum postconsumer recycled content requirements under subsection (8) of this section to the pollution control hearings board within 30 days of the department's determination.

(8) The department must temporarily exclude from minimum postconsumer recycled content requirements for the upcoming year any types of covered products in plastic containers for which a producer annually demonstrates to the department by December 31st of a given year that the achievement of postconsumer recycled content requirements in the container material is not technically feasible in order to comply with health or safety requirements of federal law, including the federal laws specified in subsection (7)(b)(v) of this section. A producer must continue to register and report consistent with the requirements of this chapter for covered products temporarily excluded from minimum postconsumer recycled content requirements under this subsection.

(9) A producer that does not achieve the postconsumer recycled content requirements established under this section is subject to penalties established in RCW 70A.245.040.

(10)(a) A city, town, county, or municipal corporation may not implement local recycled content requirements for a covered product that is subject to minimum postconsumer recycled content requirements established in this section.

(b) A city, town, county, or municipal corporation may establish local purchasing requirements that include recycled content standards that exceed the minimum recycled content requirements established by this chapter for plastic household cleaning and personal care product containers or plastic trash bags purchased by a city, town, or municipal corporation, or its contractor.

(11) The department may enter into contracts for the services required to implement this chapter and related duties of the department.

(12) In-state distributors, wholesalers, and retailers in possession of covered products manufactured before the date that postconsumer recycled content requirements become effective may exhaust their existing stock through sales to the public. [2021 c 313 § 3.]

Finding—Intent—2021 c 313: See note following RCW 70A.245.010.

70A.245.030 Producer reporting requirements.

(1)(a) Except as provided in (b) and (c) of this subsection, beginning April 1, 2024, each producer of covered products, individually or through a third party representing a group of producers, must provide an annual report to the department that includes the amount in pounds of virgin plastic and the amount in pounds of postconsumer recycled content by resin type used for each category of covered products that are sold, offered for sale, or distributed in or into Washington state, including the total postconsumer recycled content resins as a percentage of total weight. The report must be submitted in a format and manner prescribed by the department. A manufacturer may submit national data allocated on a per capita basis for Washington to approximate the information required in this subsection if the producer or third-party representative demonstrates to the department that state level data are not available or feasible to generate.

(b) The requirements of (a) of this subsection apply to household cleaning and personal care products in plastic containers beginning April 1, 2026.

(c) The requirements of (a) of this subsection apply to wine in 187 milliliter plastic beverage containers and dairy milk in plastic beverage containers beginning April 1, 2029.

(d) The department must post the information reported under this subsection on its website, except as provided in subsection (2) of this section.

(2) A producer that submits information or records to the department under this chapter may request that the information or records be made available only for the confidential use of the department, the director, or the appropriate division of the department. The director of the department must give consideration to the request and if this action is not detrimental to the public interest and is otherwise in accordance with the policies and purposes of chapter 43.21A RCW, the director must grant the request for the information to remain confidential as authorized in RCW 43.21A.160. [2021 c 313 § 4.]

Finding—Intent—2021 c 313: See note following RCW 70A.245.010.

70A.245.040 Penalties for postconsumer recycled content requirements—Penalty. (1)(a) A producer that does not meet the minimum postconsumer recycled content requirements pursuant to RCW 70A.245.020 is subject to a penalty pursuant to this section. Beginning June 1st of the year following the first year that minimum postconsumer recycled product content requirements apply to a category of covered product, the penalty must be calculated consistent with subsection (2) of this section unless a penalty reduction or corrective action plan has been approved pursuant to subsection (3) of this section.

(b) A producer that is assessed a penalty pursuant to this section may pay the penalty to the department in one payment, in quarterly installments, or arrange an alternative payment schedule subject to the approval of the department, not to exceed a 12-month payment schedule unless the department determines an extension is needed due to unforeseen circumstances, such as a public health emergency, state of emergency, or natural disaster.

(2) Beginning June 1st of the year following the first year that minimum postconsumer recycled product content requirements apply to a category of covered product, and annually thereafter, the department shall determine the penalty for the previous calendar year based on the postconsumer recycled content requirement of the previous calendar year. The department shall calculate the amount of the penalty based upon the amounts in pounds in the aggregate of virgin plastic, postconsumer recycled content plastic, and any other plastic per category used by the producer to produce covered products sold or offered for sale in or into Washington state, in accordance with the following:

(a)(i) The annual penalty amount assessed to a producer must equal the product of both of the following: The total pounds of plastic used per category multiplied by the relevant minimum postconsumer recycled plastic target percentage, less the pounds of total plastic multiplied by the percent of postconsumer recycled plastic used; multiplied by 20 cents.

(ii) Example: [(Total pounds of plastic used x minimum postconsumer recycled plastic target percentage) - (Total

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pounds of plastic used x postconsumer recycled plastic percentage used)] x 20 cents.

(b) For the purposes of (a) of this subsection, both of the following apply:

(i) The total pounds of plastic used must equal the sum of the amount of virgin plastic, postconsumer recycled content plastic, and any other plastic used by the producer, as reported pursuant to RCW 70A.245.030.

(ii) If the product calculated pursuant to (a) of this subsection is equal to or less than zero, the department may not assess a penalty.

(3)(a)(i) The department shall consider granting a reduction of penalties assessed pursuant to this section for the purpose of meeting the minimum postconsumer recycled content requirements required pursuant to RCW 70A.245.020.

(ii) In determining whether to grant the reduction pursuant to (a)(i) of this subsection, the department shall consider, at a minimum, all of the following factors:

(A) Anomalous market conditions;

(B) Disruption in, or lack of supply of, recycled plastics; and

(C) Other factors that have prevented a producer from meeting the requirements.

(b) In lieu of or in addition to assessing a penalty under this section, the department may require a producer to submit a corrective action plan detailing how the producer plans to come into compliance with RCW 70A.245.020.

(4) For the purposes of determining compliance with the postconsumer recycled content requirements of this chapter, the department may consider the date of manufacture of a covered product or the container of a covered product.

(5) A producer shall pay the penalty assessed pursuant to this section, as applicable, based on the information reported to the department as required under RCW 70A.245.030 in the form and manner prescribed by the department.

(6) A producer may appeal the penalty assessed under this section to the pollution control hearings board within 30 days of assessment.

(7) Penalties collected under this section must be deposited in the recycling enhancement account created in RCW 70A.245.100. [2021 c 313 § 5.]

Finding—Intent—2021 c 313: See note following RCW 70A.245.010.

70A.245.050 Penalties for registration, labeling, and reporting. (1) For producers out of compliance with the registration, reporting, or labeling requirements of RCW 70A.245.020, 70A.245.030, or 70A.245.060, the department shall provide written notification and offer information to producers. For the purposes of this section, written notification serves as notice of the violation. The department must issue at least two notices of violation by certified mail prior to assessing a penalty under subsection (2) of this section.

(2) A producer in violation of the registration, reporting, or labeling requirements in RCW 70A.245.020, 70A.245.030, or 70A.245.060 is subject to a civil penalty for each day of violation in an amount not to exceed \$1,000.

(3) Penalties collected under this section must be deposited in the recycling enhancement account created in RCW 70A.245.100.

(4) Penalties issued under this section are appealable to the pollution control hearings board established in chapter 43.21B RCW. [2021 c 313 § 6.]

Finding—Intent—2021 c 313: See note following RCW 70A.245.010.

70A.245.060 Trash bag labeling requirements. (1) Beginning January 1, 2023, producers shall label each package containing plastic trash bags sold, offered for sale, or distributed in or into Washington with:

(a) The name of the producer and the city, state, and country where the producer is located, which may be designated as the location of the producer's corporate headquarters; or

(b) A uniform resource locator or quick response code to an internet website that contains the information required pursuant to (a) of this subsection.

(2)(a) The provisions of subsection (1) of this section do not apply to a plastic bag that is designed and manufactured to hold, store, or transport dangerous waste or biomedical waste.

(b) For the purposes of this subsection:

(i) "Biomedical waste" means any waste defined as that term under RCW 70A.228.010; and

(ii) "Dangerous waste" means any waste defined as dangerous wastes under RCW 70A.300.010. [2021 c 313 § 7.]

Finding—Intent—2021 c 313: See note following RCW 70A.245.010.

70A.245.070 Expanded polystyrene prohibitions—Penalty. (1)(a) Beginning June 1, 2024, the sale and distribution of the following expanded polystyrene products in or into Washington state is prohibited:

(i) A portable container that is designed or intended to be used for cold storage, except for expanded polystyrene containers used for drugs, medical devices, and biological materials as defined in the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.) or shipping perishable commodities from a wholesale or retail establishment; and

(ii) Food service products that include food containers, plates, clam shell-style containers, and hot and cold beverage cups. For the purposes of this subsection (1)(a)(ii), food service products do not include: Packaging for raw, uncooked, or butchered meat, fish, poultry, or seafood, vegetables, fruit, or egg cartons.

(b) Beginning June 1, 2023, the sale and distribution of expanded polystyrene void filling packaging products, which means loose fill packaging material, also referred to as packing peanuts, in or into Washington state is prohibited.

(2)(a) The department must provide technical assistance and guidance to manufacturers of prohibited expanded polystyrene products, upon request. For manufacturers out of compliance with the requirements of this section, the department shall provide written notification and offer information to manufacturers that sell prohibited expanded polystyrene products who are in violation of this section. For the purposes of this section, written notification serves as notice of the violation. The department must issue at least two notices of violation by certified mail prior to assessing a penalty.

(b) A manufacturer of products in violation of this section is subject to a civil penalty for each violation in an amount not to exceed:

(i) \$250 if it is the manufacturer's first penalty; and

(ii) \$1,000 if the manufacturer has previously been issued a civil penalty under this section.

(c) Penalties collected under this section must be deposited in the model toxics control operating account created in RCW 70A.305.180.

(d) Penalties issued under this section are appealable to the pollution control hearings board established in chapter 43.21B RCW.

(3) A city, town, county, or municipal corporation may not implement a local ordinance restricting products prohibited under subsection (1) of this section unless the ordinance was filed by April 1, 2021, and enacted by June 1, 2021. An ordinance restricting products prohibited under subsection (1) of this section that was not enacted as of June 1, 2021, is preempted by this section.

(4) For the purposes of this section, "manufacturer" includes any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that:

(a) Produces the products subject to restrictions in subsection (1) of this section; or

(b) Is an importer or domestic distributor of a product subject to restrictions in subsection (1) of this section sold or offered for sale in or into the state. [2021 c 313 § 10.]

Finding—Intent—2021 c 313: See note following RCW 70A.245.010.

70A.245.080 Optional serviceware—Penalty. (1) Beginning January 1, 2022:

(a) Except as provided in (b) of this subsection, a food service business may provide the following single use food service products only after affirming that the customer wants the item or items:

(i) Utensils;

(ii) Straws;

(iii) Condiment packaging; and

(iv) Beverage cup lids.

(b) A food service business may provide beverage cup lids without customer affirmation for:

(i) Hot beverages;

(ii) Beverages provided through delivery service or curbside pickup; and

(iii) Beverages served to customers via a drive through or at large, permanent, venues that are designed for professional sport or music events and that have a fixed-seat capacity of at least 2,500 customers and are enclosed or are surrounded by a perimeter fence.

(c) The requirements of this section do not apply to food service products provided to a patient, resident, or customer in:

(i) A health care facility or a health care provider as defined in RCW 70.02.010;

(ii) Long-term care facilities identified in RCW 18.51.010, 18.20.020, 70.128.010, 70.97.010, or 18.390.010;

(iii) Senior nutrition programs authorized under 45 C.F.R. Sec. 1321, and home delivered meals offered under chapters 74.39 and 74.39A RCW;

(iv) Services to individuals with developmental disabilities under Title 71A RCW and chapter 74.39A RCW; and

(v) State hospitals as defined in RCW 72.23.010.

(d) The requirements of this subsection (1) apply to the activities of the department of corrections and the department

of children, youth, and families only to the extent operationally feasible and practicable.

(2)(a) Nothing in this section prohibits a food service business from making utensils, straws, condiments, and beverage cup lids available to customers using cylinders, bins, dispensers, containers, or other means of allowing for single-use utensils, straws, condiments, and beverage cup lids to be obtained at the affirmative volition of the customer.

(b) Utensils provided by a food service business for use by customers may not be bundled or packaged in plastic in such a way that a customer is unable to take only the type of single-use utensil or utensils desired without also taking a different type or types of utensil.

(3)(a) The department may issue a civil penalty of no less than \$150 per day and no more than \$2,000 per day to the owner or operator of a food service business for each day single-use food service products are provided in violation of this section.

(b) The department must issue at least two notices of violation by certified mail prior to assessing a penalty.

(c) Penalties collected under this section must be deposited in the model toxics control operating account created in RCW 70A.305.180.

(d) A food service business may appeal penalties assessed under this subsection to the pollution control hearings board within 30 days of assessment.

(4) All food service businesses are encouraged, but not required, to take actions in addition to the requirements of this section that support a goal of reducing the use of and waste generated by single-use food service products.

(5) Beginning July 1, 2021, a city, town, county, or municipal corporation may not enact an ordinance to reduce pollution from single-use food service products by requiring affirmation that a customer wants single-use food service products from the customer of the food service business or other retail establishment. [2021 c 313 § 11.]

Finding—Intent—2021 c 313: See note following RCW 70A.245.010.

70A.245.090 Department duties—Rule making. (1)

The department may conduct audits and investigations for the purpose of ensuring compliance with RCW 70A.245.020 and 70A.245.040 based on the information reported under RCW 70A.245.030.

(2) The department shall annually publish a list of registered producers of covered products and associated brand names, their compliance status, and other information the department deems appropriate on the department's website.

(3) To assist regulated parties with the requirements specified under RCW 70A.245.070 and 70A.245.080, the department:

(a) Must prepare and post on its website information regarding the prohibitions on the sale and distribution of expanded polystyrene products as specified under RCW 70A.245.070 and restrictions on the provision of optional serviceware under RCW 70A.245.080;

(b) For education and outreach to help implement RCW 70A.245.070 and 70A.245.080, may develop culturally appropriate and translated educational materials and resources for the state's diverse ethnic populations from existing materials used by local jurisdictions and other states.

(2022 Ed.)

(4) The department may adopt rules as necessary to administer, implement, and enforce this chapter. [2021 c 313 § 12.]

Finding—Intent—2021 c 313: See note following RCW 70A.245.010.

70A.245.100 Recycling enhancement account. The recycling enhancement account is created in the custody of the state treasurer. All penalties collected by the department pursuant to RCW 70A.245.040 and 70A.245.050 must be deposited in the account. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Expenditures from the account may be used by the department only for providing grants to local governments for the purpose of supporting local solid waste and financial assistance programs. [2021 c 313 § 13.]

Finding—Intent—2021 c 313: See note following RCW 70A.245.010.

70A.245.110 Recycled content account. The recycled content account is created in the custody of the state treasurer. All receipts received by the department under RCW 70A.245.020 must be deposited in the account. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Expenditures from the account may be used by the department only for implementing, administering, and enforcing the requirements of RCW 70A.245.020 through 70A.245.060 and 70A.245.090 (1), (2), and (4). [2021 c 313 § 14.]

Finding—Intent—2021 c 313: See note following RCW 70A.245.010.

70A.245.120 Market study. (Expires July 1, 2029.)

(1) Subject to the availability of amounts appropriated for this specific purpose prior to January 1, 2028, the department shall contract with a research university or an independent third-party consultant to study the plastic resin markets for all of the following:

(a) Analyzing market conditions and opportunities in the state's recycling industry for meeting the minimum postconsumer recycled content requirements for covered products pursuant to RCW 70A.245.020 and 70A.245.030; and

(b) Determining the data needs and tracking opportunities to increase the transparency and support of a more effective, fact-based public understanding of the recycling industry.

(2) If funding is provided pursuant to subsection (1) of this section and the department undertakes the study, the study must be completed by May 1, 2029.

(3) This section expires July 1, 2029. [2021 c 313 § 15.]

Finding—Intent—2021 c 313: See note following RCW 70A.245.010.

Chapter 70A.300 RCW

HAZARDOUS WASTE MANAGEMENT

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Transport of hazardous materials, state patrol authority over: Chapter 46.48 RCW.

70A.300.005 Legislative declaration. The legislature hereby finds and declares:

(1) The health and welfare of the people of the state depend on clean and pure environmental resources unaffected by hazardous waste contamination. At the same time, the quality of life of the people of the state is in part based upon a large variety of goods produced by the economy of the state. The complex industrial processes that produce these goods also generate waste by-products, some of which are hazardous to the public health and the environment if improperly managed.

(2) Safe and responsible management of hazardous waste is necessary to prevent adverse effects on the environment and to protect public health and safety.

(3) The availability of safe, effective, economical, and environmentally sound facilities for the management of hazardous waste is essential to protect public health and the environment and to preserve the economic strength of the state.

(4) Strong and effective enforcement of federal and state hazardous waste laws and regulations is essential to protect the public health and the environment and to meet the public's concerns regarding the acceptance of needed new hazardous waste management facilities.

(5) Negotiation, mediation, and similar conflict resolution techniques are useful in resolving concerns over the local impacts of siting hazardous waste management facilities.

(6) Safe and responsible management of hazardous waste requires an effective planning process that involves local and state governments, the public, and industry.

(7) Public acceptance and successful siting of needed new hazardous waste management facilities depends on several factors, including:

(a) Public confidence in the safety of the facilities;

(b) Assurance that the hazardous waste management priorities established in this chapter are being carried out to the maximum degree practical;

(c) Recognition that all state citizens benefit from certain products whose manufacture results in the generation of hazardous by-products, and that all state citizens must, therefore, share in the responsibility for finding safe and effective means to manage this hazardous waste; and

(d) Provision of adequate opportunities for citizens to meet with facility operators and resolve concerns about local hazardous waste management facilities.

(8) Due to the controversial and regional nature of facilities for the disposal and incineration of hazardous waste, the facilities have had difficulty in obtaining necessary local approvals. The legislature finds that there is a statewide interest in assuring that such facilities can be sited.

It is therefore the intent of the legislature to preempt local government's authority to approve, deny, or otherwise regulate disposal and incineration facilities, and to vest in the department of ecology the sole authority among state,

regional, and local agencies to approve, deny, and regulate preempted facilities, as defined in this chapter.

In addition, it is the intent of the legislature that such complete preemptive authority also be vested in the department for treatment and storage facilities, in addition to disposal and incineration facilities, if a local government fails to carry out its responsibilities established in RCW 70A.300.370.

It is further the intent of the legislature that no local ordinance, permit requirement, other requirement, or decision shall prohibit on the basis of land use considerations the construction of a hazardous waste management facility within any zone designated and approved in accordance with this chapter, provided that the proposed site for the facility is consistent with applicable state siting criteria.

(9) With the exception of the disposal site authorized for acquisition under this chapter, the private sector has had the primary role in providing hazardous waste management facilities and services in the state. It is the intent of the legislature that this role be encouraged and continue into the future to the extent feasible. Whether privately or publicly owned and operated, hazardous waste management facilities and services should be subject to strict governmental regulation as provided under this chapter.

(10) Wastes that are exempt or excluded from full regulation under this chapter due to their small quantity or household origin have the potential to pose significant risk to public health and the environment if not properly managed. It is the intent of the legislature that the specific risks posed by such waste be investigated and assessed and that programs be carried out as necessary to manage the waste appropriately. In addition, the legislature finds that, because local conditions vary substantially in regard to the quantities, risks, and management opportunities available for such wastes, local government is the appropriate level of government to plan for and carry out programs to manage moderate-risk waste, with assistance and coordination provided by the department. [2020 c 20 § 1277; 1985 c 448 § 2. Formerly RCW 70.105.005.]

Additional notes found at www.leg.wa.gov

70A.300.007 Purpose. The purpose of this chapter is to establish a comprehensive statewide framework for the planning, regulation, control, and management of hazardous waste which will prevent land, air, and water pollution and conserve the natural, economic, and energy resources of the state. To this end it is the purpose of this chapter:

(1) To provide broad powers of regulation to the department of ecology relating to management of hazardous wastes and releases of hazardous substances;

(2) To promote waste reduction and to encourage other improvements in waste management practices;

(3) To promote cooperation between state and local governments by assigning responsibilities for planning for hazardous wastes to the state and planning for moderate-risk waste to local government;

(4) To provide for prevention of problems related to improper management of hazardous substances before such problems occur; and

(5) To assure that needed hazardous waste management facilities may be sited in the state, and to ensure the safe oper-

ation of the facilities. [1985 c 448 § 3. Formerly RCW 70.105.007.]

Additional notes found at www.leg.wa.gov

70A.300.010 Definitions. The words and phrases defined in this section shall have the meanings indicated when used in this chapter unless the context clearly requires otherwise.

(1) "Dangerous wastes" means any discarded, useless, unwanted, or abandoned substances, including but not limited to certain pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes:

(a) Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or

(b) Are corrosive, explosive, flammable, or may generate pressure through decomposition or other means.

(2) "Department" means the department of ecology.

(3) "Designated zone facility" means any facility that requires an interim or final status permit under rules adopted under this chapter and that is not a preempted facility as defined in this section.

(4) "Director" means the director of the department of ecology or the director's designee.

(5) "Disposal site" means a geographical site in or upon which hazardous wastes are disposed of in accordance with the provisions of this chapter.

(6) "Dispose or disposal" means the discarding or abandoning of hazardous wastes or the treatment, decontamination, or recycling of such wastes once they have been discarded or abandoned.

(7) "Extremely hazardous waste" means any dangerous waste which:

(a) Will persist in a hazardous form for several years or more at a disposal site and which in its persistent form

(i) Presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic makeup of human beings or wildlife, and

(ii) Is highly toxic to human beings or wildlife

(b) If disposed of at a disposal site in such quantities as would present an extreme hazard to human beings or the environment.

(8) "Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for recycling, storing, treating, incinerating, or disposing of hazardous waste.

(9) "Hazardous household substances" means those substances identified by the department as hazardous household substances in the guidelines developed under RCW 70A.300.350.

(10) "Hazardous substances" means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the characteristics or criteria of hazardous waste as described in rules adopted under this chapter.

(11) "Hazardous waste" means and includes all dangerous and extremely hazardous waste, including substances composed of both radioactive and hazardous components.

(12) "Local government" means a city, town, or county.

(13) "Moderate-risk waste" means (a) any waste that exhibits any of the properties of hazardous waste but is exempt from regulation under this chapter solely because the waste is generated in quantities below the threshold for regulation, and (b) any household wastes which are generated from the disposal of substances identified by the department as hazardous household substances.

(14) "Person" means any person, firm, association, county, public or municipal or private corporation, agency, or other entity whatsoever.

(15) "Pesticide" shall have the meaning of the term as defined in RCW 15.58.030 as now or hereafter amended.

(16) "Preempted facility" means any facility that includes as a significant part of its activities any of the following operations: (a) Landfill, (b) incineration, (c) land treatment, (d) surface impoundment to be closed as a landfill, or (e) waste pile to be closed as a landfill.

(17) "Service charge" means an assessment imposed under RCW 70A.300.460 against those facilities that store, treat, incinerate, or dispose of dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component. Service charges shall also apply to facilities undergoing closure under this chapter in those instances where closure entails the physical characterization of remaining wastes which contain both a nonradioactive hazardous component and a radioactive component or the management of such wastes through treatment or removal, except any commercial low-level radioactive waste facility. [2020 c 20 § 1278; 2010 1st sp.s. c 7 § 88; 2009 c 549 § 1027; 1989 c 376 § 1; 1987 c 488 § 1; 1985 c 448 § 1; 1975-'76 2nd ex.s. c 101 § 1. Formerly RCW 70.105.010.]

Additional notes found at www.leg.wa.gov

70A.300.020 Standards and regulations—Adoption—Notice and hearing—Consultation with other agencies. The department after notice and public hearing shall:

(1) Adopt regulations designating as extremely hazardous wastes subject to the provisions of this chapter those substances which exhibit characteristics consistent with the definition provided in RCW 70A.300.010(7);

(2) Adopt and may revise when appropriate, minimum standards and regulations for disposal of extremely hazardous wastes to protect against hazards to the public, and to the environment. Before adoption of such standards and regulations, the department shall consult with appropriate agencies of interested local governments and secure technical assistance from the department of agriculture, the department of social and health services, the department of fish and wildlife, the department of natural resources, the department of labor and industries, and the department of commerce, through the director of fire protection. [2020 c 20 § 1279; 1994 c 264 § 42; 1988 c 36 § 28; 1986 c 266 § 119; 1975-'76 2nd ex.s. c 101 § 2. Formerly RCW 70.105.020.]

Additional notes found at www.leg.wa.gov

70A.300.030 Environmental excellence program agreements—Effect on chapter. Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 23. Formerly RCW 70.105.025.]

Purpose—1997 c 381: See RCW 43.21K.005.

70A.300.040 List and information to be furnished by depositor of hazardous waste—Rules and regulations. (1) After the effective date of the regulations adopted by the department designating extremely hazardous wastes, any person planning to dispose of extremely hazardous waste as designated by the department shall provide the operator of the disposal site with a list setting forth the extremely hazardous wastes for disposal, the amount of such wastes, the general chemical and mineral composition of such waste listed by approximate maximum and minimum percentages, and the origin of any such waste. Such list, when appropriate, shall include information on antidotes, first aid, or safety measures to be taken in case of accidental contact with the particular extremely hazardous waste being disposed.

(2) The department shall adopt and enforce all rules and regulations including the form and content of the list, necessary and appropriate to accomplish the purposes of subsection (1) of this section. [1975-'76 2nd ex.s. c 101 § 3. Formerly RCW 70.105.030.]

70A.300.050 Solid wastes—Conditionally exempt from chapter. Solid wastes that designate as dangerous waste or extremely hazardous waste but do not designate as hazardous waste under federal law are conditionally exempt from the requirements of this chapter, if:

(1) The waste is generated pursuant to a consent decree issued under chapter 70A.305 RCW;

(2) The consent decree characterizes the solid waste and specifies management practices and a department-approved treatment or disposal location;

(3) The management practices are consistent with RCW 70A.300.260 and are protective of human health and the environment as determined by the department of ecology; and

(4) Waste treated or disposed of on-site will be managed in a manner determined by the department to be as protective of human health and the environment as clean-up standards pursuant to chapter 70A.305 RCW.

This section shall not be interpreted to limit the ability of the department to apply any requirement of this chapter through a consent decree issued under chapter 70A.305 RCW, if the department determines these requirements to be appropriate. Neither shall this section be interpreted to limit the application of this chapter to a cleanup conducted under the federal comprehensive environmental response, compensation, and liability act (42 U.S.C. Sec. 9601 et seq., as amended). [2020 c 20 § 1280; 1994 c 254 § 5. Formerly RCW 70.105.035.]

70A.300.060 Disposal site or facility—Acquisition—Disposal fee schedule. (1) The department through the

*department of general administration, is authorized to acquire interests in real property from the federal government on the Hanford Reservation by gift, purchase, lease, or other means, to be used for the purpose of developing, operating, and maintaining an extremely hazardous waste disposal site or facility by the department, either directly or by agreement with public or private persons or entities: PROVIDED, That lands acquired under this section shall not be inconsistent with a local comprehensive plan approved prior to January 1, 1976: AND PROVIDED FURTHER, That no lands acquired under this section shall be subject to land use regulation by a local government.

(2) The department may establish an appropriate fee schedule for use of such disposal facilities to offset the cost of administration of this chapter and the cost of development, operation, maintenance, and perpetual management of the disposal site. If operated by a private entity, the disposal fee may be such as to provide a reasonable profit. [1975-'76 2nd ex.s. c 101 § 4. Formerly RCW 70.105.040.]

*Reviser's note: The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

70A.300.070 Disposal at other than approved site prohibited—Disposal of radioactive wastes. (1) No person shall dispose of designated extremely hazardous wastes at any disposal site in the state other than the disposal site established and approved for such purpose under provisions of this chapter, except:

(a) When such wastes are going to a processing facility which will result in the waste being reclaimed, treated, detoxified, neutralized, or otherwise processed to remove its harmful properties or characteristics; or

(b) When such wastes are managed on-site as part of a remedial action conducted by the department or by potentially liable persons under a consent decree issued by the department pursuant to chapter 70A.305 RCW.

(2) Extremely hazardous wastes that contain radioactive components may be disposed at a radioactive waste disposal site that is (a) owned by the United States department of energy or a licensee of the nuclear regulatory commission and (b) permitted by the department and operated in compliance with the provisions of this chapter. However, prior to disposal, or as a part of disposal, all reasonable methods of treatment, detoxification, neutralization, or other waste management methodologies designed to mitigate hazards associated with these wastes shall be employed, as required by applicable federal and state laws and regulations. [2020 c 20 § 1281; 1994 c 254 § 6; 1987 c 488 § 4; 1975-'76 2nd ex.s. c 101 § 5. Formerly RCW 70.105.050.]

70A.300.080 Criteria for receiving waste at disposal site. The department may elect to receive dangerous waste at the site provided under this chapter, provided

(1) it is upon request of the owner, producer, or person having custody of the waste, and

(2) upon the payment of a fee to cover disposal

(3) it can be reasonably demonstrated that there is no other disposal sites in the state that will handle such dangerous waste, and

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(4) the site is designed to handle such a request or can be modified to the extent necessary to adequately dispose of the waste, or

(5) if a demonstrable emergency and potential threat to the public health and safety exists. [1975-'76 2nd ex.s. c 101 § 7. Formerly RCW 70.105.070.]

70A.300.090 Violations—Civil penalties. (1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, every person who fails to comply with any provision of this chapter or of the rules adopted thereunder shall be subjected to a penalty in an amount of not more than ten thousand dollars per day for every such violation. Each and every such violation shall be a separate and distinct offense. In case of continuing violation, every day's continuance shall be a separate and distinct violation. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty herein provided.

(2) The penalty provided for in this section shall be imposed pursuant to the procedures in RCW 43.21B.300. [1995 c 403 § 631; 1987 c 109 § 12; 1983 c 172 § 2; 1975-'76 2nd ex.s. c 101 § 8. Formerly RCW 70.105.080.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Additional notes found at www.leg.wa.gov

70A.300.100 Violations—Criminal penalties. (1) Any person who knowingly transports, treats, stores, handles, disposes of, or exports a hazardous substance in violation of this chapter is guilty of: (a) A class B felony punishable according to chapter 9A.20 RCW if the person knows at the time that the conduct constituting the violation places another person in imminent danger of death or serious bodily injury; or (b) a class C felony punishable according to chapter 9A.20 RCW if the person knows that the conduct constituting the violation places any property of another person or any natural resources owned by the state of Washington or any of its local governments in imminent danger of harm.

(2) As used in this section: (a) "Imminent danger" means that there is a substantial likelihood that harm will be experienced within a reasonable period of time should the danger not be eliminated; and (b) "knowingly" refers to an awareness of facts, not awareness of law. [2003 c 53 § 357; 1989 c 2 § 15 (Initiative Measure No. 97, approved November 8, 1988). Formerly RCW 70.105.085.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

70A.300.110 Violations—Gross misdemeanor. In addition to the penalties imposed pursuant to RCW 70A.300.090, any person who violates any provisions of this chapter, or of the rules implementing this chapter, and any person who knowingly aids or abets another in conducting any violation of any provisions of this chapter, or of the rules implementing this chapter, shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a

fine of not less than one hundred dollars nor more than ten thousand dollars, and/or by imprisonment in the county jail for up to three hundred sixty-four days, for each separate violation. Each and every such violation shall be a separate and distinct offense. In case of continuing violation, every day's continuance shall be a separate and distinct offense. [2020 c 20 § 1282; 2011 c 96 § 51; 1984 c 237 § 1; 1983 c 172 § 3; 1975-'76 2nd ex.s. c 101 § 9. Formerly RCW 70.105.090.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Additional notes found at www.leg.wa.gov

70A.300.120 Violations—Orders—Penalty for non-compliance—Appeal. (1) Whenever on the basis on any information the department determines that a person has violated or is about to violate any provision of this chapter, the department may issue an order requiring compliance either immediately or within a specified period of time. The order shall be delivered by registered mail or personally to the person against whom the order is directed.

(2) Any person who fails to take corrective action as specified in a compliance order shall be liable for a civil penalty of not more than ten thousand dollars for each day of continued noncompliance. In addition, the department may suspend or revoke any permits and/or certificates issued under the provisions of this chapter to a person who fails to comply with an order directed against him or her.

(3) Any order may be appealed pursuant to RCW 43.21B.310. [2012 c 117 § 417; 1987 c 109 § 16; 1983 c 172 § 4. Formerly RCW 70.105.095.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Additional notes found at www.leg.wa.gov

70A.300.130 Action for damages resulting from violation—Attorneys' fees. A person injured as a result of a violation of this chapter or the rules adopted thereunder may bring an action in superior court for the recovery of the damages. A conviction or imposition of a penalty under this chapter is not a prerequisite to an action under this section.

The court may award reasonable attorneys' fees to a prevailing injured party in an action under this section. [1983 c 172 § 1. Formerly RCW 70.105.097.]

Additional notes found at www.leg.wa.gov

70A.300.140 Powers and duties of department. The department in performing its duties under this chapter may:

(1) Conduct studies and coordinate research programs pertaining to extremely hazardous waste management;

(2) Render technical assistance to generators of dangerous and extremely hazardous wastes and to state and local agencies in the planning and operation of hazardous waste programs;

(3) Encourage and provide technical assistance to waste generators to form and operate a "waste exchange" for the purpose of finding users for dangerous and extremely hazardous wastes that would otherwise be disposed of: PROVIDED, That such technical assistance shall not violate the confidentiality of manufacturing processes; and

(4) Provide for appropriate surveillance and monitoring of extremely hazardous waste disposal practices in the state. [1975-'76 2nd ex.s. c 101 § 10. Formerly RCW 70.105.100.]

70A.300.150 Duty of department to regulate PCB waste. The department of ecology shall regulate under this chapter, wastes generated from the salvaging, rebuilding, or discarding of transformers or capacitors that have been sold or otherwise transferred for salvage or disposal after the completion or termination of their useful lives and which contain polychlorinated biphenyls (PCB's) and whose disposal is not regulated under 40 C.F.R. part 761. Nothing in this section shall prohibit such wastes from being incinerated or disposed of at facilities permitted to manage PCB wastes under 40 C.F.R. part 761. [2020 c 20 § 1283; 1985 c 65 § 1. Formerly RCW 70.105.105.]

70A.300.160 Regulation of wastes with radioactive and hazardous components. The department of ecology may regulate all hazardous wastes, including those composed of both radioactive and hazardous components, to the extent it is not preempted by federal law. [1987 c 488 § 2. Formerly RCW 70.105.109.]

70A.300.170 Regulation of dangerous wastes associated with energy facilities. (1) Nothing in this chapter shall alter, amend, or supersede the provisions of chapter 80.50 RCW, except that, notwithstanding any provision of chapter 80.50 RCW, regulation of dangerous wastes associated with energy facilities from generation to disposal shall be solely by the department pursuant to this chapter. In the implementation of said section, the department shall consult and cooperate with the energy facility site evaluation council and, in order to reduce duplication of effort and to provide necessary coordination of monitoring and on-site inspection programs at energy facility sites, any on-site inspection by the department that may be required for the purposes of this chapter shall be performed pursuant to an interagency coordination agreement with the council.

(2) To facilitate the implementation of this chapter, the energy facility site evaluation council may require certificate holders to remove from their energy facility sites any dangerous wastes, controlled by this chapter, within ninety days of their generation. [2020 c 20 § 1284; 1987 c 488 § 3; 1984 c 237 § 3; 1975-'76 2nd ex.s. c 101 § 11. Formerly RCW 70.105.110.]

70A.300.180 Radioactive wastes—Authority of department of social and health services. Nothing in this chapter diminishes the authority of the department of social and health services to regulate the radioactive portion of mixed wastes pursuant to chapter 70A.388 RCW. [2020 c 20 § 1285; 1987 c 488 § 5. Formerly RCW 70.105.111.]

70A.300.190 Application of chapter to special incinerator ash. This chapter does not apply to special incinerator ash regulated under chapter 70A.315 RCW except that, for purposes of RCW 4.22.070(3)(a), special incinerator ash shall be considered hazardous waste. [2020 c 20 § 1286; 1987 c 528 § 9. Formerly RCW 70.105.112.]

70A.300.200 Hazardous substance remedial actions—Procedural requirements not applicable. The procedural requirements of this chapter shall not apply to any person conducting a remedial action at a facility pursuant to a

consent decree, order, or agreed order issued pursuant to chapter 70A.305 RCW, or to the department of ecology when it conducts a remedial action under chapter 70A.305 RCW. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70A.305 RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70A.305.090. [2020 c 20 § 1287; 1994 c 257 § 17. Formerly RCW 70.105.116.]

Additional notes found at www.leg.wa.gov

70A.300.210 Authority of attorney general. At the request of the department, the attorney general is authorized to bring such injunctive, declaratory, or other actions to enforce any requirement of this chapter. [1980 c 144 § 2. Formerly RCW 70.105.120.]

70A.300.220 Department's powers as designated agency under federal act. (1) The department is designated as the state agency for implementing the federal resource conservation and recovery act (42 U.S.C. Sec. 6901 et seq.).

(2) The power granted to the department by this section is the authority to:

(a) Establish a permit system for owners or operators of facilities which treat, store, or dispose of dangerous wastes: PROVIDED, That spent containers of pesticides or herbicides which have been used in normal farm operations and which are not extremely hazardous wastes, shall not be subject to the permit system;

(b) Establish standards for the safe transport, treatment, storage, and disposal of dangerous wastes as may be necessary to protect human health and the environment;

(c) Establish, to implement this section:

(i) A manifest system to track dangerous wastes;

(ii) Reporting, monitoring, recordkeeping, labeling, sampling requirements; and

(iii) Owner, operator, and transporter responsibility;

(d) Enter at reasonable times establishments regulated under this section for the purposes of inspection, monitoring, and sampling; and

(e) Adopt rules necessary to implement this section. [1980 c 144 § 1. Formerly RCW 70.105.130.]

70A.300.230 Copies of notification forms or annual reports to officials responsible for fire protection. Any person who generates, treats, stores, disposes, or otherwise handles dangerous or extremely hazardous wastes shall provide copies of any notification forms, or annual reports that are required pursuant to RCW 70A.300.220 to the fire departments or fire districts that service the areas in which the wastes are handled upon the request of the fire departments or fire districts. In areas that are not serviced by a fire department or fire district, the forms or reports shall be provided to the sheriff or other county official designated pursuant to RCW 43.44.050 upon the request of the sheriff or other county official. This section shall not apply to the transportation of hazardous wastes. [2020 c 20 § 1288; 1986 c 82 § 1. Formerly RCW 70.105.135.]

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70A.300.240 Rules implemented under RCW 70A.300.220—Review. Rules implementing RCW 70A.300.220 shall be submitted to the house and senate committees on ecology for review prior to being adopted in accordance with chapter 34.05 RCW. [2020 c 20 § 1289; 1980 c 144 § 3. Formerly RCW 70.105.140.]

70A.300.250 Department's authority to participate in and administer federal act. Notwithstanding any other provision of this chapter, the department of ecology is empowered to participate fully in and is empowered to administer all aspects of the programs of the federal Resource Conservation and Recovery Act, as it exists on June 7, 1984, (42 U.S.C. Sec. 6901 et seq.), contemplated for participation and administration by a state under that act. [2020 c 20 § 1290; 1984 c 237 § 2; 1983 c 270 § 2. Formerly RCW 70.105.145.]

Additional notes found at www.leg.wa.gov

70A.300.260 Declaration—Management of hazardous waste—Priorities—Definitions. The legislature hereby declares that:

(1) The health and welfare of the people of the state depend on clean and pure environmental resources unaffected by hazardous waste contamination. Management and regulation of hazardous waste disposal should encourage practices which result in the least amount of waste being produced. Towards that end, the legislature finds that the following priorities in the management of hazardous waste are necessary and should be followed in order of descending priority as applicable:

(a) Waste reduction;

(b) Waste recycling;

(c) Physical, chemical, and biological treatment;

(d) Incineration;

(e) Solidification/stabilization treatment;

(f) Landfill.

(2) As used in this section:

(a) "Waste reduction" means reducing waste so that hazardous by-products are not produced;

(b) "Waste recycling" means reusing waste materials and extracting valuable materials from a waste stream;

(c) "Physical, chemical, and biological treatment" means processing the waste to render it completely innocuous, produce a recyclable by-product, reduce toxicity, or substantially reduce the volume of material requiring disposal;

(d) "Incineration" means reducing the volume or toxicity of wastes by use of an enclosed device using controlled flame combustion;

(e) "Solidification/stabilization treatment" means the use of encapsulation techniques to solidify wastes and make them less permeable or leachable; and

(f) "Landfill" means a disposal facility, or part of a facility, at which waste is placed in or on land and which is not a land treatment facility, surface impoundment, or injection well. [1983 1st ex.s. c 70 § 1. Formerly RCW 70.105.150.]

70A.300.270 Waste management study—Public hearings—Adoption or modification of rules. The department shall conduct a study to determine the best management practices for categories of waste for the priority waste man-

agement methods established in RCW 70A.300.260, with due consideration in the course of the study to sound environmental management and available technology. As an element of the study, the department shall review methods that will help achieve the priority of RCW 70A.300.260(1)(a), waste reduction. Before issuing any proposed rules, the department shall conduct public hearings regarding the best management practices for the various waste categories studied by the department. After conducting the study, the department shall prepare new rules or modify existing rules as appropriate to promote implementation of the priorities established in RCW 70A.300.260 for management practices which assure use of sound environmental management techniques and available technology. The preliminary study shall be completed by July 1, 1986, and the rules shall be adopted by July 1, 1987.

The studies shall be updated at least once every five years. The funding for these studies shall be from the model toxics control operating account created in RCW 70A.305.180, subject to legislative appropriation. [2020 c 20 § 1291; 2010 1st sp.s. c 7 § 89; 1998 c 245 § 110; 1984 c 254 § 2; 1983 1st ex.s. c 70 § 2. Formerly RCW 70.105.160.]

Additional notes found at www.leg.wa.gov

70A.300.280 Disposal of dangerous wastes at commercial off-site land disposal facilities—Limitations. (1) Independent of the processing or issuance of any or all federal, state, and local permits for disposal of dangerous wastes, no disposal of dangerous wastes at a commercial off-site land disposal facility may be undertaken prior to July 1, 1986, unless:

(a) The disposal results from actions taken under *RCW 70.105A.060 (2) and (3), or results from other emergency situations; or

(b) Studies undertaken by the department under RCW 70A.300.270 to determine the best management practices for various waste categories under the priority waste management methods established in RCW 70A.300.260 are completed for the particular wastes or waste categories to be disposed of and any regulatory revisions deemed necessary by the department are proposed and do not prohibit land disposal of such wastes; or

(c) Final regulations have been adopted by the department that allow for such disposal.

(2) Construction of facilities used solely for the purpose of disposal of wastes that have not met the requirements of subsection (1) of this section shall not be undertaken by any developer of a dangerous waste disposal facility.

(3) The department shall prioritize the studies of waste categories undertaken under RCW 70A.300.270 to provide initial consideration of those categories most likely to be suitable for land disposal. Any regulatory changes deemed necessary by the department shall be proposed and subjected to the rule-making process by category as the study of each waste category is completed. All of the study shall be completed, and implementing regulations proposed, by July 1, 1986.

(4) Any final permit issued by the department before the adoption of rules promulgated as a result of the study conducted under RCW 70A.300.270 shall be modified as necessary to be consistent with such rules. [2020 c 20 § 1292; 1984 c 254 § 1. Formerly RCW 70.105.165.]

*Reviser's note: RCW 70.105A.060 was repealed by 1990 c 114 § 21.

Additional notes found at www.leg.wa.gov

70A.300.290 Waste management—Consultative services—Technical assistance—Confidentiality. Consistent with the purposes of RCW 70A.300.260 and 70A.300.270, the department is authorized to promote the priority waste management methods listed in RCW 70A.300.260 by establishing or assisting in the establishment of: (1) Consultative services which, in conjunction with any business or industry requesting such service, study and recommend alternative waste management practices; and (2) technical assistance, such as a toll-free telephone service, to persons interested in waste management alternatives. Any person receiving such service or assistance may, in accordance with state law, request confidential treatment of information about their manufacturing or business practices. [2020 c 20 § 1293; 1983 1st ex.s. c 70 § 3. Formerly RCW 70.105.170.]

70A.300.300 Disposition of fines and penalties—Earnings. All fines and penalties collected under this chapter shall be deposited in the model toxics control operating account created in RCW 70A.305.180. [2020 c 20 § 1294; 1985 c 57 § 70; 1983 1st ex.s. c 70 § 4. Formerly RCW 70.105.180.]

Additional notes found at www.leg.wa.gov

70A.300.310 Hazardous waste management plan. (1) The department shall develop, and shall update at least once every five years, a state hazardous waste management plan. The plan shall include, but shall not be limited to, the following elements:

(a) A state inventory and assessment of the capacity of existing facilities to treat, store, dispose, or otherwise manage hazardous waste;

(b) A forecast of future hazardous waste generation;

(c) A description of the plan or program required by RCW 70A.300.270 to promote the waste management priorities established in RCW 70A.300.260;

(d) Siting criteria as appropriate for hazardous waste management facilities, including such criteria as may be appropriate for the designation of eligible zones for designated zone facilities. However, these criteria shall not prevent the continued operation, at or below the present level of waste management activity, of existing facilities on the basis of their location in areas other than those designated as eligible zones pursuant to RCW 70A.300.370;

(e) Siting policies as deemed appropriate by the department; and

(f) A plan or program to provide appropriate public information and education relating to hazardous waste management. The department shall ensure to the maximum degree practical that these plans or programs are coordinated with public education programs carried out by local government under RCW 70A.300.350.

(2) The department shall seek, encourage, and assist participation in the development, revision, and implementation of the state hazardous waste management plan by interested citizens, local government, business and industry, environmental groups, and other entities as appropriate.

(3) Siting criteria shall be completed by December 31, 1986. Other plan components listed in subsection (1) of this section shall be completed by June 30, 1987.

(4) The department shall incorporate into the state hazardous waste management plan those elements of the local hazardous waste management plans that it deems necessary to assure effective and coordinated programs throughout the state. [2020 c 20 § 1295; 1985 c 448 § 4. Formerly RCW 70.105.200.]

Additional notes found at www.leg.wa.gov

70A.300.320 Hazardous waste management facilities—Department to develop criteria for siting. By May 31, 1990, the department shall develop and adopt criteria for the siting of hazardous waste management facilities. These criteria will be part of the state hazardous waste management plan as described in RCW 70A.300.310. To the extent practical, these criteria shall be designed to minimize the short-term and long-term risks and costs that may result from hazardous waste management facilities. These criteria may vary by type of facilities and may consider natural site characteristics and engineered protection. Criteria may be established for:

- (1) Geology;
- (2) Surface and groundwater hydrology;
- (3) Soils;
- (4) Flooding;
- (5) Climatic factors;
- (6) Unique or endangered flora and fauna;
- (7) Transportation routes;
- (8) Site access;
- (9) Buffer zones;
- (10) Availability of utilities and public services;
- (11) Compatibility with existing uses of land;
- (12) Shorelines and wetlands;
- (13) Sole-source aquifers;
- (14) Natural hazards; and
- (15) Other factors as determined by the department.

[2020 c 20 § 1296; 1989 1st ex.s. c 13 § 2; 1985 c 448 § 5. Formerly RCW 70.105.210.]

Additional notes found at www.leg.wa.gov

70A.300.330 Department to adopt rules for permits for hazardous substances treatment facilities. The legislature recognizes the need for new, modified, or expanded facilities to treat, incinerate, or otherwise process or dispose of hazardous substances safely. In order to encourage the development of such facilities, the department shall adopt rules as necessary regarding the permitting of such facilities to ensure the most expeditious permit processing possible consistent with the substantive requirements of applicable law. If owners and operators are not the same entity, the operator shall be the permit applicant and responsible for the development of the permit application and all accompanying materials, as long as the owner also signs the application and certifies its ownership of the real property described in the application, and acknowledges its awareness of the contents of the application and receipt of a copy thereof. [1986 c 210 § 3. Formerly RCW 70.105.215.]

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70A.300.340 Local government regulatory authority to prohibit or condition. Nothing in this chapter shall alter or affect the regulatory authority of a county, city, or jurisdictional health district to condition or prohibit the acceptance of hazardous waste in a county or city landfill. [1994 c 254 § 7. Formerly RCW 70.105.217.]

70A.300.350 Local governments to prepare local hazardous waste plans—Basis—Elements required. (1) Each local government, or combination of contiguous local governments, is directed to prepare a local hazardous waste plan which shall be based on state guidelines and include the following elements:

(a) A plan or program to manage moderate-risk wastes that are generated or otherwise present within the jurisdiction. This element shall include an assessment of the quantities, types, generators, and fate of moderate-risk wastes in the jurisdiction. The purpose of this element is to develop a system of managing moderate-risk waste, appropriate to each local area, to ensure protection of the environment and public health;

(b) A plan or program to provide for ongoing public involvement and public education in regard to the management of moderate-risk waste. This element shall provide information regarding:

(i) The potential hazards to human health and the environment resulting from improper use and disposal of the waste; and

(ii) Proper methods of handling, reducing, recycling, and disposing of the waste;

(c) An inventory of all existing generators of hazardous waste and facilities managing hazardous waste within the jurisdiction. This inventory shall be based on data provided by the department;

(d) A description of the public involvement process used in developing the plan;

(e) A description of the eligible zones designated in accordance with RCW 70A.300.370. However, the requirement to designate eligible zones shall not be considered part of the local hazardous waste planning requirements; and

(f) Other elements as deemed appropriate by local government.

(2) To the maximum extent practicable, the local hazardous waste plan shall be coordinated with other hazardous materials-related plans and policies in the jurisdiction.

(3) Local governments shall coordinate with those persons involved in providing privately owned hazardous and moderate-risk waste facilities and services as follows: If a local government determines that a moderate-risk waste will be or is adequately managed by one or more privately owned facilities or services at a reasonable price, the local government shall take actions to encourage the use of that private facility or service. Actions taken by a local government under this subsection may include, but are not limited to, restricting or prohibiting the land disposal of a moderate-risk waste at any transfer station or land disposal facility within its jurisdiction.

(4)(a) The department shall prepare guidelines for the development of local hazardous waste plans. The guidelines shall be prepared in consultation with local governments and shall be completed by December 31, 1986. The guidelines

shall include a list of substances identified as hazardous household substances.

(b) In preparing the guidelines under (a) of this subsection, the department shall review and assess information on pilot projects that have been conducted for moderate-risk waste management. The department shall encourage additional pilot projects as needed to provide information to improve and update the guidelines.

(5) The department shall consult with retailers, trade associations, public interest groups, and appropriate units of local government to encourage the development of voluntary public education programs on the proper handling of hazardous household substances.

(6) Local hazardous waste plans shall be completed and submitted to the department no later than June 30, 1990. Local governments may from time to time amend the local plan.

(7) Each local government, or combination of contiguous local governments, shall submit its local hazardous waste plan or amendments thereto to the department. The department shall approve or disapprove local hazardous waste plans or amendments by December 31, 1990, or within ninety days of submission, whichever is later. The department shall approve a local hazardous waste plan if it determines that the plan is consistent with this chapter and the guidelines under subsection (4) of this section. If approval is denied, the department shall submit its objections to the local government within ninety days of submission. However, for plans submitted between January 1, 1990, and June 30, 1990, the department shall have one hundred eighty days to submit its objections. No local government is eligible for grants under RCW 70A.300.390 for implementing a local hazardous waste plan unless the plan for that jurisdiction has been approved by the department.

(8) Each local government, or combination of contiguous local governments, shall implement the local hazardous waste plan for its jurisdiction by December 31, 1991.

(9) The department may waive the specific requirements of this section for any local government if such local government demonstrates to the satisfaction of the department that the objectives of the planning requirements have been met. [2020 c 20 § 1297; 1992 c 17 § 1; 1986 c 210 § 1; 1985 c 448 § 6. Formerly RCW 70.105.220.]

Used oil recycling element: RCW 70A.224.020.

Additional notes found at www.leg.wa.gov

70A.300.360 Local governments to prepare local hazardous waste plans—Used oil recycling element. Local governments and combinations of local governments shall amend their local hazardous waste plans required under RCW 70A.300.350 to comply with RCW 70A.224.020. [2020 c 20 § 1298; 1991 c 319 § 312. Formerly RCW 70.105.221.]

70A.300.370 Local governments to designate zones—Departmental guidelines—Approval of local government zone designations or amendments—Exemption. (1) Each local government, or combination of contiguous local governments, is directed to: (a) Demonstrate to the satisfaction of the department that existing zoning allows designated zone facilities as permitted uses; or (b) designate land use zones

within its jurisdiction in which designated zone facilities are permitted uses. The zone designations shall be consistent with the state siting criteria adopted in accordance with RCW 70A.300.320, except as may be approved by the department in accordance with subsection (6) of this section.

(2) Local governments shall not prohibit the processing or handling of hazardous waste in zones in which the processing or handling of hazardous substances is not prohibited. This subsection does not apply in residential zones.

(3) The department shall prepare guidelines, as appropriate, for the designation of zones under this section. The guidelines shall be prepared in consultation with local governments and shall be completed by December 31, 1986.

(4) The initial designation of zones shall be completed or revised, and submitted to the department within eighteen months after the enactment of siting criteria in accordance with RCW 70A.300.320. Local governments that do not comply with this submittal deadline shall be subject to the preemptive provisions of RCW 70A.300.400(4) until such time as zone designations are completed and approved by the department. Local governments may from time to time amend their designated zones.

(5) Local governments without land use zoning provisions shall designate eligible geographic areas within their jurisdiction, based on siting criteria adopted in accordance with RCW 70A.300.320. The area designation shall be subject to the same requirements as if they were zone designations.

(6) Each local government, or combination of contiguous local governments, shall submit its designation of zones or amendments thereto to the department. The department shall approve or disapprove zone designations or amendments within ninety days of submission. The department shall approve eligible zone designations if it determines that the proposed zone designations are consistent with this chapter, the applicable siting criteria, and guidelines for developing designated zones: PROVIDED, That the department shall consider local zoning in place as of January 1, 1985, or other special situations or conditions which may exist in the jurisdiction. If approval is denied, the department shall state within ninety days from the date of submission the facts upon which that decision is based and shall submit the statement to the local government together with any other comments or recommendations it deems appropriate. The local government shall have ninety days after it receives the statement from the department to make modifications designed to eliminate the inconsistencies and resubmit the designation to the department for approval. Any designations shall take effect when approved by the department.

(7) The department may exempt a local government from the requirements of this section if:

(a) Regulated quantities of hazardous waste have not been generated within the jurisdiction during the two calendar years immediately preceding the calendar year during which the exemption is requested; and

(b) The local government can demonstrate to the satisfaction of the department that no significant portion of land within the jurisdiction can meet the siting criteria adopted in accordance with RCW 70A.300.320. [2020 c 20 § 1299; 1989 1st ex.s. c 13 § 1; 1985 c 448 § 7. Formerly RCW 70.105.225.]

Additional notes found at www.leg.wa.gov

70A.300.380 Local governments to submit letter of intent to identify or designate zones and submit management plans—Department to prepare plan in event of failure to act. (1) Each local government is directed to submit to the director of the department by October 31, 1987, a letter of intent stating that it intends to (a) identify, or designate if necessary, eligible zones for designated zone facilities no later than June 30, 1988, and (b) submit a complete local hazardous waste management plan to the department no later than June 30, 1990. The letters shall also indicate whether these requirements will be completed in conjunction with other local governments.

(2) If any local government fails to submit a letter as provided in subsection (1)(b) of this section, or fails to adopt a local hazardous waste plan for its jurisdiction in accordance with the time schedule provided in this chapter, or fails to secure approval from the department for its local hazardous waste plan in accordance with the time schedule provided in this chapter, the department shall prepare a hazardous waste plan for the local jurisdiction. [1985 c 448 § 8. Formerly RCW 70.105.230.]

Additional notes found at www.leg.wa.gov

70A.300.390 Grants to local governments for plan preparation, implementation, and designation of zones—Matching funds—Qualifications. (1) Subject to legislative appropriations, the department may make and administer grants to local governments for (a) preparing and updating local hazardous waste plans, (b) implementing approved local hazardous waste plans, and (c) designating eligible zones for designated zone facilities as required under this chapter.

(2) Local governments shall match the funds provided by the department for planning or designating zones with an amount not less than twenty-five percent of the estimated cost of the work to be performed. Local governments may meet their share of costs with cash or contributed services. Local governments, or combination of contiguous local governments, conducting pilot projects pursuant to RCW 70A.300.350(4) may subtract the cost of those pilot projects conducted for hazardous household substances from their share of the cost. If a pilot project has been conducted for all moderate-risk wastes, only the portion of the cost that applies to hazardous household substances shall be subtracted. The matching funds requirement under this subsection shall be waived for local governments, or combination of contiguous local governments, that complete and submit their local hazardous waste plans under RCW 70A.300.350(6) prior to June 30, 1988.

(3) Recipients of grants shall meet such qualifications and follow such procedures in applying for and using grants as may be established by the department. [2020 c 20 § 1300; 1986 c 210 § 2; 1985 c 448 § 9. Formerly RCW 70.105.235.]

Additional notes found at www.leg.wa.gov

70A.300.400 State preemption—Department sole authority—Local requirements superseded—State authority over designated zone facilities. (1) As of July 28, 1985, the state preempts the field of state, regional, or local

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permitting and regulating of all preempted facilities as defined in this chapter. The department of ecology is designated the sole decision-making authority with respect to permitting and regulating such facilities and no other state agency, department, division, bureau, commission, or board, or any local or regional political subdivision of the state, shall have any permitting or regulatory authority with respect to such facilities including, but not limited to, the location, construction, and operation of such facilities. Permits issued by the department shall be in lieu of any and all permits, approvals, certifications, or conditions of any other state, regional, or local governmental authority which would otherwise apply.

(2) The department shall ensure that any permits issued under this chapter invoking the preemption authority of this section meet the substantive requirements of existing state laws and regulations to the extent such laws and regulations are not inconsistent or in conflict with any of the provisions of this chapter. In the event that any of the provisions of this chapter, or any of the regulations promulgated hereunder, are in conflict with any other state law or regulations, such other law or regulations shall be deemed superseded for purposes of this chapter.

(3) As of July 28, 1985, any ordinances, regulations, requirements, or restrictions of regional or local governmental authorities regarding the location, construction, or operation of preempted facilities shall be deemed superseded. However, in issuing permits under this section, the department shall consider local fire and building codes and condition such permits as appropriate in compliance therewith.

(4) Effective July 1, 1988, the department shall have the same preemptive authority as defined in subsections (1) through (3) of this section in regard to any designated zone facility that may be proposed in any jurisdiction where the designation of eligible zones pursuant to RCW 70A.300.370 has not been completed and approved by the department. Unless otherwise preempted by this subsection, designated zone facilities shall be subject to all applicable state and local laws, regulations, plans, and other requirements. [2020 c 20 § 1301; 1985 c 448 § 10. Formerly RCW 70.105.240.]

Additional notes found at www.leg.wa.gov

70A.300.410 Department may require notice of intent for management facility permit. The department may adopt rules to require any person who intends to file an application for a permit for a hazardous waste management facility to file a notice of intent with the department prior to submitting the application. [1985 c 448 § 11. Formerly RCW 70.105.245.]

Additional notes found at www.leg.wa.gov

70A.300.420 Appeals to pollution control hearings board. Any disputes between the department and the governing bodies of local governments in regard to the local planning requirements under RCW 70A.300.350 and the designation of zones under RCW 70A.300.370 may be appealed by the department or the governing body of the local government to the pollution control hearings board established under chapter 43.21B RCW. [2020 c 20 § 1302; 1985 c 448 § 12. Formerly RCW 70.105.250.]

Additional notes found at www.leg.wa.gov

70A.300.430 Department to provide technical assistance with local plans. The department shall provide technical assistance to local governments in the preparation, review, revision, and implementation of local hazardous waste plans. [1985 c 448 § 13. Formerly RCW 70.105.255.]

Additional notes found at www.leg.wa.gov

70A.300.440 Department to assist conflict resolution activities related to siting facilities—Agreements may constitute conditions for permit. (1) In order to promote identification, discussion, negotiation, and resolution of issues related to siting of hazardous waste management facilities, the department:

(a) Shall compile and maintain information on the use and availability of conflict resolution techniques and make this information available to industries, state and local government officials, and other citizens;

(b) Shall encourage and assist in facilitating conflict resolution activities, as appropriate, between facility proponents, host communities, and other interested persons;

(c) May adopt rules specifying procedures for facility proponents, host communities, and citizens to follow in providing opportunities for conflict resolution activities, including the use of dispute resolution centers established pursuant to chapter 7.75 RCW; and

(d) May expend funds to support such conflict resolution activities, and may adopt rules as appropriate to govern the support.

(2) Any agreements reached under the processes described in subsection (1) of this section and deemed valid by the department may be written as conditions binding on a permit issued under this chapter. [1985 c 448 § 14. Formerly RCW 70.105.260.]

Additional notes found at www.leg.wa.gov

70A.300.450 Requirements of RCW 70A.300.310 through 70A.300.380 and 70A.300.400(4) not mandatory without legislative appropriation. The requirements of RCW 70A.300.310 through 70A.300.380 and 70A.300.400(4) shall not become mandatory until funding is appropriated by the legislature. [2020 c 20 § 1303; 1985 c 448 § 15. Formerly RCW 70.105.270.]

Additional notes found at www.leg.wa.gov

70A.300.460 Service charges. (1) The department may assess reasonable service charges against those facilities that store, treat, incinerate, or dispose of dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component or which are undergoing closure under this chapter in those instances where closure entails the physical characterization of remaining wastes which contain both a nonradioactive hazardous component and a radioactive component or the management of such wastes through treatment or removal, except any commercial low-level radioactive waste facility. Service charges may not exceed the costs to the department in carrying out the duties of this section.

(2) Program elements or activities for which service charges may be assessed include:

(a) Office, staff, and staff support for the purposes of facility or unit permit development, review, and issuance; and

(b) Actions taken to determine and ensure compliance with the state's hazardous waste management act.

(3) Moneys collected through the imposition of such service charges shall be deposited in the radioactive mixed waste account created in RCW 70A.300.480.

(4) The department shall adopt rules necessary to implement this section. Facilities that store, treat, incinerate, or dispose of dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component shall not be subject to service charges prior to such rule making. Facilities undergoing closure under this chapter in those instances where closure entails the physical characterization of remaining wastes which contain both a nonradioactive hazardous component and a radioactive component or the management of such wastes through treatment or removal shall not be subject to service charges prior to such rule making. [2020 c 20 § 1304; 2013 2nd sp.s. c 1 § 14; 1989 c 376 § 2. Formerly RCW 70.105.280.]

Findings—Intent—Effective date—2013 2nd sp.s. c 1: See notes following RCW 70A.305.020.

Additional notes found at www.leg.wa.gov

70A.300.470 Metals mining and milling operations permits—Inspections by department of ecology. If a metals mining and milling operation is issued a permit pursuant to this chapter, then it will be subject to special inspection requirements. The department of ecology shall inspect these mining operations at least quarterly in order to ensure that the operation is in compliance with the conditions of any permit issued to it pursuant to this chapter. The department shall conduct additional inspections during the construction phase of the mining operation in order to ensure compliance with this chapter. [1994 c 232 § 19. Formerly RCW 70.105.300.]

Additional notes found at www.leg.wa.gov

70A.300.480 Radioactive mixed waste account. The radioactive mixed waste account is created within the state treasury. All receipts received from facilities assessed service charges established under RCW 70A.300.460 must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may only be used for carrying out the department's powers and duties under this chapter related to the regulation of facilities that treat, store, or dispose of mixed waste or mixed waste facilities that are undergoing closure. [2020 c 20 § 1305; 2013 2nd sp.s. c 1 § 12. Formerly RCW 70.105.310.]

Findings—Intent—Effective date—2013 2nd sp.s. c 1: See notes following RCW 70A.305.020.

70A.300.900 Short title—1985 c 448. This chapter shall be known and may be cited as the hazardous waste management act. [1985 c 448 § 16. Formerly RCW 70.105.900.]

Additional notes found at www.leg.wa.gov

Chapter 70A.305 RCW

HAZARDOUS WASTE CLEANUP—MODEL TOXICS CONTROL ACT

Sections

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Environmental certification programs—Fees—Rules—Liability: RCW 43.21A.175.

70A.305.010 Declaration of policy. (1) Each person has a fundamental and inalienable right to a healthful environment, and each person has a responsibility to preserve and enhance that right. The beneficial stewardship of the land, air, and waters of the state is a solemn obligation of the present generation for the benefit of future generations.

(2) A healthful environment is now threatened by the irresponsible use and disposal of hazardous substances. There are hundreds of hazardous waste sites in this state, and more will be created if current waste practices continue. Hazardous waste sites threaten the state's water resources, including those used for public drinking water. Many of our municipal landfills are current or potential hazardous waste sites and present serious threats to human health and environment. The costs of eliminating these threats in many cases are beyond the financial means of our local governments and ratepayers. The main purpose of chapter 2, Laws of 1989 is to raise sufficient funds to clean up all hazardous waste sites and to prevent the creation of future hazards due to improper disposal of toxic wastes into the state's land and waters.

(3) Many farmers and small business owners who have followed the law with respect to their uses of pesticides and other chemicals nonetheless may face devastating economic consequences because their uses have contaminated the environment or the water supplies of their neighbors. With a source of funds, the state may assist these farmers and business owners, as well as those persons who sustain damages, such as the loss of their drinking water supplies, as a result of the contamination.

(4) It is in the public's interest to efficiently use our finite land base, to integrate our land use planning policies with our clean-up policies, and to clean up and reuse contaminated industrial properties in order to minimize industrial development pressures on undeveloped land and to make clean land available for future social use.

(5) Because it is often difficult or impossible to allocate responsibility among persons liable for hazardous waste sites and because it is essential that sites be cleaned up well and expeditiously, each responsible person should be liable jointly and severally.

(6) Because releases of hazardous substances can adversely affect the health and welfare of the public, the environment, and property values, it is in the public interest that affected communities be notified of where releases of hazardous substances have occurred and what is being done to clean them up. [2002 c 288 § 1; 1994 c 254 § 1; 1989 c 2 § 1 (Initiative Measure No. 97, approved November 8, 1988). Formerly RCW 70.105D.010.]

Additional notes found at www.leg.wa.gov

70A.305.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agreed order" means an order issued by the department under this chapter with which the potentially liable person or prospective purchaser receiving the order agrees to comply. An agreed order may be used to require or approve any cleanup or other remedial actions but it is not a settlement under RCW 70A.305.040(4) and shall not contain a covenant not to sue, or provide protection from claims for contribution, or provide eligibility for public funding of remedial actions under RCW 70A.305.190(4)(a) (v) and (vi).

(2) "Area-wide groundwater contamination" means groundwater contamination on multiple adjacent properties with different ownerships consisting of hazardous substances from multiple sources that have resulted in commingled plumes of contaminated groundwater that are not practicable to address separately.

(3) "Brownfield property" means previously developed and currently abandoned or underutilized real property and adjacent surface waters and sediment where environmental, economic, or community reuse objectives are hindered by the release or threatened release of hazardous substances that the department has determined requires remedial action under this chapter or that the United States environmental protection agency has determined requires remedial action under the federal cleanup law.

(4) "City" means a city or town.

(5) "Department" means the department of ecology.

(6) "Director" means the director of ecology or the director's designee.

(7) "Environmental covenant" has the same meaning as defined in RCW 64.70.020.

(8) "Facility" means (a) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft, or (b) any site or area where a hazardous substance, other than a consumer

product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(9) "Federal cleanup law" means the federal comprehensive environmental response, compensation, and liability act of 1980, 42 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

(10)(a) "Fiduciary" means a person acting for the benefit of another party as a bona fide trustee; executor; administrator; custodian; guardian of estates or guardian ad litem; receiver; conservator; committee of estates of incapacitated persons; trustee in bankruptcy; trustee, under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender. Except as provided in subsection (22)(b)(iii) of this section, the liability of a fiduciary under this chapter shall not exceed the assets held in the fiduciary capacity.

(b) "Fiduciary" does not mean:

(i) A person acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, one or more estate plans or because of the incapacity of a natural person;

(ii) A person who acquires ownership or control of a facility with the objective purpose of avoiding liability of the person or any other person. It is prima facie evidence that the fiduciary acquired ownership or control of the facility to avoid liability if the facility is the only substantial asset in the fiduciary estate at the time the facility became subject to the fiduciary estate;

(iii) A person who acts in a capacity other than that of a fiduciary or in a beneficiary capacity and in that capacity directly or indirectly benefits from a trust or fiduciary relationship;

(iv) A person who is a beneficiary and fiduciary with respect to the same fiduciary estate, and who while acting as a fiduciary receives benefits that exceed customary or reasonable compensation, and incidental benefits permitted under applicable law;

(v) A person who is a fiduciary and receives benefits that substantially exceed customary or reasonable compensation, and incidental benefits permitted under applicable law; or

(vi) A person who acts in the capacity of trustee of state or federal lands or resources.

(11) "Fiduciary capacity" means the capacity of a person holding title to a facility, or otherwise having control of an interest in the facility pursuant to the exercise of the responsibilities of the person as a fiduciary.

(12) "Foreclosure and its equivalents" means purchase at a foreclosure sale, acquisition, or assignment of title in lieu of foreclosure, termination of a lease, or other repossession, acquisition of a right to title or possession, an agreement in satisfaction of the obligation, or any other comparable formal or informal manner, whether pursuant to law or under warranties, covenants, conditions, representations, or promises from the borrower, by which the holder acquires title to or possession of a facility securing a loan or other obligation.

(13) "Hazardous substance" means:

(a) Any dangerous or extremely hazardous waste as defined in RCW 70A.300.010 (1) and (7), or any dangerous or extremely dangerous waste designated by rule pursuant to chapter 70A.300 RCW;

(b) Any hazardous substance as defined in RCW 70A.300.010(10) or any hazardous substance as defined by rule pursuant to chapter 70A.300 RCW;

(c) Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14);

(d) Petroleum or petroleum products; and

(e) Any substance or category of substances, including solid waste decomposition products, determined by the director by rule to present a threat to human health or the environment if released into the environment.

The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local law.

(14) "Holder" means a person who holds indicia of ownership primarily to protect a security interest. A holder includes the initial holder such as the loan originator, any subsequent holder such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market, a guarantor of an obligation, surety, or any other person who holds indicia of ownership primarily to protect a security interest, or a receiver, court-appointed trustee, or other person who acts on behalf or for the benefit of a holder. A holder can be a public or privately owned financial institution, receiver, conservator, loan guarantor, or other similar persons that loan money or guarantee repayment of a loan. Holders typically are banks or savings and loan institutions but may also include others such as insurance companies, pension funds, or private individuals that engage in loaning of money or credit.

(15) "Independent remedial actions" means remedial actions conducted without department oversight or approval, and not under an order, agreed order, or consent decree.

(16) "Indicia of ownership" means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in a facility securing a loan or other obligation, including any legal or equitable title to a facility acquired incident to foreclosure and its equivalents. Evidence of such interests includes, mortgages, deeds of trust, sellers interest in a real estate contract, liens, surety bonds, and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased facility, or legal or equitable title obtained pursuant to foreclosure and their equivalents. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against the facility that are held primarily to protect a security interest.

(17) "Industrial properties" means properties that are or have been characterized by, or are to be committed to, traditional industrial uses such as processing or manufacturing of materials, marine terminal and transportation areas and facilities, fabrication, assembly, treatment, or distribution of manufactured products, or storage of bulk materials, that are either:

(a) Zoned for industrial use by a city or county conducting land use planning under chapter 36.70A RCW; or

(b) For counties not planning under chapter 36.70A RCW and the cities within them, zoned for industrial use and adjacent to properties currently used or designated for industrial purposes.

(18) "Institutional controls" means measures undertaken to limit or prohibit activities that may interfere with the integrity of a remedial action or result in exposure to or migration of hazardous substances at a site. "Institutional controls" include environmental covenants.

(19) "Local government" means any political subdivision of the state, including a town, city, county, special purpose district, or other municipal corporation, including brownfield renewal authority created under RCW 70A.305.160.

(20) "Model remedy" or "model remedial action" means a set of technologies, procedures, and monitoring protocols identified by the department for use in routine types of clean-up projects at facilities that have common features and lower risk to human health and the environment.

(21) "Operating a facility primarily to protect a security interest" occurs when all of the following are met: (a) Operating the facility where the borrower has defaulted on the loan or otherwise breached the security agreement; (b) operating the facility to preserve the value of the facility as an ongoing business; (c) the operation is being done in anticipation of a sale, transfer, or assignment of the facility; and (d) the operation is being done primarily to protect a security interest. Operating a facility for longer than one year prior to foreclosure or its equivalents shall be presumed to be operating the facility for other than to protect a security interest.

(22) "Owner or operator" means:

(a) Any person with any ownership interest in the facility or who exercises any control over the facility; or

(b) In the case of an abandoned facility, any person who had owned, or operated, or exercised control over the facility any time before its abandonment;

The term does not include:

(i) An agency of the state or unit of local government which acquired ownership or control through a drug forfeiture action under RCW 69.50.505, or involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title. This exclusion does not apply to an agency of the state or unit of local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility;

(ii) A person who, without participating in the management of a facility, holds indicia of ownership primarily to protect the person's security interest in the facility. Holders after foreclosure and its equivalent and holders who engage in any of the activities identified in subsection (23)(e) through (g) of this section shall not lose this exemption provided the holder complies with all of the following:

(A) The holder properly maintains the environmental compliance measures already in place at the facility;

(B) The holder complies with the reporting requirements in the rules adopted under this chapter;

(C) The holder complies with any order issued to the holder by the department to abate an imminent or substantial endangerment;

(D) The holder allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the holder are in compliance with any preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and

(F) The holder does not exacerbate an existing release. The exemption in this subsection (22)(b)(ii) does not apply to holders who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70A.305.040(1) (b), (c), (d), and (e); provided, however, that a holder shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release;

(iii) A fiduciary in his, her, or its personal or individual capacity. This exemption does not preclude a claim against the assets of the estate or trust administered by the fiduciary or against a nonemployee agent or independent contractor retained by a fiduciary. This exemption also does not apply to the extent that a person is liable under this chapter independently of the person's ownership as a fiduciary or for actions taken in a fiduciary capacity which cause or contribute to a new release or exacerbate an existing release of hazardous substances. This exemption applies provided that, to the extent of the fiduciary's powers granted by law or by the applicable governing instrument granting fiduciary powers, the fiduciary complies with all of the following:

(A) The fiduciary properly maintains the environmental compliance measures already in place at the facility;

(B) The fiduciary complies with the reporting requirements in the rules adopted under this chapter;

(C) The fiduciary complies with any order issued to the fiduciary by the department to abate an imminent or substantial endangerment;

(D) The fiduciary allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the fiduciary are in compliance with any preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and

(F) The fiduciary does not exacerbate an existing release. The exemption in this subsection (22)(b)(iii) does not apply to fiduciaries who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70A.305.040(1) (b), (c), (d), and (e); provided however, that a fiduciary shall not lose this exemption if it establishes that

any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release. The exemption in this subsection (22)(b)(iii) also does not apply where the fiduciary's powers to comply with this subsection (22)(b)(iii) are limited by a governing instrument created with the objective purpose of avoiding liability under this chapter or of avoiding compliance with this chapter; or

(iv) Any person who has any ownership interest in, operates, or exercises control over real property where a hazardous substance has come to be located solely as a result of migration of the hazardous substance to the real property through the groundwater from a source off the property, if:

(A) The person can demonstrate that the hazardous substance has not been used, placed, managed, or otherwise handled on the property in a manner likely to cause or contribute to a release of the hazardous substance that has migrated onto the property;

(B) The person has not caused or contributed to the release of the hazardous substance;

(C) The person does not engage in activities that damage or interfere with the operation of remedial actions installed on the person's property or engage in activities that result in exposure of humans or the environment to the contaminated groundwater that has migrated onto the property;

(D) If requested, the person allows the department, potentially liable persons who are subject to an order, agreed order, or consent decree, and the authorized employees, agents, or contractors of each, access to the property to conduct remedial actions required by the department. The person may attempt to negotiate an access agreement before allowing access; and

(E) Legal withdrawal of groundwater does not disqualify a person from the exemption in this subsection (22)(b)(iv).

(23) "Participation in management" means exercising decision-making control over the borrower's operation of the facility, environmental compliance, or assuming or manifesting responsibility for the overall management of the enterprise encompassing the day-to-day decision making of the enterprise.

The term does not include any of the following: (a) A holder with the mere capacity or ability to influence, or the unexercised right to control facility operations; (b) a holder who conducts or requires a borrower to conduct an environmental audit or an environmental site assessment at the facility for which indicia of ownership is held; (c) a holder who requires a borrower to come into compliance with any applicable laws or regulations at the facility for which indicia of ownership is held; (d) a holder who requires a borrower to conduct remedial actions including setting minimum requirements, but does not otherwise control or manage the borrower's remedial actions or the scope of the borrower's remedial actions except to prepare a facility for sale, transfer, or assignment; (e) a holder who engages in workout or policing activities primarily to protect the holder's security interest in the facility; (f) a holder who prepares a facility for sale, transfer, or assignment or requires a borrower to prepare a facility for sale, transfer, or assignment; (g) a holder who operates a facility primarily to protect a security interest, or requires a borrower to continue to operate, a facility primarily to protect

a security interest; and (h) a prospective holder who, as a condition of becoming a holder, requires an owner or operator to conduct an environmental audit, conduct an environmental site assessment, come into compliance with any applicable laws or regulations, or conduct remedial actions prior to holding a security interest is not participating in the management of the facility.

(24) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or Indian tribe.

(25) "Policing activities" means actions the holder takes to ensure that the borrower complies with the terms of the loan or security interest or actions the holder takes or requires the borrower to take to maintain the value of the security. Policing activities include: Requiring the borrower to conduct remedial actions at the facility during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, regulations, and permits during the term of the security interest; securing or exercising authority to monitor or inspect the facility including on-site inspections, or to monitor or inspect the borrower's business or financial condition during the term of the security interest; or taking other actions necessary to adequately police the loan or security interest such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower.

(26) "Potentially liable person" means any person whom the department finds, based on credible evidence, to be liable under RCW 70A.305.040. The department shall give notice to any such person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.

(27) "Prepare a facility for sale, transfer, or assignment" means to secure access to the facility; perform routine maintenance on the facility; remove inventory, equipment, or structures; properly maintain environmental compliance measures already in place at the facility; conduct remedial actions to cleanup releases at the facility; or to perform other similar activities intended to preserve the value of the facility where the borrower has defaulted on the loan or otherwise breached the security agreement or after foreclosure and its equivalents and in anticipation of a pending sale, transfer, or assignment, primarily to protect the holder's security interest in the facility. A holder can prepare a facility for sale, transfer, or assignment for up to one year prior to foreclosure and its equivalents and still stay within the security interest exemption in subsection (22)(b)(ii) of this section.

(28) "Primarily to protect a security interest" means the indicia of ownership is held primarily for the purpose of securing payment or performance of an obligation. The term does not include indicia of ownership held primarily for investment purposes nor indicia of ownership held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons, for maintaining indicia of ownership, but the primary reason must be for protection of a security interest. Holding indicia of ownership after foreclosure or its equivalents for longer than five years shall be considered to be holding the indicia of ownership for purposes other than primarily to protect a security interest.

For facilities that have been acquired through foreclosure or its equivalents prior to July 23, 1995, this five-year period shall begin as of July 23, 1995.

(29) "Prospective purchaser" means a person who is not currently liable for remedial action at a facility and who proposes to purchase, redevelop, or reuse the facility.

(30) "Public notice" means, at a minimum, adequate notice mailed to all persons who have made timely request of the department and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropriate news media; published in the newspaper of largest circulation in the city or county of the proposed action; and opportunity for interested persons to comment.

(31) "Redevelopment opportunity zone" means a geographic area designated under RCW 70A.305.150.

(32) "Release" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.

(33) "Remedy" or "remedial action" means any action or expenditure consistent with the purposes of this chapter to identify, eliminate, or minimize any threat or potential threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

(34) "Security interest" means an interest in a facility created or established for the purpose of securing a loan or other obligation. Security interests include deeds of trusts, sellers interest in a real estate contract, liens, legal, or equitable title to a facility acquired incident to foreclosure and its equivalents, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, easements, and consignments, if the transaction creates or establishes an interest in a facility for the purpose of securing a loan or other obligation.

(35) "Workout activities" means those actions by which a holder, at any time prior to foreclosure and its equivalents, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Workout activities include: Restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owed to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owed to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower. [2020 c 20 § 1306. Prior: 2013 2nd sp.s. c 1 § 2; 2007 c 104 § 18; 2005 c 191 § 1; 1998 c 6 § 1; 1997 c 406 § 2; 1995 c 70 § 1; 1994 c 254 § 2; 1989 c 2 § 2 (Initiative Measure No. 97, approved November 8, 1988). Formerly RCW 70.105D.020.]

(2022 Ed.)

Findings—Intent—2013 2nd sp.s. c 1: "The legislature finds that there are a large number of toxic waste sites that have been identified in the department of ecology's priority list as ready for immediate cleanup. The legislature further finds that addressing the cleanup of these toxic waste sites will provide needed jobs to citizens of Washington state. It is the intent of the legislature to prioritize the spending of revenues under chapter 70.105D RCW, the model toxics control act, on cleaning up the most toxic sites, while also providing jobs in communities around the state." [2013 2nd sp.s. c 1 § 1.]

Effective date—2013 2nd sp.s. c 1: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2013." [2013 2nd sp.s. c 1 § 20.]

Additional notes found at www.leg.wa.gov

70A.305.030 Department's powers and duties. (1)

The department may exercise the following powers in addition to any other powers granted by law:

(a) Investigate, provide for investigating, or require potentially liable persons to investigate any releases or threatened releases of hazardous substances, including but not limited to inspecting, sampling, or testing to determine the nature or extent of any release or threatened release. If there is a reasonable basis to believe that a release or threatened release of a hazardous substance may exist, the department's authorized employees, agents, or contractors may enter upon any property and conduct investigations. The department shall give reasonable notice before entering property unless an emergency prevents such notice. The department may by subpoena require the attendance or testimony of witnesses and the production of documents or other information that the department deems necessary;

(b) Conduct, provide for conducting, or require potentially liable persons to conduct remedial actions (including investigations under (a) of this subsection) to remedy releases or threatened releases of hazardous substances. In carrying out such powers, the department's authorized employees, agents, or contractors may enter upon property. The department must give reasonable notice before entering property unless an emergency prevents such notice. In conducting, providing for, or requiring remedial action, the department must give preference to permanent solutions to the maximum extent practicable and must provide for or require adequate monitoring to ensure the effectiveness of the remedial action;

(c) Indemnify contractors retained by the department for carrying out investigations and remedial actions, but not for any contractor's reckless or willful misconduct;

(d) Carry out all state programs authorized under the federal cleanup law and the federal resource, conservation, and recovery act, 42 U.S.C. Sec. 6901 et seq., as amended;

(e) Classify substances as hazardous substances for purposes of RCW 70A.305.020 and classify substances and products as hazardous substances for purposes of RCW 82.21.020(1);

(f) Issue orders or enter into consent decrees or agreed orders that include, or issue written opinions under RCW 70A.305.170 that may be conditioned upon, environmental covenants where necessary to protect human health and the environment from a release or threatened release of a hazardous substance from a facility. Prior to establishing an environmental covenant under this subsection, the department must consult with and seek comment from a city or county department with land use planning authority for real property subject to the environmental covenant;

(g) Enforce the application of permanent and effective institutional controls that are necessary for a remedial action to be protective of human health and the environment and the notification requirements established in RCW 70A.305.110, and impose penalties for violations of that section consistent with RCW 70A.305.050;

(h) Require holders to conduct remedial actions necessary to abate an imminent or substantial endangerment pursuant to RCW 70A.305.020(22)(b)(ii)(C);

(i) In fulfilling the objectives of this chapter, the department must allocate staffing and financial assistance in a manner that considers both the reduction of human and environmental risks and the land reuse potential and planning for the facilities to be cleaned up. This does not preclude the department from allocating resources to a facility based solely on human or environmental risks;

(j) Establish model remedies for common categories of facilities, types of hazardous substances, types of media, or geographic areas to streamline and accelerate the selection of remedies for routine types of cleanups at facilities;

(i) When establishing a model remedy, the department must:

(A) Identify the requirements for characterizing a facility to select a model remedy, the applicability of the model remedy for use at a facility, and monitoring requirements;

(B) Describe how the model remedy meets clean-up standards and the requirements for selecting a remedy established by the department under this chapter; and

(C) Provide public notice and an opportunity to comment on the proposed model remedy and the conditions under which it may be used at a facility;

(ii) When developing model remedies, the department must solicit and consider proposals from qualified persons. The proposals must, in addition to describing the model remedy, provide the information required under (j)(i)(A) and (B) of this subsection;

(iii) If a facility meets the requirements for use of a model remedy, an analysis of the feasibility of alternative remedies is not required under this chapter. For department-conducted and department-supervised remedial actions, the department must provide public notice and consider public comments on the proposed use of a model remedy at a facility; and

(k) Take any other actions necessary to carry out the provisions of this chapter, including the power to adopt rules under chapter 34.05 RCW.

(2) The department must immediately implement all provisions of this chapter to the maximum extent practicable, including investigative and remedial actions where appropriate. The department must adopt, and thereafter enforce, rules under chapter 34.05 RCW to:

(a) Provide for public participation, including at least (i) public notice of the development of investigative plans or remedial plans for releases or threatened releases and (ii) concurrent public notice of all compliance orders, agreed orders, enforcement orders, or notices of violation;

(b) Establish a hazard ranking system for hazardous waste sites;

(c) Provide for requiring the reporting by an owner or operator of releases of hazardous substances to the environment that may be a threat to human health or the environment

within ninety days of discovery, including such exemptions from reporting as the department deems appropriate, however this requirement may not modify any existing requirements provided for under other laws;

(d) Establish reasonable deadlines not to exceed ninety days for initiating an investigation of a hazardous waste site after the department receives notice or otherwise receives information that the site may pose a threat to human health or the environment and other reasonable deadlines for remedying releases or threatened releases at the site;

(e) Publish and periodically update minimum clean-up standards for remedial actions at least as stringent as the clean-up standards under section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at least as stringent as all applicable state and federal laws, including health-based standards under state and federal law; and

(f) Apply industrial clean-up standards at industrial properties. Rules adopted under this subsection must ensure that industrial properties cleaned up to industrial standards cannot be converted to nonindustrial uses without approval from the department. The department may require that a property cleaned up to industrial standards is cleaned up to a more stringent applicable standard as a condition of conversion to a nonindustrial use. Industrial clean-up standards may not be applied to industrial properties where hazardous substances remaining at the property after remedial action pose a threat to human health or the environment in adjacent nonindustrial areas.

(3) To achieve and protect the state's long-term ecological health, the department must plan to clean up hazardous waste sites and prevent the creation of future hazards due to improper disposal of toxic wastes at a pace that matches the estimated cash resources in the model toxics control capital account. Estimated cash resources must consider the annual cash flow requirements of major projects that receive appropriations expected to cross multiple biennia.

(4) Before September 20th of each even-numbered year, the department must:

(a) Develop a comprehensive ten-year financing report in coordination with all local governments with clean-up responsibilities that identifies the projected biennial hazardous waste site remedial action needs that are eligible for funding from the model toxics control capital account;

(b) Work with local governments to develop working capital reserves to be incorporated in the ten-year financing report;

(c) Identify the projected remedial action needs for orphaned, abandoned, and other clean-up sites that are eligible for funding from the model toxics control capital account;

(d) Project the remedial action need, cost, revenue, and any recommended working capital reserve estimate to the next biennium's long-term remedial action needs from the model toxics control capital account, and submit this information to the appropriate standing fiscal and environmental committees of the senate and house of representatives. This submittal must also include a ranked list of such remedial action projects for the model toxics control capital account. The submittal must also identify separate budget estimates for large, multibiennia clean-up projects that exceed ten million dollars. The department must prepare its ten-year capital budget plan that is submitted to the office of financial man-

agement to reflect the separate budget estimates for these large clean-up projects and include information on the anticipated private and public funding obligations for completion of the relevant projects.

(5) By December 1st of each odd-numbered year, the department must provide the legislature and the public a report of the department's activities supported by appropriations from the model toxics control operating, capital, and stormwater accounts. The report must be prepared and displayed in a manner that allows the legislature and the public to easily determine the statewide and local progress made in cleaning up hazardous waste sites under this chapter. The report must include, at a minimum:

(a) The name, location, hazardous waste ranking, and a short description of each site on the hazardous sites list, and the date the site was placed on the hazardous waste sites list; and

(b) For sites where there are state contracts, grants, loans, or direct investments by the state:

(i) The amount of money from the model toxics control capital account used to conduct remedial actions at the site and the amount of that money recovered from potentially liable persons;

(ii) The actual or estimated start and end dates and the actual or estimated expenditures of funds authorized under this chapter for the following project phases:

(A) Emergency or interim actions, if needed;

(B) Remedial investigation;

(C) Feasibility study and selection of a remedy;

(D) Engineering design and construction of the selected remedy;

(E) Operation and maintenance or monitoring of the constructed remedy; and

(F) The final completion date.

(6) The department must establish a program to identify potential hazardous waste sites and to encourage persons to provide information about hazardous waste sites.

(7) For all facilities where an environmental covenant has been required under subsection (1)(f) of this section, including all facilities where the department has required an environmental covenant under an order, agreed order, or consent decree, or as a condition of a written opinion issued under the authority of RCW 70A.305.170, the department must periodically review the environmental covenant for effectiveness. The department must conduct a review at least once every five years after an environmental covenant is recorded.

(a) The review must consist of, at a minimum:

(i) A review of the title of the real property subject to the environmental covenant to determine whether the environmental covenant was properly recorded and, if applicable, amended or terminated;

(ii) A physical inspection of the real property subject to the environmental covenant to determine compliance with the environmental covenant, including whether any development or redevelopment of the real property has violated the terms of the environmental covenant; and

(iii) A review of the effectiveness of the environmental covenant in limiting or prohibiting activities that may interfere with the integrity of the remedial action or that may

result in exposure to or migration of hazardous substances. This must include a review of available monitoring data.

(b) If an environmental covenant has been amended or terminated without proper authority, or if the terms of an environmental covenant have been violated, or if the environmental covenant is no longer effective in limiting or prohibiting activities that may interfere with the integrity of the remedial action or that may result in exposure to or migration of hazardous substances, then the department must take any and all appropriate actions necessary to ensure compliance with the environmental covenant and the policies and requirements of this chapter. [2020 c 20 § 1307; 2020 c 18 § 5. Prior: 2019 c 422 § 401; 2019 c 95 § 3; 2013 2nd sp.s. c 1 § 6; 2009 c 560 § 10; prior: 2007 c 446 § 1; 2007 c 225 § 1; 2007 c 104 § 19; 2002 c 288 § 3; 2001 c 291 § 401; 1997 c 406 § 3; 1995 c 70 § 2; prior: 1994 c 257 § 11; 1994 c 254 § 3; 1989 c 2 § 3 (Initiative Measure No. 97, approved November 8, 1988). Formerly RCW 70.105D.030.]

Reviser's note: This section was amended by 2020 c 18 § 5 and by 2020 c 20 § 1307, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Explanatory statement—2020 c 18: See note following RCW 43.79A.040.

Effective date—Intent—2019 c 422: See notes following RCW 82.21.010.

Intent—2019 c 95: See note following RCW 70A.305.170.

Findings—Intent—Effective date—2013 2nd sp.s. c 1: See notes following RCW 70A.305.020.

Intent—Effective date—Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560: See notes following RCW 18.06.080.

Additional notes found at www.leg.wa.gov

70A.305.040 Standard of liability—Settlement. (1) Except as provided in subsection (3) of this section, the following persons are liable with respect to a facility:

(a) The owner or operator of the facility;

(b) Any person who owned or operated the facility at the time of disposal or release of the hazardous substances;

(c) Any person who owned or possessed a hazardous substance and who by contract, agreement, or otherwise arranged for disposal or treatment of the hazardous substance at the facility, or arranged with a transporter for transport for disposal or treatment of the hazardous substances at the facility, or otherwise generated hazardous wastes disposed of or treated at the facility;

(d) Any person (i) who accepts or accepted any hazardous substance for transport to a disposal, treatment, or other facility selected by such person from which there is a release or a threatened release for which remedial action is required, unless such facility, at the time of disposal or treatment, could legally receive such substance; or (ii) who accepts a hazardous substance for transport to such a facility and has reasonable grounds to believe that such facility is not operated in accordance with chapter 70A.300 RCW; and

(e) Any person who both sells a hazardous substance and is responsible for written instructions for its use if (i) the substance is used according to the instructions and (ii) the use constitutes a release for which remedial action is required at the facility.

(2) Each person who is liable under this section is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the releases or threatened releases of hazardous substances. The attorney general, at the request of the department, is empowered to recover all costs and damages from persons liable therefor.

(3) The following persons are not liable under this section:

(a) Any person who can establish that the release or threatened release of a hazardous substance for which the person would be otherwise responsible was caused solely by:

- (i) An act of God;
- (ii) An act of war; or

(iii) An act or omission of a third party (including but not limited to a trespasser) other than (A) an employee or agent of the person asserting the defense, or (B) any person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the person asserting this defense to liability. This defense only applies where the person asserting the defense has exercised the utmost care with respect to the hazardous substance, the foreseeable acts or omissions of the third party, and the foreseeable consequences of those acts or omissions;

(b) Any person who is an owner, past owner, or purchaser of a facility and who can establish by a preponderance of the evidence that at the time the facility was acquired by the person, the person had no knowledge or reason to know that any hazardous substance, the release or threatened release of which has resulted in or contributed to the need for the remedial action, was released or disposed of on, in, or at the facility. This subsection (3)(b) is limited as follows:

(i) To establish that a person had no reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property, consistent with good commercial or customary practice in an effort to minimize liability. Any court interpreting this subsection (3)(b) shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection;

(ii) The defense contained in this subsection (3)(b) is not available to any person who had actual knowledge of the release or threatened release of a hazardous substance when the person owned the real property and who subsequently transferred ownership of the property without first disclosing such knowledge to the transferee;

(iii) The defense contained in this subsection (3)(b) is not available to any person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance at the facility;

(c) Any natural person who uses a hazardous substance lawfully and without negligence for any personal or domestic purpose in or near a dwelling or accessory structure when that person is: (i) A resident of the dwelling; (ii) a person who, without compensation, assists the resident in the use of the substance; or (iii) a person who is employed by the resident, but who is not an independent contractor;

(d) Any person who, for the purpose of growing food crops, applies pesticides or fertilizers without negligence and in accordance with all applicable laws and regulations.

(4) There may be no settlement by the state with any person potentially liable under this chapter except in accordance with this section.

(a) The attorney general may agree to a settlement with any potentially liable person only if the department finds, after public notice and any required hearing, that the proposed settlement would lead to a more expeditious cleanup of hazardous substances in compliance with clean-up standards under RCW 70A.305.030(2)(e) and with any remedial orders issued by the department. Whenever practicable and in the public interest, the attorney general may expedite such a settlement with persons whose contribution is insignificant in amount and toxicity. A hearing shall be required only if at least ten persons request one or if the department determines a hearing is necessary.

(b) A settlement agreement under this section shall be entered as a consent decree issued by a court of competent jurisdiction.

(c) A settlement agreement may contain a covenant not to sue only of a scope commensurate with the settlement agreement in favor of any person with whom the attorney general has settled under this section. Any covenant not to sue shall contain a reopener clause which requires the court to amend the covenant not to sue if factors not known at the time of entry of the settlement agreement are discovered and present a previously unknown threat to human health or the environment.

(d) A party who has resolved its liability to the state under this section shall not be liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other liable parties but it reduces the total potential liability of the others to the state by the amount of the settlement.

(e) If the state has entered into a consent decree with an owner or operator under this section, the state shall not enforce this chapter against any owner or operator who is a successor in interest to the settling party unless under the terms of the consent decree the state could enforce against the settling party, if:

(i) The successor owner or operator is liable with respect to the facility solely due to that person's ownership interest or operator status acquired as a successor in interest to the owner or operator with whom the state has entered into a consent decree; and

(ii) The stay of enforcement under this subsection does not apply if the consent decree was based on circumstances unique to the settling party that do not exist with regard to the successor in interest, such as financial hardship. For consent decrees entered into before July 27, 1997, at the request of a settling party or a potential successor owner or operator, the attorney general shall issue a written opinion on whether a consent decree contains such unique circumstances. For all other consent decrees, such unique circumstances shall be specified in the consent decree.

(f) Any person who is not subject to enforcement by the state under (e) of this subsection is not liable for claims for contribution regarding matters addressed in the settlement.

(5)(a) In addition to the settlement authority provided under subsection (4) of this section, the attorney general may agree to a settlement with a prospective purchaser, provided that:

(i) The settlement will yield substantial new resources to facilitate cleanup;

(ii) The settlement will expedite remedial action at the facility consistent with the rules adopted under this chapter; and

(iii) Based on available information, the department determines that the redevelopment or reuse of the facility is not likely to contribute to the existing release or threatened release, interfere with remedial actions that may be needed at the facility, or increase health risks to persons at or in the vicinity of the facility.

(b) The legislature recognizes that the state does not have adequate resources to participate in all property transactions involving contaminated property. The primary purpose of this subsection (5) is to promote the cleanup and reuse of brownfield property. The attorney general and the department may give priority to settlements that will provide a substantial public benefit in addition to cleanup.

(c) A settlement entered under this subsection is governed by subsection (4) of this section.

(6) As an alternative to a settlement under subsection (5) of this section, the department may enter into an agreed order with a prospective purchaser of a property within a designated redevelopment opportunity zone. The agreed order is subject to the limitations in RCW 70A.305.020(1), but stays enforcement by the department under this chapter regarding remedial actions required by the agreed order as long as the prospective purchaser complies with the requirements of the agreed order.

(7) Nothing in this chapter affects or modifies in any way any person's right to seek or obtain relief under other statutes or under common law, including but not limited to damages for injury or loss resulting from a release or threatened release of a hazardous substance. No settlement by the department or remedial action ordered by a court or the department affects any person's right to obtain a remedy under common law or other statutes. [2020 c 20 § 1308; 2013 2nd sp.s. c 1 § 7; 1997 c 406 § 4; 1994 c 254 § 4; 1989 c 2 § 4 (Initiative Measure No. 97, approved November 8, 1988). Formerly RCW 70.105D.040.]

Findings—Intent—Effective date—2013 2nd sp.s. c 1: See notes following RCW 70A.305.020.

70A.305.050 Enforcement. (1) With respect to any release, or threatened release, for which the department does not conduct or contract for conducting remedial action and for which the department believes remedial action is in the public interest, the director must issue orders or agreed orders requiring potentially liable persons to provide the remedial action. Any liable person, or prospective purchaser who has entered into an agreed order under RCW 70A.305.040(6), who refuses, without sufficient cause, to comply with an order or agreed order of the director is liable in an action brought by the attorney general for:

(a) Up to three times the amount of any costs incurred by the state as a result of the party's refusal to comply; and

(b) A civil penalty of up to twenty-five thousand dollars for each day the party refuses to comply.

The treble damages and civil penalty under this subsection apply to all recovery actions filed on or after March 1, 1989.

(2) Any person who incurs costs complying with an order issued under subsection (1) of this section may petition the department for reimbursement of those costs. If the department refuses to grant reimbursement, the person may within thirty days thereafter file suit and recover costs by proving that he or she was not a liable person under RCW 70A.305.040 and that the costs incurred were reasonable.

(3) The attorney general must seek, by filing an action if necessary, to recover the amounts spent by the department for investigative and remedial actions and orders, and agreed orders, including amounts spent prior to March 1, 1989.

(4) The attorney general may bring an action to secure such relief as is necessary to protect human health and the environment under this chapter.

(5)(a) Any person may commence a civil action to compel the department to perform any nondiscretionary duty under this chapter. At least thirty days before commencing the action, the person must give notice of intent to sue, unless a substantial endangerment exists. The court may award attorneys' fees and other costs to the prevailing party in the action.

(b) Civil actions under this section and RCW 70A.305.070 may be brought in the superior court of Thurston county or of the county in which the release or threatened release exists.

(6) Any person who fails to provide notification of releases consistent with RCW 70A.305.110 or who submits false information is liable in an action brought by the attorney general for a civil penalty of up to five thousand dollars per day for each day the party refuses to comply.

(7) Any person who owns real property or lender holding a mortgage on real property that is subject to a lien filed under RCW 70A.305.060 may petition the department to have the lien removed or the amount of the lien reduced. If, after consideration of the petition and the information supporting the petition, the department decides to deny the request, the person may, within ninety days after receipt of the department's denial, file suit for removal or reduction of the lien. The person is entitled to removal of a lien filed under RCW 70A.305.060(2)(a) if they can prove by a preponderance of the evidence that the person is not a liable party under RCW 70A.305.040. The person is entitled to a reduction of the amount of the lien if they can prove by a preponderance of the evidence:

(a) For liens filed under RCW 70A.305.060(2)(a), the amount of the lien exceeds the remedial action costs the department incurred related to cleanup of the real property; and

(b) For liens filed under RCW 70A.305.060(2)(c), the amount of the lien exceeds the remedial action costs the department incurred related to cleanup of the real property or exceeds the increase of the fair market value of the real property solely attributable to the remedial action conducted by the department.

(8) The expenditure of moneys under the model toxics control operating, capital, and stormwater accounts created in RCW 70A.305.180 through 70A.305.200 does not alter the

liability of any person under this chapter, or the authority of the department under this chapter, including the authority to recover those moneys. [2020 c 20 § 1309; 2019 c 422 § 402; 2013 2nd sp.s. c 1 § 8; 2005 c 211 § 2; 2002 c 288 § 4; 1994 c 257 § 12; 1989 c 2 § 5 (Initiative Measure No. 97, approved November 8, 1988). Formerly RCW 70.105D.050.]

Effective date—Intent—2019 c 422: See notes following RCW 82.21.010.

Findings—Intent—Effective date—2013 2nd sp.s. c 1: See notes following RCW 70A.305.020.

Additional notes found at www.leg.wa.gov

70A.305.060 Lien authority. (1) It is in the public interest for the department to recover remedial action costs incurred in discharging its responsibility under this chapter, as these recovered funds can then be applied to the cleanup of other facilities. Thus, in addition to other cost-recovery mechanisms provided under this chapter, this section is intended to facilitate the recovery of state funds spent on remedial actions by providing the department with lien authority. This will also prevent a facility owner or mortgagee from gaining a financial windfall from increased land value resulting from department-conducted remedial actions at the expense of the state taxpayers.

(2) If the state of Washington incurs remedial action costs relating to a remedial action of real property, and those remedial action costs are unrecovered by the state of Washington, the department may file a lien against that real property.

(a) Except as provided in (c) of this subsection, liens filed under this section shall have priority in rank over all other privileges, liens, monetary encumbrances, or other security interests affecting the real property, whenever incurred, filed, or recorded, except for the following liens:

(i) Local and special district property tax assessments; and

(ii) Mortgage liens recorded before liens or notices of intent to conduct remedial actions are recorded under this section.

(b) Liens filed pursuant to (a) and (c) of this subsection shall not exceed the remedial action costs incurred by the state.

(c)(i) If the real property for which the department has incurred remedial action costs is abandoned, the department may choose to limit the amount of the lien to the increase in the fair market value of the real property that is attributable to a remedial action conducted by the department. The increase in fair market value shall be determined by subtracting the county assessor's value of the real property for the most recent year prior to remedial action being initiated from the value of the real property after remedial action. The value of the real property after remedial action shall be determined by the bona fide purchase price of the real property or by a real estate appraiser retained by the department. Liens limited in this way have priority in rank over all other privileges, liens, monetary encumbrances, or other security interests affecting the real property, whenever incurred, filed, or recorded.

(ii) For the purposes of this subsection, "abandoned" means there has not been significant business activity on the real property for three years or property taxes owed on the

real property are three years in arrears prior to the department incurring costs attributable to this lien.

(d) The department shall, when notifying potentially liable persons of their potential liability under RCW 70A.305.040, include a notice stating that if the department incurs remedial action costs relating to the remediation of real property and the costs are not recovered by the department, the department may file a lien against that real property under this section.

(e) Except for emergency remedial actions, the department must provide notice to the following persons before initiating remedial actions conducted by persons under contract to the department on real property on which a lien may be filed under this section:

(i) The real property owner;

(ii) Mortgagees;

(iii) Lienholders of record;

(iv) Persons known to the department to be conducting remedial actions at the facility at the time of such notice; and

(v) Persons known to the department to be under contract to conduct remedial actions at the facility at the time of such notice.

For emergency remedial actions, this notice shall be provided within thirty days after initiation of the emergency remedial actions.

(f) The department may record a copy of the notice in (e) of this subsection, along with a legal description of the property on which the remedial action will take place, with the county auditor in the county where the real property is located. If the department subsequently files a lien, the effective date of the lien will be the date this notice was recorded.

(3) Before filing a lien under this section, the department shall give the owner of real property on which the lien is to be filed and mortgagees and lienholders of record a notice of its intent to file a lien:

(a) The notice required under this subsection (3) must be sent by certified mail to the real property owner and mortgagees of record at the addresses listed in the recorded documents. If the real property owner is unknown or if a mailed notice is returned as undeliverable, the department shall provide notice by posting a legal notice in the newspaper of largest circulation in the county in which the site is located. The notice shall provide:

(i) A statement of the purpose of the lien;

(ii) A brief description of the real property to be affected by the lien;

(iii) A statement of the remedial action costs incurred by the state related to the real property affected by the lien;

(iv) A brief statement of facts showing probable cause that the real property is the subject of the remedial action costs incurred by the department; and

(v) The time period following service or other notice during which any recipient of the notice whose legal rights may be affected by the lien may comment on the notice.

(b) Any comments on the notice must be received by the department on or before thirty days following service or other provision of the notice of intent to file a lien.

(c) If no comments are received by the department, the lien may be filed on the real property immediately.

(d) If the department receives any comments on the lien, the department shall determine if there is probable cause for

filing the certificate of lien. If the department determines there is probable cause, the department may file the lien. Any further challenge to the lien may only occur at the times specified under RCW 70A.305.070.

(e) If the department has reason to believe that exigent circumstances require the filing of a lien prior to giving notice under this subsection (3), or prior to the expiration of the time period for comments, the department may file the lien immediately. For the purposes of this subsection (3), exigent circumstances include, but are not limited to, an imminent bankruptcy filing by the real property owner, or the imminent transfer or sale of the real property subject to lien by the real property owner, or both.

(4) A lien filed under this section is effective when a statement of lien is filed with the county auditor in the county where the real property is located. The statement of lien must include a description of the real property subject to lien and the amount of the lien.

(5) Unless the department determines it is in the public interest to remove the lien, the lien continues until the liability for the remedial action costs have been satisfied through sale of the real property, foreclosure, or other means agreed to by the department. Any action for foreclosure of the lien shall be brought by the attorney general in a civil action in the court having jurisdiction and in the manner prescribed for the judicial foreclosure of a mortgage.

(6)(a) This section does not apply to real property owned by a local government or special purpose district or real property used solely for residential purposes and consisting of four residential units or less at the time the lien is recorded. This limitation does not apply to illegal drug manufacturing and storage sites under chapter 64.44 RCW.

(b) If the real property owner has consented to the department filing a lien on the real property, then only subsection (3)(a)(i) through (iii) of this section requiring notice to mortgagees and lienholders of record apply. [2020 c 20 § 1310; 2005 c 211 § 1. Formerly RCW 70.105D.055.]

70A.305.070 Timing of review. The department's investigative and remedial decisions under RCW 70A.305.030 and 70A.305.050, its decisions regarding filing a lien under RCW 70A.305.060, and its decisions regarding liable persons under RCW 70A.305.020, 70A.305.040, 70A.305.050, and 70A.305.060 shall be reviewable exclusively in superior court and only at the following times: (1) In a cost recovery suit under RCW 70A.305.050(3); (2) in a suit by the department to enforce an order or an agreed order, or seek a civil penalty under this chapter; (3) in a suit for reimbursement under RCW 70A.305.050(2); (4) in a suit by the department to compel investigative or remedial action; (5) in a citizen's suit under RCW 70A.305.050(5); and (6) in a suit for removal or reduction of a lien under RCW 70A.305.050(7). Except in suits for reduction or removal of a lien under RCW 70A.305.050(7), the court shall uphold the department's actions unless they were arbitrary and capricious. In suits for reduction or removal of a lien under RCW 70A.305.050(7), the court shall review such suits pursuant to the standards set forth in RCW 70A.305.050(7). [2020 c 20 § 1311; 2007 c 104 § 20; 2005 c 211 § 3; 1994 c 257 § 13; 1989 c 2 § 6 (Initiative Measure No. 97, approved November 8, 1988). Formerly RCW 70.105D.060.]

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Additional notes found at www.leg.wa.gov

70A.305.080 Private right of action—Remedial action costs. Except as provided in RCW 70A.305.040(4) (d) and (f), a person may bring a private right of action, including a claim for contribution or for declaratory relief, against any other person liable under RCW 70A.305.040 for the recovery of remedial action costs. In the action, natural resource damages paid to the state under this chapter may also be recovered. Recovery shall be based on such equitable factors as the court determines are appropriate. Remedial action costs shall include reasonable attorneys' fees and expenses. Recovery of remedial action costs shall be limited to those remedial actions that, when evaluated as a whole, are the substantial equivalent of a department-conducted or department-supervised remedial action. Substantial equivalence shall be determined by the court with reference to the rules adopted by the department under this chapter. An action under this section may be brought after remedial action costs are incurred but must be brought within three years from the date remedial action confirms cleanup standards are met or within one year of May 12, 1993, whichever is later. The prevailing party in such an action shall recover its reasonable attorneys' fees and costs. This section applies to all causes of action regardless of when the cause of action may have arisen. To the extent a cause of action has arisen prior to May 12, 1993, this section applies retroactively, but in all other respects it applies prospectively. [2020 c 20 § 1312; 1997 c 406 § 6; 1993 c 326 § 1. Formerly RCW 70.105D.080.]

Additional notes found at www.leg.wa.gov

70A.305.090 Remedial actions—Exemption from procedural requirements. (1) A person conducting a remedial action at a facility under a consent decree, order, or agreed order, and the department when it conducts a remedial action, are exempt from the procedural requirements of chapters 70A.15, 70A.205, 70A.300, 77.55, 90.48, and 90.58 RCW, and the procedural requirements of any laws requiring or authorizing local government permits or approvals for the remedial action. The department shall ensure compliance with the substantive provisions of chapters 70A.15, 70A.205, 70A.300, 77.55, 90.48, and 90.58 RCW, and the substantive provisions of any laws requiring or authorizing local government permits or approvals. The department shall establish procedures for ensuring that such remedial actions comply with the substantive requirements adopted pursuant to such laws, and shall consult with the state agencies and local governments charged with implementing these laws. The procedures shall provide an opportunity for comment by the public and by the state agencies and local governments that would otherwise implement the laws referenced in this section. Nothing in this section is intended to prohibit implementing agencies from charging a fee to the person conducting the remedial action to defray the costs of services rendered relating to the substantive requirements for the remedial action.

(2) An exemption in this section or in RCW 70A.15.3020, 70A.205.235, 70A.300.200, 77.55.061, 90.48.039, and 90.58.355 shall not apply if the department determines that the exemption would result in loss of approval from a federal agency necessary for the state to administer any federal law, including the federal resource

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conservation and recovery act, the federal clean water act, the federal clean air act, and the federal coastal zone management act. Such a determination by the department shall not affect the applicability of the exemptions to other statutes specified in this section. [2020 c 20 § 1313; 2003 c 39 § 30; 1994 c 257 § 14. Formerly RCW 70.105D.090.]

Additional notes found at www.leg.wa.gov

70A.305.100 Grants to local governments—Statement of environmental benefits—Development of outcome-focused performance measures. In providing grants to local governments, the department shall require grant recipients to incorporate the environmental benefits of the project into their grant applications, and the department shall utilize the statement of environmental benefit[s] in its prioritization and selection process. The department shall also develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grant program. To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270. The department shall consult with affected interest groups in implementing this section. [2001 c 227 § 5. Formerly RCW 70.105D.100.]

Findings—Intent—2001 c 227: See note following RCW 43.41.270.

70A.305.110 Releases of hazardous substances—Notice—Exemptions. (1) Except as provided in subsection (5) of this section, any owner or operator of a facility that is actively transitioning from operating under a federal permit for treatment, storage, or disposal of hazardous waste issued under 42 U.S.C. Sec. 6925 to operating under the provisions of this chapter, who has information that a hazardous substance has been released to the environment at the owner or operator's facility that may be a threat to human health or the environment, shall issue a notice to the department within ninety days. The notice shall include a description of any remedial actions planned, completed, or underway.

(2) The notice must be posted in a visible, publicly accessible location on the facility, to remain in place until all remedial actions except confirmational monitoring are complete.

(3) After receiving the notice from the facility, the department must review the notice and mail a summary of its contents, along with any additional information deemed appropriate by the department, to:

(a) Each residence and landowner of a residence whose property boundary is within three hundred feet of the boundary of the property where the release occurred or if the release occurred from a pipeline or other facility that does not have a property boundary, within three hundred feet of the actual release;

(b) Each business and landowner of a business whose property boundary is within three hundred feet of the boundary of the property where the release occurred;

(c) Each residence, landowner of a residence, and business with a property boundary within the area where hazardous substances have come to be located as a result of the release;

(d) Neighborhood associations and community organizations representing an area within one mile of the facility

and recognized by the city or county with jurisdiction within this area;

(e) The city, county, and local health district with jurisdiction within the areas described in (a), (b), and (c) of this subsection; and

(f) The department of health.

(4) A notice produced by a facility shall provide the following information:

(a) The common name of any hazardous substances released and, if available, the chemical abstract service registry number of these substances;

(b) The address of the facility where the release occurred;

(c) The date the release was discovered;

(d) The cause and date of the release, if known;

(e) The remedial actions being taken or planned to address the release;

(f) The potential health and environmental effects of the hazardous substances released; and

(g) The name, address, and telephone number of a contact person at the facility where the release occurred.

(5) The following releases are exempt from the notification requirements in this section:

(a) Application of pesticides and fertilizers for their intended purposes and according to label instructions;

(b) The lawful and nonnegligent use of hazardous household substances by a natural person for personal or domestic purposes;

(c) The discharge of hazardous substances in compliance with permits issued under chapter 70A.15, 90.48, or 90.56 RCW;

(d) De minimis amounts of any hazardous substance leaked or discharged onto the ground;

(e) The discharge of hazardous substances to a permitted wastewater treatment facility or from a permitted wastewater collection system or treatment facility as allowed by a facility's discharge permit;

(f) Any releases originating from a single-family or multifamily residence, including but not limited to the discharge of oil from a residential home heating oil tank with the capacity of five hundred gallons or less;

(g) Any spill on a public road, street, or highway or to surface waters of the state that has previously been reported to the United States coast guard and the state division of emergency management under chapter 90.56 RCW;

(h) Any release of hazardous substances to the air;

(i) Any release that occurs on agricultural land, including land used to grow trees for the commercial production of wood or wood fiber, that is at least five acres in size, when the effects of the release do not come within three hundred feet of any property boundary. For the purposes of this subsection, agricultural land includes incidental uses that are compatible with agricultural or silvicultural purposes, including, but not limited to, land used for the housing of the owner, operator, or employees, structures used for the storage or repair of equipment, machinery, and chemicals, and any paths or roads on the land; and

(j) Releases that, before January 1, 2003, have been previously reported to the department, or remediated in compliance with a settlement agreement under RCW 70A.305.040(4) or enforcement order or agreed order issued

under this chapter or have been the subject of an opinion from the department under RCW 70A.305.170 that no further remedial action is required.

An exemption from the notification requirements of this section does not exempt the owner or operator of a facility from any other notification or reporting requirements, or imply a release from liability under this chapter.

(6) If a significant segment of the community to be notified speaks a language other than English, an appropriate translation of the notice must also be posted and mailed to the department in accordance with the requirements of this section.

(7) The facility where the release occurred is responsible for reimbursing the department within thirty days for the actual costs associated with the production and mailing of the notices under this section. [2020 c 20 § 1314; 2019 c 95 § 5; 2002 c 288 § 2. Formerly RCW 70A.305.170.]

Intent—2019 c 95: See note following RCW 70A.305.170.

Additional notes found at www.leg.wa.gov

70A.305.120 Puget Sound partners. When administering funds under this chapter, the department shall give preference only to Puget Sound partners, as defined in RCW 90.71.010, in comparison to other entities that are eligible to be included in the definition of Puget Sound partner. Entities that are not eligible to be a Puget Sound partner due to geographic location, composition, exclusion from the scope of the Puget Sound action agenda developed by the Puget Sound partnership under RCW 90.71.310, or for any other reason, shall not be given less preferential treatment than Puget Sound partners. [2007 c 341 § 31. Formerly RCW 70.105D.120.]

Additional notes found at www.leg.wa.gov

70A.305.130 Cleanup settlement account—Reporting requirements. (1) The cleanup settlement account is created in the state treasury. The account is not intended to replace the model toxics control capital account established under RCW 70A.305.190. All receipts from the sources identified in subsection (2) of this section must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only as identified in subsection (4) of this section.

(2) The following receipts must be deposited into the cleanup settlement account:

(a) Receipts from settlements or court orders that direct payment to the account and resolve a person's liability or potential liability under this chapter for either or both of the following:

(i) Conducting future remedial action at a specific facility, if it is not feasible to require the person to conduct the remedial action based on the person's financial insolvency, limited ability to pay, or insignificant contribution under RCW 70A.305.040(4)(a);

(ii) Assessing or addressing the injury to natural resources caused by the release of a hazardous substance from a specific facility; and

(b) Receipts from investment of the moneys in the account.

(3) If a settlement or court order does not direct payment of receipts described in subsection (2)(a) of this section into

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the cleanup settlement account, then the receipts from any payment to the state must be deposited into the model toxics control capital account.

(4) Expenditures from the cleanup settlement account may only be used to conduct remedial actions at the specific facility or to assess or address the injury to natural resources caused by the release of hazardous substances from that facility for which the moneys were deposited in the account. Conducting remedial actions or assessing or addressing injury to natural resources includes direct expenditures and indirect expenditures such as department oversight costs. During the 2009-2011 fiscal biennium, the legislature may transfer excess fund balances in the account into the state efficiency and restructuring account. Transfers of excess fund balances made under this section may be made only to the extent amounts transferred with required repayments do not impair the ten-year spending plan administered by the department of ecology for environmental remedial actions dedicated for any designated clean-up site associated with the Everett smelter and Tacoma smelter, including plumes, or former Asarco mine sites. The cleanup settlement account must be repaid with interest under provisions of the state efficiency and restructuring account.

(5) The department must track moneys received, interest earned, and moneys expended separately for each facility.

(6) After the department determines that all remedial actions at a specific facility, and all actions assessing or addressing injury to natural resources caused by the release of hazardous substances from that facility, are completed, including payment of all related costs, any moneys remaining for the specific facility must be transferred to the model toxics control capital account established under RCW 70A.305.190.

(7) The department must provide the office of financial management and the fiscal committees of the legislature with a report by October 31st of each year regarding the activity within the cleanup settlement account during the previous fiscal year. [2020 c 20 § 1315; 2019 c 422 § 413; 2010 1st sp.s. c 37 § 947; 2008 c 106 § 1. Formerly RCW 70.105D.130.]

Effective date—Intent—2019 c 422: See notes following RCW 82.21.010.

Additional notes found at www.leg.wa.gov

70A.305.140 Brownfield redevelopment trust fund account—Created—Report to the office of financial management and the legislature—Rules. (1) The brownfield redevelopment trust fund account is created in the state treasury. All receipts from the sources identified in subsection (2) of this section must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only as identified in subsection (4) of this section.

(2) The following receipts must be deposited into the brownfield redevelopment trust fund account:

(a) Moneys appropriated by the legislature to the account for a specific redevelopment opportunity zone established under RCW 70A.305.150 or a specific brownfield renewal authority established under RCW 70A.305.160;

(b) Moneys voluntarily deposited in the account for a specific redevelopment opportunity zone or a specific brownfield renewal authority; and

(c) Moneys voluntarily deposited in the account for a specific redevelopment opportunity zone or a specific brownfield renewal authority; and

(c) Receipts from settlements or court orders that direct payment to the account for a specific redevelopment opportunity zone to resolve a person's liability or potential liability under this chapter.

(3) If a settlement or court order does not direct payment of receipts described in subsection (2)(c) of this section into the brownfield redevelopment trust fund account, then the receipts from any payment to the state must be deposited into the model toxics control capital account established under RCW 70A.305.190.

(4) Expenditures from the brownfield redevelopment trust fund account may only be used for the purposes of remediation and cleanup at the specific redevelopment opportunity zone or specific brownfield renewal authority for which the moneys were deposited in the account.

(5) The department must track moneys received, interest earned, and moneys expended separately for each facility.

(6) The account must retain its interest earnings in accordance with RCW 43.84.092.

(7) The local government designating the redevelopment opportunity zone under RCW 70A.305.150 or the associated brownfield renewal authority created under RCW 70A.305.160 must be the beneficiary of the deposited moneys.

(8) All expenditures must be used to conduct remediation and cleanup consistent with a plan for the remediation and cleanup of the properties or facilities approved by the department under this chapter. All expenditures must meet the eligibility requirements for the use by local governments under the rules for remedial action grants adopted by the department under this chapter, including requirements for the expenditure of nonstate match funding.

(9) Beginning October 31, 2015, the department must provide a biennial report to the office of financial management and the legislature regarding the activity for each specific redevelopment opportunity zone or specific brownfield renewal authority for which specific legislative appropriation was provided in the previous two fiscal years.

(10) After the department determines that all remedial actions within the redevelopment opportunity zone identified in the plan approved under subsection (8) of this section are completed, including payment of all cost reasonably attributable to the remedial actions and cleanup, any remaining moneys must be transferred to the model toxics control capital account established under RCW 70A.305.190.

(11) If the department determines that substantial progress has not been made on the plan approved under subsection (8) of this section for a redevelopment opportunity zone or specific brownfield renewal authority for which moneys were deposited in the account within six years, or that the brownfield renewal authority is no longer a viable entity, then all remaining moneys must be transferred to the model toxics control operating account established under RCW 70A.305.180.

(12) The department is authorized to adopt rules to implement this section. [2020 c 20 § 1316; 2019 c 422 § 414; 2013 2nd sp.s. c 1 § 3. Formerly RCW 70.105D.140.]

Effective date—Intent—2019 c 422: See notes following RCW 82.21.010.

Findings—Intent—Effective date—2013 2nd sp.s. c 1: See notes following RCW 70A.305.020.

70A.305.150 Designation of a redevelopment opportunity zone—Criteria. (1) A city or county may designate a geographic area within its jurisdiction as a redevelopment opportunity zone if the zone meets the criteria in this subsection and the city or county adopts a resolution that includes the following determinations and commitments:

(a) At least fifty percent of the upland properties in the zone are brownfield properties whether or not the properties are contiguous;

(b) The upland portions of the zone are comprised entirely of parcels of property either owned by the city or county or whose owner has provided consent in writing to have their property included within the zone;

(c) The cleanup of brownfield properties will be integrated with planning for the future uses of the properties and is consistent with the comprehensive land use plan for the zone; and

(d) The proposed properties lie within the incorporated area of a city or within an urban growth area designated under RCW 36.70A.110.

(2) A port district may designate a redevelopment opportunity zone when:

(a) The port district adopts a resolution that includes the determinations and commitments required under subsection (1)(a), (c), and (d) of this section and (c) of this subsection;

(b) The zone meets the criteria in subsection (1)(a), (c), and (d) of this section; and

(c) The port district either:

(i) Owns in fee all of the upland properties within the zone; or

(ii) Owns in fee at least fifty percent of the upland property in the zone, the owners of other parcels of upland property in the zone have provided consent in writing to have their property included in the zone, and the governing body of the city and county in which the zone lies approves of the designation by resolution. [2013 2nd sp.s. c 1 § 4. Formerly RCW 70.105D.150.]

Findings—Intent—Effective date—2013 2nd sp.s. c 1: See notes following RCW 70A.305.020.

70A.305.160 Brownfield renewal authority. (1) A city, county, or port district may establish by resolution a brownfield renewal authority for the purpose of guiding and implementing the cleanup and reuse of properties within a designated redevelopment opportunity zone. Any combination of cities, counties, and port districts may establish a brownfield renewal authority through an interlocal agreement under chapter 39.34 RCW, and the brownfield renewal authority may exercise those powers as are authorized under chapter 39.34 RCW and under this chapter.

(2) A brownfield renewal authority must be governed by a board of directors selected as determined by the resolution or interlocal agreement establishing the authority.

(3) A brownfield renewal authority must be a separate legal entity and be deemed a municipal corporation. It has the power to: Sue and be sued; receive, account for, and disburse funds; employ personnel; and acquire or dispose of any interest in real or personal property within a redevelopment opportunity zone in the furtherance of the authority purposes. A brownfield renewal authority has the power to contract indebtedness and to issue and sell general obligation bonds

pursuant to and in the manner provided for general county bonds in chapters 36.67 and 39.46 RCW and other applicable statutes, and to issue revenue bonds pursuant to and in the manner provided for revenue bonds in chapter 36.67 RCW and other applicable statutes.

(4) If the department determines that substantial progress has not been made on the plan approved under RCW 70A.305.140 by the brownfield renewal authority within six years of a city, county, or port district establishing a brownfield renewal authority, the department may require dissolution of the brownfield renewal authority. Upon dissolution of the brownfield renewal authority, except as provided in RCW 70A.305.140, all assets and liabilities transfer to the city, town, or port district establishing the brownfield renewal authority. [2020 c 20 § 1317; 2013 2nd sp.s. c 1 § 5. Formerly RCW 70.105D.160.]

Findings—Intent—Effective date—2013 2nd sp.s. c 1: See notes following RCW 70A.305.020.

70A.305.170 Establishment of program to provide informal advice and assistance—Collection of costs—Expedited process—Rules—Voluntary cleanup account.

(1) The department may establish a program to provide informal advice and assistance on the administrative and technical requirements of this chapter to persons who are conducting or otherwise interested in conducting independent remedial actions at facilities where there is a suspected or confirmed release of hazardous substances.

(a) Any advice or assistance is advisory only and is not binding on the department.

(b) As part of this advice and assistance, the department may provide written opinions on whether the independent remedial actions or proposals for those actions meet the substantive requirements of this chapter or whether the department believes further remedial action is necessary at the facility.

(c) Nothing in this chapter may be construed to preclude the department from issuing a written opinion on whether further remedial action is necessary at any portion of the real property located within a facility, even if further remedial action is still necessary elsewhere at the same facility. A written opinion on a portion of a facility must also provide an opinion on the status of the facility as a whole.

(2) The department may collect, from persons requesting advice and assistance under the program, all costs incurred by the department in providing advice and assistance.

(a) To collect its costs, the department may use either a cost recovery structure or a fee structure, or both.

(i) A fee structure may include either a single fee or a series of fees for individual services.

(ii) The department may calculate fees based on the complexity of the contaminated site and other site-specific factors determined by the department.

(iii) The department may establish a separate fee and cost recovery structure for providing expedited advice and assistance under subsection (3) of this section.

(b) The department may waive collection of costs if the person requesting technical advice and assistance under the program commits to remediate contaminated real property for development of affordable housing, as determined by the department. Prior to waiving costs, the department must con-

sider the requestor's ability to pay and the potential public benefit of the development. To ensure the real property is used for affordable housing, the department may file a lien against the real property pursuant to RCW 70A.305.060, require the person to record an interest in the real property in accordance with RCW 64.04.130, or use other means deemed by the department to be no less protective of the affordable housing use and the interests of the department.

(c) Except when providing expedited advice and assistance under subsection (3) of this section, the department may also waive collection of costs:

(i) For providing technical assistance in support of public participation;

(ii) For providing written opinions on a cleanup that qualifies for and appropriately uses a model remedy; or

(iii) Based on a person's ability to pay. If costs are waived, the department may file a lien against the real property for which the department has incurred the costs pursuant to RCW 70A.305.060.

(3) The department may offer an expedited process for providing informal advice and assistance under the program. Except as provided under subsection (2)(b) of this section, the department must collect, from persons requesting expedited advice and assistance, all costs incurred by the department in providing the advice and assistance. The department may establish conditions for requesting expedited advice and assistance.

(4) The department may adopt rules to implement the program. To ensure that the adoption of rules will not delay the implementation of independent remedial actions, the department may implement the cost waiver and expedited process specified in subsections (2)(b) and (3) of this section through interpretive guidance pending adoption of rules.

(5) The department must track the number of requests for reviews of planned or completed independent remedial actions under the program and establish performance measures to track how quickly the department is able to respond to those requests. The department's tracking system must include a category for tracking the length of time that elapses between the submission of a request for expedited advice and assistance on an independent remedial action at a facility under subsection (3) of this section and the issuance of a letter on the sufficiency of the cleanup at the facility.

(6) The state, the department, and officers and employees of the state are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing, or failing to provide, informal advice and assistance under the program.

(7) The voluntary cleanup account is created in the state treasury. All receipts from the fees collected and costs recovered under the expedited process in subsection (3) of this section must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only to support the expedited process in subsection (3) of this section. If the department suspends the expedited process, any moneys remaining in the account may be used to carry out the purposes of the program. The account must retain its interest earnings in accordance with RCW 43.84.092. [2020 c 20 § 1318; 2019 c 95 § 2. Formerly RCW 70.105D.180.]

Intent—2019 c 95: "Cleaning up and redeveloping contaminated properties is essential to the health and economic prosperity of our communities. Most cleanups are performed voluntarily by property owners and are driven by the sale or redevelopment of the properties. Many of these property owners request written opinions on the sufficiency of their voluntary cleanups from the department of ecology. Buyers and lenders often require these opinions when property owners sell or redevelop contaminated properties. Providing expedited reviews of voluntary cleanups would encourage and expedite more cleanup and redevelopment projects. It is the intent of the legislature to support the cleanup and redevelopment of contaminated properties in our communities by providing the department of ecology with the additional tools and resources necessary for conducting expedited reviews of voluntary cleanups."

The availability of affordable housing is of vital importance to the health, safety, and welfare of the residents of the state. It is in the public interest to facilitate the cleanup and redevelopment of contaminated and underutilized properties within our communities for affordable housing. It is the intent of the legislature to encourage voluntary cleanups of these properties for affordable housing development by waiving the department of ecology's costs of reviewing voluntary cleanups." [2019 c 95 § 1.]

70A.305.180 Model toxics control operating account.

(1) The model toxics control operating account is hereby created in the state treasury.

(2) Moneys in the model toxics control operating account must be used only to carry out the purposes of this chapter, including but not limited to the following:

(a) The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70A.300 RCW;

(b) The state's responsibility for solid waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70A.205 RCW;

(c) The hazardous waste clean-up program required under this chapter;

(d) State matching funds required under federal cleanup law;

(e) Financial assistance for local programs and plans, including local solid waste financial assistance, in accordance with chapters 70A.405, 70A.205, 70A.214, 70A.224, and 70A.300 RCW;

(f) State government programs for the safe reduction, recycling, or disposal of paint and hazardous wastes from households, small businesses, and agriculture;

(g) Oil and hazardous materials spill prevention, preparedness, training, and response activities;

(h) Water and environmental health protection and monitoring programs;

(i) Programs authorized under chapter 70A.135 RCW;

(j) A public participation program;

(k) Development and demonstration of alternative management technologies designed to carry out the hazardous waste management priorities of RCW 70A.300.260;

(l) State agriculture and health programs for the safe use, reduction, recycling, or disposal of pesticides;

(m) Funding requirements to maintain receipt of federal funds under the federal solid waste disposal act (42 U.S.C. Sec. 6901 et seq.);

(n) Air quality programs and actions for reducing public exposure to toxic air pollution;

(o) Petroleum-based plastic or expanded polystyrene foam debris clean-up activities in fresh or marine waters; and

(p) For the 2021-2023 fiscal biennium, and solely to continue the policy of previous biennia, forest practices at the department of natural resources.

(3) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in model toxics control operating account may be spent only after appropriation by statute.

(4) One percent of the moneys collected under RCW 82.21.030 must be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. No grant may exceed sixty thousand dollars. Grants may be renewed annually. Moneys appropriated for public participation that are not expended at the close of any biennium revert to the model toxics control operating account.

(5) The department must adopt rules for grant or loan issuance and performance. [2021 c 334 § 988; 2020 c 20 § 1319; 2019 c 422 § 202. Formerly RCW 70.105D.190.]

Conflict with federal requirements—Effective date—2021 c 334: See notes following RCW 43.79.555.

Effective date—Intent—2019 c 422: See notes following RCW 82.21.010.

70A.305.190 Model toxics control capital account.

(1) The model toxics control capital account is hereby created in the state treasury.

(2) In addition to the funds deposited into the model toxics control capital account required under RCW 82.21.030, the following moneys must be deposited into the model toxics control capital account:

(a) The costs of remedial actions recovered under this chapter, except as provided under RCW 70A.305.170(7);

(b) Penalties collected or recovered under this chapter; and

(c) Any other money appropriated or transferred to the account by the legislature.

(3) Moneys in the model toxics control capital account must be used for the improvement, rehabilitation, remediation, and cleanup of toxic sites and other capital-related expenditures for programs and activities identified in subsection (4) of this section.

(4) Moneys in the model toxics control capital account may be used only for capital projects and activities that carry out the purposes of this chapter and for financial assistance to local governments or other persons to carry out those projects or activities, including but not limited to the following, generally in descending order of priority:

(a) Remedial actions, including the following generally in descending order of priority:

(i) Extended grant agreements entered into under subsection (5)(a) of this section;

(ii) Grants or loans to local governments for remedial actions, including planning for adaptive reuse of properties as provided for under subsection (5)(d) of this section. The department must prioritize funding of remedial actions at:

(A) Facilities on the department's hazardous sites list with a high hazard ranking for which there is an approved remedial action work plan or an equivalent document under federal cleanup law;

(B) Brownfield properties within a redevelopment opportunity zone if the local government is a prospective purchaser of the property and there is a department-approved remedial action work plan or equivalent document under the federal cleanup law;

(iii) Department-conducted remedial actions;

(iv) Grants to persons intending to remediate contaminated real property for development of affordable housing;

(v) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with cleanup standards under RCW 70A.305.030(2)(e) if:

(A) The amount and terms of the funding are established under a settlement agreement under RCW 70A.305.040(4); and

(B) The director has found that the funding will achieve both a substantially more expeditious or enhanced cleanup than would otherwise occur, and the prevention or mitigation of unfair economic hardship;

(vi) Public funding to assist prospective purchasers to pay for the costs of remedial action in compliance with cleanup standards under RCW 70A.305.030(2)(e) if:

(A) The facility is located within a redevelopment opportunity zone designated under RCW 70A.305.150;

(B) The amount and terms of the funding are established under a settlement agreement under RCW 70A.305.040(5); and

(C) The director has found the funding will achieve a substantially more expeditious or enhanced cleanup than would otherwise occur, provide a public benefit in addition to cleanup commensurate with the scope of the public funding; and meet any additional criteria established in rule by the department; and

(vii) To expedite multiparty clean-up efforts, purchase of remedial action cost-cap insurance;

(b) Grants, or loans, or contracts to local governments for solid waste plans and programs under chapters 70A.205, 70A.214, 70A.224, 70A.222, 70A.230, and 70A.300 RCW. Funds must be allocated consistent with priorities and matching requirements in the respective chapters;

(c) Toxic air pollutant reduction programs, including grants or loans to local governments for woodstoves and diesel;

(d) Grants, loans, or contracts to local governments for hazardous waste plans and programs under chapters 70A.405 and 70A.300 RCW, including chemical action plan implementation. Funds must be allocated consistent with priorities and matching requirements in the respective chapters; and

(e) Petroleum-based plastic or expanded polystyrene foam debris clean-up activities in fresh or marine waters.

(5) The department may establish and administer a program to provide grants and loans to local governments for remedial actions, including planning for adaptive reuse of contaminated properties. To expedite cleanups throughout the state, the department may use the following strategies when providing grants to local governments under this subsection:

(a) Enter into an extended grant agreement with a local government conducting remedial actions at a facility where those actions extend over multiple biennia and the total eligible cost of those actions exceeds \$20,000,000. The agreement is subject to the following limitations:

(i) The initial duration of such an agreement may not exceed 10 years. The department may extend the duration of such an agreement upon finding substantial progress has been made on remedial actions at the facility;

(ii) Extended grant agreements may not exceed 50 percent of the total eligible remedial action costs at the facility; and

(iii) The department may not allocate future funding to an extended grant agreement unless the local government has demonstrated to the department that funds awarded under the agreement during the previous biennium have been substantially expended or contracts have been entered into to substantially expend the funds;

(b) Enter into a grant agreement with a local government conducting a remedial action that provides for periodic reimbursement of remedial action costs as they are incurred as established in the agreement;

(c) Enter into a grant agreement with a local government prior to it acquiring a property or obtaining necessary access to conduct remedial actions, provided the agreement is conditioned upon the local government acquiring the property or obtaining the access in accordance with a schedule specified in the agreement;

(d) Provide integrated planning grants to local governments to fund studies necessary to facilitate remedial actions at brownfield properties and adaptive reuse of properties following remediation. Eligible activities include, but are not limited to: Environmental site assessments; remedial investigations; health assessments; feasibility studies; site planning; community involvement; land use and regulatory analyses; building and infrastructure assessments; economic and fiscal analyses; and any environmental analyses under chapter 43.21C RCW;

(e) Provide grants to local governments for remedial actions related to area-wide groundwater contamination. To receive the funding, the local government does not need to be a potentially liable person or be required to seek reimbursement of grant funds from a potentially liable person;

(f) The director may alter grant matching requirements to create incentives for local governments to expedite cleanups when one of the following conditions exists:

(i) Funding would prevent or mitigate unfair economic hardship imposed by the clean-up liability;

(ii) Funding would create new substantial economic development, public recreational opportunities, or habitat restoration opportunities that would not otherwise occur; or

(iii) Funding would create an opportunity for acquisition and redevelopment of brownfield property under RCW 70A.305.040(5) that would not otherwise occur; and

(g) When pending grant applications under subsection (4)(d) and (e) of this section exceed the amount of funds available, designated redevelopment opportunity zones must receive priority for distribution of available funds.

(6) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in model toxics control capital account may be spent only after appropriation by

statute. [2022 c 102 § 2; 2020 c 20 § 1320; 2019 c 422 § 203. Formerly RCW 70.105D.200.]

Findings—2022 c 102: "The legislature finds that:

(1) Remedial action grants are an effective means to assist a local government achieve toxic waste cleanup; and

(2) Requiring a local government to have all the necessary permits in hand prior to receiving remedial action grant funding has caused unintended delays in implementing projects." [2022 c 102 § 1.]

Effective date—Intent—2019 c 422: See notes following RCW 82.21.010.

70A.305.200 Model toxics control stormwater account. (1) The model toxics control stormwater account is hereby created in the state treasury.

(2) Moneys in the model toxics control stormwater account must be used for operating and capital programs, activities, and projects identified in subsection (3) of this section directly relating to stormwater pollution control.

(3) Moneys in the model toxics control stormwater account must be used only to carry out the operating and capital programs, activities, and projects directly relating to stormwater activities under RCW 70A.305.180 and 70A.305.190, including but not limited to the following:

(a) Stormwater pollution control projects and activities that protect or preserve existing remedial actions or prevent hazardous clean-up sites;

(b) Stormwater financial assistance to local governments that assist in compliance to the purposes of this chapter.

(4) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the model toxics control stormwater account may be spent only after appropriation by statute. [2020 c 20 § 1321; 2019 c 422 § 204. Formerly RCW 70.105D.210.]

Effective date—Intent—2019 c 422: See notes following RCW 82.21.010.

70A.305.900 Short title—1989 c 2. This act shall be known as "the model toxics control act." [1989 c 2 § 22 (Initiative Measure No. 97, approved November 8, 1988). Formerly RCW 70.105D.900.]

70A.305.901 Captions—1989 c 2. As used in this act, captions constitute no part of the law. [1989 c 2 § 21 (Initiative Measure No. 97, approved November 8, 1988). Formerly RCW 70.105D.905.]

70A.305.902 Construction—1989 c 2. The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act. In the event of conflict between the provisions of this act and any other act, the provisions of this act shall govern. [1989 c 2 § 19 (Initiative Measure No. 97, approved November 8, 1988). Formerly RCW 70.105D.910.]

70A.305.903 Existing agreements—1989 c 2. The consent orders and decrees in effect on March 1, 1989, shall remain valid and binding. [1989 c 2 § 20 (Initiative Measure No. 97, approved November 8, 1988). Formerly RCW 70.105D.915.]

70A.305.904 Effective date—1989 c 2. (1) Sections 1 through 24 of this act shall take effect March 1, 1989, except

that the director of ecology and the director of revenue may take whatever actions may be necessary to ensure that sections 1 through 24 of this act are implemented on their effective date.

*(2) This section does not apply and shall have no force or effect if (a) this act is passed by the legislature in the 1988 regular session or (b) no bill is enacted by the legislature involving hazardous substance cleanup (along with any other subject matter) between August 15, 1987, and January 1, 1988. [1989 c 2 § 26 (Initiative Measure No. 97, approved November 8, 1988). Formerly RCW 70.105D.920.]

***Reviser's note:** Neither condition contained in subsection (2) was met.

Chapter 70A.310 RCW

MILL TAILINGS—LICENSING AND PERPETUAL CARE

Sections

70A.310.010	Legislative findings.
70A.310.020	Definitions.
70A.310.030	Licenses—Renewal—Hearings.
70A.310.040	Facility operations and decommissioning—Monitoring.
70A.310.050	Radiation perpetual maintenance fund—Licensee contributions—Disposition.
70A.310.060	State authority to acquire property for surveillance sites.
70A.310.070	Status of acquired state property for surveillance sites.
70A.310.080	Payment for transferred sites for surveillance.
70A.310.090	Authority for on-site inspections and monitoring.
70A.310.100	Licenses' bond requirements.
70A.310.110	Acceptable bonds.
70A.310.120	Forfeited bonds—Use of fund.
70A.310.130	Exemptions from bonding requirements.
70A.310.140	Amounts owed to state—Lien created.
70A.310.150	Amounts owed to the state—Collection by attorney general.
70A.310.900	Construction.
70A.310.901	Short title.

Nuclear energy and radiation: Chapter 70A.388 RCW.

Radioactive waste storage and transportation act of 1980: Chapter 70A.390 RCW.

70A.310.010 Legislative findings. The legislature finds that:

(1) The milling of uranium and thorium creates potential hazards to the health of the citizens of the state of Washington in that potentially hazardous radioactive isotopes, decay products of uranium and thorium, naturally occurring in relatively dispersed geologic formations, are brought to one location on the surface and pulverized in the process of mining and milling uranium and thorium.

(2) These radioactive isotopes, in addition to creating a field of gamma radiation in the vicinity of the tailings area, also exude potentially hazardous radioactive gas and particulates into the atmosphere from the tailings areas, and contaminate the milling facilities, thereby creating hazards which will be present for many generations.

(3) The public health and welfare of the citizens demands that the state assure that the public health be protected by requiring that: (a) Prior to the termination of any radioactive materials license, all milling facilities and associated tailings piles will be decommissioned in such a manner as to bring the potential public health hazard to a minimum; and (b) such environmental radiation monitoring as is necessary to verify the status of decommissioned facilities will be conducted. [1979 ex.s. c 110 § 1. Formerly RCW 70.121.010.]

Additional notes found at www.leg.wa.gov

70A.310.020 Definitions. Unless the context clearly requires a different meaning, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of health.

(2) "License" means a radioactive materials license issued under chapter 70A.388 RCW and the rules adopted under chapter 70A.388 RCW.

(3) "Milling" means grinding, cutting, working, or concentrating ore which has been extracted from the earth by mechanical (conventional) or chemical (in situ) processes.

(4) "Obligor-licensee" means any person who obtains a license to operate a uranium or thorium mill in the state of Washington or any person who owns the property on which the mill operates and who owes money to the state for the licensing fee, for reclamation of the site, for perpetual surveillance and maintenance of the site, or for any other obligation owed the state under this chapter.

(5) "Secretary" means the secretary of health.

(6) "Site" means the restricted area as defined by the United States nuclear regulatory commission.

(7) "Statement of claim" means the document recorded or filed pursuant to this chapter, which names an obligor-licensee, names the state as obligee, describes the obligation owed to the state, and describes property owned by the obligor-licensee on which a lien will attach for the benefit of the state, and which creates the lien when filed.

(8) "Tailings" means the residue remaining after extraction of uranium or thorium from the ore whether or not the residue is left in piles, but shall not include ore bodies nor ore stock piles.

(9) "Termination of license" means the cancellation of the license after permanent cessation of operations. Temporary interruptions or suspensions of production due to economic or other conditions are not a permanent cessation of operations. [2020 c 20 § 1368; 1991 c 3 § 372; 1987 c 184 § 1; 1982 c 78 § 1; 1979 ex.s. c 110 § 2. Formerly RCW 70.121.020.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Additional notes found at www.leg.wa.gov

70A.310.030 Licenses—Renewal—Hearings. (1) Any person who proposes to operate a uranium or thorium mill within the state of Washington after January 1, 1980, shall obtain a license from the department to mill thorium and uranium. The period of the license shall be determined by the secretary and shall be initially valid for not more than two years and renewable thereafter for periods of not more than five years. No license may be granted unless:

(a) The owner or operator of the mill submits to the department a plan for reclamation and disposal of tailings and for decommissioning the site that conforms to the criteria and standards then in effect for the protection of the public safety and health; and

(b) The owner of the mill agrees to transfer or revert to the appropriate state or federal agency upon termination of the license all lands, buildings, and grounds, and any interests therein, necessary to fulfill the purposes of this chapter

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except where the lands are held in trust for or are owned by any Indian tribe.

(2) Any person operating a uranium or thorium mill on January 1, 1980, shall, at the time of application for renewal of his or her license to mill thorium or uranium, comply with the following conditions for continued operation of the mill:

(a) The owner or operator of the mill shall submit to the department a plan for reclamation and disposal of tailings and for decommissioning the site that conforms to the criteria and standards then in effect for the protection of the public safety and health; and

(b) The owner of the mill shall agree to transfer or revert to the appropriate state or federal agency upon termination of the license all lands, buildings, and grounds, and any interests therein, necessary to fulfill the purposes of this chapter except where the lands are held in trust for or are owned by any Indian tribe.

(3) The department shall, after public notice and opportunity for written comment, hold a public hearing to consider the adequacy of the proposed plan to protect the safety and health of the public required by subsections (1) and (2) of this section. The proceedings shall be recorded and transcribed. The public hearing shall provide the opportunity for cross-examination by both the department and the person proposing the plan required under this section. The department shall make a written determination as to the licensing of the mill which is based upon the findings included in the determination and upon the evidence presented during the public comment period. The determination is subject to judicial review. If a declaration of nonsignificance is issued for a license renewal application under rules adopted under chapter 43.21C RCW, the public hearing is not required.

(4) The department shall set a schedule of license and amendment fees predicated on the cost of reviewing the license application and of monitoring for compliance with the conditions of the license. A permit for construction of a uranium or thorium mill may be granted by the secretary prior to licensing. [2012 c 117 § 427; 1979 ex.s. c 110 § 3. Formerly RCW 70.121.030.]

Additional notes found at www.leg.wa.gov

70A.310.040 Facility operations and decommissioning—Monitoring. The secretary or his or her representative shall monitor the operations of the mill for compliance with the conditions of the license by the owner or operator. The mill owner or operator shall be responsible for compliance, both during the lifetime of the facility and at shutdown, including but not limited to such requirements as fencing and posting the site; contouring, covering, and stabilizing the pile; and for decommissioning the facility. [2012 c 117 § 428; 1979 ex.s. c 110 § 4. Formerly RCW 70.121.040.]

Additional notes found at www.leg.wa.gov

70A.310.050 Radiation perpetual maintenance fund—Licensee contributions—Disposition. On a quarterly basis on and after January 1, 1980, there shall be levied and the department shall collect a charge of five cents per pound on each pound of uranium or thorium compound milled out of the raw ore. All moneys paid to the department from these charges shall be deposited in a special security fund in the treasury of the state of Washington to be known as

the "radiation perpetual maintenance fund." This security fund shall be used by the department when a licensee has ceased to operate and the site may still contain, or have associated with the site at which the licensed activity was conducted in spite of full compliance with RCW 70A.310.030, radioactive material which will require further maintenance, surveillance, or other care. If, with respect to a licensee, the department determines that the estimated total of these charges will be less than or greater than that required to defray the estimated cost of administration of this responsibility, the department may prescribe such an increased or decreased charge as is considered necessary for this purpose. If, at termination of the license, the department determines that by the applicable standards and practices then in effect, the charges which have been collected from the licensee and earnings generated therefrom are in excess of the amount required to defray the cost of this responsibility, the department may refund the excess portion to the licensee. If, at termination of the license or cessation of operation, the department determines, by the applicable standards and practices then in effect, that the charges which have been collected from the licensee and earnings generated therefrom are together insufficient to defray the cost of this responsibility, the department may collect the excess portion from the licensee. [2020 c 20 § 1369; 2012 c 187 § 8; 1987 c 184 § 2; 1979 ex.s. c 110 § 5. Formerly RCW 70.121.050.]

Additional notes found at www.leg.wa.gov

70A.310.060 State authority to acquire property for surveillance sites. In order to provide for the proper care and surveillance of sites under RCW 70A.310.050, the state may acquire by gift or transfer from any government agency, corporation, partnership, or person, all lands, buildings, and grounds necessary to fulfill the purposes of this chapter. Any such gift or transfer shall be subject to approval by the department. In exercising the authority of this section, the department shall take into consideration the status of the ownership of the land and interests therein and the ability of the licensee to transfer title and custody thereof to the state. [2020 c 20 § 1370; 1979 ex.s. c 110 § 6. Formerly RCW 70.121.060.]

Additional notes found at www.leg.wa.gov

70A.310.070 Status of acquired state property for surveillance sites. Recognizing the uncertainty of the existence of a person or corporation in perpetuity, and recognizing that ultimate responsibility to protect the public health and safety must be reposed in a solvent government, without regard to the existence of any particular agency or department thereof, all lands, buildings, and grounds acquired by the state under RCW 70A.310.060 shall be owned in fee simple by the state and dedicated in perpetuity to the purposes stated in RCW 70A.310.060. All radioactive material received at a site and located therein at the time of acquisition of ownership by the state shall become the property of the state. [2020 c 20 § 1371; 1979 ex.s. c 110 § 7. Formerly RCW 70.121.070.]

Additional notes found at www.leg.wa.gov

70A.310.080 Payment for transferred sites for surveillance. If a person licensed by any governmental agency other than the state or if any other governmental agency

desires to transfer a site to the state for the purpose of administering or providing perpetual care, a lump sum payment shall be made to the radiation perpetual maintenance fund. The amount of the deposit shall be determined by the department taking into consideration the factors stated in RCW 70A.310.050. [2020 c 20 § 1372; 1979 ex.s. c 110 § 8. Formerly RCW 70.121.080.]

Additional notes found at www.leg.wa.gov

70A.310.090 Authority for on-site inspections and monitoring. Each licensee under this chapter, as a condition of his or her license, shall submit to whatever reasonable on-site inspections and on-site monitoring as required in order for the department to carry out its responsibilities and duties under this chapter. Such on-site inspections and monitoring shall be conducted without the necessity of any further approval or any permit or warrant therefor. [2012 c 117 § 429; 1979 ex.s. c 110 § 9. Formerly RCW 70.121.090.]

Additional notes found at www.leg.wa.gov

70A.310.100 Licensees' bond requirements. The secretary or the secretary's duly authorized representative shall require the posting of a bond by licensees to be used exclusively to provide funds in the event of abandonment, default, or other inability of the licensee to meet the requirements of the department. The secretary may establish bonding requirements by classes of licensees and by range of monetary amounts. In establishing these requirements, the secretary shall consider the potential for contamination, injury, cost of disposal, and reclamation of the property. The amount of the bond shall be sufficient to pay the costs of reclamation and perpetual maintenance. [1987 c 184 § 5; 1979 ex.s. c 110 § 10. Formerly RCW 70.121.100.]

Additional notes found at www.leg.wa.gov

70A.310.110 Acceptable bonds. A bond shall be accepted by the department if it is a bond issued by a fidelity or surety company admitted to do business in the state of Washington and the fidelity or surety company is found by the state finance commission to be financially secure at licensing and licensing renewals, if it is a personal bond secured by such collateral as the secretary deems satisfactory and in accordance with RCW 70A.310.100, or if it is a cash bond. [2020 c 20 § 1373; 1987 c 184 § 6; 1979 ex.s. c 110 § 11. Formerly RCW 70.121.110.]

Additional notes found at www.leg.wa.gov

70A.310.120 Forfeited bonds—Use of fund. All bonds forfeited shall be paid to the department for deposit in the radiation perpetual maintenance fund. All moneys in this fund may only be expended by the department as necessary for the protection of the public health and safety and shall not be used for normal operating expenses of the department. [1979 ex.s. c 110 § 12. Formerly RCW 70.121.120.]

Additional notes found at www.leg.wa.gov

70A.310.130 Exemptions from bonding requirements. All state, local, or other governmental agencies, or subdivisions thereof, are exempt from the bonding requirements of this chapter. [1987 c 184 § 7; 1979 ex.s. c 110 § 13. Formerly RCW 70.121.130.]

Additional notes found at www.leg.wa.gov

70A.310.140 Amounts owed to state—Lien created.

If a licensee fails to pay the department within a reasonable time money owed to the state under this chapter, the obligation owed to the state shall constitute a lien on all property, both real and personal, owned by the obligor-licensee when the department records or files, pursuant to this section, a statement of claim against the obligor-licensee. The statement of claim against the obligor-licensee shall name the obligor-licensee, name the state as obligee, describe the obligation, and describe the property to be held in security for the obligation.

Statements of claim creating a lien on real property, fixtures, timber, agricultural products, oil, gas, or minerals shall be recorded with the county auditor in each county where the property is located. Statements of claim creating a lien in personal property, whether tangible or intangible, shall be filed with the department of licensing.

A lien recorded or filed pursuant to this section has priority over any lien, interest, or other encumbrance previously or thereafter recorded or filed concerning any property described in the statement of claim, to the extent allowed by federal law.

A lien created pursuant to this section shall continue in force until extinguished by foreclosure or bankruptcy proceedings or until a release of the lien signed by the secretary is recorded or filed in the place where the statement of claim was recorded or filed. The secretary shall sign and record or file a release only after the obligation owed to the state under this chapter, together with accrued interest and costs of collection has been paid. [1987 c 184 § 3. Formerly RCW 70.121.140.]

70A.310.150 Amounts owed to the state—Collection by attorney general. The attorney general shall use all available methods of obtaining funds owed to the state under this chapter. The attorney general shall foreclose on liens made pursuant to this section, obtain judgments against obligor-licensees and pursue assets of the obligor-licensees found outside the state, consider pursuing the assets of parent corporations and shareholders where an obligor-licensee corporation is an underfinanced corporation, and pursue any other legal remedy available. [1987 c 184 § 4. Formerly RCW 70.121.150.]

70A.310.900 Construction. This chapter is cumulative and not exclusive, and no part of this chapter shall be construed to repeal any existing law specifically enacted for the protection of the public health and safety. [1979 ex.s. c 110 § 14. Formerly RCW 70.121.900.]

Additional notes found at www.leg.wa.gov

70A.310.901 Short title. This chapter may be known as the "Mill Tailings Licensing and Perpetual Care Act of 1979". [1979 ex.s. c 110 § 15. Formerly RCW 70.121.905.]

Additional notes found at www.leg.wa.gov

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Chapter 70A.315 RCW INCINERATOR ASH RESIDUE

Sections

70A.315.010	Legislative findings.
70A.315.020	Definitions.
70A.315.030	Review and approval of management plans—Disposal permits.
70A.315.040	Civil penalties.
70A.315.050	Violations—Orders.
70A.315.060	Enforcement—Injunctive relief.
70A.315.070	Criminal penalties.
70A.315.900	Application of chapter to certain incinerators.
70A.315.901	Short title.

Environmental certification programs—Fees—Rules—Liability: RCW 43.21A.175.

70A.315.010 Legislative findings. The legislature finds:

(1) Solid wastes generated in the state are to be managed in the following order of descending priority: (a) Waste reduction; (b) recycling; (c) treatment; (d) energy recovery or incineration; (e) solidification/stabilization; and (f) landfill.

(2) Special incinerator ash residues from the incineration of municipal solid waste that would otherwise be regulated as hazardous wastes need a separate regulatory scheme in order to (a) ease the permitting and reporting requirements of chapter 70A.300 RCW, the state hazardous waste management act, and (b) supplement the environmental protection provisions of chapter 70A.205 RCW, the state solid waste management act.

(3) Raw garbage poses significant environmental and public health risks. Municipal solid waste incineration constitutes a higher waste management priority than the land disposal of untreated municipal solid waste due to its reduction of waste volumes and environmental health risks.

It is therefore the purpose of this chapter to establish management requirements for special incinerator ash that otherwise would be regulated as hazardous waste under chapter 70A.300 RCW, the hazardous waste management act. [2020 c 20 § 1374; 1987 c 528 § 1. Formerly RCW 70.138.010.]

70A.315.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of ecology.

(2) "Director" means the director of the department of ecology or the director's designee.

(3) "Dispose" or "disposal" means the treatment, utilization, processing, or final deposit of special incineration ash.

(4) "Generate" means any act or process which produces special incinerator ash or which first causes special incinerator ash to become subject to regulation.

(5) "Management" means the handling, storage, collection, transportation, and disposal of special incinerator ash.

(6) "Person" means any person, firm, association, county, public or municipal or private corporation, agency, or other entity whatsoever.

(7) "Facility" means all structures, other appurtenances, improvements, and land used for recycling, storing, treating, or disposing of special incinerator ash.

(8) "Special incinerator ash" means ash residues resulting from the operation of incinerator or energy recovery facil-

ities managing municipal solid waste, including solid waste from residential, commercial, and industrial establishments, if the ash residues (a) would otherwise be regulated as hazardous wastes under chapter 70A.300 RCW; and (b) are not regulated as a hazardous waste under the federal resource conservation and recovery act, 42 U.S.C. Sec. 6901 et seq. [2020 c 20 § 1375; 1987 c 528 § 2. Formerly RCW 70.138.020.]

70A.315.030 Review and approval of management plans—Disposal permits. (1) Prior to managing special incinerator ash, persons who generate special incinerator ash shall develop plans for managing the special incinerator ash. These plans shall:

(a) Identify procedures for all aspects relating to the management of the special incinerator ash that are necessary to protect employees, human health, and the environment;

(b) Identify alternatives for managing solid waste prior to incineration for the purpose of (i) reducing the toxicity of the special incinerator ash; and (ii) reducing the quantity of the special incinerator ash;

(c) Establish a process for submittal of an annual report to the department disclosing the results of a testing program to identify the toxic properties of the special incinerator ash as necessary to ensure that the procedures established in the plans submitted pursuant to this chapter are adequate to protect employees, human health, and the environment; and

(d) Comply with the rules established by the department in accordance with this section.

(2) Prior to managing any special incinerator ash, any person required to develop a plan pursuant to subsection (1) of this section shall submit the plan to the department for review and approval. Prior to approving a plan, the department shall find that the plan complies with the provisions of this chapter, including any rules adopted under this chapter. Approval may be conditioned upon additional requirements necessary to protect employees, human health, and the environment, including special management requirements, waste segregation, or treatment techniques such as neutralization, detoxification, and solidification/stabilization.

(3) The department shall give notice of receipt of a proposed plan to interested persons and the public and shall accept public comment for a minimum of thirty days. The department shall approve, approve with conditions, or reject the plan submitted pursuant to this section within ninety days of submittal.

(4) Prior to accepting any special incinerator ash for disposal, persons owning or operating facilities for the disposal of the incinerator ash shall apply to the department for a permit. The department shall issue a permit if the disposal will provide adequate protection of human health and the environment. Prior to issuance of any permit, the department shall find that the facility meets the requirements of chapter 70A.205 RCW and any rules adopted under this chapter. The department may place conditions on the permit to include additional requirements necessary to protect employees, human health, and the environment, including special management requirements, waste segregation, or treatment techniques such as neutralization, detoxification, and solidification/stabilization.

(5) The department shall give notice of its receipt of a permit application to interested persons and the public and shall accept public comment for a minimum of thirty days. The department shall issue, issue with conditions, or deny the permit within ninety days of submittal.

(6) The department shall adopt rules to implement the provisions of this chapter. The rules shall (a) establish minimum requirements for the management of special incinerator ash as necessary to protect employees, human health, and the environment, (b) clearly define the elements of the plans required by this chapter, and (c) require special incinerator ash to be disposed at facilities that are operating in compliance with this chapter. [2020 c 20 § 1376; 1987 c 528 § 3. Formerly RCW 70.138.030.]

70A.315.040 Civil penalties. (1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, any person who violates any provision of a department regulation or regulatory order relating to the management of special incinerator ash shall incur in addition to any other penalty provided by law, a penalty in an amount up to ten thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense. In case of continuing violation, every day's continuance shall be a separate and distinct violation. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty herein provided.

(2) The penalty provided for in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department, describing the violation with reasonable particularity. Within fifteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of such penalty. Upon receipt of the application, the department may remit or mitigate the penalty upon whatever terms the department in its discretion deems proper, giving consideration to the degree of hazard associated with the violation, provided the department deems such remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department shall have authority to ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper.

(3) Any penalty imposed by this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or petition for review by the hearings board is filed. When such an application for remission or mitigation is made, any penalty incurred pursuant to this section shall become due and payable thirty days after receipt of notice setting forth the disposition of such application.

(4) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county, or any county in which such violator may do business, to recover such penalty. In all such actions, the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise provided in

this chapter. [1995 c 403 § 633; 1987 c 528 § 4. Formerly RCW 70.138.040.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

70A.315.050 Violations—Orders. Whenever a person violates any provision of this chapter or any permit or regulation the department may issue an order appropriate under the circumstances to assure compliance with the chapter, permit, or regulation. Such an order must be served personally or by registered mail upon any person to whom it is directed. [1987 c 528 § 5. Formerly RCW 70.138.050.]

70A.315.060 Enforcement—Injunctive relief. The department, with the assistance of the attorney general, may bring any appropriate action at law or in equity, including action for injunctive relief as may be necessary to enforce the provisions of this chapter or any permit or regulation issued thereunder. [1987 c 528 § 6. Formerly RCW 70.138.060.]

70A.315.070 Criminal penalties. Any person found guilty of wilfully violating, without sufficient cause, any of the provisions of this chapter, or permit or order issued pursuant to this chapter is guilty of a gross misdemeanor and upon conviction shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment for up to three hundred sixty-four days, or by both. Each day of violation may be deemed a separate violation. [2011 c 96 § 52; 1987 c 528 § 7. Formerly RCW 70.138.070.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

70A.315.900 Application of chapter to certain incinerators. This chapter shall not apply to municipal solid waste incinerators that are in operation on May 19, 1987, until a special incinerator waste disposal permit is issued in the county where the municipal solid waste incinerator is located, or July 1, 1989, whichever is sooner. [1987 c 528 § 12. Formerly RCW 70.138.900.]

70A.315.901 Short title. This chapter shall be known as the special incinerator ash disposal act. [1987 c 528 § 11. Formerly RCW 70.138.901.]

Chapter 70A.320 RCW AREA-WIDE SOIL CONTAMINATION

Sections

70A.320.010	Findings.
70A.320.020	Definitions.
70A.320.030	Children in schools and child care facilities—Department duties—School and child care facility duties.
70A.320.040	Department assistance—Best management practice guidelines—Grants—Interagency agreements authorized—Reports.
70A.320.050	Department of health to provide assistance.
70A.320.060	Department of social and health services to provide assistance.
70A.320.070	Livestock, agricultural land exempt from chapter.
70A.320.080	Existing authority of department not affected.

70A.320.010 Findings. The legislature finds that state and local agencies are currently implementing actions to reduce children's exposure to soils that contain hazardous substances. The legislature further finds that it is in the public

interest to enhance those efforts in western Washington in areas located within the central Puget Sound smelter plume. [2005 c 306 § 1. Formerly RCW 70.140.010.]

70A.320.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Area-wide soil contamination" means low to moderate arsenic and lead soil contamination dispersed over a large geographic area.

(2) "Child care facility" means a child day-care center or a family day-care provider as those terms are defined under *RCW 74.15.020.

(3) "Department" means the department of ecology.

(4) "Director" means the director of the department of ecology.

(5) "Low to moderate soil contamination" means low level arsenic or lead concentrations where a child's exposure to soil contamination at a school or a child care facility may be reduced through best management practices.

(6) "School" means a public or private kindergarten, elementary, or secondary school. [2005 c 306 § 2. Formerly RCW 70.140.020.]

***Reviser's note:** RCW 74.15.020 was amended by 2006 c 265 § 401, removing the definitions for "child day-care center" and "family day-care provider."

70A.320.030 Children in schools and child care facilities—Department duties—School and child care facility duties. (1) The department, in cooperation with the department of social and health services, the department of health, the office of the superintendent of public instruction, and local health districts, shall assist schools and child care facilities west of the crest of the Cascade mountains to reduce the potential for children's exposure to area-wide soil contamination.

(2) The department shall:

(a) Identify schools and child care facilities that are located within the central Puget Sound smelter plume based on available information;

(b) Conduct qualitative evaluations to determine the potential for children's exposure to area-wide soil contamination;

(c) If the qualitative evaluation determines that children may be routinely exposed to area-wide soil contamination at a property, conduct soil samples at that property by December 31, 2009; and

(d) If soil sample results confirm the presence of area-wide soil contamination, notify schools and child care facilities regarding the test results and the steps necessary for implementing best management practices.

(3) If a school or a child care facility with area-wide soil contamination does not implement best management practices within six months of receiving written notification from the department, the superintendent or board of directors of a school or the owner or operator of a child care facility must notify parents and guardians in writing of the results of soil tests. The written notice shall be prepared by the department.

(4) The department shall recognize schools and child care facilities that successfully implement best management practices with a voluntary certification letter confirming that

the facility has successfully implemented best management practices.

(5) Schools and child care facilities must work with the department to provide the department with site access for soil sampling at times that are the most convenient for all parties. [2005 c 306 § 3. Formerly RCW 70.140.030.]

70A.320.040 Department assistance—Best management practice guidelines—Grants—Interagency agreements authorized—Reports. (1) The department shall assist schools and owners and operators of child care facilities located within the central Puget Sound smelter plume. Such assistance may include the following:

(a) Technical assistance in conducting qualitative evaluations to determine where area-wide soil contamination exposures could occur;

(b) Technical and financial assistance in testing soils where evaluations indicate potential for contamination; and

(c) Technical and financial assistance to implement best management practices.

(2) The department shall develop best management practice guidelines for schools and day care facilities with area-wide soil contamination. The guidelines shall recommend a range of methods for reducing exposure to contaminated soil, considering the concentration, extent, and location of contamination and the nature and frequency of child use of the area.

(3) The department shall develop a grant program to assist schools and child care facilities with implementing best management practices.

(4) The department, within available funds, may provide grants to schools and child care facilities for the purpose of implementing best management practices.

(5) The department, within available funds, may provide financial assistance to the department of health and the department of social and health services to implement this chapter.

(6) The department may, through an interagency agreement, authorize a local health jurisdiction to administer any activity in this chapter that is otherwise not assigned to a local health jurisdiction by this chapter.

(7) The department shall evaluate actions to reduce child exposure to contaminated soils and submit progress reports to the governor and to the appropriate committees of the legislature by December 31, 2006, and December 31, 2008. [2005 c 306 § 4. Formerly RCW 70.140.040.]

70A.320.050 Department of health to provide assistance. The department of health shall assist the department in implementing this chapter, including but not limited to developing best management practices and guidelines. [2005 c 306 § 5. Formerly RCW 70.140.050.]

70A.320.060 Department of social and health services to provide assistance. The department of social and health services shall assist the department by providing information on the location of child care facilities and contacts for these facilities. [2005 c 306 § 6. Formerly RCW 70.140.060.]

70A.320.070 Livestock, agricultural land exempt from chapter. This chapter does not apply to land devoted primarily to the commercial production of livestock or agricultural commodities. [2005 c 306 § 7. Formerly RCW 70.140.070.]

70A.320.080 Existing authority of department not affected. Nothing in this chapter is intended to change ongoing actions or the authority of the department or other agencies to require actions to address soil contamination under existing laws. [2005 c 306 § 8. Formerly RCW 70.140.080.]

Chapter 70A.325 RCW

UNDERGROUND PETROLEUM STORAGE TANKS

Sections

70A.325.005	Finding—Intent.
70A.325.010	Definitions.
70A.325.020	Pollution liability insurance program trust account.
70A.325.030	Reinsurance for heating oil pollution liability protection program.
70A.325.040	Pollution liability insurance program—Generally—Ad hoc committees.
70A.325.050	Program design—Cost coverage.
70A.325.060	Rules.
70A.325.070	Powers and duties of director.
70A.325.080	Disclosure of reports or information—Penalty.
70A.325.090	Insurer selection process and criteria.
70A.325.100	Cancellation or refusal by insurer—Appeal.
70A.325.110	Exemptions from Title 48 RCW—Exceptions.
70A.325.120	Reservation of legislative power.
70A.325.130	Director may implement an emergency program—Report to the legislature.
70A.325.900	Expiration of chapter.

70A.325.005 Finding—Intent. (Expires July 1, 2030.)

(1) The legislature finds that:

(a) Final regulations adopted by the United States environmental protection agency (EPA) require owners and operators of underground petroleum storage tanks to demonstrate financial responsibility for accidental releases of petroleum as a precondition to continued ownership and operation of such tanks;

(b) Financial responsibility is demonstrated through the purchase of pollution liability insurance or an acceptable alternative such as coverage under a state financial responsibility program, in the amount of at least five hundred thousand dollars per occurrence and one million dollars annual aggregate depending upon the nature, use, and number of tanks owned or operated;

(c) Many owners and operators of underground petroleum storage tanks cannot purchase pollution liability insurance either because private insurance is unavailable at any price or because owners and operators cannot meet the rigid underwriting standards of existing insurers, nor can many owners and operators meet the strict regulatory standards imposed for alternatives to the purchase of insurance; and

(d) Without a state financial responsibility program for owners and operators of underground petroleum storage tanks, many tank owners and operators will be forced to discontinue the ownership and operation of these tanks.

(2) The purpose of this chapter is to create a state financial responsibility program meeting EPA standards for owners and operators of underground petroleum storage tanks in a manner that:

- (a) Minimizes state involvement in pollution liability claims management and insurance administration;
- (b) Protects the state of Washington from unwanted and unanticipated liability for accidental release claims;
- (c) Creates incentives for private insurers to provide needed liability insurance; and
- (d) Parallels generally accepted principles of insurance and risk management.

To that end, this chapter establishes a temporary program to provide pollution liability reinsurance at a price that will encourage a private insurance company or risk retention group to sell pollution liability insurance in accordance with the requirements of this chapter to owners and operators of underground petroleum storage tanks, thereby allowing the owners and operators to comply with the financial responsibility regulations of the EPA. In the event that private insurance is not available in the state, this chapter provides an emergency program to address the need of owners and operators of underground petroleum storage tanks to demonstrate financial responsibility so that businesses may continue to operate.

(3) It is not the intent of this chapter to permit owners and operators of underground petroleum storage tanks to obtain pollution liability insurance without regard to the quality or condition of their storage tanks or without regard to the risk management practices of tank owners and operators, nor is it the intent of this chapter to provide coverage or funding for past or existing petroleum releases. Further, it is the intent of the legislature that the program follow generally accepted insurance underwriting and actuarial principles and to deviate from those principles only to the extent necessary and within the tax revenue limits provided, to make pollution liability insurance reasonably affordable and available to owners and operators who meet the requirements of this chapter, particularly to those owners and operators whose underground storage tanks meet a vital economic need within the affected community. [2020 c 156 § 1; 1990 c 64 § 1; 1989 c 383 § 1. Formerly RCW 70.148.005.]

70A.325.010 Definitions. (Expires July 1, 2030.)

Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Accidental release" means any sudden or nonsudden release of petroleum arising from operating an underground storage tank that results in a need for corrective action, bodily injury, or property damage neither expected nor intended by the owner or operator.
- (2) "Director" means the Washington pollution liability insurance program director.
- (3) "Bodily injury" means bodily injury, sickness, or disease sustained by any person, including death at any time resulting from the injury, sickness, or disease.
- (4) "Corrective action" means those actions reasonably required to be undertaken by the insured to remove, treat, neutralize, contain, or clean up an accidental release in order to comply with any statute, ordinance, rule, regulation, directive, order, or similar legal requirement of the United States, the state of Washington, or any political subdivision of the United States or the state of Washington in effect at the time of an accidental release. "Corrective action" includes, when agreed to in writing, in advance by the insurer, action to

remove, treat, neutralize, contain, or clean up an accidental release to avert, reduce, or eliminate the liability of the insured for corrective action, bodily injury, or property damage. "Corrective action" also includes actions reasonably necessary to monitor, assess, and evaluate an accidental release. "Corrective action" does not include:

- (a) Replacement or repair of storage tanks or other receptacles;
 - (b) Replacement or repair of piping, connections, and valves of storage tanks or other receptacles;
 - (c) Excavation or backfilling done in conjunction with (a) or (b) of this subsection; or
 - (d) Testing for a suspected accidental release if the results of the testing indicate that there has been no accidental release.
- (5) "Defense costs" include the costs of legal representation, expert fees, and related costs and expenses incurred in defending against claims or actions brought by or on behalf of:
- (a) The United States, the state of Washington, or any political subdivision of the United States or state of Washington to require corrective action or to recover costs of corrective action; or
 - (b) A third party for bodily injury or property damage caused by an accidental release.
- (6) "Washington pollution liability insurance program" or "program" means the reinsurance program created by this chapter.

(7) "Insured" means the owner or operator who is provided insurance coverage in accordance with this chapter.

(8) "Insurer" means the insurance company or risk retention group licensed or qualified to do business in Washington and authorized by the director to provide insurance coverage in accordance with this chapter.

(9) "Loss reserve" means the amount traditionally set aside by commercial liability insurers for costs and expenses related to claims that have been made. "Loss reserve" does not include losses that have been incurred but not reported to the insurer.

(10) "Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a release from an underground storage tank.

(11) "Operator" means a person in control of, or having responsibility for, the daily operation of an underground storage tank.

(12) "Owner" means a person who owns an underground storage tank.

(13) "Person" means an individual, trust, firm, joint stock company, corporation (including government corporation), partnership, association, consortium, joint venture, commercial entity, state, municipality, commission, political subdivision of a state, interstate body, the federal government, or any department or agency of the federal government.

(14) "Petroleum" means crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure, which means at sixty degrees Fahrenheit and 14.7 pounds per square inch absolute and includes gasoline, kerosene, heating oils, and diesel fuels.

(15) "Property damage" means:

(a) Physical injury to, destruction of, or contamination of tangible property, including the loss of use of the property resulting from the injury, destruction, or contamination; or

(b) Loss of use of tangible property that has not been physically injured, destroyed, or contaminated but has been evacuated, withdrawn from use, or rendered inaccessible because of an accidental release.

(16) "Release" means the emission, discharge, disposal, dispersal, seepage, or escape of petroleum from an underground storage tank into or upon land, groundwater, surface water, subsurface soils, or the atmosphere.

(17) "Surplus reserve" means the amount traditionally set aside by commercial property and casualty insurance companies to provide financial protection from unexpected losses and to serve, in part, as a measure of an insurance company's net worth.

(18) "Tank" means a stationary device, designed to contain an accumulation of petroleum, that is constructed primarily of nonearthen materials such as wood, concrete, steel, or plastic that provides structural support.

(19) "Underground storage tank" means any one or a combination of tanks including underground pipes connected to the tank, that is used to contain an accumulation of petroleum and the volume of which (including the volume of the underground pipes connected to the tank) is ten percent or more beneath the surface of the ground. [1990 c 64 § 2; 1989 c 383 § 2. Formerly RCW 70.148.010.]

70A.325.020 Pollution liability insurance program trust account. (Expires July 1, 2030.) (1) The pollution liability insurance program trust account is established in the custody of the state treasurer. All funds appropriated for this chapter and all premiums collected for reinsurance shall be deposited in the account. Except as provided in chapter 70A.345 RCW, expenditures from the account shall be used exclusively for the purposes of this chapter including payment of costs of administering the pollution liability insurance program and emergency program. Expenditures for payment of administrative and operating costs of the agency are subject to the allotment procedures under chapter 43.88 RCW and may be made only after appropriation by statute. No appropriation is required for other expenditures from the account.

(2) Each calendar quarter, the director shall report to the insurance commissioner the loss and surplus reserves required for the calendar quarter. The director shall notify the department of revenue of this amount by the fifteenth day of each calendar quarter.

(3) During the 2019-2021 fiscal biennium, the legislature may make appropriations from the pollution liability insurance program trust account for the leaking tank model remedies activity. [2020 c 156 § 4; 2020 c 20 § 1383; 2019 c 413 § 7034. Prior: 2016 sp.s. c 35 § 6013; 2016 c 161 § 15; 2013 2nd sp.s. c 4 § 993; 2012 1st sp.s. c 3 § 1; 2006 c 276 § 1; 2005 c 518 § 942; 1999 c 73 § 1; 1998 c 245 § 114; 1991 sp.s. c 13 § 90; 1991 c 4 § 7; 1990 c 64 § 3; 1989 c 383 § 3. Formerly RCW 70.148.020.]

Reviser's note: This section was amended by 2020 c 20 § 1383 and by 2020 c 156 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2019 c 413: See note following RCW 28B.15.210.

Effective date—2016 sp.s. c 35: See note following RCW 28B.10.027.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Additional notes found at www.leg.wa.gov

70A.325.030 Reinsurance for heating oil pollution liability protection program. (Expires July 1, 2030.) The director shall provide reinsurance through the pollution liability insurance program trust account to the heating oil pollution liability protection program under chapter 70A.330 RCW. [2020 c 20 § 1384; 1995 c 20 § 12. Formerly RCW 70.148.025.]

70A.325.040 Pollution liability insurance program—Generally—Ad hoc committees. (Expires July 1, 2030.) (1) The Washington pollution liability insurance program is created as an independent agency of the state. The administrative head and appointing authority of the program shall be the director who shall be appointed by the governor, with the consent of the senate, and shall serve at the pleasure of the governor. The salary for this office shall be set by the governor pursuant to RCW 43.03.040. The director shall appoint a deputy director. The director, deputy director, and up to three other employees are exempt from the civil service law, chapter 41.06 RCW.

(2) The director shall employ such other staff as are necessary to fulfill the responsibilities and duties of the director. The staff is subject to the civil service law, chapter 41.06 RCW. In addition, the director may contract with third parties for services necessary to carry out its activities where this will promote economy, avoid duplication of effort, and make best use of available expertise. To the extent necessary to protect the state from unintended liability and ensure quality program and contract design, the director shall contract with an organization or organizations with demonstrated experience and ability in managing and designing pollution liability insurance and with an organization or organizations with demonstrated experience and ability in managing and designing pollution liability reinsurance. The director shall enter into such contracts after competitive bid but need not select the lowest bid. Any such contractor or consultant is prohibited from releasing, publishing, or otherwise using any information made available to it under its contractual responsibility without specific permission of the program director. The director may call upon other agencies of the state to provide technical support and available information as necessary to assist the director in meeting the director's responsibilities under this chapter. Agencies shall supply this support and information as promptly as circumstances permit.

(3) The director may appoint ad hoc technical advisory committees to obtain expertise necessary to fulfill the purposes of this chapter. [1994 sp.s. c 9 § 805; 1990 c 64 § 4; 1989 c 383 § 4. Formerly RCW 70.148.030.]

Additional notes found at www.leg.wa.gov

70A.325.050 Program design—Cost coverage. (Expires July 1, 2030.) The director may design the program to cover the costs incurred in determining whether a proposed applicant for pollution insurance under the program meets the underwriting standards of the insurer. In covering such costs

the director shall consider the financial resources of the applicant, shall take into consideration the economic impact of the discontinued use of the applicant's storage tank upon the affected community, shall provide coverage within the revenue limits provided under this chapter, and shall limit coverage of such costs to the extent that coverage would be detrimental to providing affordable insurance under the program. [1990 c 64 § 11. Formerly RCW 70.148.035.]

70A.325.060 Rules. (Expires July 1, 2030.) The director may adopt rules consistent with this chapter to carry out the purposes of this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. [1990 c 64 § 5; 1989 c 383 § 5. Formerly RCW 70.148.040.]

70A.325.070 Powers and duties of director. (Expires July 1, 2030.) The director has the following powers and duties:

(1) To design and from time to time revise a reinsurance contract providing coverage to an insurer meeting the requirements of this chapter. Before initially entering into a reinsurance contract, the director shall prepare an actuarial report describing the various reinsurance methods considered by the director and describing each method's costs. In designing the reinsurance contract the director shall consider common insurance industry reinsurance contract provisions and shall design the contract in accordance with the following guidelines:

(a) The contract shall provide coverage to the insurer for the liability risks of owners and operators of underground storage tanks for third party bodily injury and property damage and corrective action that are underwritten by the insurer.

(b) In the event of an insolvency of the insurer, the reinsurance contract shall provide reinsurance payable directly to the insurer or to its liquidator, receiver, or successor on the basis of the liability of the insurer in accordance with the reinsurance contract. In no event may the program be liable for or provide coverage for that portion of any covered loss that is the responsibility of the insurer whether or not the insurer is able to fulfill the responsibility.

(c) The total limit of liability for reinsurance coverage shall not exceed one million dollars per occurrence and two million dollars annual aggregate for each policy underwritten by the insurer less the ultimate net loss retained by the insurer as defined and provided for in the reinsurance contract.

(d) Disputes between the insurer and the insurance program shall be settled through arbitration.

(2) To design and implement a structure of periodic premiums due the director from the insurer that takes full advantage of revenue collections and projected revenue collections to ensure affordable premiums to the insured consistent with sound actuarial principles.

(3) To periodically review premium rates for reinsurance to determine whether revenue appropriations supporting the program can be reduced without substantially increasing the insured's premium costs.

(4) To solicit bids from insurers and select an insurer to provide pollution liability insurance to owners and operators of underground storage tanks for third party bodily injury and property damage and corrective action.

(5) To monitor the activities of the insurer to ensure compliance with this chapter and protect the program from excessive loss exposure resulting from claims mismanagement by the insurer.

(6) To monitor the success of the program and periodically make such reports and recommendations to the legislature as the director deems appropriate, and to annually publish a financial report on the pollution liability insurance program trust account showing, among other things, administrative and other expenses paid from the fund.

(7) To annually report the financial and loss experience of the insurer as to policies issued under the program and the financial and loss experience of the program to the legislature.

(8) To enter into contracts with public and private agencies to assist the director in his or her duties to design, revise, monitor, and evaluate the program and to provide technical or professional assistance to the director.

(9) To examine the affairs, transactions, accounts, records, documents, and assets of insurers as the director deems advisable.

(10) To design, in consultation with the office of financial management, an emergency program to assist owners and operators of underground storage tanks in meeting the federal financial responsibility requirements in the event that a private insurer withdraws from the Washington pollution liability insurance program.

(11) To determine, assess, and collect moneys sufficient to cover the direct and indirect costs of implementing the emergency program, including initial program development costs. The moneys may be collected from underground storage tank owners and operators who are using the emergency program. All moneys collected under this section must be deposited in the pollution liability insurance program trust account created in RCW 70A.325.020. [2021 c 65 § 72; 2020 c 156 § 2; 2006 c 276 § 2; 1998 c 245 § 115; 1995 c 12 § 1; 1990 c 64 § 6; 1989 c 383 § 6. Formerly RCW 70.148.050.]

Explanatory statement—2021 c 65: See note following RCW 53.54.030.

Additional notes found at www.leg.wa.gov

70A.325.080 Disclosure of reports or information—Penalty. (Expires July 1, 2030.) (1) All information except for proprietary reports or information obtained by the director and the director's staff in soliciting bids from insurers and in monitoring the insurer selected by the director shall be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) Subsection (1) of this section notwithstanding, the director may furnish all or part of examination reports prepared by the director or by any person, firm, corporation, association, or other entity preparing the reports on behalf of the director to:

(a) The Washington state insurance commissioner;

(b) A person or organization officially connected with the insurer as officer, director, attorney, auditor, or independent attorney or independent auditor; and

(c) The attorney general in his or her role as legal advisor to the director.

(3) Subsection (1) of this section notwithstanding, the director may furnish all or part of the examination or proprietary reports or information obtained by the director to:

- (a) The Washington state insurance commissioner; and
- (b) A person, firm, corporation, association, governmental body, or other entity with whom the director has contracted for services necessary to perform his or her official duties.

(4) Proprietary information obtained by the director and the director's staff is not subject to public disclosure under chapter 42.56 RCW.

(5) A person who violates any provision of this section is guilty of a gross misdemeanor. [2015 c 224 § 5; 2005 c 274 § 341; 1990 c 64 § 7; 1989 c 383 § 7. Formerly RCW 70.148.060.]

70A.325.090 Insurer selection process and criteria. (Expires July 1, 2030.) (1) In selecting an insurer to provide pollution liability insurance coverage to owners and operators of underground storage tanks, the director shall evaluate bids based upon criteria established by the director that shall include:

- (a) The insurer's ability to underwrite pollution liability insurance;
- (b) The insurer's ability to settle pollution liability claims quickly and efficiently;
- (c) The insurer's estimate of underwriting and claims adjustment expenses;
- (d) The insurer's estimate of premium rates for providing coverage;
- (e) The insurer's ability to manage and invest premiums; and
- (f) The insurer's ability to provide risk management guidance to insureds.

The director shall select the bidder most qualified to provide insurance consistent with this chapter and need not select the bidder submitting the least expensive bid. The director may consider bids by groups of insurers and management companies who propose to act in concert in providing coverage and who otherwise meet the requirements of this chapter.

(2) The successful bidder shall agree to provide liability insurance coverage to owners and operators of underground storage tanks for third party bodily injury and property damage and corrective action consistent with the following minimum standards:

- (a) The insurer shall provide coverage for defense costs.
- (b) The insurer shall collect a deductible from the insured for corrective action in an amount approved by the director.
- (c) The insurer shall provide coverage for accidental releases in the amount of five hundred thousand dollars per occurrence and one million dollars annual aggregate but no more than one million dollars per occurrence and two million dollars annual aggregate exclusive of defense costs.
- (d) The insurer shall require insurance applicants to meet at least the following underwriting standards before issuing coverage to the applicant:

- (i) The applicant must be in compliance with statutes, ordinances, rules, regulations, and orders governing the own-

ership and operation of underground storage tanks as identified by the director by rule; and

(ii) The applicant must exercise adequate underground storage tank risk management as specified by the director by rule.

(e) The insurer may exclude coverage for losses arising before the effective date of coverage, and the director may adopt rules establishing standards for determining whether a loss was incurred before the effective date of coverage.

(f) The insurer may exclude coverage for bodily injury, property damage, and corrective action as permitted by the director by rule.

(g) The insurer shall use a variable rate schedule approved by the director taking into account tank type, tank age, and other factors specified by the director.

(3) The director shall adopt all rules necessary to implement this section. In developing and adopting rules governing rates, deductibles, underwriting standards, and coverage conditions, limitations, and exclusions, the director shall balance the owner and operator's need for coverage with the need to maintain the actuarial integrity of the program, shall take into consideration the economic impact of the discontinued use of a storage tank upon the affected community, and shall consult with the *standing technical advisory committee established under RCW 70A.325.040(3). In developing and adopting rules governing coverage exclusions affecting corrective action, the director shall consult with the Washington state department of ecology.

(4) Notwithstanding the definitions contained in RCW 70A.325.010, the director may permit an insurer to use different words or phrases describing the coverage provided under the program. In permitting such deviations from the definitions contained in RCW 70A.325.010, the director shall consider the regulations adopted by the United States environmental protection agency requiring financial responsibility by owners and operators of underground petroleum storage tanks.

(5) Owners and operators of underground storage tanks or sites containing underground storage tanks where a preexisting release has been identified or where the owner or operator knows of a preexisting release are eligible for coverage under the program subject to the following conditions:

- (a) The owner or operator must have a plan for proceeding with corrective action; and
- (b) If the owner or operator files a claim with the insurer, the owner or operator has the burden of proving that the claim is not related to a preexisting release until the owner or operator demonstrates to the satisfaction of the director that corrective action has been completed.

(6) When a reinsurance contract has been entered into by the agency and insurance companies, the director shall notify the department of ecology of the letting of the contract. Within thirty days of that notification, the department of ecology shall notify all known owners and operators of petroleum underground storage tanks that appropriate levels of financial responsibility must be established by October 26, 1990, in accordance with federal environmental protection agency requirements, and that insurance under the program is available. All owners and operators of petroleum underground storage tanks must also be notified that declaration of method of financial responsibility or intent to seek to be insured

under the program must be made to the state by November 1, 1990. If the declaration of method of financial responsibility is not made by November 1, 1990, the department of ecology shall, pursuant to chapter 70A.355 RCW, prohibit the owner or operator of an underground storage tank from obtaining a tank tag or receiving petroleum products until such time as financial responsibility has been established. [2020 c 20 § 1385; 1990 c 64 § 8; 1989 c 383 § 8. Formerly RCW 70.148.070.]

***Reviser's note:** The "standing technical advisory committee" was abolished by 1994 sp.s. c 9 § 805 and in its place the director was given authority to appoint ad hoc technical advisory committees.

70A.325.100 Cancellation or refusal by insurer—Appeal. (Expires July 1, 2030.) If the insurer cancels or refuses to issue or renew a policy, the affected owner or operator may appeal the insurer's decision to the director. The director shall conduct a brief adjudicative proceeding under chapter 34.05 RCW. [1990 c 64 § 9; 1989 c 383 § 9. Formerly RCW 70.148.080.]

70A.325.110 Exemptions from Title 48 RCW—Exceptions. (Expires July 1, 2030.) (1) The activities and operations of the program are exempt from the provisions and requirements of Title 48 RCW.

(2) To the extent of their participation in the program, the activities and operations of the insurer selected by the director to provide liability insurance coverage to owners and operators of underground storage tanks are exempt from the requirements of Title 48 RCW except for:

- (a) Chapter 48.03 RCW pertaining to examinations;
- (b) RCW 48.05.250 pertaining to annual reports;
- (c) Chapter 48.12 RCW pertaining to assets and liabilities;
- (d) Chapter 48.13 RCW pertaining to investments;
- (e) Chapter 48.30 RCW pertaining to deceptive, false, or fraudulent acts or practices; and
- (f) Chapter 48.92 RCW pertaining to liability risk retention.

(3) To the extent of their participation in the program, the insurer selected by the director to provide liability insurance coverage to owners and operators of underground storage tanks shall not participate in the Washington insurance guaranty association nor shall the association be liable for coverage provided to owners and operators of underground storage tanks issued in connection with the program. [2020 c 156 § 5; 1990 c 64 § 10; 1989 c 383 § 10. Formerly RCW 70.148.090.]

70A.325.120 Reservation of legislative power. (Expires July 1, 2030.) The legislature reserves the right to amend or repeal all or any part of this chapter at any time, and there is no vested right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or any acts done under it exist subject to the power of the legislature to amend or repeal this chapter at any time. [1989 c 383 § 12. Formerly RCW 70.148.110.]

70A.325.130 Director may implement an emergency program—Report to the legislature. (Expires July 1, 2022 Ed.)

2030.) (1) The director may implement an emergency program, as designed under RCW 70A.325.070.

(2) At the legislative session following implementation of an emergency program, the director must provide to the legislature a report on the options available to assist owners and operators in using one or a combination of mechanisms to demonstrate financial responsibility for underground storage tanks. The report must include, but is not limited to: Discussion of a state run insurance program; alternative options to a state run insurance program; an evaluation and recommendation of the finances required to develop and implement a new financial responsibility model that complies with the federal financial responsibility requirements in 40 C.F.R. Part 280, subpart H; and recommendations for legislation necessary to implement actions needed to meet federal financial responsibility requirements in 40 C.F.R. Part 280, subpart H. [2021 c 65 § 73; 2020 c 156 § 3.]

Explanatory statement—2021 c 65: See note following RCW 53.54.030.

70A.325.900 Expiration of chapter. This chapter expires July 1, 2030. [2016 c 161 § 16; 2012 1st sp.s. c 3 § 2; 2006 c 276 § 3; 2000 c 16 § 1; 1995 c 12 § 2; 1989 c 383 § 13. Formerly RCW 70.148.900.]

Additional notes found at www.leg.wa.gov

Chapter 70A.330 RCW

PETROLEUM STORAGE TANK SYSTEMS— POLLUTION LIABILITY PROTECTION ACT

Sections

70A.330.010	Intent—Findings.
70A.330.020	Short title.
70A.330.030	Definitions.
70A.330.040	Duties of director.
70A.330.050	Exemptions from Title 48 RCW—Exceptions.
70A.330.060	Heating oil pollution liability trust account.
70A.330.070	Pollution liability insurance fee.
70A.330.080	Confidentiality.
70A.330.090	Application of RCW 19.86.020 through 19.86.060.
70A.330.100	Heating oil tanks—Design criteria—Reimbursement.
70A.330.110	Authorization to process claims through interpretative guidance.
70A.330.800	Technical advice and assistance program expansion—Interpretive guidance pending rules.
70A.330.801	Technical advice and assistance program expansion—Timeline.
70A.330.900	Expiration of chapter.

70A.330.010 Intent—Findings. (Expires July 1, 2030.) The legislature finds that it is in the best interests of all citizens for petroleum storage tank systems to be operated safely and for tank leaks or spills to be dealt with expeditiously. The legislature finds that it is appropriate for an agency with expertise in petroleum to provide technical advice and assistance to owners or operators when there has been a release. The legislature further finds that while it is necessary to protect tank owners from the financial hardship related to damaged heating oil tanks, support can be provided through the agency's revolving loan and grant program in chapter 70A.345 RCW. Therefore, the legislature intends to transition the pollution liability insurance program for heating oil tanks to a revolving loan and grant program, while maintaining the pollution liability insurance program for

existing registrants. [2021 c 65 § 74; 2020 c 310 § 1; 2017 c 23 § 1; 1995 c 20 § 1. Formerly RCW 70.149.010.]

Explanatory statement—2021 c 65: See note following RCW 53.54.030.

70A.330.020 Short title. (Expires July 1, 2030.) This chapter may be known and cited as the Washington state pollution liability protection act. [2017 c 23 § 2; 1995 c 20 § 2. Formerly RCW 70.149.020.]

70A.330.030 Definitions. (Expires July 1, 2030.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Accidental release" means a sudden or nonsudden release of heating oil, occurring after July 23, 1995, from operating a heating oil tank that results in bodily injury, property damage, or a need for corrective action, neither expected nor intended by the owner or operator.

(2) "Bodily injury" means bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from the injury, sickness, or disease.

(3)(a) "Corrective action" means those actions reasonably required to be undertaken by the insured to remove, treat, neutralize, contain, or clean up an accidental release in order to comply with a statute, ordinance, rule, regulation, directive, order, or similar legal requirement, in effect at the time of an accidental release, of the United States, the state of Washington, or a political subdivision of the United States or the state of Washington. "Corrective action" includes, where agreed to in writing, in advance by the insurer, action to remove, treat, neutralize, contain, or clean up an accidental release to avert, reduce, or eliminate the liability of the insured for corrective action, bodily injury, or property damage. "Corrective action" also includes actions reasonably necessary to monitor, assess, and evaluate an accidental release.

(b) "Corrective action" does not include:

(i) Replacement or repair of heating oil tanks or other receptacles; or

(ii) Replacement or repair of piping, connections, and valves of tanks or other receptacles.

(4) "Defense costs" include the costs of legal representation, expert fees, and related costs and expenses incurred in defending against claims or actions brought by or on behalf of:

(a) The United States, the state of Washington, or a political subdivision of the United States or state of Washington to require corrective action or to recover costs of corrective action; or

(b) A third party for bodily injury or property damage caused by an accidental release.

(5) "Director" means the director of the Washington state pollution liability insurance agency or the director's appointed representative.

(6) "Environmental covenant" has the same meaning as defined in RCW 64.70.020.

(7) "Facility" has the same meaning as defined in RCW 70A.305.020.

(8) "Heating oil" means any petroleum product used for space heating in oil-fired furnaces, heaters, and boilers, including stove oil, diesel fuel, or kerosene. "Heating oil" does not include petroleum products used as fuels in motor

vehicles, marine vessels, trains, buses, aircraft, or any off-highway equipment not used for space heating, or for industrial processing or the generation of electrical energy.

(9) "Heating oil tank" means a tank and its connecting pipes, whether above or below ground, or in a basement, with pipes connected to the tank for space heating of human living or working space on the premises where the tank is located. "Heating oil tank" does not include a decommissioned or abandoned heating oil tank, or a tank used solely for industrial process heating purposes or generation of electrical energy.

(10) "Independent remedial action" has the same meaning as defined in RCW 70A.305.020.

(11) "Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a release from a heating oil tank.

(12) "Owner or operator" means a person in control of, or having responsibility for, the daily operation of a petroleum storage tank system.

(13) "Petroleum" means any petroleum-based substance including crude oil or any fraction that is liquid at standard conditions of temperature and pressure. The term "petroleum" includes, but is not limited to, petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, used oils, and heating oils. The term "petroleum" does not include propane, asphalt, or any other petroleum product that is not liquid at standard conditions of temperature and pressure. Standard conditions of temperature and pressure are at sixty degrees Fahrenheit and 14.7 pounds per square inch absolute.

(14) "Petroleum storage tank system" means a storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other substances. The systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, used oils, and heating oils. "Petroleum storage tank system" does not include any storage tank system regulated under chapter 70A.300 RCW.

(15) "Pollution liability insurance agency" means the Washington state pollution liability insurance agency.

(16) "Property damage" means:

(a) Physical injury to, destruction of, or contamination of tangible property, including the loss of use of the property resulting from the injury, destruction, or contamination; or

(b) Loss of use of tangible property that has not been physically injured, destroyed, or contaminated but has been evacuated, withdrawn from use, or rendered inaccessible because of an accidental release.

(17) "Release" means a spill, leak, emission, escape, or leaching into the environment.

(18) "Remedial action" has the same meaning as defined in RCW 70A.305.020.

(19) "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action.

(20) "Tank" means a stationary device, designed to contain an accumulation of heating oil, that is constructed primarily of nonearthen materials such as concrete, steel, fiberglass, or plastic that provides structural support.

(21) "Third-party liability" means the liability of a heating oil tank owner to another person due to property damage

or personal injury that results from a leak or spill. [2020 c 20 § 1386; 2017 c 23 § 3; 1995 c 20 § 3. Formerly RCW 70.149.030.]

70A.330.040 Duties of director. (Expires July 1, 2030.) The director shall:

(1) Design and implement a process to close out existing claims under the heating oil pollution liability insurance program. During this process, the director has authority to maintain the program providing pollution liability insurance for heating oil tanks that provides up to sixty thousand dollars per occurrence coverage and aggregate limits, not to exceed fifteen million dollars each calendar year. Claims received under the existing policy, which would result in payment in excess of fifteen million dollars in a calendar year may be paid out in the next calendar year. The heating oil pollution liability insurance program shall not register heating oil tanks for coverage under the heating oil pollution liability insurance program after July 1, 2020;

(2) Administer, implement, and enforce the provisions of this chapter. To assist in administration of the program, the director is authorized to appoint up to two employees who are exempt from the civil service law, chapter 41.06 RCW, and who shall serve at the pleasure of the director;

(3) Administer the heating oil pollution liability trust account, as established under RCW 70A.330.060;

(4) Employ and discharge, at his or her discretion, agents, attorneys, consultants, companies, organizations, and employees as deemed necessary, and to prescribe their duties and powers, and fix their compensation;

(5) Adopt rules under chapter 34.05 RCW as necessary to carry out the provisions of this chapter;

(6) Have the authority to provide reinsurance through the pollution liability insurance program trust account;

(7) Implement a program to provide advice and technical assistance on the administrative and technical requirements of this chapter and chapter 70A.305 RCW to persons who are conducting or otherwise interested in independent remedial actions at facilities where there is a suspected or confirmed release from the following petroleum storage tank systems: A heating oil tank; a decommissioned heating oil tank; an abandoned heating oil tank; or a petroleum storage tank system identified by the department of ecology based on the relative risk posed by the release to human health and the environment, as determined under chapter 70A.305 RCW, or other factors identified by the department of ecology.

(a) Such advice or assistance is advisory only, and is not binding on the pollution liability insurance agency or the department of ecology. As part of this advice and assistance, the pollution liability insurance agency may provide written opinions on whether independent remedial actions or proposals for these actions meet the substantive requirements of chapter 70A.305 RCW, or whether the pollution liability insurance agency believes further remedial action is necessary at the facility. As part of this advice and assistance, the pollution liability insurance agency may also observe independent remedial actions.

(b) The agency is authorized to collect, from persons requesting advice and assistance, the costs incurred by the agency in providing such advice and assistance. The costs may include travel costs and expenses associated with review

of reports and preparation of written opinions and conclusions. Funds from cost reimbursement must be deposited in the heating oil pollution liability trust account.

(c) The state of Washington, the pollution liability insurance agency, and its officers and employees are immune from all liability, and no cause of action arises from any act or omission in providing, or failing to provide, such advice, opinion, conclusion, or assistance;

(8) Establish a public information program to provide information regarding liability, technical, and environmental requirements associated with active and abandoned heating oil tanks;

(9) Monitor agency expenditures and seek to minimize costs and maximize benefits to ensure responsible financial stewardship;

(10) Study if appropriate user fees to supplement program funding are necessary and develop recommendations for legislation to authorize such fees;

(11) Establish requirements, including deadlines not to exceed ninety days, for reporting to the pollution liability insurance agency a suspected or confirmed release from a heating oil tank, including a decommissioned or abandoned heating oil tank, that may pose a threat to human health or the environment by the owner or operator of the heating oil tank or the owner of the property where the release occurred;

(12) Within ninety days of receiving information and having a reasonable basis to believe that there may be a release from a heating oil tank, including decommissioned or abandoned heating oil tanks, that may pose a threat to human health or the environment, perform an initial investigation to determine at a minimum whether such a release has occurred and whether further remedial action is necessary under chapter 70A.305 RCW. The initial investigation may include, but is not limited to, inspecting, sampling, or testing. The director may retain contractors to perform an initial investigation on the agency's behalf;

(13) For any written opinion issued under subsection (7) of this section requiring an environmental covenant as part of the remedial action, consult with, and seek comment from, a city or county department with land use planning authority for real property subject to the environmental covenant prior to the property owner recording the environmental covenant; and

(14) For any property where an environmental covenant has been established as part of the remedial action approved under subsection (7) of this section, periodically review the environmental covenant for effectiveness. The director shall perform a review at least once every five years after an environmental covenant is recorded. [2020 c 310 § 2; 2020 c 20 § 1387; 2018 c 194 § 3; 2017 c 23 § 4; 2009 c 560 § 11; 2007 c 240 § 1; 2004 c 203 § 1; 1997 c 8 § 1; 1995 c 20 § 4. Formerly RCW 70.149.040.]

Reviser's note: This section was amended by 2020 c 20 § 1387 and by 2020 c 310 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560: See notes following RCW 18.06.080.

Additional notes found at www.leg.wa.gov

70A.330.050 Exemptions from Title 48 RCW—Exceptions. (Expires July 1, 2030.) (1) The activities and operations of the program are exempt from the provisions and requirements of Title 48 RCW and to the extent of their participation in the program, the activities and operations of the insurer selected by the director to provide liability insurance coverage to owners and operators of heating oil tanks are exempt from the requirements of Title 48 RCW except for:

- (a) Chapter 48.03 RCW pertaining to examinations;
- (b) RCW 48.05.250 pertaining to annual reports;
- (c) Chapter 48.12 RCW pertaining to assets and liabilities;
- (d) Chapter 48.13 RCW pertaining to investments;
- (e) Chapter 48.30 RCW pertaining to deceptive, false, or fraudulent acts or practices; and
- (f) Chapter 48.92 RCW pertaining to liability risk retention.

(2) To the extent of their participation in the program, the insurer selected by the director to provide liability insurance coverage to owners and operators of heating oil tanks shall not participate in the Washington insurance guaranty association nor shall the association be liable for coverage provided to owners and operators of heating oil tanks issued in connection with the program. [1995 c 20 § 6. Formerly RCW 70.149.060.]

70A.330.060 Heating oil pollution liability trust account. (Expires July 1, 2030.) (1) The heating oil pollution liability trust account is created in the custody of the state treasurer. All receipts from the pollution liability insurance fee collected under RCW 70A.330.070 and reinsurance premiums shall be deposited into the account. Expenditures from the account may be used only for the purposes set out under this chapter. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(2) Money in the account may be used by the director for the following purposes:

- (a) Corrective action costs;
- (b) Third-party liability claims;
- (c) Costs associated with claims administration;
- (d) Purchase of an insurance policy to cover all registered heating oil tanks, and reinsurance of the policy; and
- (e) Administrative expenses of the program, including personnel, equipment, supplies, and providing advice and technical assistance. [2020 c 20 § 1388; 2017 c 23 § 5; 2004 c 203 § 2; 1997 c 8 § 2; 1995 c 20 § 7. Formerly RCW 70.149.070.]

70A.330.070 Pollution liability insurance fee. (Expires July 1, 2030.) (1) A pollution liability insurance fee of one and two-tenths cents per gallon of heating oil purchased within the state shall be imposed on every special fuel dealer, as the term is defined in chapter 82.38 RCW, making sales of heating oil to a user or consumer.

(2) The pollution liability insurance fee shall be remitted by the special fuel dealer to the department of licensing.

(3) The fee proceeds shall be used for the specific regulatory purposes of this chapter.

(4) The fee imposed by this section shall not apply to heating oil exported or sold for export from the state. [2004 c 203 § 3; 1995 c 20 § 8. Formerly RCW 70.149.080.]

Additional notes found at www.leg.wa.gov

70A.330.080 Confidentiality. (Expires July 1, 2030.) The following shall be confidential and exempt under chapter 42.56 RCW, subject to the conditions set forth in this section:

(1) All examination and proprietary reports and information obtained by the director and the director's staff in soliciting bids from insurers and in monitoring the insurer selected by the director may not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) All information obtained by the director or the director's staff related to registration of heating oil tanks to be insured may not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(3) The director may furnish all or part of examination reports prepared by the director or by any person, firm, corporation, association, or other entity preparing the reports on behalf of the director to:

- (a) The Washington state insurance commissioner;
- (b) A person or organization officially connected with the insurer as officer, director, attorney, auditor, or independent attorney or independent auditor; and
- (c) The attorney general in his or her role as legal advisor to the director. [2005 c 274 § 342; 1995 c 20 § 9. Formerly RCW 70.149.090.]

70A.330.090 Application of RCW 19.86.020 through 19.86.060. (Expires July 1, 2030.) Nothing contained in this chapter shall authorize any commercial conduct which is prohibited by RCW 19.86.020 through 19.86.060, and no section of this chapter shall be deemed to be an implied repeal of any of those sections of the Revised Code of Washington. [1995 c 20 § 10. Formerly RCW 70.149.100.]

70A.330.100 Heating oil tanks—Design criteria—Reimbursement. (Expires July 1, 2030.) (1) The pollution liability insurance agency shall identify design criteria for heating oil tanks that provide superior protection against future leaks as compared to standard steel tank designs. Any tank designs identified under this section must either be constructed with fiberglass or offer at least an equivalent level of protection against leaks as a standard fiberglass design.

(2) The pollution liability insurance agency shall reimburse any owner or operator, who is participating in the program created in this chapter and who has experienced an occurrence or remedial action, for the difference in price between a standard steel heating tank and a new heating oil tank that satisfies the design standards identified under subsection (1) of this section, if the owner or operator chooses or is required to replace his or her tank at the time of the occurrence or remedial action.

(3) Any new heating oil tank reimbursement provided under this section must be funded within the amount of per occurrence coverage provided to the owner or operator under RCW 70A.330.040. [2020 c 20 § 1389; 2007 c 240 § 2. Formerly RCW 70.149.120.]

Additional notes found at www.leg.wa.gov

70A.330.110 Authorization to process claims through interpretative guidance. (Expires July 1, 2030.) To ensure the adoption of rules will not delay the process to close out existing claims under the heating oil pollution liability insurance program, the pollution liability insurance agency may continue to process claims through interpretative guidance pending adoption of rules. [2020 c 310 § 3.]

70A.330.800 Technical advice and assistance program expansion—Interpretive guidance pending rules. (Expires July 1, 2030.) To ensure the adoption of rules will not delay the implementation of remedial actions, the pollution liability insurance agency may implement the technical advice and assistance program expansion to include petroleum storage tank systems through interpretive guidance pending adoption of rules. [2017 c 23 § 7. Formerly RCW 70.149.800.]

70A.330.801 Technical advice and assistance program expansion—Timeline. (Expires July 1, 2030.) The pollution liability insurance agency may not expand the technical advice and assistance program to include petroleum storage tank systems until January 1, 2018. The pollution liability insurance agency may include heating oil tanks, including abandoned and decommissioned tanks, in the technical advice and assistance program as of July 23, 2017. [2017 c 23 § 8. Formerly RCW 70.149.801.]

70A.330.900 Expiration of chapter. This chapter expires July 1, 2030. [2016 c 161 § 17; 2012 1st sp.s. c 3 § 3; 2006 c 276 § 4; 2000 c 16 § 2; 1995 c 20 § 14. Formerly RCW 70.149.900.]

Chapter 70A.335 RCW

BISPHENOL A—RESTRICTIONS ON SALE

Sections

70A.335.010	Definitions.
70A.335.020	Prohibiting the sale or distribution of certain products containing bisphenol A.
70A.335.030	Notification—Recall of products.
70A.335.040	Penalties.
70A.335.050	Expenses to cover cost of administering chapter.
70A.335.060	Rules.

70A.335.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of ecology.

(2) "Metal can" means a single walled container that is manufactured from metal substrate designed to hold or pack food or beverages and sealed by can ends manufactured from metal substrate. The metal substrate for the can and the can ends must be equal to or thinner than 0.0149 inch.

(3) "Sports bottle" means a resealable, reusable container, sixty-four ounces or less in size, that is designed or intended primarily to be filled with a liquid or beverage for consumption from the container, and is sold or distributed at retail without containing any liquid or beverage. [2010 c 140 § 1. Formerly RCW 70.280.010.]

(2022 Ed.)

70A.335.020 Prohibiting the sale or distribution of certain products containing bisphenol A. (1) Beginning July 1, 2011, no manufacturer, wholesaler, or retailer may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state, any bottle, cup, or other container, except a metal can, that contains bisphenol A if that container is designed or intended to be filled with any liquid, food, or beverage primarily for consumption from that container by children three years of age or younger and is sold or distributed at retail without containing any liquid, food, or beverage.

(2) Beginning July 1, 2012, no manufacturer, wholesaler, or retailer may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state, sports bottles that contain bisphenol A. [2010 c 140 § 2. Formerly RCW 70.280.020.]

70A.335.030 Notification—Recall of products. (1) A manufacturer of products that are restricted under this chapter must notify persons that sell the manufacturer's products in this state about the provisions of this chapter no less than ninety days prior to the effective date of the restrictions.

(2) A manufacturer that produces, sells, or distributes a product prohibited from manufacture, sale, or distribution in this state under this chapter shall recall the product and reimburse the retailer or any other purchaser for the product. [2010 c 140 § 3. Formerly RCW 70.280.030.]

70A.335.040 Penalties. (1) A manufacturer, wholesaler, or retailer that manufactures, knowingly sells, or distributes products in violation of this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers, wholesalers, or retailers who are repeat violators are subject to a civil penalty not to exceed ten thousand dollars for each repeat offense. Penalties collected under this section must be deposited in the model toxics control operating account created in RCW 70A.305.180.

(2) Retailers who unknowingly sell products that are restricted from sale under this chapter are not subject to the civil penalties under this chapter. [2020 c 20 § 1419; 2010 c 140 § 4. Formerly RCW 70.280.040.]

70A.335.050 Expenses to cover cost of administering chapter. Expenses to cover the cost of administering this chapter must be paid from the model toxics control operating account under RCW 70A.305.180. [2020 c 20 § 1420; 2019 c 422 § 410; 2010 c 140 § 5. Formerly RCW 70.280.050.]

Effective date—Intent—2019 c 422: See notes following RCW 82.21.010.

70A.335.060 Rules. The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter. [2010 c 140 § 6. Formerly RCW 70.280.060.]

Chapter 70A.340 RCW BRAKE FRICTION MATERIAL

Sections

70A.340.010	Findings.
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[Title 70A RCW—page 257]

70A.340.020	Definitions.
70A.340.030	Prohibition on the sale of certain brake friction material—Exemptions.
70A.340.040	Brake friction material advisory committee—Members—Duties.
70A.340.050	Finding that alternative brake friction material is available—Report.
70A.340.060	Application for exemption from chapter.
70A.340.070	Manufacturers of brake friction material must provide certain data to the department—Department's duties.
70A.340.080	Compliance with chapter—Proof of compliance.
70A.340.090	Enforcement of chapter—Violations—Penalties.
70A.340.100	Adoption of rules.

70A.340.010 Findings. The legislature finds that:

- (1) Brake friction material is an essential component of motor vehicle brakes and is critically important to transportation safety and public safety in general;
- (2) Debris from brake friction material containing copper and its compounds is generated and released to the environment during normal operation of motor vehicle brakes;
- (3) Thousands of pounds of copper and other substances released from brake friction material enter Washington state's streams, rivers, and marine environment every year; and
- (4) Copper is toxic to many aquatic organisms, including salmon. [2010 c 147 § 1. Formerly RCW 70.285.010.]

70A.340.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Accredited laboratory" means a laboratory that is:
 - (a) Qualified and equipped for testing of products, materials, equipment, and installations in accordance with national or international standards; and
 - (b) Accredited by a third-party organization approved by the department to accredit laboratories for purposes of this chapter.
- (2) "Alternative brake friction material" means brake friction material that:
 - (a) Does not contain:
 - (i) More than 0.5 percent copper or its compounds by weight;
 - (ii) The constituents identified in RCW 70A.340.030 at or above the concentrations specified; and
 - (iii) Other materials determined by the department to be more harmful to human health or the environment than existing brake friction material;
 - (b) Enables motor vehicle brakes to meet applicable federal safety standards, or if no federal safety standard exists, a widely accepted industry standard;
 - (c) Is available at a cost and quantity that does not cause significant financial hardship across the majority of brake friction material and vehicle manufacturing industries; and
 - (d) Is available to enable brake friction material and vehicle manufacturers to produce viable products meeting consumer expectations regarding braking noise, shuddering, and durability.
- (3) "Brake friction material" means that part of a motor vehicle brake designed to retard or stop the movement of a motor vehicle through friction against a rotor made of more durable material.
- (4) "Committee" means the brake friction material advisory committee.
- (5) "Department" means the department of ecology.

(6)(a) "Motor vehicle" has the same meaning as defined in RCW 46.04.320 that are subject to registration requirements under RCW 46.16A.080.

(b) "Motor vehicle" does not include:

- (i) Motorcycles as defined in RCW 46.04.330;
- (ii) Motor vehicles employing internal closed oil immersed motor vehicle brakes or similar brake systems that are fully contained and emit no debris or fluid under normal operating conditions;
- (iii) Military combat vehicles;
- (iv) Race cars, dual-sport vehicles, or track day vehicles, whose primary use is for off-road purposes and are permitted under RCW 46.16A.320; or
- (v) Collector vehicles, as defined in RCW 46.04.126.

(7)(a) "Motor vehicle brake" means an energy conversion mechanism used to retard or stop the movement of a motor vehicle.

(b) "Motor vehicle brake" does not include brakes designed primarily to hold motor vehicles stationary and not for use while motor vehicles are in motion.

(8) "Original equipment service" means brake friction material provided as service parts originally designed for and using the same brake friction material formulation sold with a new motor vehicle.

(9) "Small volume motor vehicle manufacturer" means a manufacturer of motor vehicles with Washington annual sales of less than one thousand new passenger cars, light duty trucks, medium duty vehicles, heavy duty vehicles, and heavy duty engines based on the average number of vehicles sold for the three previous consecutive model years. [2020 c 20 § 1421; 2011 c 171 § 111; 2010 c 147 § 2. Formerly RCW 70.285.020.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

70A.340.030 Prohibition on the sale of certain brake friction material—Exemptions. (1) No manufacturer, wholesaler, retailer, or distributor may sell or offer for sale brake friction material in Washington state containing any of the following constituents in an amount exceeding the specified concentrations:

- (a) Asbestiform fibers, 0.1 percent by weight.
 - (b) Cadmium and its compounds, 0.01 percent by weight.
 - (c) Chromium(VI)-salts, 0.1 percent by weight.
 - (d) Lead and its compounds, 0.1 percent by weight.
 - (e) Mercury and its compounds, 0.1 percent by weight.
- (2) Beginning January 1, 2021, no manufacturer, wholesaler, retailer, or distributor may sell or offer for sale brake friction material in Washington state containing more than five percent copper and its compounds by weight.
- (3) Beginning January 1, 2025, no manufacturer, wholesaler, retailer, or distributor may sell or offer for sale brake friction material in Washington state containing more than 0.5 percent copper and its compounds by weight.
- (4) Brake friction material manufactured prior to 2015 is exempt from subsection (1) of this section for the purposes of clearing inventory. This exemption expires January 1, 2025.
- (5) Brake friction material manufactured prior to 2021 is exempt from subsection (2) of this section for the purposes of clearing inventory. This exemption expires January 1, 2031.

(6) Brake friction material manufactured prior to 2025 is exempt from subsection (3) of this section for the purposes of clearing inventory. This exemption expires January 1, 2035.

(7) Brake friction material manufactured as part of an original equipment service contract for vehicles manufactured prior to January 1, 2015, is exempt from subsection (1) of this section.

(8) Brake friction material manufactured as part of an original equipment service contract for vehicles manufactured prior to January 1, 2021, is exempt from subsection (2) of this section.

(9) Brake friction material manufactured as part of an original equipment service contract for vehicles manufactured prior to January 1, 2025, is exempt from subsection (3) of this section. [2017 c 204 § 1; 2010 c 147 § 3. Formerly RCW 70.285.030.]

70A.340.040 Brake friction material advisory committee—Members—Duties. (1) By December 1, 2015, the department shall review risk assessments, scientific studies, and other relevant analyses regarding alternative brake friction material and determine whether the material may be available. The department shall consider any new science with regard to the bioavailability and toxicity of copper.

(2) If the department finds that alternative brake friction material may be available, it shall convene a brake friction material advisory committee. The committee shall include, but is not limited to:

(a) A representative of the department, who will chair the committee;

(b) The chief of the Washington state patrol, or the chief's designee;

(c) A representative of manufacturers of brake friction material;

(d) A representative of manufacturers of motor vehicles;

(e) A representative of a nongovernmental organization concerned with motor vehicle safety;

(f) A representative of the national highway traffic safety administration; and

(g) A representative of a nongovernmental organization concerned with the environment.

(3) If convened pursuant to subsection (2) of this section, the committee shall separately assess alternative brake friction material for passenger vehicles, light duty vehicles, and heavy duty vehicles. The committee shall make different recommendations to the department as to whether alternative brake friction material is available or unavailable for passenger vehicles, light duty vehicles, and heavy duty vehicles. For purposes of this section, "heavy duty vehicle" means a vehicle used for commercial purposes with a gross vehicle weight rating above twenty-six thousand pounds. The committee shall also consider appropriate exemptions including original equipment service and brake friction material manufactured prior to the dates specified in RCW 70A.340.050. The department shall consider the committee's recommendations and make a finding as to whether alternative brake friction material is available or unavailable.

(4) If, pursuant to subsection (3) of this section, the department finds that alternative brake friction material:

(a) Is available, it shall comply with RCW 70A.340.050;

(b) Is not available, it shall periodically evaluate the finding and, if it determines that alternative brake friction material may be available, comply with subsections (2) and (3) of this section. If the department finds that alternative brake friction material is available, it shall comply with RCW 70A.340.050. [2020 c 20 § 1422; 2010 c 147 § 4. Formerly RCW 70.285.040.]

70A.340.050 Finding that alternative brake friction material is available—Report. If, pursuant to RCW 70A.340.040, the department finds that alternative brake friction material is available:

(1)(a) By December 31st of the year in which the finding is made, the department shall publish the information required by RCW 70A.340.040 in the Washington State Register and present it in a report to the appropriate committees of the legislature; and

(b) The report must include recommendations for exemptions on original equipment service and brake friction material manufactured prior to dates specified in this section and may include recommendations for other exemptions.

(2) Beginning January 1, 2025, and consistent with RCW 70A.340.030(3), no manufacturer, wholesaler, retailer, or distributor may sell or offer for sale brake friction material in Washington state containing more than 0.5 percent copper and its compounds by weight, as specified in the report in subsection (1) of this section. [2020 c 20 § 1423; 2017 c 204 § 2; 2010 c 147 § 5. Formerly RCW 70.285.050.]

70A.340.060 Application for exemption from chapter. Any motor vehicle manufacturer or brake friction material manufacturer may apply to the department for an exemption from this chapter for brake friction material intended for a specific motor vehicle model or class of motor vehicles based on special needs or characteristics of the motor vehicles for which the brake friction material is intended. Exemptions may only be issued for small volume motor vehicle manufacturers, specific motor vehicle models, or special classes of vehicles, such as fire trucks, police cars, and heavy or wide-load equipment hauling, provided the manufacturer can demonstrate that complying with the requirements of this chapter is not feasible, does not allow compliance with safety standards, or causes significant financial hardship. Exemptions are valid for no less than one year and may be renewed automatically as needed or the exemption may be permanent for as long as the vehicle is used in the manner described in the application. [2010 c 147 § 6. Formerly RCW 70.285.060.]

70A.340.070 Manufacturers of brake friction material must provide certain data to the department—Department's duties. (1) By January 1, 2013, and at least every three years thereafter, manufacturers of brake friction material sold or offered for sale in Washington state shall provide data to the department adequate to enable the department to determine concentrations of antimony, copper, nickel, and zinc and their compounds in brake friction material sold or offered for sale in Washington state.

(2) Using data provided pursuant to subsection (1) of this section and other data as needed, and in consultation with the

brake friction material manufacturing industry, the department must:

(a) By July 1, 2013, establish baseline concentration levels for constituents identified in subsection (1) of this section in brake friction material; and

(b) Track progress toward reducing the use of copper and its compounds and ensure that concentration levels of antimony, nickel, or zinc and their compounds do not increase by more than fifty percent above baseline concentration levels.

(3) If concentration levels of antimony, nickel, or zinc and their compounds in brake friction material increase by more than fifty percent above baseline concentration levels, the department shall review scientific studies to determine the potential impact of the constituent on human health and the environment. If scientific studies demonstrate the need for controlling the use of the constituent in brake friction material, the department may consider recommending limits on concentration levels of the constituent in the material.

(4) Confidential business information otherwise protected under RCW 43.21A.160 or chapter 42.56 RCW is exempt from public disclosure. [2010 c 147 § 7. Formerly RCW 70.285.070.]

70A.340.080 Compliance with chapter—Proof of compliance. (1) Manufacturers of brake friction material offered for sale in Washington state must certify compliance with the requirements of this chapter and mark proof of certification on the brake friction material in accordance with criteria developed under this section.

(2) By December 1, 2012, the department must, after consulting with interested parties, develop compliance criteria to meet the requirements of this chapter. Compliance criteria includes, but is not limited to:

(a) Self-certification of compliance by brake friction material manufacturers using accredited laboratories; and

(b) Marked proof of certification, including manufacture date, on brake friction material and product packaging. Marked proof of certification must appear by January 1, 2015. Brake friction material manufactured or packaged prior to January 1, 2015, is exempt from this subsection (2)(b).

(3) Beginning January 1, 2021, manufacturers of new motor vehicles offered for sale in Washington state must ensure that motor vehicles are equipped with brake friction material certified to be compliant with the requirements of this chapter. [2010 c 147 § 8. Formerly RCW 70.285.080.]

70A.340.090 Enforcement of chapter—Violations—Penalties. (1) The department must enforce this chapter. The department may periodically purchase and test brake friction material sold or offered for sale in Washington state to verify that the material complies with this chapter.

(2) Enforcement of this chapter by the department must rely on notification and information exchange between the department and manufacturers, distributors, and retailers. The department must issue one warning letter by certified mail to a manufacturer, distributor, or retailer that sells or offers to sell brake friction material in violation of this chapter, and offer information or other appropriate assistance regarding compliance with this chapter. Once a warning letter has been issued to a distributor or retailer for violations under subsections (3) and (5) of this section, the department need

not provide warning letters for subsequent violations by that distributor or retailer. For the purposes of subsection (6) of this section, a warning letter serves as notice of the violation. If compliance is not achieved, the department may assess penalties under this section.

(3) A brake friction material distributor or retailer that violates this chapter is subject to a civil penalty not to exceed ten thousand dollars for each violation. Brake friction material distributors or retailers that sell brake friction material that is packaged consistent with RCW 70A.340.080(2)(b) are not in violation of this chapter. However, if the department conclusively proves that the brake friction material distributor or retailer was aware that the brake friction material being sold violates RCW 70A.340.030 or 70A.340.050, the brake friction material distributor or retailer is subject to civil penalties according to this section.

(4) A brake friction material manufacturer that knowingly violates this chapter must recall the brake friction material and reimburse the brake friction distributor, retailer, or any other purchaser for the material and any applicable shipping and handling charges for returning the material. A brake friction material manufacturer that violates this chapter is subject to a civil penalty not to exceed ten thousand dollars for each violation.

(5) A motor vehicle distributor or retailer that violates this chapter is subject to a civil penalty not to exceed ten thousand dollars for each violation. A motor vehicle distributor or retailer is not in violation of this chapter for selling a vehicle that was previously sold at retail and that contains brake friction material failing to meet the requirements of this chapter. However, if the department conclusively proves that the motor vehicle distributor or retailer installed brake friction material that violates RCW 70A.340.030, 70A.340.050, or 70A.340.080(2)(b) on the vehicle being sold and was aware that the brake friction material violates RCW 70A.340.030, 70A.340.050, or 70A.340.080(2)(b), the motor vehicle distributor or retailer is subject to civil penalties under this section.

(6) A motor vehicle manufacturer that violates this chapter must notify the registered owner of the vehicle within six months of knowledge of the violation and must replace at no cost to the owner the noncompliant brake friction material with brake friction material that complies with this chapter. A motor vehicle manufacturer that fails to provide the required notification to registered owners of the affected vehicles within six months of knowledge of the violation is subject to a civil penalty not to exceed one hundred thousand dollars. A motor vehicle manufacturer that fails to provide the required notification to registered owners of the affected vehicles after twelve months of knowledge of the violation is subject to a civil penalty not to exceed ten thousand dollars per vehicle. For purposes of this section, "motor vehicle manufacturer" does not include a vehicle dealer defined under RCW 46.70.011 and required to be licensed as a vehicle dealer under chapter 46.70 RCW.

(7) Before the effective date of the prohibitions in RCW 70A.340.030 or 70A.340.050, the department must prepare and distribute information about the prohibitions to manufacturers, distributors, and retailers to the maximum extent practicable.

(8) All penalties collected under this chapter must be deposited in the model toxics control operating account created in RCW 70A.305.180. [2020 c 20 § 1424; 2019 c 422 § 409; 2010 c 147 § 9. Formerly RCW 70.285.090.]

Effective date—Intent—2019 c 422: See notes following RCW 82.21.010.

70A.340.100 Adoption of rules. The department may adopt rules necessary to implement this chapter. Rules adopted by the department under this section may not exceed the terms explicitly established by this chapter. [2017 c 204 § 3; 2010 c 147 § 10. Formerly RCW 70.285.100.]

Chapter 70A.345 RCW

UNDERGROUND STORAGE TANK REVOLVING LOAN AND GRANT PROGRAM

Sections

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70A.345.010 Intent. (Expires July 1, 2030.) (1) The legislature intends for the pollution liability insurance agency to establish a revolving loan and grant program to assist owners and operators of petroleum underground storage tank systems to: (a) Remediate past releases; (b) upgrade, replace, or remove petroleum underground storage tank systems to prevent future releases; and (c) install new infrastructure or retrofit existing infrastructure for dispensing or using renewable or alternative energy.

(2) Furthermore, the legislature intends for the revolving loan and grant program to assist owners and operators of heating oil tanks to: (a) Remediate past releases; or (b) prevent future releases by upgrading, replacing, decommissioning, or removing heating oil systems. [2020 c 310 § 4; 2016 c 161 § 1. Formerly RCW 70.340.010.]

Effective date—2016 c 161 §§ 1-13: "Sections 1 through 13 of this act take effect July 1, 2016." [2016 c 161 § 23.]

70A.345.020 Definitions. (Expires July 1, 2030.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" means the Washington state pollution liability insurance agency.

(2) "Heating oil tank" means a tank and its connecting pipes, whether above or below ground, or in a basement, with pipes connected to the tank for space heating of human living or working space on the premises where the tank is located.

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(3) "Local government" means any political subdivision of the state, including a town, city, county, special purpose district, or other municipal corporation.

(4) "Operator" means any person in control of, or having responsibility for, the daily operation of a petroleum underground storage tank system, including a heating oil tank system.

(5) "Owner" means any person who owns a petroleum underground storage tank system, including a heating oil tank system.

(6) "Petroleum underground storage tank system" means an underground storage tank system regulated under chapter 70A.355 RCW or subtitle I of the solid waste disposal act (42 U.S.C. chapter 82, subchapter IX) that is used for storing petroleum.

(7) "Release" has the same meaning as defined in RCW 70A.305.020.

(8) "Remedial action" has the same meaning as defined in RCW 70A.305.020.

(9) "Underground storage tank facility" means the location where one or more underground storage tank systems are installed. A facility encompasses all contiguous real property under common ownership associated with the operation of the underground storage tank system or systems.

(10) "Underground storage tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any, and includes any aboveground ancillary equipment connected to the underground storage tank or piping, such as dispensers. [2020 c 310 § 5; 2020 c 20 § 1435; 2016 c 161 § 2. Formerly RCW 70.340.020.]

Reviser's note: This section was amended by 2020 c 20 § 1435 and by 2020 c 310 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2016 c 161 §§ 1-13: See note following RCW 70A.345.010.

70A.345.030 Program established—Purpose—Maximum amount of loans and grants. (Expires July 1, 2030.)

(1) The agency shall establish an underground storage tank revolving loan and grant program to provide loans or grants to owners or operators to:

(a) Conduct remedial actions in accordance with chapter 70A.305 RCW, including investigations and cleanups of any release or threatened release of a hazardous substance at or affecting an underground storage tank facility, provided that at least one of the releases or threatened releases involves petroleum;

(b) Upgrade, replace, or permanently close a petroleum underground storage tank system in accordance with chapter 70A.355 RCW or subtitle I of the solid waste disposal act (42 U.S.C., chapter 82, subchapter IX), as applicable;

(c) Install new infrastructure or retrofit existing infrastructure at an underground storage tank facility for dispensing or using renewable or alternative energy for motor vehicles, including electric vehicle charging stations, when conducted in conjunction with either (a) or (b) of this subsection;

(d) Install and subsequently remove a temporary petroleum aboveground storage tank system in compliance with

applicable laws, when conducted in conjunction with either (a) or (b) of this subsection;

(e) Conduct remedial actions in accordance with chapter 70A.305 RCW, including investigation and cleanup of any release or threatened releases of petroleum from a heating oil tank; or

(f) Prevent future releases by upgrading, replacing, decommissioning, or removing a heating oil tank.

(2) The maximum amount that may be loaned or granted under this program to an owner or operator for a single underground storage tank facility is two million dollars and for a single heating oil tank seventy-five thousand dollars. [2021 c 65 § 75. Prior: 2020 c 310 § 6; 2020 c 20 § 1436; 2016 c 161 § 3. Formerly RCW 70.340.030.]

Explanatory statement—2021 c 65: See note following RCW 53.54.030.

Effective date—2016 c 161 §§ 1-13: See note following RCW 70A.345.010.

70A.345.040 Use of funds—Restrictions. (Expires July 1, 2030.) (1) A recipient of a loan or grant may not use these funds to conduct remedial actions of a release or threatened release from a petroleum underground storage tank system requiring financial assurances under chapter 70A.355 RCW or subtitle I of the solid waste disposal act (42 U.S.C., chapter 82, subchapter IX) unless the owner or operator:

(a) Agrees to first expend all moneys available under the required financial assurances;

(b) Demonstrates that all moneys available under the required financial assurances have been expended; or

(c) Demonstrates that a claim has been made under the required financial assurances and the claim has been rejected by the provider.

(2) A recipient must use a loan or grant for a project that develops and acquires assets that have a useful life of at least thirteen years. [2020 c 20 § 1437; 2016 c 161 § 4. Formerly RCW 70.340.040.]

Effective date—2016 c 161 §§ 1-13: See note following RCW 70A.345.010.

70A.345.050 Program administration—Loan origination fees. (Expires July 1, 2030.) The agency shall partner and enter into a memorandum of agreement with the department of health to implement the revolving loan and grant program.

(1) The agency shall approve recipients for loans and grants, structure funding offers to protect applicants with limited economic resources, and manage the work conducted under RCW 70A.345.030(1).

(2) The department of health shall administer the loans and grants to qualified recipients as determined by the agency.

(3) The department of health may collect, from persons requesting financial assistance, loan origination fees to cover costs incurred by the department of health in operating the financial assistance program.

(4) The agency may use the moneys in the pollution liability insurance agency underground storage tank revolving account to fund the department of health's operating costs for the program. [2020 c 310 § 7; 2020 c 20 § 1438; 2016 c 161 § 5. Formerly RCW 70.340.050.]

Reviser's note: This section was amended by 2020 c 20 § 1438 and by 2020 c 310 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2016 c 161 §§ 1-13: See note following RCW 70A.345.010.

70A.345.060 Remedial actions—Release or threatened release of hazardous substance. (Expires July 1, 2030.) (1) The agency may conduct remedial actions and investigate or clean up a release or threatened release of a hazardous substance at or affecting an underground storage tank facility if the following conditions are met:

(a) The owner or operator received a loan or grant for the underground storage tank facility under the revolving program created in this chapter for two million dollars or less;

(b) The remedial actions are conducted in accordance with the rules adopted under chapter 70A.305 RCW;

(c) The owner of real property subject to the remedial actions provides consent for the agency to:

(i) Recover the remedial action costs from the owner; and

(ii) Enter upon the real property to conduct remedial actions limited to those authorized by the owner or operator. Remedial actions must be focused on maintaining the economic vitality of the property. The agency or the agency's authorized representatives shall give reasonable notice before entering property unless an emergency prevents the notice; and

(d) The owner of the underground storage tank facility consents to the agency filing a lien on the underground storage tank facility to recover the agency's remedial action costs.

(2) The agency may conduct the remedial actions authorized under subsection (1) of this section using the moneys in the pollution liability insurance agency underground storage tank revolving account, as required under RCW 70A.345.050. However, for any remedial action where the owner or operator has received a loan or grant, the agency may not expend more than the difference between the amount loaned or granted and two million dollars. [2020 c 310 § 8; 2020 c 20 § 1439; 2016 c 161 § 6. Formerly RCW 70.340.060.]

Reviser's note: This section was amended by 2020 c 20 § 1439 and by 2020 c 310 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2016 c 161 §§ 1-13: See note following RCW 70A.345.010.

70A.345.070 Lien for cost of remedial action—Procedure—Notice. (Expires July 1, 2030.) (1) The agency may file a lien against the underground storage tank facility if the agency incurs remedial action costs and those costs are unrecovered by the agency.

(a) A lien filed under this section may not exceed the remedial action costs incurred by the agency.

(b) A lien filed under this section has priority in rank over all other privileges, liens, monetary encumbrances, or other security interests affecting the real property, whenever incurred, filed, or recorded, except for local and special district property tax assessments.

(2) Before filing a lien under this section, the agency shall give notice of its intent to file a lien to the owner of the underground storage tank facility on which the lien is to be filed, mortgagees, and lienholders of record.

(a) The agency shall send the notice by certified mail to the underground storage tank facility owner and mortgagees of record at the addresses listed in the recorded documents. If the underground storage tank facility owner is unknown or if a mailed notice is returned as undeliverable, the agency shall provide notice by posting a legal notice in the newspaper of largest circulation in the county in which the site is located. The notice must provide:

- (i) A statement of the purpose of the lien;
- (ii) A brief description of the real property to be affected by the lien; and
- (iii) A statement of the remedial action costs incurred by the agency.

(b) If the agency has reason to believe that exigent circumstances require the filing of a lien prior to giving notice under this subsection, the agency may file the lien immediately. Exigent circumstances include, but are not limited to, an imminent bankruptcy filing by the underground storage tank facility owner or the imminent transfer or sale of the real property subject to lien by the underground storage tank facility owner, or both.

(3) A lien filed under this section is effective when a statement of lien is filed with the county auditor in the county where the underground storage tank facility is located. The statement of lien must include a description of the real property subject to lien and the amount of the lien.

(4) Unless the agency determines it is in the public interest to remove the lien, the lien continues until the liabilities for the remedial action costs have been satisfied through sale of the real property, foreclosure, or other means agreed to by the agency. Any action for foreclosure of the lien must be brought by the attorney general in a civil action in the court having jurisdiction and in the manner prescribed for judicial foreclosure of a mortgage under chapter 61.24 RCW.

(5) The agency may not file a lien under this section against an underground storage tank facility owned by a local government. [2016 c 161 § 7. Formerly RCW 70.340.070.]

Effective date—2016 c 161 §§ 1-13: See note following RCW 70A.345.010.

70A.345.080 Pollution liability insurance agency underground storage tank revolving account. (Expires July 1, 2030.) (1) The pollution liability insurance agency underground storage tank revolving account is created in the state treasury. All receipts from sources identified under subsection (2) of this section must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for items identified under subsection (3) of this section.

(2) The following receipts must be deposited into the account:

(a) All moneys appropriated by the legislature to pay for the agency's operating costs to carry out the purposes of this chapter;

(b) All moneys appropriated by the legislature to provide loans and grants under RCW 70A.345.030;

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(c) Any repayment of loans provided under RCW 70A.345.030;

(d) All moneys appropriated by the legislature to conduct remedial actions under RCW 70A.345.060;

(e) Any recovery of the costs of remedial actions conducted under RCW 70A.345.060;

(f) Any grants provided by the federal government to the agency to achieve the purposes of this chapter; and

(g) Any other deposits made from a public or private entity to achieve the purposes of this chapter.

(3) Moneys in the account may be used by the agency only to carry out the purposes of this chapter including, but not limited to:

(a) The costs of the agency and department of health to carry out the purposes of this chapter;

(b) Loans and grants under RCW 70A.345.030;

(c) Remedial actions under RCW 70A.345.060; and

(d) State match requirements for grants provided to the agency by the federal government. [2020 c 20 § 1440; 2016 c 161 § 8. Formerly RCW 70.340.080.]

Effective date—2016 c 161 §§ 1-13: See note following RCW 70A.345.010.

70A.345.090 Report on agency activities. (Expires July 1, 2030.) By September 1st of each even-numbered year, the agency must provide the office of financial management and the appropriate legislative committees a report on the agency's activities supported by expenditures from the pollution liability insurance agency underground storage tank revolving account. The report must at a minimum include:

(1) The amount of money the legislature appropriated from the pollution liability insurance agency underground storage tank revolving account under RCW 70A.345.080 during the last biennium;

(2) For the previous biennium, the total number of loans and grants, the amounts loaned or granted, sites cleaned up, petroleum underground storage tank systems or heating oil tanks upgraded, replaced, or permanently closed, and jobs preserved;

(3) For each loan and grant awarded during the previous biennium, the name of the recipient, the location of the underground storage tank facility, a description of the project and its status, the amount loaned, and the amount repaid. For loans and grants awarded for heating oil tanks, only the general location, status, amount loaned, and the amount repaid must be provided;

(4) For each underground storage tank facility where the agency conducted remedial actions under RCW 70A.345.060 during the previous biennium, the name and location of the site, the amount of money used to conduct the remedial actions, the status of remedial actions, whether liens were filed against the underground storage tank facility under RCW 70A.345.070, and the amount of money recovered; and

(5) The operating costs of the agency and department of health to carry out the purposes of this chapter during the last biennium. [2020 c 310 § 9; 2020 c 20 § 1441; 2016 c 161 § 9. Formerly RCW 70.340.090.]

Reviser's note: This section was amended by 2020 c 20 § 1441 and by 2020 c 310 § 9, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2016 c 161 §§ 1-13: See note following RCW 70A.345.010.

70A.345.100 Adoption of rules—Memorandum of agreement—Interpretative guidance. (Expires July 1, 2030.) The agency must adopt rules under chapter 34.05 RCW necessary to carry out the provisions of this chapter. To accelerate remedial actions, the agency shall enter into a memorandum of agreement with the department of health under RCW 70A.345.050 within one year of July 1, 2016. To ensure the adoption of rules will not delay the award of a loan or grant, the agency may implement the underground storage tank revolving program through interpretative guidance pending adoption of rules. [2020 c 20 § 1442; 2016 c 161 § 10. Formerly RCW 70.340.100.]

Effective date—2016 c 161 §§ 1-13: See note following RCW 70A.345.010.

70A.345.110 Civil liability of state. (Expires July 1, 2030.) Officers, employees, and authorized representatives of the agency and the department of health, and the state of Washington are immune from civil liability and no cause of action of any nature may arise from any act or omission in exercising powers and duties under this chapter. [2016 c 161 § 11. Formerly RCW 70.340.110.]

Effective date—2016 c 161 §§ 1-13: See note following RCW 70A.345.010.

70A.345.120 Applicability of chapter—Authority of the department of ecology. (Expires July 1, 2030.) Nothing in this chapter limits the authority of the department of ecology under chapter 70A.305 RCW. [2020 c 20 § 1443; 2016 c 161 § 12. Formerly RCW 70.340.120.]

Effective date—2016 c 161 §§ 1-13: See note following RCW 70A.345.010.

70A.345.130 Pollution liability insurance program trust account—Transfers to revolving account. (1) On July 1, 2016, if the cash balance amount in the pollution liability insurance program trust account exceeds seven million five hundred thousand dollars after excluding the reserves under RCW 70A.325.020(2), the state treasurer shall transfer the amount exceeding seven million five hundred thousand dollars, up to a transfer of ten million dollars, from the pollution liability insurance program trust account into the pollution liability insurance agency underground storage tank revolving account. If ten million dollars is not available to be transferred on July 1, 2016, then by the end of fiscal year 2017, if the cash balance amount in the pollution liability insurance program trust account exceeds seven million five hundred thousand dollars after excluding the reserves under RCW 70A.325.020(2), the state treasurer shall transfer the amount exceeding seven million five hundred thousand dollars from the pollution liability insurance program trust account into the pollution liability insurance agency underground storage tank revolving account. The total amount transferred in fiscal year 2017 from the pollution liability insurance program trust account into the pollution liability insurance agency underground storage tank revolving account may not exceed ten million dollars.

(2) Beginning July 1, 2017, during the fiscal biennium and each successive fiscal biennium, if the cash balance

amount in the pollution liability insurance program trust account exceeds seven million five hundred thousand dollars, the state treasurer is authorized, upon request of the agency, to transfer the amount exceeding seven million five hundred thousand dollars after excluding the reserves under RCW 70A.325.020(2), up to a transfer of twenty million dollars, from the pollution liability insurance program trust account into the pollution liability insurance agency underground storage tank revolving account. The agency may request transfers only as needed to maximize the amount transferred in a fiscal biennium from the pollution liability insurance program trust account into the pollution liability insurance agency underground storage tank revolving account. The total amount transferred in a fiscal biennium from the pollution liability insurance program trust account into the pollution liability insurance agency underground storage tank revolving account may not exceed twenty million dollars. [2020 c 310 § 10; 2020 c 20 § 1444; 2017 3rd sp.s. c 4 § 6015; 2016 c 161 § 21. Formerly RCW 70.340.130.]

Reviser's note: This section was amended by 2020 c 20 § 1444 and by 2020 c 310 § 10, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2017 3rd sp.s. c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [July 1, 2017]." [2017 3rd sp.s. c 4 § 7014.]

70A.345.900 Expiration date—Savings clause—Reversion of revolving account funds. (1) RCW 70A.345.010 through 70A.345.120 expire July 1, 2030.

(2) The expiration of RCW 70A.345.010 through 70A.345.120 does not terminate any of the following rights, obligations, authorities or any provision necessary to carry out:

(a) The repayment of loans due and payable to the lender or the state of Washington;

(b) The resolution of any cost recovery action or the initiation of any action or other collection process to recover defaulted loan moneys due to the state of Washington; and

(c) The resolution of any action or the initiation of any action to recover the agency's remedial actions costs under RCW 70A.345.070.

(3) On July 1, 2030, the pollution liability insurance agency underground storage tank revolving account and all moneys due that account revert to, and accrue to the benefit of, the department of health. [2020 c 20 § 1445; 2016 c 161 § 13. Formerly RCW 70.340.900.]

Effective date—2016 c 161 §§ 1-13: See note following RCW 70A.345.010.

Chapter 70A.350 RCW TOXIC POLLUTION

Sections

70A.350.010	Definitions.
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70A.350.050	Identification of priority consumer products—Regulatory actions—Rules—Public notice.
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70A.350.070 Penalty.
 70A.350.080 Adoption of rules.
 70A.350.090 PFAS chemicals.
 70A.350.900 Short title—2019 c 292.

70A.350.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Consumer product" means any item, including any component parts and packaging, sold for residential or commercial use.

(2) "Department" means the department of ecology.

(3) "Director" means the director of the department.

(4) "Electronic product" includes personal computers, audio and video equipment, calculators, wireless phones, game consoles, and handheld devices incorporating a video screen that are used to access interactive software, and the peripherals associated with such products.

(5) "Inaccessible electronic component" means a part or component of an electronic product that is located inside and entirely enclosed within another material and is not capable of coming out of the product or being accessed during any reasonably foreseeable use or abuse of the product.

(6) "Manufacturer" means any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a product or is an importer or domestic distributor of a product sold or offered for sale in or into the state.

(7) "Organohalogen" means a class of chemicals that includes any chemical containing one or more halogen elements bonded to carbon.

(8) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS chemicals" means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

(9) "Phenolic compounds" means alkylphenol ethoxylates and bisphenols.

(10) "Phthalates" means synthetic chemical esters of phthalic acid.

(11) "Polychlorinated biphenyls" or "PCBs" means chemical forms that consist of two benzene rings joined together and containing one to ten chlorine atoms attached to the benzene rings.

(12) "Priority chemical" means a chemical or chemical class used as, used in, or put in a consumer product including:

(a) Perfluoroalkyl and polyfluoroalkyl substances;

(b) Phthalates;

(c) Organohalogen flame retardants;

(d) Flame retardants, as identified by the department under chapter 70A.430 RCW;

(e) Phenolic compounds;

(f) Polychlorinated biphenyls; or

(g) A chemical identified by the department as a priority chemical under RCW 70A.350.020.

(13) "Safer alternative" means an alternative that is less hazardous to humans or the environment than the existing chemical or chemical process. A safer alternative to a particular chemical may include a chemical substitute or a change in materials or design that eliminates the need for a chemical alternative.

(14) "Sensitive population" means a category of people that is identified by the department that may be or is disproportionately or more severely affected by priority chemicals,

such as:

(a) Men and women of childbearing age;

(b) Infants and children;

(c) Pregnant women;

(d) Communities that are highly impacted by toxic chemicals;

(e) Persons with occupational exposure; and

(f) The elderly.

(15) "Sensitive species" means a species or grouping of animals that is identified by the department that may be or is disproportionately or more severely affected by priority chemicals, such as:

(a) Southern resident killer whales;

(b) Salmon; and

(c) Forage fish. [2020 c 20 § 1451. Prior: 2019 c 292 § 1. Formerly RCW 70.365.010.]

70A.350.020 Report to the legislature—Priority chemicals. Every five years, and consistent with the timeline established in RCW 70A.350.050, the department, in consultation with the department of health, must report to the appropriate committees of the legislature its decision to designate at least five priority chemicals that meet at least one of the following:

(1) The chemical or a member of a class of chemicals are identified by the department as a:

(a) High priority chemical of high concern for children under chapter 70A.430 RCW; or

(b) Persistent, bioaccumulative toxin under chapter 70A.300 RCW;

(2) The chemical or members of a class of chemicals are regulated:

(a) In consumer products under chapter 70A.430, 70A.405, 70A.222, 70A.335, 70A.340, 70A.230, or 70A.400 RCW; or

(b) As a hazardous substance under chapter 70A.300 or 70A.305 RCW; or

(3) The department determines the chemical or members of a class of chemicals are a concern for sensitive populations and sensitive species after considering the following factors:

(a) A chemical's or members of a class of chemicals' hazard traits or environmental or toxicological endpoints;

(b) A chemical's or members of a class of chemicals' aggregate effects;

(c) A chemical's or members of a class of chemicals' cumulative effects with other chemicals with the same or similar hazard traits or environmental or toxicological endpoints;

(d) A chemical's or members of a class of chemicals' environmental fate;

(e) The potential for a chemical or members of a class of chemicals to degrade, form reaction products, or metabolize into another chemical or a chemical that exhibits one or more hazard traits or environmental or toxicological endpoints, or both;

(f) The potential for the chemical or class of chemicals to contribute to or cause adverse health or environmental impacts;

(g) The chemical's or class of chemicals' potential impact on sensitive populations, sensitive species, or environmentally sensitive habitats;

(h) Potential exposures to the chemical or members of a class of chemicals based on:

(i) Reliable information regarding potential exposures to the chemical or members of a class of chemicals; and

(ii) Reliable information demonstrating occurrence, or potential occurrence, of multiple exposures to the chemical or members of a class of chemicals. [2020 c 20 § 1452; 2019 c 292 § 2. Formerly RCW 70.365.020.]

70A.350.030 Identification of priority consumer products—Report to the legislature—Exempt products.

(1) Every five years, and consistent with the timeline established in RCW 70A.350.050, the department, in consultation with the department of health, shall identify priority consumer products that are a significant source of or use of priority chemicals. The department must submit a report to the appropriate committees of the legislature at the time that it identifies a priority consumer product.

(2) When identifying priority consumer products under this section, the department must consider, at a minimum, the following criteria:

(a) The estimated volume of a priority chemical or priority chemicals added to, used in, or present in the consumer product;

(b) The estimated volume or number of units of the consumer product sold or present in the state;

(c) The potential for exposure to priority chemicals by sensitive populations or sensitive species when the consumer product is used, disposed of, or has decomposed;

(d) The potential for priority chemicals to be found in the outdoor environment, with priority given to surface water, groundwater, marine waters, sediments, and other ecologically sensitive areas, when the consumer product is used, disposed of, or has decomposed;

(e) If another state or nation has identified or taken regulatory action to restrict or otherwise regulate the priority chemical in the consumer product;

(f) The availability and feasibility of safer alternatives; and

(g) Whether the department has already identified the consumer product in a chemical action plan completed under chapter 70A.300 RCW as a source of a priority chemical or other reports or information gathered under chapter 70A.430, 70A.405, 70A.222, 70A.335, 70A.340, 70A.230, or 70A.400 RCW.

(3) The department is not required to give equal weight to each of the criteria in subsection (2)(a) through (g) of this section when identifying priority consumer products that use or are a significant source of priority chemicals.

(4) To assist with identifying priority consumer products under this section and making determinations as authorized under RCW 70A.350.040, the department may order a manufacturer to submit a notice to the department that contains the information specified in RCW 70A.430.060 (1) through (6) or other information relevant to subsection (2)(a) through (d) of this section. The manufacturer must provide the notice to the department no later than six months after receipt of such a demand by the department.

(5)(a) Except as provided in (b) of this subsection, the department may not identify the following as priority consumer products under this section:

(i) Plastic shipping pallets manufactured prior to 2012;

(ii) Food or beverages;

(iii) Tobacco products;

(iv) Drug or biological products regulated by the United States food and drug administration;

(v) Finished products certified or regulated by the federal aviation administration or the department of defense, or both, when used in a manner that was certified or regulated by such agencies, including parts, materials, and processes when used to manufacture or maintain such regulated or certified finished products;

(vi) Motorized vehicles, including on and off-highway vehicles, such as all-terrain vehicles, motorcycles, side-by-side vehicles, farm equipment, and personal assistive mobility devices; and

(vii) Chemical products used to produce an agricultural commodity, as defined in RCW 17.21.020.

(b) The department may identify the packaging of products listed in (a) of this subsection as priority consumer products.

(6) For an electronic product identified by the department as a priority consumer product under this section, the department may not make a regulatory determination under RCW 70A.350.040 to restrict or require the disclosure of a priority chemical in an inaccessible electronic component of the electronic product. [2022 c 264 § 3; 2020 c 20 § 1453; 2019 c 292 § 3. Formerly RCW 70.365.030.]

70A.350.040 Regulatory actions—Report to the legislature—Authority to restrict or prohibit priority chemicals.

(1) Every five years, and consistent with the timeline established in RCW 70A.350.050, the department, in consultation with the department of health, must determine regulatory actions to increase transparency and to reduce the use of priority chemicals in priority consumer products. The department must submit a report to the appropriate committees of the legislature at the time that it determines regulatory actions. The department may:

(a) Determine that no regulatory action is currently required;

(b) Require a manufacturer to provide notice of the use of a priority chemical or class of priority chemicals consistent with RCW 70A.430.060; or

(c) Restrict or prohibit the manufacture, wholesale, distribution, sale, retail sale, or use, or any combination thereof, of a priority chemical or class of priority chemicals in a consumer product.

(2)(a) The department may order a manufacturer to submit information consistent with RCW 70A.350.030(4).

(b) The department may require a manufacturer to provide:

(i) A list of products containing priority chemicals;

(ii) Product ingredients;

(iii) Information regarding exposure and chemical hazard; and

(iv) A description of the amount and the function of the high priority chemical in the product.

(3) The department may restrict or prohibit a priority chemical or members of a class of priority chemicals in a priority consumer product when it determines:

(a) Safer alternatives are feasible and available; and

(b)(i) The restriction will reduce a significant source of or use of a priority chemical; or

(ii) The restriction is necessary to protect the health of sensitive populations or sensitive species.

(4) When determining regulatory actions under this section, the department may consider, in addition to the criteria pertaining to the selection of priority chemicals and priority consumer products that are specified in RCW 70A.350.020 and 70A.350.030, whether:

(a) The priority chemical or members of a class of priority chemicals are functionally necessary in the priority consumer product; and

(b) A restriction would be consistent with regulatory actions taken by another state or nation on a priority chemical or members of a class of priority chemicals in a product.

(5) A restriction or prohibition on a priority chemical in a consumer product may include exemptions or exceptions, including exemptions to address existing stock of a product in commerce at the time that a restriction takes effect. [2020 c 20 § 1454; 2019 c 292 § 4. Formerly RCW 70.365.040.]

70A.350.050 Identification of priority consumer products—Regulatory actions—Rules—Public notice.

(1)(a) By June 1, 2020, and consistent with RCW 70A.350.030, the department shall identify priority consumer products that are a significant source of or use of priority chemicals specified in RCW 70A.350.010(12) (a) through (f).

(b) By June 1, 2022, and consistent with RCW 70A.350.040, the department must determine regulatory actions regarding the priority chemicals and priority consumer products identified in (a) of this subsection. The deadline of June 1, 2022, does not apply to the priority consumer products identified in RCW 70A.350.090.

(c) By June 1, 2023, the department must adopt rules to implement regulatory actions determined under (b) of this subsection.

(2)(a) By June 1, 2024, and every five years thereafter, the department shall select at least five priority chemicals specified in RCW 70A.350.010(12) (a) through (g) that are identified consistent with RCW 70A.350.020.

(b) By June 1, 2025, and every five years thereafter, the department must identify priority consumer products that contain any new priority chemicals after notifying the appropriate committees of the legislature, consistent with RCW 70A.350.030.

(c) By June 1, 2027, and every five years thereafter, the department must determine regulatory actions for any priority chemicals in priority consumer products identified under (b) of this subsection, consistent with RCW 70A.350.040.

(d) By June 1, 2028, and every five years thereafter, the department must adopt rules to implement regulatory actions identified under (c) of this subsection.

(3)(a) The designation of priority chemicals by the department does not take effect until the adjournment of the regular legislative session immediately following the identification of chemicals, in order to allow an opportunity for the

legislature to add to, limit, or otherwise amend the list of priority chemicals to be considered by the department.

(b) The designation of priority consumer products by the department does not take effect until the adjournment of the regular legislative session immediately following the identification of priority consumer products, in order to allow an opportunity for the legislature to add to, limit, or otherwise amend the list of priority consumer products to be considered by the department.

(c) The determination of regulatory actions by the department does not take effect until the adjournment of the regular legislative session immediately following the determination by the department, in order to allow an opportunity for the legislature to add to, limit, or otherwise amend the regulatory determinations by the department.

(d) Nothing in this subsection (3) limits the authority of the department to:

(i) Begin to identify priority consumer products for a priority chemical prior to the effective date of the designation of a priority chemical;

(ii) Begin to consider possible regulatory actions prior to the effective date of the designation of a priority consumer product; or

(iii) Initiate a rule-making process prior to the effective date of a determination of a regulatory action.

(4)(a) When identifying priority chemicals and priority consumer products under this chapter, the department must notify the public of the selection, including the identification of the peer-reviewed science and other sources of information that the department relied upon, the basis for the selection, and a draft schedule for making determinations. The notice must be published in the Washington State Register. The department shall provide the public with an opportunity for review and comment on the regulatory determinations.

(b)(i) By June 1, 2020, the department must create a stakeholder advisory process to provide expertise, input, and a review of the department's rationale for identifying priority chemicals and priority consumer products and proposed regulatory determinations. The input received from a stakeholder process must be considered and addressed when adopting rules.

(ii) The stakeholder process must include, but is not limited to, representatives from: Large and small business sectors; community, environmental, and public health advocacy groups; local governments; affected and interested businesses; an expert in scientific data analysis; and public health agencies. [2022 c 264 § 2; 2020 c 20 § 1455; 2019 c 292 § 5. Formerly RCW 70.365.050.]

70A.350.060 Confidentiality of information and records.

(1) A manufacturer that submits information or records to the department under this chapter may request that the information or records be made available only for the confidential use of the department, the director, or the appropriate division of the department. The director shall give consideration to the request and if this action is not detrimental to the public interest and is otherwise within accord with the policies and purposes of chapter 43.21A RCW, the director must grant the request for the information to remain confidential as authorized in RCW 43.21A.160. Under the procedures established under RCW 43.21A.160, the director must

keep confidential any records furnished by a manufacturer under this chapter that relate to proprietary manufacturing processes or chemical formulations used in products or processes.

(2) For records or other information furnished to the department by a federal agency on the condition that the information be afforded the same confidentiality protections as under federal law, the director may determine that the information or records be available only for the confidential use of the director, the department, or the appropriate division of the department. All such records and information are exempt from public disclosure. The director is authorized to enter into an agreement with the federal agency furnishing the records or information to ensure the confidentiality of the records or information. [2019 c 292 § 6. Formerly RCW 70.365.060.]

70A.350.070 Penalty. (1) A manufacturer violating a requirement of this chapter, a rule adopted under this chapter, or an order issued under this chapter, is subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty not to exceed ten thousand dollars for each repeat offense.

(2) Any penalty provided for in this section, and any order issued by the department under this chapter, may be appealed to the pollution control hearings board.

(3) All penalties collected under this chapter shall be deposited in the model toxics control operating account created in RCW 70A.305.180. [2020 c 20 § 1456; 2019 c 292 § 7. Formerly RCW 70.365.070.]

70A.350.080 Adoption of rules. (1) The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter.

(2)(a) The department must adopt rules to implement the determinations of regulatory actions specified in RCW 70A.350.040(1) (b) or (c). When proposing or adopting rules to implement regulatory determinations specified in this subsection, the department must identify the expected costs and benefits of the proposed or adopted rules to state agencies to administer and enforce the rules and to private persons or businesses, by category of type of person or business affected.

(b) A rule adopted to implement a regulatory determination involving a restriction on the manufacture, wholesale, distribution, sale, retail sale, or use of a priority consumer product containing a priority chemical may take effect no sooner than three hundred sixty-five days after the adoption of the rule.

(c) Each rule adopted to implement a determination of regulatory action specified in RCW 70A.350.040(1) (b) or (c) is a significant legislative rule for purposes of RCW 34.05.328. The department must prepare a small business economic impact statement consistent with the requirements of RCW 19.85.040 for each rule to implement a determination of a regulatory action specified in RCW 70A.350.040(1) (b) or (c). [2020 c 20 § 1457; 2019 c 292 § 8. Formerly RCW 70.365.080.]

70A.350.090 PFAS chemicals. (1) For purposes of the regulatory process established in this chapter, the department may consider any product identified in the department's final PFAS chemical action plan dated November 2021 as a source of or use of PFAS chemicals to be a priority consumer product under this chapter. No additional action, including publication in the Washington State Register, is required for the department to designate such a product as a priority consumer product for purposes of this chapter. For such products, the department may, under the process established in RCW 70A.350.040, determine regulatory actions and adopt rules to implement those regulatory determinations.

(2) Firefighting personal protective equipment, as defined in RCW 70A.400.005, is established as a priority consumer product for PFAS chemicals.

(3) For the products identified in this section, the department is directed to:

(a) Determine an initial set of regulatory actions under this chapter by June 1, 2024; and

(b) Adopt rules to implement the initial set of determinations of regulatory actions under (a) of this subsection by December 1, 2025. [2022 c 264 § 1.]

70A.350.900 Short title—2019 c 292. This act may be known and cited as the pollution prevention for healthy people and Puget Sound act. [2019 c 292 § 14. Formerly RCW 70.365.900.]

Chapter 70A.355 RCW UNDERGROUND STORAGE TANKS

Sections

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70A.355.010	Definitions.
70A.355.020	Department's powers and duties—Rule-making authority.
70A.355.030	Environmentally sensitive areas.
70A.355.040	Delivery of regulated substances.
70A.355.050	Investigation and access.
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70A.355.080	Annual tank fee.
70A.355.090	Underground storage tank account.
70A.355.100	Preemption.
70A.355.900	Captions not law.
70A.355.901	Severability—1989 c 346.
70A.355.902	Effective date—1989 c 346.

Reviser's note—Sunset Act application: The underground storage tank program is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.393. RCW 70A.355.005 through 70A.355.100 and 70A.355.900 through 70A.355.902 are scheduled for future repeal under RCW 43.131.394.

70A.355.005 Findings—Intent. The legislature finds that leaking underground storage tanks containing petroleum and other regulated substances pose a serious threat to human health and the environment. To address this threat, the legislature intends for the department of ecology to establish an underground storage tank program designed, operated, and enforced in a manner that, at a minimum, meets the requirements for delegation of the federal underground storage tank program of the resource conservation and recovery act of 1976, as amended (42 U.S.C. Sec. 6901, et seq.). The legislature intends that statewide requirements for underground storage tanks adopted by the department be consistent with and no less stringent than the requirements in the federal reg-

ulations and the underground storage tank compliance act of 2005 (42 U.S.C. Sec. 15801 et seq., energy policy act of 2005, P.L. 109-58, Title XV, subtitle B).

The legislature further finds that certain areas of the state possess physical characteristics that make them especially vulnerable to threats from leaking underground storage tanks and that in these environmentally sensitive areas, local requirements more stringent than the statewide requirements may apply. [2007 c 147 § 1; 1989 c 346 § 1. Formerly RCW 90.76.005.]

Sunset Act application: See note following chapter digest.

70A.355.010 Definitions. (1) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(a) "Department" means the department of ecology.

(b) "Director" means the director of the department.

(c) "Facility compliance tag" means a marker, constructed of metal, plastic, or other durable material, that clearly identifies all qualifying underground storage tanks on the particular site for which it is issued.

(d) "Federal act" means the federal resource conservation and recovery act, as amended (42 U.S.C. Sec. 6901, et seq.).

(e) "Federal regulations" means the underground storage tanks regulations (40 C.F.R. Secs. 280 and 281) adopted by the United States environmental protection agency under the federal act.

(f) "License" means the business license underground storage tank endorsement issued by the department of revenue under chapter 19.02 RCW.

(g) "Underground storage tank compliance act of 2005" means Title XV and subtitle B of P.L. 109-58 (42 U.S.C. Sec. 15801 et seq.) which have amended the federal resource conservation and recovery act's subtitle I.

(h) "Underground storage tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

(2) Except as provided in this section and any rules adopted by the department under this chapter, the definitions contained in the federal regulations apply to the terms in this chapter. [2013 c 144 § 53; 2011 c 298 § 39; 2007 c 147 § 2; 1998 c 155 § 1; 1989 c 346 § 2. Formerly RCW 90.76.010.]

Sunset Act application: See note following chapter digest.

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 298: See notes following RCW 19.02.020.

70A.355.020 Department's powers and duties—Rule-making authority. (1) The department must adopt rules establishing requirements for all underground storage tanks that are regulated under the federal act, taking into account the various classes or categories of tanks to be regulated. The rules must be consistent with and no less stringent than the federal regulations and the underground storage tank compliance act of 2005 and consist of requirements for the following:

(a) New underground storage tank system design, construction, installation, and notification;

(b) Upgrading existing underground storage tank systems;

(c) General operating requirements;

(d) Release detection;

(e) Release reporting;

(f) Out-of-service underground storage tank systems and closure;

(g) Financial responsibility for underground storage tanks containing regulated substances; and

(h) Groundwater protection measures, including secondary containment and monitoring for installation or replacement of all underground storage tank systems or components, such as tanks and piping, installed after July 1, 2007, and under dispenser spill containment for installation or replacement of all dispenser systems installed after July 1, 2007.

(2) The department must adopt rules:

(a) Establishing physical site criteria to be used in designating local environmentally sensitive areas;

(b) Establishing procedures for local government application for this designation; and

(c) Establishing procedures for local government adoption and department approval of rules more stringent than the statewide standards in these designated areas.

(3) The department must establish by rule an administrative and enforcement program that is consistent with and no less stringent than the program required under the federal regulations in the areas of:

(a) Compliance monitoring, including procedures for recordkeeping and a program for systematic inspections;

(b) Enforcement;

(c) Public participation;

(d) Information sharing;

(e) Owner and operator training; and

(f) Delivery prohibition for underground storage tank systems or facilities that are determined by the department to be ineligible to receive regulated substances.

(4) The department must establish a program that provides for the annual licensing of underground storage tanks. The license must take the form of a tank endorsement on the facility's annual business license issued by the department of revenue under chapter 19.02 RCW. A tank is not eligible for a license unless the owner or operator can demonstrate compliance with the requirements of this chapter and the annual tank fees have been remitted. The department may revoke a tank license if a facility is not in compliance with this chapter, or any rules adopted under this chapter. The business license must be displayed by the tank owner or operator in a location clearly identifiable.

(5)(a) The department must issue a one-time "facility compliance tag" to underground storage tank facilities that have installed the equipment required to meet corrosion protection, spill prevention, overfill prevention, leak detection standards, have demonstrated financial responsibility, and have paid annual tank fees. The facility must continue to maintain compliance with corrosion protection, spill prevention, overfill prevention, and leak detection standards, financial responsibility, and have remitted annual tank fees to display a facility compliance tag. The facility compliance tag must be displayed on or near the fire emergency shutoff device, or in the absence of such a device in close proximity to the fill pipes and clearly identifiable to persons delivering regulated substance to underground storage tanks.

(b) The department may revoke a facility compliance tag if a facility is not in compliance with the requirements of this chapter, or any rules adopted under this chapter.

(6) The department may place a red tag on a tank at a facility if the department determines that the owner or operator is not in compliance with this chapter or the rules adopted under this chapter regarding the compliance requirements related to that tank. Removal of a red tag without authorization from the department is a violation of this chapter.

(7) The department may establish programs to certify persons who install or decommission underground storage tank systems or conduct inspections, testing, closure, cathodic protection, interior tank lining, corrective action, site assessments, or other activities required under this chapter. Certification programs must be designed to ensure that each certification will be effective in all jurisdictions of the state.

(8) When adopting rules under this chapter, the department must consult with the state building code council to ensure coordination with the building and fire codes adopted under chapter 19.27 RCW. [2013 c 144 § 54; 2011 c 298 § 40; 2007 c 147 § 3; 1998 c 155 § 2; 1989 c 346 § 3. Formerly RCW 90.76.020.]

Sunset Act application: See note following chapter digest.

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 298: See notes following RCW 19.02.020.

70A.355.030 Environmentally sensitive areas. (1) A city, town, or county may apply to the department to have an area within its jurisdictional boundaries designated an environmentally sensitive area. A city, town, or county may submit a joint application with any other city, town, or county for joint administration under chapter 39.34 RCW of a single environmentally sensitive area located in both jurisdictions.

(2) A city, town, or county may adopt proposed ordinances or resolutions establishing requirements for underground storage tanks located within an environmentally sensitive area that are more stringent than the statewide standards established under RCW 70A.355.020. Proposed local ordinances and resolutions shall only apply to new underground storage tank installations. The local government adopting the ordinances and resolutions shall submit them to the department for approval. Disapproved ordinances and resolutions may be modified and resubmitted to the department for approval. Proposed local ordinances and resolutions become effective when approved by the department.

(3) The department shall approve or disapprove each proposed local ordinance or resolution based on the following criteria:

(a) The area to be regulated is found to be an environmentally sensitive area based on rules adopted by the department; and

(b) The proposed local regulations are reasonably consistent with previously approved local regulations for similar environmentally sensitive areas.

(4) A city, town, or county for which a proposed local ordinance or resolution establishing more stringent requirements is approved by the department may establish local tank fees that meet the requirements of RCW 70A.355.080, if such fees are necessary for enhanced program administration or

enforcement. [2020 c 20 § 1510; 1998 c 155 § 3; 1989 c 346 § 5. Formerly RCW 90.76.040.]

Sunset Act application: See note following chapter digest.

70A.355.040 Delivery of regulated substances. (1) A person delivering regulated substances to underground storage tanks shall not deliver or deposit regulated substances to underground storage tanks or facilities that do not have a facility compliance tag displayed as required in RCW 70A.355.020(5)(a). Additionally, a person delivering regulated substances to underground storage tanks shall not deliver or deposit regulated substances to an individual underground storage tank on which the department has placed a red tag under RCW 70A.355.020(6).

(2) An owner or operator of an underground storage tank system or facility shall not accept delivery or deposit of regulated substances to that underground storage tank system or facility, if the system does not have a facility compliance tag displayed as required in RCW 70A.355.020(5)(a). Additionally, an owner or operator of an underground storage tank system or facility shall not accept delivery or deposit of regulated substances to an individual underground storage tank on which the department has placed a red tag under RCW 70A.355.020(6).

(3) A supplier shall not refuse to deliver regulated substances to an underground storage tank regulated under this chapter on the basis of its potential to leak contents where the facility displays a valid facility compliance tag as required in this chapter, and the department has not placed a red tag on the underground storage tank. This section does not apply to a supplier who does not directly transfer a regulated substance into an underground storage tank. [2020 c 20 § 1511; 2007 c 147 § 4; 1998 c 155 § 4; 1989 c 346 § 6. Formerly RCW 90.76.050.]

Sunset Act application: See note following chapter digest.

70A.355.050 Investigation and access. (1) If necessary to determine compliance with the requirements of this chapter, an authorized representative of the state engaged in compliance inspections, monitoring, and testing may, by request, require an owner or operator to submit relevant information or documents. The department may subpoena witnesses, documents, and other relevant information that the department deems necessary. In the case of any refusal to obey the subpoena, the superior court for any county in which the person is found, resides, or transacts business has jurisdiction to issue an order requiring the person to appear before the department and give testimony or produce documents. Any failure to obey the order of the court may be punished by the court as contempt.

(2) Any authorized representative of the state may require an owner or operator to conduct monitoring or testing.

(3) Upon reasonable notice, an authorized representative of the state may enter a premises or site subject to regulation under this chapter or in which records relevant to the operation of an underground storage tank system are kept. In the event of an emergency or in circumstances where notice would undermine the effectiveness of an inspection, notice is not required. The authorized representative may copy these records, obtain samples of regulated substances, and inspect

or conduct monitoring or testing of an underground storage tank system.

(4) For purposes of this section, the term "authorized representative" or "authorized representative of the state" means an enforcement officer, employee, or representative of the department. [1998 c 155 § 5; 1989 c 346 § 7. Formerly RCW 90.76.060.]

Sunset Act application: See note following chapter digest.

70A.355.060 Enforcement. The director may seek appropriate injunctive or other judicial relief by filing an action in Thurston county superior court or issue such order as the director deems appropriate to:

(1) Enjoin any threatened or continuing violation of this chapter or rules adopted under this chapter;

(2) Restrain immediately and effectively a person from engaging in unauthorized activity that results in a violation of any requirement of this chapter or rules adopted under this chapter and is endangering or causing damage to public health or the environment;

(3) Require compliance with requests for information, access, testing, or monitoring under RCW 70A.355.050; or

(4) Assess and recover civil penalties authorized under RCW 70A.355.070. [2020 c 20 § 1512; 2007 c 147 § 5; 1989 c 346 § 8. Formerly RCW 90.76.070.]

Sunset Act application: See note following chapter digest.

70A.355.070 Penalties. (1) A person who fails to notify the department pursuant to tank notification requirements or who submits false information is subject to a civil penalty not to exceed five thousand dollars per violation.

(2) A person who violates this chapter or rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each tank per day of violation.

(3) A person incurring a penalty under this chapter or rules adopted under this chapter may apply to the department in writing for the remission or mitigation of the penalty as set out in RCW 43.21B.300. A person also may appeal a penalty directly to the pollution control hearings board in accordance with RCW 43.21B.300. [2007 c 147 § 6; 1995 c 403 § 639; 1989 c 346 § 9. Formerly RCW 90.76.080.]

Sunset Act application: See note following chapter digest.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

70A.355.080 Annual tank fee. (1) An annual tank fee of one hundred twenty dollars per tank is effective July 1, 2007, to June 30, 2008. An annual tank fee of one hundred forty dollars per tank is effective from July 1, 2008, to June 30, 2009. Effective July 1, 2009, the annual tank fee will increase up to one hundred sixty dollars per tank unless the department has received sufficient additional federal grant funding to offset the increased cost of implementation of the underground storage tank compliance act of 2005 (Title XV, Subtitle B of the energy policy act of 2005). Annually, beginning on July 1, 2010, and upon a finding by the department that a fee increase is necessary, the previous tank fee amount may be increased up to the fiscal growth factor for the next year. The fiscal growth factor is calculated by the office of financial management under RCW 43.135.025 for the upcoming biennium. The department shall use the fiscal

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growth factor to calculate the fee for the next year and shall publish the new fee by March 1st before the year for which the new fee is effective. The new tank fee is effective from July 1st to June 30th of every year. The tank fee shall be paid by every person who:

(a) Owns an underground storage tank located in this state; and

(b) Was required to provide notification to the department under the federal act.

This fee is not required of persons who have (i) permanently closed their tanks, and (ii) if required, have completed corrective action in accordance with the rules adopted under this chapter.

(2) The department may authorize the imposition of additional annual local tank fees in environmentally sensitive areas designated under RCW 70A.355.030. Annual local tank fees may not exceed fifty percent of the annual state tank fee.

(3) State and local tank fees collected under this section shall be deposited in the account established under RCW 70A.355.090.

(4) Other than the annual local tank fee authorized for environmentally sensitive areas, no local government may levy an annual tank fee on the ownership or operation of an underground storage tank. [2020 c 20 § 1513; 2007 c 147 § 7; 1998 c 155 § 6; 1989 c 346 § 10. Formerly RCW 90.76.090.]

Sunset Act application: See note following chapter digest.

70A.355.090 Underground storage tank account.

The underground storage tank account is created in the state treasury. Money in the account may only be spent, subject to legislative appropriation, for the administration and enforcement of the underground storage tank program established under this chapter. The account shall contain:

(1) All fees collected under RCW 70A.355.080; and

(2) All fines or penalties collected under RCW 70A.355.070. [2020 c 20 § 1514; 1991 sp.s. c 13 § 72; 1989 c 346 § 11. Formerly RCW 90.76.100.]

Sunset Act application: See note following chapter digest.

Additional notes found at www.leg.wa.gov

70A.355.100 Preemption. (1) Except as provided in RCW 70A.355.030 and subsections (2), (3), (4), and (5) of this section, the rules adopted under this chapter supersede and preempt any state or local underground storage tank law, ordinance, or resolution governing any aspect of regulation covered by the rules adopted under this chapter.

(2) Provisions of the international fire code adopted under chapter 19.27 RCW, which are not more stringent than, and do not directly conflict with, rules adopted under this chapter are not superseded or preempted.

(3) Local laws, ordinances, and resolutions pertaining to local authority to take immediate action in response to a release of a regulated substance are not superseded or preempted.

(4) City, town, or county underground storage tank ordinances that are more stringent than the federal regulations and the uniform codes adopted under chapter 19.27 RCW and that were in effect on or before November 1, 1988, are not superseded or preempted.

(5) Local laws, ordinances, and resolutions pertaining to permits and fees for the use of underground storage tanks in street right-of-ways [rights-of-way] that were in existence prior to July 1, 1990, are not superseded or preempted. [2020 c 20 § 1515; 2007 c 147 § 8; 1991 c 83 § 1; 1989 c 346 § 12. Formerly RCW 90.76.110.]

Sunset Act application: See note following chapter digest.

70A.355.900 Captions not law. Section headings used in this chapter do not constitute any part of the law. [1989 c 346 § 15. Formerly RCW 90.76.900.]

Sunset Act application: See note following chapter digest.

70A.355.901 Severability—1989 c 346. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 346 § 14. Formerly RCW 90.76.901.]

Sunset Act application: See note following chapter digest.

70A.355.902 Effective date—1989 c 346. (1) Except as provided in subsection (2) of this section, RCW 70A.355.040, 70A.355.100, and 19.27.080 take effect on July 1, 1990.

(2) This section shall apply only if this act becomes effective as provided under *section 20(2) of this act. [2020 c 20 § 1516; 1989 c 346 § 18. Formerly RCW 90.76.902.]

***Reviser's note:** Section 20(2) is an uncodified section that made a state reinsurance program for owners and operators of underground storage tanks a prerequisite to 1989 c 346 taking effect. 1989 c 383 created such a program.

Sunset Act application: See note following chapter digest.

Chapter 70A.380 RCW

NORTHWEST INTERSTATE COMPACT ON LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT

Sections

- 70A.380.010 Compact.
70A.380.020 Requirements of Washington representative to Northwest low-level waste compact committee.
70A.380.030 Rule-making authority.

Radioactive Waste Storage and Transportation Act of 1980: Chapter 70A.390 RCW.

70A.380.010 Compact. The Northwest Interstate Compact on Low-Level Radioactive Waste Management is hereby enacted into law and entered into by the state of Washington as a party, and is in full force and effect between the state and other states joining the compact in accordance with the terms of the compact.

NORTHWEST INTERSTATE COMPACT ON LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT

ARTICLE I—Policy and Purpose

The party states recognize that low-level radioactive wastes are generated by essential activities and services that benefit the citizens of the states. It is further recognized that the protection of the health and safety of the citizens of the party states and the most economical management of low-level radioactive wastes can be accomplished through coop-

eration of the states in minimizing the amount of handling and transportation required to dispose of such wastes and through the cooperation of the states in providing facilities that serve the region. It is the policy of the party states to undertake the necessary cooperation to protect the health and safety of the citizens of the party states and to provide for the most economical management of low-level radioactive wastes on a continuing basis. It is the purpose of this compact to provide the means for such a cooperative effort among the party states so that the protection of the citizens of the states and the maintenance of the viability of the states' economies will be enhanced while sharing the responsibilities of radioactive low-level waste management.

ARTICLE II—Definitions

As used in this compact:

(1) "Facility" means any site, location, structure, or property used or to be used for the storage, treatment, or disposal of low-level waste, excluding federal waste facilities;

(2) "Low-level waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities which exceed applicable federal or state standards for unrestricted release. Low-level waste does not include waste containing more than ten nanocuries of transuranic contaminants per gram of material, nor spent reactor fuel, nor material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable federal regulations;

(3) "Generator" means any person, partnership, association, corporation, or any other entity whatsoever which, as a part of its activities, produces low-level radioactive waste;

(4) "Host state" means a state in which a facility is located.

ARTICLE III—Regulatory Practices

Each party state hereby agrees to adopt practices which will require low-level waste shipments originating within its borders and destined for a facility within another party state to conform to the applicable packaging and transportation requirements and regulations of the host state. Such practices shall include:

(1) Maintaining an inventory of all generators within the state that have shipped or expect to ship low-level waste to facilities in another party state;

(2) Periodic unannounced inspection of the premises of such generators and the waste management activities thereon;

(3) Authorization of the containers in which such waste may be shipped, and a requirement that generators use only that type of container authorized by the state;

(4) Assurance that inspections of the carriers which transport such waste are conducted by proper authorities, and appropriate enforcement action taken for violations;

(5) After receiving notification from a host state that a generator within the party state is in violation of applicable packaging or transportation standards, the party state will take appropriate action to assure that such violations do not recur. Such action may include inspection of every individual low-level waste shipment by that generator.

Each party state may impose fees upon generators and shippers to recover the cost of the inspections and other prac-

tices under this Article. Nothing in this Article shall be construed to limit any party state's authority to impose additional or more stringent standards on generators or carriers than those required under this Article.

ARTICLE IV—Regional Facilities

Section 1. Facilities located in any party state, other than facilities established or maintained by individual low-level waste generators for the management of their own low-level waste, shall accept low-level waste generated in any party state if such waste has been packaged and transported according to applicable laws and regulations.

Section 2. No facility located in any party state may accept low-level waste generated outside of the region comprised of the party states, except as provided in Article V.

Section 3. Until such time as Section 2 takes effect as provided in Article VI, facilities located in any party state may accept low-level waste generated outside of any of the party states only if such waste is accompanied by a certificate of compliance issued by an official of the state in which such waste shipment originated. Such certificate shall be in such form as may be required by the host state, and shall contain at least the following:

- (1) The generator's name and address;
- (2) A description of the contents of the low-level waste container;
- (3) A statement that the low-level waste being shipped has been inspected by the official who issued the certificate or by his agent or by a representative of the United States Nuclear Regulatory Commission, and found to have been packaged in compliance with applicable federal regulations and such additional requirements as may be imposed by the host state;
- (4) A binding agreement by the state of origin to reimburse any party state for any liability or expense incurred as a result of an accidental release of such waste during shipment or after such waste reaches the facility.

Section 4. Each party state shall cooperate with the other party states in determining the appropriate site of any facility that might be required within the region comprised of the party states, in order to maximize public health and safety while minimizing the use of any one party state as the host of such facilities on a permanent basis. Each party state further agrees that decisions regarding low-level waste management facilities in their region will be reached through a good faith process which takes into account the burdens borne by each of the party states as well as the benefits each has received.

Section 5. The party states recognize that the issue of hazardous chemical waste management is similar in many respects to that of low-level waste management. Therefore, in consideration of the state of Washington allowing access to its low-level waste disposal facility by generators in other party states, party states such as Oregon and Idaho which host hazardous chemical waste disposal facilities will allow access to such facilities by generators within other party states. Nothing in this compact may be construed to prevent any party state from limiting the nature and type of hazardous chemical or low-level wastes to be accepted at facilities within its borders or from ordering the closure or [of] such facilities, so long as such action by a host state is applied

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equally to all generators within the region composed of the party states.

Section 6. Any host state may establish a schedule of fees and requirements related to its facility, to assure that closure, perpetual care, and maintenance and contingency requirements are met, including adequate bonding.

ARTICLE V—Northwest Low-level Waste Compact Committee

The governor of each party state shall designate one official of that state as the person responsible for administration of this compact. The officials so designated shall together comprise the Northwest low-level waste compact committee. The committee shall meet as required to consider matters arising under this compact. The parties shall inform the committee of existing regulations concerning low-level waste management in their states, and shall afford all parties a reasonable opportunity to review and comment upon any proposed modifications in such regulations. Notwithstanding any provision of Article IV to the contrary, the committee may enter into arrangements with states, provinces, individual generators, or regional compact entities outside the region comprised of the party states for access to facilities on such terms and conditions as the committee may deem appropriate. However, it shall require a two-thirds vote of all such members, including the affirmative vote of the member of any party state in which a facility affected by such arrangement is located, for the committee to enter into such arrangement.

ARTICLE VI—Eligible Parties and Effective Date

Section 1. Each of the following states is eligible to become a party to this compact: Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington, and Wyoming. As to any eligible party, this compact shall become effective upon enactment into law by that party, but it shall not become initially effective until enacted into law by two states. Any party state may withdraw from this compact by enacting a statute repealing its approval.

Section 2. After the compact has initially taken effect pursuant to Section 1, any eligible party state may become a party to this compact by the execution of an executive order by the governor of the state. Any state which becomes a party in this manner shall cease to be a party upon the final adjournment of the next general or regular session of its legislature or July 1, 1983, whichever occurs first, unless the compact has by then been enacted as a statute by that state.

Section 3. Section 2 of Article IV of this compact shall take effect on July 1, 1983, if consent is given by Congress. As provided in Public Law 96-573, Congress may withdraw its consent to the compact after every five-year period.

ARTICLE VII—Severability

If any provision of this compact, or its application to any person or circumstance, is held to be invalid, all other provisions of this compact, and the application of all of its provisions to all other persons and circumstances, shall remain valid; and to this end the provisions of this compact are severable. [1981 c 124 § 1. Formerly RCW 43.145.010.]

[Title 70A RCW—page 273]

70A.380.020 Requirements of Washington representative to Northwest low-level waste compact committee. The person designated as the Washington representative to the committee as specified in Article V shall adhere to all provisions of the low-level radioactive waste compact. In considering special conditions or arrangements for access to the state's facilities from wastes generated outside of the region, the committee member shall ensure at a minimum, that the provisions of Article IV, Section 3 are complied with. After 1992 the Washington representative may approve access to the state's facility only for the states currently members of the Rocky Mountain compact or states which generate less than one thousand cubic feet of waste annually and are contiguous with a state which is a member of the Northwest compact. [1990 c 21 § 5; 1981 c 124 § 2. Formerly RCW 43.145.020.]

70A.380.030 Rule-making authority. See RCW 70A.384.040.

Chapter 70A.382 RCW

PACIFIC STATES AGREEMENT ON RADIOACTIVE MATERIAL TRANSPORTATION MANAGEMENT

Sections

- 70A.382.010 Pacific States Agreement on Radioactive Materials Transportation Management.
70A.382.900 Legislative directive—State designee—1987 c 90.

70A.382.010 Pacific States Agreement on Radioactive Materials Transportation Management. The Pacific States Agreement on Radioactive Materials Transportation Management is hereby enacted into law and entered into by the state of Washington as a party, and is in full force and effect between the state and other states joining the agreement in accordance with its terms.

PACIFIC STATES AGREEMENT ON RADIOACTIVE MATERIALS TRANSPORTATION MANAGEMENT

ARTICLE I—Policy and Purpose

The party states recognize that protection of the health and safety of citizens and the environment, and the most economical transportation of radioactive materials, can be accomplished through cooperation and coordination among neighboring states. It is the purpose of this agreement to establish a committee comprised of representatives from each party state to further cooperation between the states on emergency response and to coordinate activities by the states to eliminate unnecessary duplication of rules and regulations regarding the transportation and handling of radioactive material.

The party states intend that this agreement facilitate both interstate commerce and protection of public health and the environment. To accomplish this goal, the party states direct the committee to develop model regulatory standards for party states to act upon and direct the committee to coordinate decisions by party states relating to the routing and inspection of shipments of radioactive material.

ARTICLE II—Definitions

As used in this agreement:

- (1) "Carrier" includes common, private, and contract carriers.
- (2) "Hazardous material" means a substance or material which has been determined by the United States department of transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.
- (3) "Radioactive material" has the meaning given that term in federal department of transportation regulations found in 49 C.F.R. Sec. 173, and includes, but is not limited to, high-level radioactive waste, low-level radioactive waste, and spent nuclear fuel, as defined in section 2 of the nuclear waste policy act of 1982 (96 Stat. 2202; 42 U.S.C.A. Sec. 10101).
- (4) "Transportation" means the transport by any means of radioactive material destined for or derived from any location, and any loading, unloading, or storage incident to such transport. "Transportation" does not include permanent storage or disposal of the material.

ARTICLE III—Regulatory Practices

Section 1. The party states agree to develop model standards, not in conflict with federal law or regulations, for carriers of radioactive material to provide information regarding:

- (1) The amount and kind of material transported;
- (2) The mode of transportation and, to the extent feasible, the route or routes and the time schedule;
- (3) The carrier's compliance with local, state, and federal rules and regulations related to radioactive material transportation;
- (4) The carrier's compliance with federal and state liability insurance requirements.

Section 2. Consistent with federal law or regulations pertaining to transportation of radioactive material, the party states also agree to:

- (1) Develop model uniform procedures for issuing permits to carriers;
- (2) Develop model uniform recordkeeping processes that allow access on demand by each state;
- (3) Develop model uniform safety standards for carriers;
- (4) Coordinate routing of shipments of radioactive materials;
- (5) Develop a method for coordinating the party states' emergency response plans to provide for regional emergency response including (a) systems for sharing information essential to radiation control efforts, (b) systems for sharing emergency response personnel, and (c) a method to allocate costs and clarify liability when a party state or its officers request or render emergency response;
- (6) Recommend parking requirements for motor vehicles transporting radioactive materials;
- (7) Coordinate state inspections of carriers; and
- (8) Develop other cooperative arrangements and agreements to enhance safety.

Section 3. The party states also agree to coordinate emergency response training and preparedness drills among the

party states, Indian tribes, and affected political subdivisions of the party states, and, if possible, with federal agencies.

Section 4. The party states recognize that the transportation management of hazardous waste and hazardous materials is similar in many respects to that of radioactive materials. The party states, therefore, agree to confer as to transportation management and emergency response for those items where similarities in management exist.

ARTICLE IV—Pacific States Radioactive Materials Transportation Committee

Section 1. Each party state shall designate one official of that state to confer with appropriate legislative committees and with other officials of that state responsible for managing transportation of radioactive material and with affected Indian tribes and be responsible for administration of this agreement. The officials so designated shall together comprise the Pacific states radioactive materials transportation committee. The committee shall meet as required to consider and, where necessary, coordinate matters addressed in this agreement. The parties shall inform the committee of existing regulations concerning radioactive materials transportation management in their states, and shall afford all parties a reasonable opportunity to review and comment upon any proposed modifications in such regulations.

Section 2. The committee may also engage in long-term planning to assure safe and economical management of radioactive material transportation on a continuing basis.

Section 3. To the extent practicable, the committee shall coordinate its activities with those of other organizations.

ARTICLE V—Eligible Parties and Effective Date

Section 1. The states of Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming are eligible to become a party to this agreement. As to any eligible party, this agreement shall become effective upon enactment into law by that party, but it shall not become initially effective until enacted into law by two states. Any party state may withdraw from this agreement by enacting a statute repealing its approval.

Section 2. After the agreement has initially taken effect under section 1 of this article, any eligible party state may become a party to this agreement by the execution of an executive order by the governor of the state. Any state which becomes a party in this manner shall cease to be a party upon the final adjournment of the next general or regular session of its legislature or July 1, 1988, whichever occurs first, unless the agreement has by then been enacted as a statute by that state.

ARTICLE VI—Severability

If any provision of this agreement, or its application to any person or circumstance, is held to be invalid, all other provisions of this agreement, and the application of all of its provisions to all other persons and circumstances, shall remain valid; and to this end the provisions of this agreement are severable. [1987 c 90 § 1. Formerly RCW 43.146.010.]

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70A.382.900 Legislative directive—State designee—1987 c 90. (1) Section 1 of this act shall constitute a new chapter in Title 70A RCW.

(2) The Washington state designee to the committee shall be appointed by the governor. [2020 c 20 § 1052; 1987 c 90 § 2. Formerly RCW 43.146.900.]

Chapter 70A.384 RCW RADIOACTIVE WASTE ACT

Sections

70A.384.005	Finding—Purpose.
70A.384.010	Definitions.
70A.384.020	Participation authority regarding federal statutes—Federal financial assistance.
70A.384.030	Cooperation required.
70A.384.040	Rules.
70A.384.050	Additional powers and duties of director—Site closure account—Perpetual surveillance and maintenance account.
70A.384.060	Waste disposal surcharges and penalty surcharges—Disposition.
70A.384.070	Implementation of federal low-level radioactive waste policy amendments of 1985.
70A.384.080	Studies on-site closure and perpetual care and maintenance requirements and on adequacy of insurance coverage.
70A.384.090	Review of potential damage—Financial assurance.
70A.384.100	Site closure fee—Generally.
70A.384.110	Fees for waste generators.
70A.384.120	Waste generator surcharge remittance to counties.
70A.384.130	Disposal of waste generator surcharges.
70A.384.900	Construction of chapter.
70A.384.901	Conflict with federal requirements—1983 1st ex.s. c 19.
70A.384.902	Construction—1986 c 191.
70A.384.903	Transfer of site use permit program from the department of ecology to the department of health.

Nuclear energy and radiation: Chapter 70A.388 RCW.

70A.384.005 Finding—Purpose. The legislature finds that the safe transporting, handling, storage, or otherwise caring for radioactive wastes is required to protect the health, safety, and welfare of the citizens of the state of Washington. It is the purpose of this chapter to establish authority for the state to exercise appropriate oversight and care for the safe management and disposal of radioactive wastes; to consult with the federal government and other states on interim or permanent storage of these radioactive wastes; and to carry out the state responsibilities under the federal nuclear waste policy act of 1982. [1983 1st ex.s. c 19 § 1. Formerly RCW 43.200.010.]

70A.384.010 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Commercial low-level radioactive waste disposal facility" has the same meaning as "facility" as defined in RCW 70A.380.010.

(2) "Department" means the department of ecology.

(3) "High-level radioactive waste" means "high-level radioactive waste" as the term is defined in 42 U.S.C. Sec. 10101 (P.L. 97-425).

(4) "Low-level radioactive waste" means waste material that contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable federal or state standards for unrestricted release. Low-level waste does not include waste containing more than one hundred nanocuries of transuranic contaminants per gram of material, nor spent nuclear fuel, nor mate-

rial classified as either high-level radioactive waste or waste that is unsuited for disposal by near-surface burial under any applicable federal regulations.

(5) "Radioactive waste" means both high-level and low-level radioactive waste.

(6) "Spent nuclear fuel" means spent nuclear fuel as the term is defined in 42 U.S.C. Sec. 10101. [2020 c 20 § 1053. Prior: 2012 c 19 § 1; 1989 c 322 § 1; 1985 c 293 § 1; 1984 c 161 § 1. Formerly RCW 43.200.015.]

Effective date—2012 c 19: "This act takes effect July 1, 2012." [2012 c 19 § 15.]

70A.384.020 Participation authority regarding federal statutes—Federal financial assistance. The department of ecology is designated as the executive branch agency for participation in the federal nuclear waste policy act of 1982 and the federal low-level radioactive waste policy act of 1980, however the legislature retains an autonomous role with respect to participation in all aspects of the federal nuclear waste policy act of 1982. The department may receive federal financial assistance for carrying out radioactive waste management activities, including assistance for expenses, salaries, travel, and monitoring and evaluating the program of repository exploration and siting undertaken by the federal government. [1989 c 322 § 2; 1984 c 161 § 2; 1983 1st ex.s. c 19 § 2. Formerly RCW 43.200.020.]

70A.384.030 Cooperation required. All departments, agencies, and officers of this state and its subdivisions shall cooperate with the department of ecology in the furtherance of any of its activities pursuant to this chapter. [1989 c 322 § 3; 1984 c 161 § 4; 1983 1st ex.s. c 19 § 3. Formerly RCW 43.200.030.]

70A.384.040 Rules. The department of ecology shall adopt such rules as are necessary to carry out responsibilities under this chapter. The department of ecology is authorized to adopt such rules as are necessary to carry out its responsibilities under chapter 70A.380 RCW. [2020 c 20 § 1054; 1989 c 322 § 5; 1986 c 2 § 5; 1984 c 161 § 8; 1983 1st ex.s. c 19 § 7. Formerly RCW 43.200.070.]

70A.384.050 Additional powers and duties of director—Site closure account—Perpetual surveillance and maintenance account. The director of ecology shall, in addition to the powers and duties otherwise imposed by law, have the following special powers and duties:

(1) To fulfill the responsibilities of the state under the lease between the state of Washington and the federal government executed September 10, 1964, as amended, covering approximately one hundred fifteen acres of land lying within the Hanford reservation near Richland, Washington. The department of ecology may sublease to private or public entities all or a portion of the land for specific purposes or activities which are determined, after public hearing, to be in agreement with the terms of the lease and in the best interests of the citizens of the state consistent with any criteria that may be developed as a requirement by the legislature;

(2) To assume the responsibilities of the state under the perpetual care agreement between the state of Washington and the federal government executed July 29, 1965, and the

sublease between the state of Washington and the site operator of the commercial low-level radioactive waste disposal facility. In order to finance perpetual surveillance and maintenance under the agreement and ensure site closure under the sublease, the department of ecology shall impose and collect fees from parties holding radioactive materials for waste management purposes. The fees shall be established by rule adopted under chapter 34.05 RCW and shall be an amount determined by the department of ecology to be necessary to defray the estimated liability of the state. Such fees shall reflect equity between the disposal facilities of this and other states. A site closure account and a perpetual surveillance and maintenance account are hereby created in the state treasury. Site use permit fees collected by the department of health under RCW 70A.388.060(3) must be deposited in the site closure account and must be used as specified in RCW 70A.388.060(3). Funds in the site closure account other than site use permit fee funds shall be exclusively available to reimburse, to the extent that moneys are available in the account, the site operator for its costs plus a reasonable profit as agreed by the operator and the state, or to reimburse the state licensing agency and any agencies under contract to the state licensing agency for their costs in final closure and decommissioning of the commercial low-level radioactive waste disposal facility. If a balance remains in the account after satisfactory performance of closure and decommissioning, this balance shall be transferred to the perpetual surveillance and maintenance account. The perpetual surveillance and maintenance account shall be used exclusively by the state to meet post-closure surveillance and maintenance costs, or for otherwise satisfying surveillance and maintenance obligations. Appropriations are required to permit expenditures and payment of obligations from the site closure account and the perpetual surveillance and maintenance account. Receipts shall be directed to the site closure account and the perpetual surveillance and maintenance account as specified by the department. Additional moneys specifically appropriated by the legislature or received from any public or private source may be placed in the site closure account and the perpetual surveillance and maintenance account. During the 2003-2005 fiscal biennium, the legislature may transfer up to thirteen million eight hundred thousand dollars from the site closure account to the general fund;

(3)(a) Subject to the conditions in (b) of this subsection, on July 1, 2008, and each July 1st thereafter, the treasurer shall transfer from the perpetual surveillance and maintenance account to the site closure account the sum of nine hundred sixty-six thousand dollars. The nine hundred sixty-six thousand dollars transferred on July 1, 2009, and thereafter shall be adjusted to a level equal to the percentage increase in the United States implicit price deflator for personal consumption. The last transfer under this section shall occur on July 1, 2033.

(b) The transfer in (a) of this subsection shall occur only if written agreement is reached between the state department of ecology and the United States department of energy pursuant to section 6 of the perpetual care agreement dated July 29, 1965, between the United States atomic energy commission and the state of Washington. If agreement cannot be reached between the state department of ecology and the United States department of energy by June 1, 2008, the treasurer

shall transfer the funds from the general fund to the site closure account according to the schedule in (a) of this subsection.

(c) If for any reason the commercial low-level radioactive waste disposal facility is closed to further disposal operations during or after the 2003-2005 biennium and before 2033, then the amount remaining to be repaid from the 2003-2005 transfer of thirteen million eight hundred thousand dollars from the site closure account shall be transferred by the treasurer from the general fund to the site closure account to fund the closure and decommissioning of the facility. The treasurer shall transfer to the site closure account in full the amount remaining to be repaid upon written notice from the secretary of health that the department of health has authorized closure or that disposal operations have ceased. The treasurer shall complete the transfer within sixty days of written notice from the secretary of health.

(d) To the extent that money in the site closure account together with the amount of money identified for repayment to the site closure account, pursuant to (a) through (c) of this subsection, equals or exceeds the cost estimate approved by the department of health for closure and decommissioning of the facility, the money in the site closure account together with the amount of money identified for repayment to the site closure account shall constitute adequate financial assurance for purposes of the department of health financial assurance requirements;

(4) To assure maintenance of such insurance coverage by state licensees, lessees, or sublessees as will adequately, in the opinion of the director, protect the citizens of the state against nuclear accidents or incidents that may occur on privately or state-controlled nuclear facilities;

(5) To make application for or otherwise pursue any federal funds to which the state may be eligible, through the federal resource conservation and recovery act or any other federal programs, for the management, treatment or disposal, and any remedial actions, of wastes that are both radioactive and hazardous at all commercial low-level radioactive waste disposal facilities; and

(6) To develop contingency plans for duties and options for the department and other state agencies related to the commercial low-level radioactive waste disposal facility based on various projections of annual levels of waste disposal. These plans shall include an analysis of expected revenue to the state in various taxes and funds related to low-level radioactive waste disposal and the resulting implications that any increase or decrease in revenue may have on state agency duties or responsibilities. The plans shall be updated annually. [2020 c 20 § 1055; 2012 c 19 § 2; 2003 1st sp.s. c 21 § 1; 1999 c 372 § 12; 1991 sp.s. c 13 § 60; 1990 c 21 § 6; 1989 c 418 § 2; 1986 c 2 § 1; 1983 1st ex.s. c 19 § 8. Formerly RCW 43.200.080.]

Effective date—2012 c 19: See note following RCW 70A.384.010.

User permit system—Fees—Indemnity and hold state harmless—Adoption of rules: RCW 70A.388.060.

Additional notes found at www.leg.wa.gov

70A.384.060 Waste disposal surcharges and penalty surcharges—Disposition. The governor may assess surcharges and penalty surcharges on the disposal of waste at the commercial low-level radioactive waste disposal facility. The

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surcharges may be imposed up to the maximum extent permitted by federal law. Ten dollars per cubic foot of the moneys received under this section shall be transmitted monthly to the site closure account established under RCW 70A.384.050. The rest of the moneys received under this section shall be deposited in the general fund. [2020 c 20 § 1056; 2012 c 19 § 3; 1990 c 21 § 3; 1986 c 2 § 3. Formerly RCW 43.200.170.]

Effective date—2012 c 19: See note following RCW 70A.384.010.

70A.384.070 Implementation of federal low-level radioactive waste policy amendments of 1985. Except as provided in chapter 70A.388 RCW related to administration of a user permit system, the department of ecology shall be the state agency responsible for implementation of the federal low-level radioactive waste policy amendments act of 1985, including:

(1) Collecting and administering the surcharge assessed by the governor under RCW 70A.384.060;

(2) Collecting low-level radioactive waste data from disposal facility operators, generators, intermediate handlers, and the federal department of energy;

(3) Developing and operating a computerized information system to manage low-level radioactive waste data;

(4) Denying and reinstating access to the commercial low-level radioactive waste disposal facility pursuant to the authority granted under federal law;

(5) Administering and/or monitoring (a) the maximum waste volume levels for the commercial low-level radioactive waste disposal facility, (b) reactor waste allocations, (c) priority allocations under the Northwest Interstate Compact on Low-Level Radioactive Waste Management, and (d) adherence by other states and compact regions to federal statutory deadlines; and

(6) Coordinating the state's low-level radioactive waste disposal program with similar programs in other states. [2020 c 20 § 1057; 2012 c 19 § 4; 1998 c 245 § 81; 1986 c 2 § 4. Formerly RCW 43.200.180.]

Effective date—2012 c 19: See note following RCW 70A.384.010.

70A.384.080 Studies on-site closure and perpetual care and maintenance requirements and on adequacy of insurance coverage. The department of ecology shall perform studies, by contract or otherwise, to define site closure and perpetual care and maintenance requirements for the commercial low-level radioactive waste disposal facility and to assess the adequacy of insurance coverage for general liability, radiological liability, and transportation liability for the facility. [2012 c 19 § 5; 1998 c 245 § 82; 1986 c 2 § 6. Formerly RCW 43.200.190.]

Effective date—2012 c 19: See note following RCW 70A.384.010.

70A.384.090 Review of potential damage—Financial assurance. (1) The director of the department of ecology may periodically review the potential for bodily injury and property damage arising from the transportation and disposal of commercial low-level radioactive waste under permits issued by the state.

(2) In making the determination of the appropriate level of financial assurance, the director shall consider:

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(a) The nature and purpose of the activity and its potential for injury and damages to or claims against the state and its citizens;

(b) The current and cumulative manifested volume and radioactivity of waste being packaged, transported, buried, or otherwise handled;

(c) The location where the waste is being packaged, transported, buried, or otherwise handled, including the proximity to the general public and geographic features such as geology and hydrology, if relevant; and

(d) The legal defense cost, if any, that will be paid from the required financial assurance amount. [2012 c 19 § 6; 1998 c 245 § 83; 1992 c 61 § 1; 1990 c 82 § 1; 1986 c 191 § 1. Formerly RCW 43.200.200.]

Effective date—2012 c 19: See note following RCW 70A.384.010.

70A.384.100 Site closure fee—Generally. Beginning January 1, 1993, the department of ecology may impose a reasonable site closure fee if necessary to be deposited in the site closure account established under RCW 70A.384.050. The department may continue to collect moneys for the site closure account until the account contains an amount sufficient to complete the closure plan, as specified in the radioactive materials license issued by the department of health. [2020 c 20 § 1058; 1990 c 21 § 4. Formerly RCW 43.200.220.]

Additional notes found at www.leg.wa.gov

70A.384.110 Fees for waste generators. The director of the department of ecology shall require that generators of waste pay a fee for each cubic foot of waste disposed at any facility in the state equal to six dollars and fifty cents. The fee shall be imposed specifically on the generator of the waste and shall not be considered to apply in any way to the low-level site operator's disposal activities. The fee shall be allocated in accordance with RCW 70A.384.120 and 70A.384.130. Failure to comply with this section may result in denial or suspension of the generator's site use permit pursuant to RCW 70A.388.060. [2020 c 20 § 1059; 2012 c 19 § 7; 1991 c 272 § 16. Formerly RCW 43.200.230.]

Effective date—2012 c 19: See note following RCW 70A.384.010.

Additional notes found at www.leg.wa.gov

70A.384.120 Waste generator surcharge remittal to counties. A portion of the surcharge received under RCW 70A.384.110 shall be remitted monthly to the county in which the low-level radioactive waste disposal facility is located in the following manner:

(1) During 1993, six dollars and fifty cents per cubic foot of waste;

(2) During 1994, three dollars and twenty-five cents per cubic foot of waste; and

(3) During 1995 and thereafter, two dollars per cubic foot of waste. [2020 c 20 § 1060; 1991 c 272 § 17. Formerly RCW 43.200.233.]

Additional notes found at www.leg.wa.gov

70A.384.130 Disposal of waste generator surcharges. Except for moneys that may be remitted to a county in which a low-level radioactive waste disposal facility is located, all surcharges authorized under RCW 70A.384.110 shall be

deposited in the fund created in RCW 43.31.422. [2020 c 20 § 1061; 1991 c 272 § 18. Formerly RCW 43.200.235.]

Additional notes found at www.leg.wa.gov

70A.384.900 Construction of chapter. The rules of strict construction do not apply to this chapter and it shall be liberally construed in order to carry out the objective for which it is designed, in accordance with the legislative intent to give the board the maximum possible freedom in carrying the provisions of this chapter into effect. [1984 c 161 § 15; 1983 1st ex.s. c 19 § 10. Formerly RCW 43.200.900.]

70A.384.901 Conflict with federal requirements—1983 1st ex.s. c 19. If any part of this act shall be found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, such conflicting part of this act is hereby declared to be inoperative solely to the extent of such conflict and with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this act in its application to the agencies concerned. The rules and regulations under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1983 1st ex.s. c 19 § 11. Formerly RCW 43.200.901.]

70A.384.902 Construction—1986 c 191. The provisions of this act shall not have the effect of reducing the level of liability coverage required under any law, regulation, or contract of the state before December 31, 1987, or the effective date of the first determination made pursuant to RCW 70A.384.090, if earlier. [2020 c 20 § 1062; 1986 c 191 § 4. Formerly RCW 43.200.905.]

70A.384.903 Transfer of site use permit program from the department of ecology to the department of health. (1) The site use permit program is transferred from the department of ecology to the department of health.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the department of ecology site use permit program shall be delivered to the custody of the department of health. All funds, credits, or other assets held by the department of ecology site use permit program shall be assigned to the department of health.

(b) Any appropriations made to the department of ecology for the site use permit program shall be transferred and credited to the department of health.

(3) All rules of the department of ecology site use permit program shall be continued and acted upon by the department of health until new rules are adopted under RCW 70A.388.060. All permit applications and pending business before the department of ecology site use permit program shall be continued and acted upon by the department of health. All existing contracts and obligations shall remain in full force and shall be performed by the department of health.

(4) The transfer of the powers, duties, functions, and personnel of the department of ecology site use permit program to the department of health under chapter 19, Laws of 2012 shall not affect the validity of any activity performed before July 1, 2012. [2020 c 20 § 1063; 2012 c 19 § 14. Formerly RCW 43.200.907.]

Effective date—2012 c 19: See note following RCW 70A.384.010.

Chapter 70A.386 RCW
HIGH-LEVEL NUCLEAR WASTE REPOSITORY
SITING

Sections

- 70A.386.010 Findings.
70A.386.020 Duties relating to the site selection process for a high-level nuclear waste repository.

Nuclear waste site—Election for disapproval: Chapter 29A.88 RCW.

70A.386.010 Findings. The legislature and the people of the state of Washington find that:

(1) In order to solve the problem of high-level radioactive waste disposal, congress established a process for selecting two sites for the safe, permanent, and regionally equitable disposal of such waste.

(2) The process of selecting three sites as final candidates, including the Hanford reservation, for a first high-level nuclear waste repository by the United States department of energy violated the intent and the mandate of congress.

(3) The United States department of energy has prematurely deferred consideration of numerous potential sites and disposal media that its own research indicates are more appropriate, safer, and less expensive.

(4) Placement of a repository at Hanford without methodical and independently verified scientific evaluation will pose a threat to the health and safety of the people and the environment of this state.

(5) The selection process is flawed and not credible because it did not include independent experts in the selection of the sites and in the review of that selection, as recommended by the National Academy of Sciences.

(6) By postponing indefinitely all site specific work for a second repository, the United States department of energy has not complied with the intent of congress expressed in the Nuclear Waste Policy Act, Public Law 97-425, and the fundamental compromise which enabled its enactment. [1986 ex.s. c 1 § 1. Formerly RCW 43.205.010.]

70A.386.020 Duties relating to the site selection process for a high-level nuclear waste repository. In order to achieve complete compliance with federal law and protect the health, safety, and welfare of the people of the state of Washington, the governor, the legislature, other statewide elected officials, and the nuclear waste board shall use all legal means necessary to:

(1) Suspend the preliminary site selection process for a high-level nuclear waste repository, including the process of site characterization, until there is compliance with the intent of the Nuclear Waste Policy Act;

(2) Reverse the secretary of energy's decision to postpone indefinitely all site specific work on locating and developing a second repository for high-level nuclear waste;

(3) Insist that the United States department of energy's site selection process, when resumed, considers all acceptable geologic media and results in safe, scientifically justified, and regionally and geographically equitable high-level nuclear waste disposal;

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(4) Demand that federal budget actions fully and completely follow the intent of the Nuclear Waste Policy Act; and

(5) Continue to pursue alliances with other states and interested parties, particularly with Pacific Northwest governors, legislatures, and other parties, affected by the site selection and transportation of high-level nuclear waste. [1986 ex.s. c 1 § 2. Formerly RCW 43.205.020.]

Chapter 70A.388 RCW
NUCLEAR ENERGY AND RADIATION

Sections

- 70A.388.010 Declaration of policy.
70A.388.020 Purpose.
70A.388.030 Definitions.
70A.388.040 State radiation control agency.
70A.388.050 Rules and regulations—Licensing requirements and procedure—Notice of license application—Objections—Notice upon granting of license—Registration of sources of ionizing radiation—Exemptions from registration or licensing.
70A.388.060 User permit system—Fees—Indemnify and hold state harmless—Adoption of rules.
70A.388.070 Inspection.
70A.388.080 Financial assurance—Noncompliance.
70A.388.090 Financial assurance—Generally.
70A.388.100 Records.
70A.388.110 Federal-state agreements—Authorized—Effect as to federal licenses.
70A.388.120 Inspection agreements and training programs.
70A.388.130 Department of ecology to seek federal funding for environmental radiation monitoring.
70A.388.140 Federal assistance to be sought for high-level radioactive waste program.
70A.388.150 Administrative procedure.
70A.388.160 Injunction proceedings.
70A.388.170 Prohibited uses.
70A.388.180 Impounding of materials.
70A.388.190 Prohibition—Fluoroscopic X-ray shoe-fitting devices.
70A.388.200 Exemptions.
70A.388.210 Professional uses.
70A.388.220 Penalties.
70A.388.230 Adoption of rules for administering site use permit program.
70A.388.901 Effective date—1961 c 207.
70A.388.902 Section headings not part of law.

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

Nuclear, thermal power facilities, joint city, public utility district, electrical companies development: Chapter 54.44 RCW.

Radioactive and hazardous waste emergency response programs, state coordinator: RCW 38.52.030.

Radioactive waste act: Chapter 70A.384 RCW.

70A.388.010 Declaration of policy. It is the policy of the state of Washington in furtherance of its responsibility to protect the public health and safety and to encourage, insofar as consistent with this responsibility, the industrial and economic growth of the state and to institute and maintain a regulatory and inspection program for sources and uses of ionizing radiation so as to provide for (1) compatibility with the standards and regulatory programs of the federal government, (2) a single, effective system of regulation within the state, and (3) a system consonant insofar as possible with those of other states. [1975-'76 2nd ex.s. c 108 § 12; 1961 c 207 § 1. Formerly RCW 70.98.010.]

Additional notes found at www.leg.wa.gov

70A.388.020 Purpose. It is the purpose of this chapter to effectuate the policies set forth in RCW 70A.388.010 as now or hereafter amended by providing for:

(1) A program of effective regulation of sources of ionizing radiation for the protection of the occupational and public health and safety;

(2) A program to promote an orderly regulatory pattern within the state, among the states and between the federal government and the state and facilitate intergovernmental cooperation with respect to use and regulation of sources of ionizing radiation to the end that duplication of regulation may be minimized;

(3) A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to by-product, source, and special nuclear materials. [2020 c 20 § 1263; 1975-'76 2nd ex.s. c 108 § 13; 1965 c 88 § 1; 1961 c 207 § 2. Formerly RCW 70.98.020.]

Additional notes found at www.leg.wa.gov

70A.388.030 Definitions. (1) "By-product material" means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(2)(a) "General license" means a license effective pursuant to rules promulgated by the state radiation control agency, without the filing of an application, to transfer, acquire, own, possess, or use quantities of, or devices or equipment utilizing, by-product, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

(b) "Specific license" means a license, issued after application to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of, or devices or equipment utilizing by-product, source, special nuclear materials, or other radioactive materials occurring naturally or produced artificially.

(3) "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other atomic or subatomic particles; but not sound or radio waves, or visible, infrared, or ultraviolet light.

(4) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States Atomic Energy Commission, or any successor thereto, and other than federal government agencies licensed by the United States Atomic Energy Commission, or any successor thereto.

(5) "Radiation source" means any type of device or substance which is capable of producing or emitting ionizing radiation.

(6) "Registration" means registration with the state department of health by any person possessing a source of ionizing radiation in accordance with rules adopted by the department of health.

(7) "Site use permit" means a permit, issued after application, to use the commercial low-level radioactive waste disposal facility.

(8) "Source material" means (a) uranium, thorium, or any other material which is determined by the United States Nuclear Regulatory Commission or its successor pursuant to the provisions of section 61 of the United States Atomic

Energy Act of 1954, as amended (42 U.S.C. Sec. 209) to be source material; or (b) ores containing one or more of the foregoing materials, in such concentration as the commission may by regulation determine from time to time.

(9) "Special nuclear material" means (a) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the United States Nuclear Regulatory Commission or its successor, pursuant to the provisions of section 51 of the United States Atomic Energy Act of 1954, as amended (42 U.S.C. Sec. 2071), determines to be special nuclear material, but does not include source material; or (b) any material artificially enriched by any of the foregoing, but does not include source material. [2012 c 19 § 8; 1991 c 3 § 355; 1983 1st ex.s. c 19 § 9; 1979 c 141 § 125; 1965 c 88 § 2; 1961 c 207 § 3. Formerly RCW 70.98.030.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2012 c 19: See note following RCW 70A.384.010.

Additional notes found at www.leg.wa.gov

70A.388.040 State radiation control agency. (1) The department of health is designated as the state radiation control agency, hereinafter referred to as the agency, and shall be the state agency having sole responsibility for administration of the regulatory, licensing, and radiation control provisions of this chapter.

(2) The secretary of health shall be director of the agency, hereinafter referred to as the secretary, who shall perform the functions vested in the agency pursuant to the provisions of this chapter.

(3) The agency shall appoint a state radiological control officer, and in accordance with the laws of the state, fix his or her compensation and prescribe his or her powers and duties.

(4) The agency shall for the protection of the occupational and public health and safety:

(a) Develop programs for evaluation of hazards associated with use of ionizing radiation;

(b) Develop a statewide radiological baseline beginning with the establishment of a baseline for the Hanford reservation;

(c) Implement an independent statewide program to monitor ionizing radiation emissions from radiation sources within the state;

(d) Develop programs with due regard for compatibility with federal programs for regulation of by-product, source, and special nuclear materials;

(e) Conduct environmental radiation monitoring programs which will determine the presence and significance of radiation in the environment and which will verify the adequacy and accuracy of environmental radiation monitoring programs conducted by the federal government at its installations in Washington and by radioactive materials licensees at their installations;

(f) Formulate, adopt, promulgate, and repeal codes, rules, and regulations relating to control of sources of ionizing radiation;

(g) Advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions, and with groups concerned with control of sources of ionizing radiation;

(h) Have the authority to accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private;

(i) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of ionizing radiation, including the collection of statistical data and epidemiological research, where available, on diseases that result from exposure to sources of ionizing radiation;

(j) Collect and disseminate information relating to control of sources of ionizing radiation; including:

(i) Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(ii) Maintenance of a file of registrants possessing sources of ionizing radiation requiring registration under the provisions of this chapter and any administrative or judicial action pertaining thereto; and

(iii) Maintenance of a file of all rules and regulations relating to regulation of sources of ionizing radiation, pending or promulgated, and proceedings thereon;

(k) Collect and disseminate information relating to non-ionizing radiation, including:

(i) Maintaining a state clearinghouse of information pertaining to sources and effects of nonionizing radiation with an emphasis on electric and magnetic fields;

(ii) Maintaining current information on the status and results of studies pertaining to health effects resulting from exposure to nonionizing radiation with an emphasis on studies pertaining to electric and magnetic fields;

(iii) Serving as the lead state agency on matters pertaining to electric and magnetic fields and periodically informing state agencies of relevant information pertaining to nonionizing radiation;

(l) In connection with any adjudicative proceeding as defined by RCW 34.05.010 or any other administrative proceedings as provided for in this chapter, have the power to issue subpoenas in order to compel the attendance of necessary witnesses and/or the production of records or documents.

(5) In order to avoid duplication of efforts, the agency may acquire the data requested under this section from public and private entities that possess this information. [2012 c 117 § 414; 1990 c 173 § 2; 1989 c 175 § 132; 1985 c 383 § 1; 1985 c 372 § 1; 1971 ex.s. c 189 § 10; 1970 ex.s. c 18 § 16; 1965 c 88 § 3; 1961 c 207 § 5. Formerly RCW 70.98.050.]

Finding—1990 c 173: "The legislature finds that concern has been raised over possible health effects resulting from exposure to nonionizing radiation, and specifically exposure to electric and magnetic fields. The legislature further finds that there is no clear responsibility in state government for following this issue and that this responsibility is best suited for the department of health." [1990 c 173 § 1.]

Additional notes found at www.leg.wa.gov

70A.388.050 Rules and regulations—Licensing requirements and procedure—Notice of license application—Objections—Notice upon granting of license—Registration of sources of ionizing radiation—Exemptions from registration or licensing. (1) The agency shall provide by rule or regulation for general or specific licensing of by-product, source, special nuclear materials, or devices or

equipment utilizing such materials, or other radioactive material occurring naturally or produced artificially. Such rule or regulation shall provide for amendment, suspension, or revocation of licenses. Such rule or regulation shall provide that:

(a) Each application for a specific license shall be in writing and shall state such information as the agency, by rule or regulation, may determine to be necessary to decide the technical, insurance, and financial qualifications, or any other qualification of the applicant as the agency may deem reasonable and necessary to protect the occupational and public health and safety. The agency may at any time after the filing of the application, and before the expiration of the license, require further written statements and shall make such inspections as the agency deems necessary in order to determine whether the license should be granted or denied or whether the license should be modified, suspended, or revoked. In no event shall the agency grant a specific license to any applicant who has never possessed a specific license issued by a recognized state or federal authority until the agency has conducted an inspection which insures that the applicant can meet the rules, regulations and standards adopted pursuant to this chapter. All applications and statements shall be signed by the applicant or licensee. The agency may require any applications or statements to be made under oath or affirmation;

(b) Each license shall be in such form and contain such terms and conditions as the agency may by rule or regulation prescribe;

(c) No license issued under the authority of this chapter and no right to possess or utilize sources of ionizing radiation granted by any license shall be assigned or in any manner disposed of; and

(d) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules, regulations or orders issued in accordance with the provisions of this chapter.

(2) Before the agency issues a license to an applicant under this section, it shall give notice of such application to the chief executive officer of the incorporated city or town, if the application is for a license within an incorporated city or town, or to the county legislative authority, if the application is for a license outside the boundaries of incorporated cities or towns. The incorporated city or town, through the official or employee selected by it, or the county legislative authority or the official or employee selected by it, shall have the right to file with the agency within twenty days after date of transmittal of such notice, written objections against the applicant or against the activity for which the license is sought, and shall include with such objections a statement of all facts upon which such objections are based, and in case written objections are filed, may request and the agency may in its discretion hold a formal hearing under chapter 34.05 RCW. Upon the granting of a license under this section the agency shall send a duplicate of the license or written notification to the chief executive officer of the incorporated city or town in which the license is granted, or to the county legislative authority if the license is granted outside the boundaries of incorporated cities or towns.

This subsection shall not apply to activities conducted within the boundaries of the Hanford reservation.

(3) The agency may require registration of all sources of ionizing radiation.

(4) The agency may exempt certain sources of ionizing radiation or kinds of uses or users from the registration or licensing requirements set forth in this section when the agency makes a finding after approval of the technical advisory board that the exemption of such sources of ionizing radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

(5) In promulgating rules and regulations pursuant to this chapter the agency shall, insofar as practical, strive to avoid requiring dual licensing, and shall provide for such recognition of other state or federal licenses as the agency shall deem desirable, subject to such registration requirements as the agency may prescribe. [1984 c 96 § 1; 1965 c 88 § 5; 1961 c 207 § 8. Formerly RCW 70.98.080.]

70A.388.060 User permit system—Fees—Indemnify and hold state harmless—Adoption of rules. (1) The agency is empowered to administer a user permit system and issue site use permits for generators, packagers, or brokers to use the commercial low-level radioactive waste disposal facility. The agency may issue a site use permit consistent with the requirements of this chapter and the rules adopted under it and the requirements of the Northwest Interstate Compact on Low-Level Radioactive Waste Management under chapter 70A.380 RCW. The agency may deny an application for a site use permit or modify, suspend, or revoke a site use permit in any case in which it finds that the permit was obtained by fraud or there is or has been a failure, refusal, or inability to comply with the requirements of this chapter or rules adopted under this chapter or the requirements of the Northwest Interstate Compact on Low-Level Radioactive Waste Management under chapter 70A.380 RCW. The agency may also deny or suspend a site use permit for failure to comply with RCW 70A.384.110.

(2) Any permit issued by the department of ecology for a site use permit pursuant to chapter 70A.384 RCW is valid until the first expiration date that occurs after July 1, 2012.

(3) The agency shall collect a fee from the applicants for site use permits that is sufficient to fund the costs to the agency to administer the user permit system. The site use permit fee must be set at a level that is also sufficient to fund state participation in activities related to the Northwest Interstate Compact on Low-Level Radioactive Waste Management under chapter 70A.380 RCW. The site use permit fees must be deposited in the site closure account established in RCW 70A.384.050(2). Appropriations to the department of health or the department of ecology are required to permit expenditures using site use permit fee funds from the site closure account.

(4) The agency shall collect a surveillance fee as an added charge on each cubic foot of low-level radioactive waste disposed of at the commercial low-level radioactive waste disposal site in this state which shall be set at a level that is sufficient to fund completely the radiation control activities of the agency directly related to the disposal site, including but not limited to the management, licensing, monitoring, and regulation of the site. The fee shall also provide funds to the Washington state patrol for costs incurred from inspection of low-level radioactive waste shipments entering

this state. Disbursements for this purpose shall be by authorization of the secretary of the department of health or the secretary's designee.

(5) The agency shall require that any person who holds or applies for a permit under this chapter indemnify and hold harmless the state from claims, suits, damages, or expenses on account of injuries to or death of persons and property damage, arising or growing out of any operations and activities for which the person holds the permit, and any necessary or incidental operations.

(6) The agency may adopt such rules as are necessary to carry out its responsibilities under this section. [2020 c 20 § 1264; 2012 c 19 § 9; 1990 c 21 § 7; 1989 c 106 § 1; 1986 c 2 § 2; 1985 c 383 § 3. Formerly RCW 70.98.085.]

Effective date—2012 c 19: See note following RCW 70A.384.010.

70A.388.070 Inspection. The agency or its duly authorized representative shall have the power to enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violation of the provisions of this chapter and rules and regulations issued thereunder. [1985 c 372 § 2; 1961 c 207 § 9. Formerly RCW 70.98.090.]

Additional notes found at www.leg.wa.gov

70A.388.080 Financial assurance—Noncompliance. (1) The radiation control agency may require any person who applies for, or holds, a license under this chapter to demonstrate that the person has financial assurance sufficient to assure that liability incurred as a result of licensed operations and activities can be fully satisfied. Financial assurance may be in the form of insurance, cash deposits, surety bonds, corporate guarantees, letters of credit, or other financial instruments or guarantees determined by the agency to be acceptable financial assurance. The agency may require financial assurance in an amount determined by the secretary pursuant to RCW 70A.388.090.

(2) The radiation control agency may require site use permit holders to demonstrate financial assurance in an amount that is adequate to protect the state and its citizens from all claims, suits, losses, damages, or expenses on account of injuries to persons and property damage arising or growing out of the transportation or disposal of commercial low-level radioactive waste. The financial assurance may be in the form of insurance, cash deposits, surety bonds, corporate guarantees, and other acceptable instruments or guarantees determined by the secretary to be acceptable evidence of financial assurance. The agency may require financial assurance in an amount determined by the secretary pursuant to RCW 70A.388.090.

(3) The radiation control agency shall refuse to issue a license or permit or suspend the license or permit of any person required by this section to demonstrate financial assurance who fails to demonstrate compliance with this section. The license or permit shall not be issued or reinstated until the person demonstrates compliance with this section.

(4) The radiation control agency shall require (a) that any person required to demonstrate financial assurance, maintain with the agency current copies of any insurance policies, certificates of insurance, letters of credit, surety bonds, or any other documents used to comply with this section, (b) that the

agency be notified of any changes in the financial assurance or financial condition of the person, and (c) that the state be named as an insured party on any insurance policy used to comply with this section. [2020 c 20 § 1265; 2012 c 19 § 10; 1992 c 61 § 3; 1990 c 82 § 4; 1986 c 191 § 3. Formerly RCW 70.98.095.]

Effective date—2012 c 19: See note following RCW 70A.384.010.

Additional notes found at www.leg.wa.gov

70A.388.090 Financial assurance—Generally. (1) In making the determination of the appropriate level of financial assurance, the secretary shall consider: (a) Any report prepared by the department of ecology pursuant to RCW 70A.384.090; (b) the potential cost of decontamination, treatment, disposal, decommissioning, and cleanup of facilities or equipment; (c) federal cleanup and decommissioning requirements; and (d) the legal defense cost, if any, that might be paid from the required financial assurance.

(2) The secretary may establish different levels of required financial assurance for various classes of permit or license holders.

(3) The secretary shall establish by rule the instruments or mechanisms by which a person may demonstrate financial assurance as required by RCW 70A.388.080.

(4) To the extent that money in the site closure account together with the amount of money identified for repayment to the site closure account pursuant to RCW 70A.384.050 equals or exceeds the cost estimate approved by the department of health for closure and decommissioning of the commercial low-level radioactive waste disposal facility, the money in the site closure account together with the amount of money identified for repayment to the site closure account shall constitute adequate financial assurance for purposes of the department of health financial assurance requirements under RCW 70A.388.080. [2020 c 20 § 1266; 2012 c 19 § 11; 2003 1st sp.s. c 21 § 2; 1992 c 61 § 4; 1990 c 82 § 3. Formerly RCW 70.98.098.]

Effective date—2012 c 19: See note following RCW 70A.384.010.

70A.388.100 Records. (1) The agency shall require each person who possesses or uses a source of ionizing radiation to maintain necessary records relating to its receipt, use, storage, transfer, or disposal and such other records as the agency may require which will permit the determination of the extent of occupational and public exposure from the radiation source. Copies of these records shall be submitted to the agency on request. These requirements are subject to such exemptions as may be provided by rules.

(2) The agency may by rule and regulation establish standards requiring that personnel monitoring be provided for any employee potentially exposed to ionizing radiation and may provide for the reporting to any employee of his or her radiation exposure record. [2012 c 117 § 415; 1961 c 207 § 10. Formerly RCW 70.98.100.]

70A.388.110 Federal-state agreements—Authorized—Effect as to federal licenses. (1) The governor, on behalf of this state, is authorized to enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with

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respect to sources of ionizing radiation and the assumption thereof by this state pursuant to this chapter.

(2) Any person who, on the effective date of an agreement under subsection (1) above, possesses a license issued by the federal government shall be deemed to possess the same pursuant to a license issued under this chapter which shall expire either ninety days after the receipt from the state radiation control agency of a notice of expiration of such license or on the date of expiration specified in the federal license, whichever is earlier. [1965 c 88 § 6; 1961 c 207 § 11. Formerly RCW 70.98.110.]

70A.388.120 Inspection agreements and training programs. (1) The agency is authorized to enter into an agreement or agreements with the federal government, other states, or interstate agencies, whereby this state will perform on a cooperative basis with the federal government, other states, or interstate agencies, inspections or other functions relating to control of sources of ionizing radiation.

(2) The agency may institute training programs for the purpose of qualifying personnel to carry out the provisions of this chapter and may make said personnel available for participation in any program or programs of the federal government, other states, or interstate agencies in furtherance of the purposes of this chapter. [1961 c 207 § 12. Formerly RCW 70.98.120.]

70A.388.130 Department of ecology to seek federal funding for environmental radiation monitoring. The department of ecology shall seek federal funding, such as is available under the clean air act (42 U.S.C. Sec. 1857 et seq.) and the nuclear waste policy act (42 U.S.C. Sec. 10101 et seq.) to carry out the purposes of RCW 70A.388.040(4)(e). [2020 c 20 § 1267; 1985 c 372 § 3. Formerly RCW 70.98.122.]

Additional notes found at www.leg.wa.gov

70A.388.140 Federal assistance to be sought for high-level radioactive waste program. (1) The agency shall seek federal financial assistance as authorized by the nuclear waste policy act of 1982, P.L. 97-425 section 116(c), for activities related to the high-level radioactive waste program in the state of Washington. The activities for which federal funding is sought shall include, but are not limited to, the development of a radiological baseline for the Hanford reservation; the implementation of a program to monitor ionizing radiation emissions on the Hanford reservation; the collection of statistical data and epidemiological research, where available, on diseases that result from exposure to sources of ionizing radiation on the Hanford reservation.

(2) In the event the federal government refuses to grant financial assistance for the activities under subsection (1) of this section, the agency is directed to investigate potential legal action. [1985 c 383 § 2. Formerly RCW 70.98.125.]

70A.388.150 Administrative procedure. (1) In any proceeding under this chapter for the issuance or modification or repeal of rules relating to control of sources of ionizing radiation, the agency shall comply with the requirements of chapter 34.05 RCW, the administrative procedure act.

[Title 70A RCW—page 283]

(2) Notwithstanding any other provision of this chapter, whenever the agency finds that an emergency exists requiring immediate action to protect the public health, safety, or general welfare, the agency may, in accordance with RCW 34.05.350 without notice or hearing, adopt a rule reciting the existence of such emergency and require that such action be taken as is necessary to meet the emergency. As specified in RCW 34.05.350, such rules are effective immediately.

(3) In any case in which the department denies, modifies, suspends, or revokes a license or permit, RCW 43.70.115 governs notice of the action and provides the right to an adjudicative proceeding to the applicant or licensee or permittee. Such an adjudicative proceeding is governed by chapter 34.05 RCW. [2012 c 19 § 12; 1989 c 175 § 133; 1961 c 207 § 13. Formerly RCW 70.98.130.]

Effective date—2012 c 19: See note following RCW 70A.384.010.

Additional notes found at www.leg.wa.gov

70A.388.160 Injunction proceedings. Notwithstanding the existence or use of any other remedy, whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any rule, regulation, or order issued thereunder, the attorney general upon the request of the agency, after notice to such person and opportunity to comply, may make application to the appropriate court for an order enjoining such acts or practices, or for an order directing compliance, and upon a showing by the agency that such person has engaged in, or is about to engage in, any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted. [1961 c 207 § 14. Formerly RCW 70.98.140.]

70A.388.170 Prohibited uses. It shall be unlawful for any person to use, manufacture, produce, transport, transfer, receive, acquire, own, or possess any source of ionizing radiation unless licensed by or registered with, or exempted by the agency in accordance with the provisions of this chapter. [1965 c 88 § 7; 1961 c 207 § 15. Formerly RCW 70.98.150.]

70A.388.180 Impounding of materials. The agency shall have the authority in the event of an emergency to impound or order the impounding of sources of ionizing radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of this chapter or any rules or regulations issued thereunder. [1961 c 207 § 16. Formerly RCW 70.98.160.]

70A.388.190 Prohibition—Fluoroscopic X-ray shoe-fitting devices. The operation or maintenance of any X-ray, fluoroscopic, or other equipment or apparatus employing roentgen rays, in the fitting of shoes or other footwear or in the viewing of bones in the feet is prohibited. This prohibition does not apply to any licensed physician, surgeon, *podiatrist, or any person practicing a licensed healing art, or any technician working under the direct and immediate supervision of such persons. [1973 c 77 § 27; 1961 c 207 § 17. Formerly RCW 70.98.170.]

*Reviser's note: The term "podiatrist" was changed to "podiatric physician and surgeon" by 1990 c 147.

70A.388.200 Exemptions. This chapter shall not apply to the following sources or conditions:

(1) Radiation machines during process of manufacture, or in storage or transit: PROVIDED, That this exclusion shall not apply to functional testing of such machines.

(2) Any radioactive material while being transported in conformity with regulations adopted by any federal agency having jurisdiction therein, and specifically applicable to the transportation of such radioactive materials.

(3) No exemptions under this section are granted for those quantities or types of activities which do not comply with the established rules and regulations promulgated by the Atomic Energy Commission, or any successor thereto. [1965 c 88 § 8; 1961 c 207 § 18. Formerly RCW 70.98.180.]

70A.388.210 Professional uses. Nothing in this chapter shall be construed to limit the kind or amount of radiation that may be intentionally applied to a person for diagnostic or therapeutic purposes by or under the immediate direction of a licensed practitioner of the healing arts acting within the scope of his or her professional license. [2012 c 117 § 416; 1961 c 207 § 19. Formerly RCW 70.98.190.]

70A.388.220 Penalties. Any person who violates any of the provisions of this chapter or rules, regulations, or orders in effect pursuant thereto shall be guilty of a gross misdemeanor. [1961 c 207 § 20. Formerly RCW 70.98.200.]

70A.388.230 Adoption of rules for administering site use permit program. The agency shall adopt rules for administering a site use permit program under RCW 70A.388.060. [2020 c 20 § 1268; 2012 c 19 § 13. Formerly RCW 70.98.220.]

Effective date—2012 c 19: See note following RCW 70A.384.010.

70A.388.901 Effective date—1961 c 207. The provisions of this act relating to the control of by-product, source and special nuclear materials shall become effective on the effective date of the agreement between the federal government and this state as authorized in RCW 70A.388.110. All other provisions of this act shall become effective on the 30th day of June, 1961. [2020 c 20 § 1269; 1961 c 207 § 23. Formerly RCW 70.98.910.]

70A.388.902 Section headings not part of law. Section headings as used in this chapter do not constitute any part of the law. [1961 c 207 § 25. Formerly RCW 70.98.920.]

Chapter 70A.390 RCW RADIOACTIVE WASTE STORAGE AND TRANSPORTATION ACT OF 1980

Sections

70A.390.010	Finding.
70A.390.020	Definitions.
70A.390.030	Storage of radioactive waste from outside the state prohibited—Exceptions.
70A.390.040	Transportation of radioactive waste from outside the state for storage within the state prohibited—Exception.
70A.390.050	Violations—Penalties—Injunctions—Jurisdiction and venue—Fees and costs.
70A.390.060	Interstate compact for regional storage.
70A.390.900	Construction—1981 c 1.
70A.390.901	Short title.

Nuclear energy and radiation: Chapter 70A.388 RCW.

Radioactive and hazardous waste emergency response programs, state coordinator: RCW 38.52.030.

Uranium and thorium mill tailings—Licensing and perpetual care: Chapter 70A.310 RCW.

70A.390.010 Finding. The people of the state of Washington find that:

(1) Radioactive wastes are highly dangerous, in that releases of radioactive materials and emissions to the environment are inimical to the health and welfare of the people of the state of Washington, and contribute to the occurrences of harmful diseases, including excessive cancer and leukemia. The dangers posed by the transportation and presence of radioactive wastes are increased further by the long time periods that the wastes remain radioactive and highly dangerous;

(2) Transporting, handling, storing, or otherwise caring for radioactive waste presents a hazard to the health, safety, and welfare of the individual citizens of the state of Washington because of the ever-present risk that an accident or incident will occur while the wastes are being cared for;

(3) The likelihood that an accident will occur in this state involving the release of radioactive wastes to the environment becomes greater as the volume of wastes transported, handled, stored, or otherwise cared for in this state increases;

(4) The effects of unplanned releases of radioactive wastes into the environment, especially into the air and water of the state, are potentially both widespread and harmful to the health, safety, and welfare of the citizens of this state.

The burdens and hazards posed by increasing the volume of radioactive wastes transported, handled, stored, or otherwise cared for in this state by the importation of such wastes from outside this state is not a hazard the state government may reasonably ask its citizens to bear. The people of the state of Washington believe that the principles of federalism do not require the sacrifice of the health, safety, and welfare of the people of one state for the convenience of other states or nations. [1981 c 1 § 1 (Initiative Measure No. 383, approved November 4, 1980). Formerly RCW 70.99.010.]

70A.390.020 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Radioactive waste" means unwanted radioactive material, including radioactive residues produced as a result of electric power generation or other reactor operation.

(2) "Medical waste" means radioactive waste from all therapy, diagnosis, or research in medical fields and radioactive waste which results from the production and manufacture of radioactive material used for therapy, diagnosis, or research in medical fields, except that "medical waste" does not include spent fuel or waste from the fuel of an isotope production reactor.

(3) "Radioactive waste generated or otherwise produced outside the geographic boundaries of the state of Washington" means radioactive waste which was located outside the state of Washington at the time of removal from a reactor vessel. [1981 c 1 § 2 (Initiative Measure No. 383, approved November 4, 1980). Formerly RCW 70.99.020.]

70A.390.030 Storage of radioactive waste from outside the state prohibited—Exceptions. Notwithstanding

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any law, order, or regulation to the contrary, after July 1, 1981, no area within the geographic boundaries of the state of Washington may be used by any person or entity as a temporary, interim, or permanent storage site for radioactive waste, except medical waste, generated or otherwise produced outside the geographic boundaries of the state of Washington. This section does not apply to radioactive waste stored within the state of Washington prior to July 1, 1981. [1981 c 1 § 3 (Initiative Measure No. 383, approved November 4, 1980). Formerly RCW 70.99.030.]

70A.390.040 Transportation of radioactive waste from outside the state for storage within the state prohibited—Exception. Notwithstanding any law, order, or regulation to the contrary, after July 1, 1981, no person or entity may transport radioactive waste, except medical waste, generated or otherwise produced outside the geographic boundaries of the state of Washington to any site within the geographic boundaries of the state of Washington for temporary, interim, or permanent storage. [1981 c 1 § 4 (Initiative Measure No. 383, approved November 4, 1980). Formerly RCW 70.99.040.]

70A.390.050 Violations—Penalties—Injunctions—Jurisdiction and venue—Fees and costs. (1) A violation of or failure to comply with the provisions of RCW 70A.390.030 or 70A.390.040 is a gross misdemeanor.

(2) Any person or entity that violates or fails to comply with the provisions of RCW 70A.390.030 or 70A.390.040 is subject to a civil penalty of one thousand dollars for each violation or failure to comply.

(3) Each day upon which a violation occurs constitutes a separate violation for the purposes of subsections (1) and (2) of this section.

(4) Any person or entity violating this chapter may be enjoined from continuing the violation. The attorney general or any person residing in the state of Washington may bring an action to enjoin violations of this chapter, on his or her own behalf and on the behalf of all persons similarly situated. Such action may be maintained in the person's own name or in the name of the state of Washington. No bond may be required as a condition to obtaining any injunctive relief. The superior courts have jurisdiction over actions brought under this section, and venue shall lie in the county of the plaintiff's residence, in the county in which the violation is alleged to occur, or in Thurston county. In addition to other relief, the court in its discretion may award attorney's and expert witness fees and costs of the suit to a party who demonstrates that a violation of this chapter has occurred. [2020 c 20 § 1270; 1981 c 1 § 5 (Initiative Measure No. 383, approved November 4, 1980). Formerly RCW 70.99.050.]

70A.390.060 Interstate compact for regional storage. Notwithstanding the other provisions of this chapter, the state of Washington may enter into an interstate compact, which will become effective upon ratification by a majority of both houses of the United States Congress, to provide for the regional storage of radioactive wastes. [1981 c 1 § 6 (Initiative Measure No. 383, approved November 4, 1980). Formerly RCW 70.99.060.]

Northwest Interstate Compact on Low-Level Radioactive Waste Management: Chapter 70A.380 RCW.

70A.390.900 Construction—1981 c 1. This chapter shall be liberally construed to protect the health, safety, and welfare of the individual citizens of the state of Washington. [1981 c 1 § 7 (Initiative Measure No. 383, approved November 4, 1980). Formerly RCW 70.99.900.]

70A.390.901 Short title. This act may be known as the Radioactive Waste Storage and Transportation Act of 1980. [1981 c 1 § 9 (Initiative Measure No. 383, approved November 4, 1980). Formerly RCW 70.99.910.]

Chapter 70A.400 RCW FIREFIGHTING AGENTS AND EQUIPMENT— TOXIC CHEMICAL USE

Sections

70A.400.005	Definitions.
70A.400.010	Discharge or use for training purposes of certain class B firefighting foam prohibited.
70A.400.020	Manufacture, sale, or distribution of certain class B firefighting foam restricted—Publication of findings—Exceptions.
70A.400.030	Sale of firefighting personal protective equipment containing PFAS chemicals—Written notice to purchaser required—Retention.
70A.400.040	Manufacturer of restricted class B firefighting foam—Notification to sellers—Recall of prohibited products.
70A.400.050	Class B firefighting foam/firefighting personal protective equipment—Certificate of compliance—Department duties.
70A.400.060	Penalties.

70A.400.005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Chemical plant" has the same meaning as in WAC 296-24-33001, as that section existed as of January 1, 2018.

(2) "Class B firefighting foam" means foams designed for flammable liquid fires.

(3) "Department" means the department of ecology.

(4) "Firefighting personal protective equipment" means any clothing designed, intended, or marketed to be worn by firefighting personnel in the performance of their duties, designed with the intent for the use in fire and rescue activities, including jackets, pants, shoes, gloves, helmets, and respiratory equipment.

(5) "Local governments" includes any county, city, town, fire district, regional fire protection authority, or other special purpose district that provides firefighting services.

(6) "Manufacturer" includes any person, firm, association, partnership, corporation, organization, joint venture, importer, or domestic distributor of firefighting agents or firefighting equipment. For the purposes of this subsection, "importer" means the owner of the product.

(7) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS chemicals" means, for the purposes of firefighting agents and firefighting equipment, a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom. [2018 c 286 § 1. Formerly RCW 70.75A.005.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

70A.400.010 Discharge or use for training purposes of certain class B firefighting foam prohibited. Beginning July 1, 2018, a person, local government, or state agency may not discharge or otherwise use for training purposes class B firefighting foam that contains intentionally added PFAS chemicals. [2018 c 286 § 2. Formerly RCW 70.75A.010.]

70A.400.020 Manufacture, sale, or distribution of certain class B firefighting foam restricted—Publication of findings—Exceptions. (1) Beginning July 1, 2020, a manufacturer of class B firefighting foam may not manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state class B firefighting foam to which PFAS chemicals have been intentionally added.

(2)(a) The restrictions in subsection (1) of this section do not apply to any manufacture, sale, or distribution of class B firefighting foam where the inclusion of PFAS chemicals are required by federal law, including but not limited to the requirements of 14 C.F.R. 139.317, as that section existed as of January 1, 2018.

(b) In the event that the requirements of 14 C.F.R. Sec. 139.317 or other applicable federal regulations change after January 1, 2018, to allow the use of alternative firefighting agents that do not contain PFAS chemicals, then as of the effective date of that change, the department shall publish a finding to that effect in the Washington State Register and submit this finding to the appropriate committees of the house of representatives and the senate. The department's publication regarding a change in the federal regulations must be specific with respect to the involved federal agency and use and, if identified by the federal agency, the alternative firefighting agent. Two years after publication in the Washington State Register, the restrictions of subsection (1) of this section apply to the manufacture, sale, and distribution of class B firefighting foam that contains intentionally added PFAS chemicals for the uses specified in 14 C.F.R. Sec. 139.317 or other applicable federal regulations. However, the restrictions of subsection (1) of this section do not take effect for an additional year if all of the airports in Washington certificated under 14 C.F.R. Sec. 139 have not been able to secure alternative firefighting agents and any necessary infrastructure to apply the agent in order to meet certification requirements, as determined by the department. Eighteen months after the department's original publication in the Washington State Register, each section 139 licensed airport shall report to the department on the airport's status with respect to obtaining alternative firefighting agents approved by the federal aviation administration and any necessary infrastructure. The department must publish a second notice delaying the restrictions under subsection (1) of this section for an additional year if the department has determined that any section 139 airport is unable to secure alternative firefighting agents without intentionally added PFAS chemicals or infrastructure to meet certification requirements because the agents or infrastructure are not commercially available.

(3)(a) The restrictions in subsection (1) of this section do not apply until January 1, 2024, to any manufacture, sale, or distribution of class B firefighting foam to a person for use at a terminal, as defined in RCW 82.23A.010, operated by the person, a chemical plant operated by the person, or an oil refinery operated by the person.

(b) A person who operates a chemical plant, refinery, or terminal may apply to the department for a waiver. A waiver may only be for two years and may only be extended by the department for one additional two-year term. The department may grant a waiver if the applicant provides:

(i) Clear and convincing evidence that there is no commercially available replacement that does not contain intentionally added PFAS chemicals that is capable of suppressing a large atmospheric storage tank fire;

(ii) Information on the amount of firefighting foam containing intentionally added PFAS chemicals stored, used, or released on-site on an annual basis;

(iii) A report on the progress being made by the operator of the chemical plant, terminal, or refinery to transition to use of firefighting foam at the facility that does not contain intentionally added PFAS chemicals; and

(iv) An explanation of how all releases of firefighting foam will be fully contained on-site and how existing containment measures will not allow firewater, wastewater, runoff, and other wastes to be released to the environment including, but not limited to, soils, groundwater, waterways, and stormwater.

(c) Nothing in this section prohibits an oil refinery or terminal from providing class B firefighting foam in the form of mutual aid to another refinery or terminal in the event of a class B fire. [2020 c 23 § 1; 2018 c 286 § 3. Formerly RCW 70.75A.020.]

70A.400.030 Sale of firefighting personal protective equipment containing PFAS chemicals—Written notice to purchaser required—Retention. (1) Beginning July 1, 2018, a manufacturer or other person that sells firefighting personal protective equipment to any person, local government, or state agency must provide written notice to the purchaser at the time of sale if the firefighting personal protective equipment contains PFAS chemicals. The written notice must include a statement that the firefighting personal protective equipment contains PFAS chemicals and the reason PFAS chemicals are added to the equipment.

(2) The manufacturer or person selling firefighting personal protective equipment and the purchaser of the equipment must retain the notice on file for at least three years from the date of the transaction. Upon the request of the department, a person, manufacturer, or purchaser must furnish the notice, or written copies, and associated sales documentation to the department within sixty days. [2018 c 286 § 4. Formerly RCW 70.75A.030.]

70A.400.040 Manufacturer of restricted class B firefighting foam—Notification to sellers—Recall of prohibited products. (1) A manufacturer of class B firefighting foam restricted under RCW 70A.400.020 must notify, in writing, persons that sell the manufacturer's products in this state about the provisions of this chapter no less than one year prior to the effective date of the restrictions.

(2) A manufacturer that produces, sells, or distributes a class B firefighting foam prohibited under RCW 70A.400.020 shall recall the product and reimburse the retailer or any other purchaser for the product. [2020 c 20 § 1067; 2018 c 286 § 5. Formerly RCW 70.75A.040.]

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70A.400.050 Class B firefighting foam/firefighting personal protective equipment—Certificate of compliance—Department duties. (1) The department may request a certificate of compliance from a manufacturer of class B firefighting foam or firefighting personal protective equipment. A certificate of compliance attests that a manufacturer's product or products meets the requirements of this chapter.

(2) Beginning July 1, 2018, the department shall assist the department of enterprise services, other state agencies, fire protection districts, and other local governments to avoid purchasing or using class B firefighting foams to which PFAS chemicals have been intentionally added. The department shall assist the department of enterprise services, other state agencies, fire protection districts, and other local governments to give priority and preference to the purchase of firefighting personal protective equipment that does not contain PFAS chemicals. [2018 c 286 § 6. Formerly RCW 70.75A.050.]

70A.400.060 Penalties. A manufacturer of class B firefighting foam in violation of RCW 70A.400.020 or 70A.400.040 or a person in violation of RCW 70A.400.010 or 70A.400.030 is subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers, local governments, or persons that are repeat violators are subject to a civil penalty not to exceed ten thousand dollars for each repeat offense. Penalties collected under this section must be deposited in the model toxics control operating account created in RCW 70A.305.180. [2020 c 20 § 1068; 2019 c 422 § 403; 2018 c 286 § 7. Formerly RCW 70.75A.060.]

Effective date—Intent—2019 c 422: See notes following RCW 82.21.010.

Chapter 70A.405 RCW

POLYBROMINATED DIPHENYL ETHERS—FLAME RETARDANTS

Sections

70A.405.005	Findings.
70A.405.010	Definitions.
70A.405.020	Manufacture, sale, or distribution of noncombustible products containing PBDEs—Exemptions.
70A.405.030	Manufacture, sale, or distribution of products containing commercial deca-bde—Departments review of commercial deca-bde alternatives—Effective date of prohibitions.
70A.405.040	Fire safety committee.
70A.405.050	Departments review of commercial deca-bde alternatives and effects of PBDEs in waste stream—Publication.
70A.405.060	Exclusions from chapter—Transportation and storage.
70A.405.070	Notification to sellers.
70A.405.080	Assistance to state agencies.
70A.405.090	Retailers—Liability—Existing stock.
70A.405.100	Enforcement—Achieving compliance with chapter—Enforcement sequence—Recall—Penalties.
70A.405.110	Rules.

70A.405.005 Findings. Polybrominated diphenyl ethers (PBDEs) have been used extensively as flame retardants in a large number of common household products for the past thirty years. Studies on animals show that PBDEs can impact the developing brain, affecting behavior and learning after birth and into adulthood, making exposure to fetuses and children a particular concern. Levels of PBDEs are increasing in people, and in the environment, particularly

in North America. Because people can be exposed to these chemicals through house dust and indoor air as well as through food, it is important to phase out their use in common household products, provided that effective flame retardants that are safer and technically feasible are available at a reasonable cost. [2007 c 65 § 1. Formerly RCW 70.76.005.]

70A.405.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Comestible" means edible.
- (2) "Commercial decabromo diphenyl ether" or "commercial deca-bde" means the chemical mixture of decabromo diphenyl ether, including associated polybrominated diphenyl ether impurities not intentionally added.
- (3) "Department" means the department of ecology.
- (4) "Electronic enclosure" means the plastic housing that encloses the components of electronic products, including but not limited to televisions and computers.
- (5) "Manufacturer" means any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a product containing polybrominated diphenyl ethers or an importer or domestic distributor of a noncomestible product containing polybrominated diphenyl ethers. A manufacturer does not include a retailer who:
 - (a) Adds a private label brand or cobrands a product for sale; or
 - (b) Assembles components to create a single noncomestible product based on an individual consumer preference.
- (6) "Mattress" has the same meaning as defined by the United States consumer product safety commission in 16 C.F.R. Part 1633 (2007) as it existed on July 22, 2007, and includes mattress sets, box springs, futons, crib mattresses, and youth mattresses. "Mattress" includes mattress pads.
- (7) "Medical device" means an instrument, machine, implant, or diagnostic test used to help diagnose a disease or other condition or to cure, treat, or prevent disease.
- (8) "Polybrominated diphenyl ethers" or "PBDEs" means chemical forms that consist of diphenyl ethers bound with bromine atoms. Polybrominated diphenyl ethers include, but are not limited to, the three primary forms of the commercial mixtures known as pentabromo diphenyl ether (penta-bde), octabromo diphenyl ether (octa-bde), and decabromo diphenyl ether (deca-bde).
- (9) "Residential upholstered furniture" means residential seating products intended for indoor use in a home or other dwelling intended for residential occupancy that consists in whole or in part of resilient cushioning materials enclosed within a covering consisting of fabric or related materials, if the resilient cushioning materials are sold with the item of upholstered furniture and the upholstered furniture is constructed with a contiguous upholstered seat and back that may include arms.
- (10) "Retailer" means a person who offers a product for sale at retail through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or the internet, but does not include a sale that is a wholesale transaction with a distributor or a retailer. A retailer does not include a person, firm, association, partnership, corporation, govern-

mental entity, organization, or joint venture that both manufactures and sells a product at retail.

(11) "Technically feasible" means an alternative that is available at a cost and in sufficient quantity to permit the manufacturer to produce an economically viable product.

(12) "Transportation vehicle" means a mechanized vehicle that is used to transport goods or people including, but not limited to, airplanes, automobiles, motorcycles, trucks, buses, trains, boats, ships, streetcars, or monorail cars. [2007 c 65 § 2. Formerly RCW 70.76.010.]

70A.405.020 Manufacture, sale, or distribution of noncomestible products containing PBDEs—Exemptions. After January 1, 2008, no person may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state noncomestible products containing PBDEs. Exemptions from the prohibition in this section are limited to the following:

- (1) Products containing deca-bde, except as provided in RCW 70A.405.030;
- (2) The sale or distribution of any used transportation vehicle manufactured before January 1, 2008, with component parts containing PBDEs;
- (3) The sale or distribution of any used transportation vehicle parts or new transportation vehicle parts manufactured before January 1, 2008, that contain PBDEs;
- (4) The manufacture, sale, repair, distribution, maintenance, refurbishment, or modification of equipment containing PBDEs and used primarily for military or federally funded space program applications. The exemption in this subsection (4) does not cover consumer-based goods with broad applicability;
- (5) Federal aviation administration fire worthiness requirements and recommendations;
- (6) The manufacture, sale, repair, distribution, maintenance, refurbishment, or modification of any new raw material or component part used in a transportation vehicle with component parts, including original spare parts, containing deca-bde;
- (7) The use of commercial deca-bde in the maintenance, refurbishment, or modification of transportation equipment;
- (8) The sale or distribution of any product containing PBDEs that has been previously owned, purchased, or sold in commerce, provided it was manufactured before the effective date of the prohibition;
- (9) The manufacture, sale, or distribution of any new product or product component consisting of recycled or used materials containing deca-bde;
- (10) The sale or purchase of any previously owned product containing PBDEs made in casual or isolated sales as defined in RCW 82.04.040 and to sales by nonprofit organizations;
- (11) The manufacture, sale, or distribution of new carpet cushion made from recycled foam containing less than one-tenth of one percent penta-bde; and
- (12) Medical devices. [2020 c 20 § 1069; 2007 c 65 § 3. Formerly RCW 70.76.020.]

70A.405.030 Manufacture, sale, or distribution of products containing commercial deca-bde—Departments review of commercial deca-bde alternatives—Effective

date of prohibitions. (1) Except as provided in RCW 70A.405.090, no person may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state mattresses containing commercial deca-bde after January 1, 2008.

(2) Except as provided in RCW 70A.405.090, no person may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state residential upholstered furniture that contains commercial deca-bde, or any television or computer that has an electronic enclosure that contains commercial deca-bde after the effective date established in subsection (3) of this section. This prohibition may not take effect until the department and the department of health identify that a safer and technically feasible alternative is available, and the fire safety committee, created in RCW 70A.405.040, determines that the identified alternative meets applicable fire safety standards. The effective date of the prohibition must be established according to the following process:

(a) The department and the department of health shall review risk assessments, scientific studies, and other relevant findings regarding alternatives to the use of commercial deca-bde in residential upholstered furniture, televisions, and computers.

(b) If the department and the department of health jointly find that safer and technically feasible alternatives are available for any of these uses, the department shall convene the fire safety committee created in RCW 70A.405.040 to determine whether the identified alternatives meet applicable fire safety standards.

(c) By majority vote, the fire safety committee created in RCW 70A.405.040 shall make a finding whether an alternative identified under (b) of this subsection meets applicable fire safety standards. The fire safety committee shall report their finding to the state fire marshal. After reviewing the finding of the fire safety committee, the state fire marshal shall determine whether an alternative identified under (b) of this subsection meets applicable fire safety standards. The determination of the fire marshal must be based upon the finding of the fire safety committee. The state fire marshal shall report the determination to the department.

(d) The department shall seek public input on their findings, the findings of the fire safety committee, and the determination by the state fire marshal. The department shall publish these findings in the Washington State Register, and submit them in a report to the appropriate committees of the legislature. The department shall initially report these findings by December 31, 2008.

(3) The effective date of the prohibition is as follows:

(a) If the December 31, 2008, report required in subsection (2)(d) of this section finds that a safer and technically feasible alternative that meets applicable fire safety standards is available, the prohibition takes effect January 1, 2011;

(b) If the December 31, 2008, report required in subsection (2)(d) of this section does not find that a safer and technically feasible alternative that meets applicable fire safety standards is available, the prohibition does not take effect January 1, 2011. Beginning in 2009, by December 31st of each year, the department shall review and report on alternatives as described in subsection (2) of this section. The prohibition in subsection (2) of this section takes effect two years

after a report submitted to the legislature required under subsection (2)(d) of this section finds that a safer and technically feasible alternative that meets applicable fire safety standards is available. [2020 c 20 § 1070; 2007 c 65 § 4. Formerly RCW 70.76.030.]

70A.405.040 Fire safety committee. (1) The fire safety committee is created for the exclusive purpose of finding whether an alternative identified under RCW 70A.405.030(2)(b) meets applicable fire safety standards.

(2) A majority vote of the members of the fire safety committee constitutes a finding that an alternative meets applicable fire safety standards.

(3) The fire safety committee consists of the following members:

(a) A representative from the department, who shall chair the fire safety committee, and serve as an ex officio nonvoting member.

(b) Five voting members, appointed by the governor, as follows:

(i) A representative of the office of the state fire marshal;

(ii) A representative of a statewide association representing the interests of fire chiefs;

(iii) A representative of a statewide association representing the interests of fire commissioners;

(iv) A representative of a recognized statewide council, affiliated with an international association representing the interests of firefighters; and

(v) A representative of a statewide association representing the interests of volunteer firefighters. [2020 c 20 § 1071; 2007 c 65 § 5. Formerly RCW 70.76.040.]

70A.405.050 Departments review of commercial deca-bde alternatives and effects of PBDEs in waste stream—Publication. The department and the department of health shall review risk assessments, scientific studies, and other relevant findings regarding alternatives to the use of commercial deca-bde in products not directly addressed in this chapter. If a flame retardant that is safer and technically feasible becomes available, the department shall convene the fire safety committee created in RCW 70A.405.040. The fire safety committee and the state fire marshal shall proceed as required in RCW 70A.405.030(2)(c) to determine if the identified alternative meets applicable fire safety standards. The department and the department of health shall also review risk assessments, scientific studies, and other findings regarding the potential effect of PBDEs in the waste stream. By December 31st of the year in which the finding is made, the department must publish the information required by this section in the Washington State Register and present it in a report to the appropriate committees of the legislature. [2020 c 20 § 1072; 2007 c 65 § 6. Formerly RCW 70.76.050.]

70A.405.060 Exclusions from chapter—Transportation and storage. Nothing in this chapter restricts the ability of a manufacturer, importer, or distributor from transporting products containing PBDEs through the state or storing the products in the state for later distribution outside the state. [2007 c 65 § 7. Formerly RCW 70.76.060.]

70A.405.070 Notification to sellers. A manufacturer of products containing PBDEs that are restricted under this chapter must notify persons that sell the manufacturer's products in this state about the provisions of this chapter no less than ninety days prior to the effective date of the restrictions. [2007 c 65 § 8. Formerly RCW 70.76.070.]

70A.405.080 Assistance to state agencies. The department shall assist state agencies to give priority and preference to the purchase of equipment, supplies, and other products that do not contain PBDEs. [2007 c 65 § 9. Formerly RCW 70.76.080.]

70A.405.090 Retailers—Liability—Existing stock. (1) Retailers who unknowingly sell products prohibited under RCW 70A.405.020 or 70A.405.030 are not liable under this chapter.

(2) In-state retailers in possession of products on the date that restrictions on the sale of the products become effective under RCW 70A.405.020 or 70A.405.030 may exhaust their existing stock through sales to the public.

(3) The department must assist in-state retailers in identifying potential products containing PBDEs.

(4) If a retailer unknowingly possesses products that are prohibited for sale under RCW 70A.405.020 or 70A.405.030 and the manufacturer does not recall the products as required under RCW 70A.405.100(2), the retailer may exhaust its existing stock through sales to the public. However, no additional prohibited stock may be sold or offered for sale. [2020 c 20 § 1073; 2007 c 65 § 10. Formerly RCW 70.76.090.]

70A.405.100 Enforcement—Achieving compliance with chapter—Enforcement sequence—Recall—Penalties. (1) Enforcement of this chapter must rely on notification and information exchange between the department and manufacturers. The department must achieve compliance with this chapter using the following enforcement sequence:

(a) Before the effective date of the product prohibition in RCW 70A.405.020 or 70A.405.030, the department must prepare and distribute information to in-state manufacturers and out-of-state manufacturers, to the maximum extent practicable, to assist them in identifying products prohibited for manufacture, sale, or distribution under this chapter.

(b) The department may request a certificate of compliance from a manufacturer. A certificate of compliance attests that a manufacturer's product or products meets the requirements of this chapter.

(c) The department may issue a warning letter to a manufacturer that produces, sells, or distributes prohibited products in violation of this chapter. The department must offer information or other appropriate assistance to the manufacturer in complying with this chapter. If, after one year, compliance is not achieved, penalties may be assessed under subsection (3) of this section.

(2) A manufacturer that knowingly produces, sells, or distributes a product prohibited from manufacture, sale, or distribution in this state under this chapter must recall the product and reimburse the retailer or any other purchaser for the product and any applicable shipping and handling for returning the products.

(3) A manufacturer of products containing PBDEs in violation of this chapter is subject to a civil penalty not to exceed one thousand dollars for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty not to exceed five thousand dollars for each repeat offense. Penalties collected under this section must be deposited in the model toxics control operating account created in RCW 70A.305.180. [2020 c 20 § 1074; 2019 c 422 § 404; 2007 c 65 § 11. Formerly RCW 70.76.100.]

Effective date—Intent—2019 c 422: See notes following RCW 82.21.010.

70A.405.110 Rules. The department may adopt rules to fully implement this chapter. [2007 c 65 § 12. Formerly RCW 70.76.110.]

Chapter 70A.410 RCW DETERGENT PHOSPHORUS CONTENT

Sections

70A.410.005	Finding.
70A.410.010	Definitions.
70A.410.020	Phosphorus content regulated.
70A.410.030	Notice to distributors and wholesalers.
70A.410.040	Injunction.

70A.410.005 Finding. The legislature hereby finds and declares that:

(1) Phosphorus loading of surface waters can stimulate the growth of weeds and algae, and that such growth can have adverse environmental, health, and aesthetic effects;

(2) Household detergents contribute to phosphorus loading, and that a limit on detergents containing phosphorus can significantly reduce the discharge of phosphorus into the state's surface and ground waters;

(3) Household detergents containing no or very low phosphorus are readily available and that over thirty percent of the United States population lives in areas with a ban on detergents containing phosphorus;

(4) Phosphorus limits on household detergents can significantly reduce treatment costs at those sewage treatment facilities that remove phosphorus from the waste stream; and

(5) While significant reductions of phosphorus from laundry detergent have been accomplished, similar progress in reducing phosphorus contributions from dishwashing detergents has not been achieved.

It is therefore the intent of the legislature to impose a statewide limit on the phosphorus content of household detergents. [2006 c 223 § 1; 1993 c 118 § 1. Formerly RCW 70.95L.005.]

70A.410.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 70A.410.005 through 70A.410.030.

(1) "Department" means the department of ecology.

(2) "Dishwashing detergent" means a cleaning agent sold, used, or manufactured for the purpose of cleaning dishes, whether by hand or by household machine.

(3) "Laundry detergent" means a cleaning agent sold, used, or manufactured for the purpose of cleaning laundry, whether by hand or by household machine.

(4) "Person" means an individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(5) "Phosphorus" means elemental phosphorus. [2020 c 20 § 1243; 1993 c 118 § 2. Formerly RCW 70.95L.010.]

70A.410.020 Phosphorus content regulated. (1) After July 1, 1994, a person may not sell or distribute for sale a laundry detergent that contains 0.5 percent or more phosphorus by weight.

(2)(a) After July 1, 1994, and until the dates specified in this subsection, a person may not sell or distribute for sale a dishwashing detergent that contains 8.7 percent or more phosphorus by weight.

(b) Beginning July 1, 2008, in counties located east of the crest of the Cascade mountains with populations greater than four hundred thousand, as determined by office of financial management population estimates, a person may not sell or distribute for sale a dishwashing detergent that contains 0.5 percent or more phosphorus by weight.

(c) From July 1, 2008, to June 30, 2010, in counties located west of the crest of the Cascade mountains with populations greater than one hundred eighty thousand and less than two hundred twenty thousand, as determined by office of financial management population estimates, a person may not sell or distribute for sale a dishwashing detergent that contains 0.5 percent or more phosphorus by weight except in a single-use package containing no more than 2.0 grams of phosphorus.

(d) Beginning July 1, 2010, a person may not sell or distribute for sale a dishwashing detergent that contains 0.5 percent or more phosphorus by weight in the state.

(e) For purposes of this section, "single-use package" means a tablet or other form of dishwashing detergent that is constituted and intended for use in a single washing.

(3) This section does not apply to the sale or distribution of detergents for commercial and industrial uses. [2008 c 193 § 1; 2006 c 223 § 2; 1993 c 118 § 3. Formerly RCW 70.95L.020.]

70A.410.030 Notice to distributors and wholesalers. The department is responsible for notifying major distributors and wholesalers of the statewide limit on phosphorus in detergents. [1993 c 118 § 4. Formerly RCW 70.95L.030.]

70A.410.040 Injunction. The attorney general or appropriate city or county prosecuting attorney is authorized to bring an appropriate action to enjoin any violation of the provisions of RCW 70A.410.020. [2020 c 20 § 1244; 1993 c 118 § 5. Formerly RCW 70.95L.040.]

Chapter 70A.415 RCW

HAZARDOUS SUBSTANCE INFORMATION

Sections

70A.415.010 Definitions.

70A.415.020 Hazardous substance information and education office—Duties.

70A.415.010 Definitions. Unless the context clearly indicates otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Agency" means any state agency or local government entity.

(2) "Hazardous household substances" means those substances identified by the department as hazardous household substances in the guidelines developed by the department.

(3) "Department" means the department of ecology.

(4) "Director" means the director of the department.

(5) "Hazardous substances" or "hazardous materials" means those substances or materials identified as such under regulations adopted pursuant to the federal hazardous materials transportation act, the toxic substances control act, the resource recovery and conservation act, the comprehensive environmental response compensation and liability act, the federal insecticide, fungicide, and rodenticide act, the occupational safety and health act hazardous communications standards, and the state hazardous waste act.

(6) "Moderate risk waste" means any waste that exhibits any of the properties of dangerous waste but is exempt from regulation under this chapter solely because the waste is generated in quantities below the threshold for regulation and any household wastes that are generated from the disposal of substances identified by the department as hazardous household substances. [1985 c 410 § 2. Formerly RCW 70.102.010.]

70A.415.020 Hazardous substance information and education office—Duties. There is hereby created the hazardous substance information and education office. Through this office the department shall:

(1) Facilitate access to existing information on hazardous substances within a community;

(2) Request and obtain information about hazardous substances at specified locations and facilities from agencies that regulate those locations and facilities. The department shall review, approve, and provide confidentiality as provided by statute. Upon request of the department, each agency shall provide the information within forty-five days;

(3) At the request of citizens or public health or public safety organizations, compile existing information about hazardous substance use at specified locations and facilities. This information shall include but not be limited to:

(a) Point and nonpoint air and water emissions;

(b) Extremely hazardous, moderate risk wastes and dangerous wastes as defined in chapter 70A.300 RCW produced, used, stored, transported from, or disposed of by any facility;

(c) A list of the hazardous substances present at a given site and data on their acute and chronic health and environmental effects;

(d) Data on governmental pesticide use at a given site;

(e) Data on commercial pesticide use at a given site if such data is only given to individuals who are chemically sensitive; and

(f) Compliance history of any facility.

(4) Provide education to the public on the proper production, use, storage, and disposal of hazardous substances, including but not limited to:

(a) A technical resource center on hazardous substance management for industry and the public;

(b) Programs, in cooperation with local government, to educate generators of moderate risk waste, and provide information regarding the potential hazards to human health and the environment resulting from improper use and disposal of the waste and proper methods of handling, reducing, recycling, and disposing of the waste;

(c) Public information and education relating to the safe handling and disposal of hazardous household substances; and

(d) Guidelines to aid counties in developing and implementing a hazardous household substances program.

Requests for information from the hazardous substance information and education office may be made by letter or by a toll-free telephone line, if one is established by the department. Requests shall be responded to in accordance with chapter 42.56 RCW.

This section shall not require any agency to compile information that is not required by existing laws or rules. [2020 c 20 § 1271; 2005 c 274 § 339; 1985 c 410 § 1. Formerly RCW 70.102.020.]

Worker and community right to know fund, use to provide hazardous substance information under chapter 70A.415 RCW: RCW 49.70.175.

Chapter 70A.420 RCW LEAD-BASED PAINT

Sections

70A.420.010	Finding.
70A.420.020	Definitions.
70A.420.030	Certification and training—Local governments—Rules.
70A.420.040	Certification and accreditation—Rules.
70A.420.050	Rules—Report.
70A.420.060	Lead paint account.
70A.420.070	Inspections.
70A.420.080	Certification required to perform lead-based paint activities—Certificate revocation—Penalties.
70A.420.090	Chapter contingent on federal action.

70A.420.010 Finding. (1) The legislature finds that lead hazards associated with lead-based paint represent a significant and preventable environmental health problem. Lead-based paint is the most widespread of the various sources of lead exposure to the public. Census data show that one million five hundred sixty thousand homes in Washington state were built prior to 1978 when the sale of residential lead-based paint was banned. These are homes that are believed to contain some lead-based paint.

Lead negatively affects every system of the body. It is harmful to individuals of all ages and is especially harmful to children, fetuses, and adults of childbearing age. The effects of lead on a child's cognitive, behavioral, and developmental abilities may necessitate large expenditures of public funds for health care and special education. The irreversible damage to children and subsequent expenditures could be avoided if exposure to lead is reduced.

(2) The federal government regulates lead poisoning and lead hazard reduction through:

- (a)(i) The lead-based paint poisoning prevention act;
 - (ii) The lead contamination control act;
 - (iii) The safe drinking water act;
 - (iv) The resource conservation and recovery act of 1976;
- and

(v) The residential lead-based paint hazard reduction act of 1992; and

(b) Implementing regulations of:

- (i) The environmental protection agency;
- (ii) The department of housing and urban development;
- (iii) The occupational safety and health administration;

and

(iv) The centers for disease control and prevention.

(3) In 1992, congress passed the federal residential lead-based paint hazard reduction act, which allows states to provide for the accreditation of lead-based paint activities programs, the certification of persons completing such training programs, and the licensing of lead-based paint activities contractors under standards developed by the United States environmental protection agency.

(4) The legislature recognizes the state's need to protect the public from exposure to lead hazards. A qualified and properly trained workforce is needed to assist in the prevention, detection, reduction, and elimination of hazards associated with lead-based paint. The purpose of training workers, supervisors, inspectors, risk assessors, project designers, renovators, and dust sampling technicians engaged in lead-based paint activities is to protect building occupants, particularly children ages six years and younger from potential lead-based paint hazards and exposures both during and after lead-based paint activities. Qualified and properly trained individuals and firms will help to ensure lead-based paint activities are conducted in a way that protects the health of the citizens of Washington state and safeguards the environment. The state lead-based paint activities program requires that all lead-based paint activities be performed by certified personnel trained by an accredited program, and that all lead-based paint activities meet minimum work practice standards established by the department of commerce. Therefore, the lead-based paint activities accreditation, training, and certification program shall be established in accordance with this chapter. The lead-based paint activities accreditation, training, and certification program shall be administered by the department of commerce and shall be used as a means to assure the protection of the general public from exposure to lead hazards.

(5) For the welfare of the people of the state of Washington, this chapter establishes a lead-based paint activities program within the department of commerce to protect the general public from exposure to lead hazards and to ensure the availability of a trained and qualified workforce to identify and address lead-based paint hazards. The legislature recognizes the department of commerce is not a regulatory agency and may delegate enforcement responsibilities under chapter 322, Laws of 2003 to local governments or private entities. [2010 c 158 § 1; 2003 c 322 § 1. Formerly RCW 70.103.010.]

70A.420.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards.

(a) Abatement includes, but is not limited to:

(i) The removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or permanent cov-

ering of soil, when lead-based paint hazards are present in such paint, dust, or soil; and

(ii) All preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures.

(b) Specifically, abatement includes, but is not limited to:

(i) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that:

(A) Shall result in the permanent elimination of lead-based paint hazards; or

(B) Are designed to permanently eliminate lead-based paint hazards and are described in (a)(i) and (ii) of this subsection;

(ii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by certified firms or individuals, unless such projects are covered by (c) of this subsection;

(iii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by (c) of this subsection; or

(iv) Projects resulting in the permanent elimination of lead-based paint hazards, that are conducted in response to state or local abatement orders.

(c) Abatement does not include renovation, remodeling, landscaping, or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

(2) "Accredited training program" means a training program that has been accredited by the department to provide training for individuals engaged in lead-based paint activities.

(3) "Certified abatement worker" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to perform abatements.

(4) "Certified dust sampling technician" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to conduct dust sampling for renovation projects.

(5) "Certified firm" includes a company, partnership, corporation, sole proprietorship, association, agency, or other business entity that meets all the qualifications established by the department and performs lead-based paint activities to which the department has issued a certificate.

(6) "Certified inspector" means an individual who has been trained by an accredited training program, meets all the

qualifications established by the department, and is certified by the department to conduct inspections.

(7) "Certified project designer" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to prepare abatement project designs, occupant protection plans, and abatement reports.

(8) "Certified renovator" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to perform renovations or direct workers in the performance of renovation work.

(9) "Certified risk assessor" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to conduct risk assessments and sample for the presence of lead in dust and soil for the purposes of abatement clearance testing.

(10) "Certified supervisor" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to supervise and conduct abatements, and to prepare occupant protection plans and abatement reports.

(11) "Department" means the Washington state department of commerce.

(12) "Director" means the director of the Washington state department of commerce.

(13) "Federal laws and rules" means:

(a) Title IV, toxic substances control act (15 U.S.C. Sec. 2681 et seq.) and the rules adopted by the United States environmental protection agency under that law for authorization of state programs;

(b) Any regulations or requirements adopted by the United States department of housing and urban development regarding eligibility for grants to states and local governments; and

(c) Any other requirements adopted by a federal agency with jurisdiction over lead-based paint hazards.

(14) "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5 percent by weight.

(15) "Lead-based paint activity" includes inspection, testing, risk assessment, lead-based paint hazard reduction project design or planning, abatement, or renovation of lead-based paint hazards.

(16) "Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as identified by the administrator of the United States environmental protection agency under the toxic substances control act, section 403.

(17) "Person" includes an individual, corporation, firm, partnership, or association, an Indian tribe, state, or political subdivision of a state, and a state department or agency.

(18) "Renovation" means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as

part of an abatement as defined in this section. The term includes but is not limited to:

- (a) The removal, modification, or repair of painted surface or painted components;
- (b) Modification of painted doors;
- (c) Surface restoration;
- (d) Window repair;
- (e) Surface preparation, such as sanding, scraping, or activities that generates paint dust;
- (f) Removal of building components, such as walls, windows, or other like structures;
- (g) Weatherization projects, such as cutting holes in painted surfaces to install blown-in insulation;
- (h) Interim controls that disturb painted surfaces; or
- (i) A renovation performed for the purposes of converting a building or part of a building in target housing or a child-occupied facility.

The term renovation as defined in this subsection (18) does not include minor repair and maintenance activities.

(19) "Risk assessment" means:

- (a) An on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards; and
- (b) The provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

(20) "State program" means a state administered lead-based paint activities certification and training program that meets the federal environmental protection agency requirements. [2010 c 158 § 2; 2009 c 565 § 49; 2003 c 322 § 2. Formerly RCW 70.103.020.]

70A.420.030 Certification and training—Local governments—Rules. (1) The department shall administer and enforce a state program for worker training and certification, and training program accreditation, which shall include those program elements necessary to assume responsibility for federal requirements for a program as set forth in Title IV of the toxic substances control act (15 U.S.C. Sec. 2601 et seq.), the residential lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.), 40 C.F.R. Part 745, Subparts L and Q (1996), and Title X of the housing and community development act of 1992 (P.L. 102-550). The department may delegate or enter into a memorandum of understanding with local governments or private entities for implementation of components of the state program.

(2) The department is authorized to adopt rules that are consistent with federal requirements to implement a state program. Rules adopted under this section shall:

- (a) Establish minimum accreditation requirements for lead-based paint activities for training providers;
- (b) Establish work practice standards for conduct of lead-based paint activities;
- (c) Establish certification requirements for individuals and firms engaged in lead-based paint activities including provisions for recognizing certifications accomplished under existing certification programs;
- (d) Require the use of certified personnel in all lead-based paint activities;
- (e) Be revised as necessary to comply with federal law and rules and to maintain eligibility for federal funding;

(f) Facilitate reciprocity and communication with other states having a lead-based paint certification program;

(g) Provide for decertification, deaccreditation, and financial assurance for a person certified by or a training provider accredited by the department; and

(h) Be issued in accordance with the administrative procedure act, chapter 34.05 RCW.

(3) The department may accept federal funds for the administration of the program.

(4) This program shall equal, but not exceed, legislative authority under federal requirements as set forth in Title IV of the toxic substances control act (15 U.S.C. Sec. 2601 et seq.), the residential lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.), and Title X of the housing and community development act of 1992 (P.L. 102-550).

(5) Any rules adopted by the department shall be consistent with federal laws, regulations, and requirements relating to lead-based paint activities specified by the residential lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.) and Title X of the housing and community development act of 1992 (P.L. 102-550), and rules adopted pursuant to chapter 70A.305 RCW, to ensure consistency in regulatory action. The rules may not be more restrictive than corresponding federal and state regulations unless such stringency is specifically authorized by this chapter.

(6) The department shall collect a fee in the amount of twenty-five dollars for certification and recertification of lead paint firms, inspectors, project developers, risk assessors, supervisors, abatement workers, renovators, and dust sampling technicians.

(7) The department shall collect a fee in the amount of two hundred dollars for the accreditation of lead paint training programs. [2020 c 20 § 1272; 2010 c 158 § 3; 2003 c 322 § 3. Formerly RCW 70.103.030.]

70A.420.040 Certification and accreditation—Rules.

(1) The department shall establish a program for certification of persons involved in lead-based paint activities and for accreditation of training providers in compliance with federal laws and rules.

(2) Rules adopted under this section shall:

- (a) Establish minimum accreditation requirements for lead-based paint activities for training providers;
- (b) Establish work practice standards for conduct of lead-based paint activities;
- (c) Establish certification requirements for individuals and firms engaged in lead-based paint activities including provisions for recognizing certifications accomplished under existing certification programs;
- (d) Require the use of certified personnel in any lead-based paint hazard reduction activity;
- (e) Be revised as necessary to comply with federal law and rules and to maintain eligibility for federal funding;
- (f) Facilitate reciprocity and communication with other states having a lead-based paint certification program;
- (g) Provide for decertification, deaccreditation, and financial assurance for a person certified or accredited by the department; and
- (h) Be issued in accordance with the administrative procedure act, chapter 34.05 RCW.

(3) This program shall equal, but not exceed, legislative authority under federal requirements as set forth in Title IV of the toxic substances control act (15 U.S.C. Sec. 2601 et seq.), the residential lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.), 40 C.F.R. Part 745 (1996), Subparts L and Q, and Title X of the housing and community development act of 1992 (P.L. 102-550).

(4) Any rules adopted by the department shall be consistent with federal laws, regulations, and requirements relating to lead-based paint activities specified by the residential lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.) and Title X of the housing and community development act of 1992 (P.L. 102-550), and rules adopted pursuant to chapter 70A.305 RCW, to ensure consistency in regulatory action. The rules may not be more restrictive than corresponding federal and state regulations unless such stringency is specifically authorized by this chapter.

(5) The department may accept federal funds for the administration of the program.

(6) For the purposes of certification under the federal requirements as set forth in section 2682 of the toxic substances control act (15 U.S.C. Sec. 2682), the department may require renovators and dust sampling technicians to apply for a certification badge issued by the department. The department may impose a fee on the applicant for processing the application. The application shall include a photograph of the applicant and a fee in the amount imposed by the department. [2020 c 20 § 1273; 2010 c 158 § 4; 2003 c 322 § 4. Formerly RCW 70.103.040.]

70A.420.050 Rules—Report. The department shall adopt rules to:

(1) Establish procedures and requirements for the accreditation of lead-based paint activities training programs including, but not limited to, the following:

- (a) Training curriculum;
- (b) Training hours;
- (c) Hands-on training;
- (d) Trainee competency and proficiency;
- (e) Training program quality control;
- (f) Procedures for the reaccreditation of training programs;
- (g) Procedures for the oversight of training programs; and
- (h) Procedures for the suspension, revocation, or modification of training program accreditations, or acceptance of training offered by an accredited training provider in another state or Indian tribe authorized by the environmental protection agency;

(2) Establish procedures for the purposes of certification, for the acceptance of training offered by an accredited training provider in a state or Indian tribe authorized by the environmental protection agency;

(3) Certify individuals involved in lead-based paint activities to ensure that certified individuals are trained by an accredited training program and possess appropriate educational or experience qualifications for certification;

(4) Establish procedures for recertification;

(5) Require the conduct of lead-based paint activities in accordance with work practice standards;

(6) Establish procedures for the suspension, revocation, or modification of certifications;

(7) Establish requirements for the administration of third-party certification exams;

(8) Use laboratories accredited under the environmental protection agency's national lead laboratory accreditation program;

(9) Establish work practice standards for the conduct of lead-based paint activities, as defined in RCW 70A.420.020;

(10) Establish an enforcement response policy that shall include:

(a) Warning letters, notices of noncompliance, notices of violation, or the equivalent;

(b) Administrative or civil actions, including penalty authority, including accreditation or certification suspension, revocation, or modification; and

(c) Authority to apply criminal sanctions or other criminal authority using existing state laws as applicable.

The department shall prepare and submit a biennial report to the legislature regarding the program's status, its costs, and the number of persons certified by the program. [2020 c 20 § 1274; 2010 c 158 § 5; 2003 c 322 § 5. Formerly RCW 70.103.050.]

70A.420.060 Lead paint account. The lead paint account is created in the state treasury. All receipts from RCW 70A.420.030 shall be deposited into the account. Monies in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes of this chapter. [2020 c 20 § 1275; 2003 c 322 § 6. Formerly RCW 70.103.060.]

70A.420.070 Inspections. (1)(a) The director or the director's designee is authorized to inspect at reasonable times and, when feasible, with at least twenty-four hours prior notification:

(i) Premises or facilities where those engaged in training for lead-based paint activities conduct business; and

(ii) The business records of, and take samples at, the businesses accredited or certified under this chapter to conduct lead-based paint training or activities.

(b) Any accredited training program or any firm or individual certified under this chapter that denies access to the department for the purposes of (a) of this subsection is subject to deaccreditation or decertification under RCW 70A.420.040.

(2) The director or the director's designee is authorized to inspect premises or facilities, with the consent of the owner or owner's agent, where violations may occur concerning lead-based paint activities, as defined under RCW 70A.420.020, at reasonable times and, when feasible, with at least forty-eight hours prior notification of the inspection.

(3) Prior to receipt of federal lead-based paint abatement funding, all premise or facility owners shall be notified by any entity that receives and disburses the federal funds that an inspection may be conducted. If a premise or facility owner does not wish to have an inspection conducted, that owner is not eligible to receive lead-based paint abatement funding. [2020 c 20 § 1276; 2003 c 322 § 7. Formerly RCW 70.103.070.]

70A.420.080 Certification required to perform lead-based paint activities—Certificate revocation—Penalties.

(1) The department is designated as the official agency of this state for purposes of cooperating with, and implementing the state lead-based paint activities program under the jurisdiction of the United States environmental protection agency.

(2) No individual or firm can perform, offer, or claim to perform lead-based paint activities without certification from the department to conduct these activities.

(3) The department may deny, suspend, or revoke a certificate for failure to comply with the requirements of this chapter or any rule adopted under this chapter. No person whose certificate is revoked under this chapter shall be eligible to apply for a certificate for one year from the effective date of the final order of revocation. A certificate may be denied, suspended, or revoked on any of the following grounds:

(a) A risk assessor, inspector, contractor, project designer, worker, dust sampling technician, or renovator violates work practice standards established by the United States environmental protection agency or the United States department of housing and urban development governing work practices and procedures; or

(b) The certificate was obtained by error, misrepresentation, or fraud.

(4) Any person convicted of violating any of the provisions of this chapter is guilty of a misdemeanor. A conviction is an unvacated forfeiture of bail or collateral deposited to secure the defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt on a violation of this chapter, regardless of whether imposition of sentence is deferred or the penalty is suspended, and shall be treated as a violation conviction for purposes of certification forfeiture under this chapter. Violations of this chapter include:

(a) Failure to comply with any requirement of this chapter;

(b) Failure or refusal to establish, maintain, provide, copy, or permit access to records or reports as required;

(c) Obtaining certification through fraud or misrepresentation;

(d) Failure to obtain certification from the department and performing work requiring certification at a jobsite; or

(e) Fraudulently obtaining certification and engaging in any lead-based paint activities requiring certification. [2010 c 158 § 6; 2003 c 322 § 8. Formerly RCW 70.103.080.]

70A.420.090 Chapter contingent on federal action.

(1) The department's duties under chapter 322, Laws of 2003 are subject to authorization of the state program from the federal government within two years of July 27, 2003. Chapter 322, Laws of 2003 expires if the federal environmental protection agency does not authorize a state program within two years of July 27, 2003.

(2) The department's duties under chapter 322, Laws of 2003, as amended, are subject to the availability of sufficient funding from the federal government for this purpose. The director or his or her designee shall seek funding of the department's efforts under this chapter from the federal government. By October 15th of each year, the director shall determine if sufficient federal funding has been provided or guaranteed by the federal government. If the director deter-

mines sufficient funding has not been provided, the department shall:

(a) Cease efforts under this chapter due to the lack of federal funding; and

(b) Inform the code reviser that it has ceased its efforts due to the lack of federal funding. [2010 c 158 § 7; 2003 c 322 § 9. Formerly RCW 70.103.090.]

Reviser's note: The federal environmental protection agency authorized Washington's program which was established June 10, 2004.

Chapter 70A.425 RCW POISON PREVENTION—LABELING AND PACKAGING

Sections

70A.425.010	Purpose.
70A.425.020	Short title.
70A.425.030	Definitions—Construction.
70A.425.040	"Director" defined.
70A.425.050	"Sale" defined.
70A.425.060	"Household substance" defined.
70A.425.070	"Package" defined.
70A.425.080	"Special packaging" defined.
70A.425.090	"Labeling" defined.
70A.425.100	Standards for packaging.
70A.425.110	Exceptions from packaging standards.
70A.425.120	Adoption of rules and regulations under federal poison prevention packaging act.
70A.425.130	Penalties.
70A.425.140	Authority to adopt regulations—Delegation of authority to pharmacy quality assurance commission.
70A.425.900	Saving—1974 ex.s. c 49.
70A.425.901	Chapter cumulative and nonexclusive.

Radioactive and hazardous waste emergency response programs, state coordinator: RCW 38.52.030.

70A.425.010 Purpose. The purpose of this chapter is to provide for special packaging to protect children from personal injury, serious illness or death resulting from handling, using or ingesting household substances, and to provide penalties. [1974 ex.s. c 49 § 1. Formerly RCW 70.106.010.]

70A.425.020 Short title. This chapter shall be cited as the Washington Poison Prevention Act of 1974. [1974 ex.s. c 49 § 2. Formerly RCW 70.106.020.]

70A.425.030 Definitions—Construction. The definitions in RCW 70A.425.040 through 70A.425.090 unless the context otherwise requires shall govern the construction of this chapter. [2020 c 20 § 1322; 1974 ex.s. c 49 § 3. Formerly RCW 70.106.030.]

70A.425.040 "Director" defined. "Director" means the director of the department of agriculture of the state of Washington, or his or her duly authorized representative. [2012 c 117 § 418; 1974 ex.s. c 49 § 4. Formerly RCW 70.106.040.]

70A.425.050 "Sale" defined. "Sale" means to sell, offer for sale, hold for sale, handle or use as an inducement in the promotion of a household substance or the sale of another article or product. [1974 ex.s. c 49 § 5. Formerly RCW 70.106.050.]

70A.425.060 "Household substance" defined. "Household substance" means any substance which is cus-

tomarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household and which is:

(1) A "hazardous substance", which means (a) any substance or mixture of substances or product which (i) is toxic, (ii) is corrosive, (iii) is an irritant, (iv) is a strong sensitizer, (v) is flammable or combustible, or (vi) generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children; (b) any substances which the director by regulation finds to meet the requirements of subsection (1)(a) of this section; (c) any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the director determines by regulation that the substance is sufficiently hazardous to require labeling in accordance with this chapter in order to protect the public health, safety or welfare; and (d) any toy or other article intended for use by children which the director by regulation determines presents an electrical, mechanical or thermal hazard.

(2) A pesticide as defined in the Washington Pesticide Control Act, chapter 15.58 RCW as now or hereafter amended;

(3) A food, drug, or cosmetic as those terms are defined in the Uniform Washington Food, Drug and Cosmetic Act, chapter 69.04 RCW as now or hereafter amended; or

(4) A substance intended for use as fuel when stored in portable containers and used in the heating, cooking, or refrigeration system of a house; or

(5) Any other substance which the director may declare to be a household substance subsequent to a hearing as provided for under the provisions of chapter 34.05 RCW, Administrative Procedure Act, for the adoption of rules. [1974 ex.s. c 49 § 6. Formerly RCW 70.106.060.]

70A.425.070 "Package" defined. "Package" means the immediate container or wrapping in which any household substance is contained for consumption, use, or storage by individuals in or about the household, and, for purposes of RCW 70A.425.110(1)(b), also means any outer container or wrapping used in the retail display of any such substance to consumers. Such term does not include:

(1) Any shipping container or wrapping used solely for the transportation of any household substance in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof; or

(2) Any shipping container or outer wrapping used by retailers to ship or deliver any household substance to consumers unless it is the only such container or wrapping. [2020 c 20 § 1323; 1974 ex.s. c 49 § 7. Formerly RCW 70.106.070.]

70A.425.080 "Special packaging" defined. "Special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a

toxic or harmful amount within a reasonable time. [1974 ex.s. c 49 § 8. Formerly RCW 70.106.080.]

70A.425.090 "Labeling" defined. "Labeling" means all labels and other written, printed, or graphic matter upon any household substance or its package, or accompanying such substance. [1974 ex.s. c 49 § 9. Formerly RCW 70.106.090.]

70A.425.100 Standards for packaging. (1) The director may establish in accordance with the provisions of this chapter, by regulation, standards for the special packaging of any household substance if he or she finds that:

(a) The degree or nature of the hazard to children in the availability of such substance, by reason of its packaging is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance; and

(b) The special packaging to be required by such standard is technically feasible, practicable, and appropriate for such substance.

(2) In establishing a standard under this section, the director shall consider:

(a) The reasonableness of such standard;

(b) Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

(c) The manufacturing practices of industries affected by this chapter; and

(d) The nature and use of the household substance.

(3) In carrying out the provisions of this chapter, the director shall publish his or her findings, his or her reasons therefor, and citation of the sections of statutes which authorize his or her action.

(4) Nothing in this chapter authorizes the director to prescribe specific packaging designs, product content, package quantity, or, with the exception of authority granted in RCW 70A.425.110(1)(b), labeling. In the case of a household substance for which special packaging is required pursuant to a regulation under this section, the director may in such regulation prohibit the packaging of such substance in packages which he or she determines are unnecessarily attractive to children.

(5) The director shall cause the regulations promulgated under this chapter to conform with the requirements or exemptions of the federal hazardous substances act and with the regulations or interpretations promulgated pursuant thereto. [2020 c 20 § 1324; 2012 c 117 § 419; 1974 ex.s. c 49 § 10. Formerly RCW 70.106.100.]

70A.425.110 Exceptions from packaging standards.

(1) For the purpose of making any household substance which is subject to a standard established under RCW 70A.425.100 readily available to elderly persons or persons with disabilities unable to use such substance when packaged in compliance with such standard, the manufacturer or packer, as the case may be, may package any household substance, subject to such a standard, in packaging of a single size which does not comply with such standard if:

(a) The manufacturer or packer also supplies such substance in packages which comply with such standard; and

(b) The packages of such substance which do not meet such standard bear conspicuous labeling stating: "This package for households without young children"; except that the director may by regulation prescribe a substitute statement to the same effect for packaging too small to accommodate such labeling.

(2) In the case of a household substance which is subject to such a standard and which is dispensed pursuant to an order of a physician, dentist, or other licensed medical practitioner authorized to prescribe, such substance may be dispensed in noncomplying packages only when directed in such order or when requested by the purchaser.

(3) In the case of a household substance subject to such a standard which is packaged under subsection (1) of this section in a noncomplying package, if the director determines that such substance is not also being supplied by a manufacturer or packer in popular size packages which comply with such standard, he or she may, after giving the manufacturer or packer an opportunity to comply with the purposes of this chapter, by order require such substance to be packaged by such manufacturer or packer exclusively in special packaging complying with such standard if he or she finds, after opportunity for hearing, that such exclusive use of special packaging is necessary to accomplish the purposes of this chapter. [2020 c 20 § 1325; 2012 c 117 § 420; 1974 ex.s. c 49 § 11. Formerly RCW 70.106.110.]

70A.425.120 Adoption of rules and regulations under federal poison prevention packaging act. One of the purposes of this chapter is to promote uniformity with the Poison Prevention Packaging Act of 1970 and rules and regulations adopted thereunder. In accordance with such declared purpose, all of the special packaging rules and regulations adopted under the Poison Prevention Packaging Act of 1970 (84 Stat. 1670; 7 U.S.C. Sec. 135; 15 U.S.C. Sec. 1261, 1471-1476; 21 U.S.C. Sec. 343, 352, 353, 362) on July 24, 1974, are hereby adopted as rules and regulations applicable to this chapter. In addition, any rule or regulation adopted hereafter under said Federal Poison Prevention Act of 1970 concerning special packaging and published in the federal register shall be deemed to have been adopted under the provisions of this chapter. The director may, however, within thirty days of the publication of the adoption of any such rule or regulation under the Federal Poison Prevention Packaging Act of 1970, give public notice that a hearing will be held to determine if such regulations shall not be applicable under the provisions of this chapter. Such hearing shall be conducted in accord with the provisions of chapter 34.05 RCW, Administrative Procedure Act, as now enacted or hereafter amended. [1974 ex.s. c 49 § 12. Formerly RCW 70.106.120.]

70A.425.130 Penalties. (1) Except as provided in subsection (2) of this section, any person violating the provisions of this chapter or rules adopted under this chapter is guilty of a misdemeanor.

(2) A second or subsequent violation of the provisions of this chapter or rules adopted under this chapter is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense.

[2003 c 53 § 358; 1974 ex.s. c 49 § 16. Formerly RCW 70.106.140.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

70A.425.140 Authority to adopt regulations—Delegation of authority to pharmacy quality assurance commission. The authority to promulgate regulations for the efficient enforcement of this chapter is hereby vested in the director. However, the director shall designate the pharmacy quality assurance commission to carry out all the provisions of this chapter pertaining to drugs and cosmetics, with authority to promulgate regulations for the efficient enforcement thereof. [2013 c 19 § 124; 1987 c 236 § 1. Formerly RCW 70.106.150.]

70A.425.900 Saving—1974 ex.s. c 49. The enactment of this 1974 act shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on July 24, 1974. [1974 ex.s. c 49 § 15. Formerly RCW 70.106.905.]

70A.425.901 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1974 ex.s. c 49 § 17. Formerly RCW 70.106.910.]

Chapter 70A.430 RCW CHILDREN'S SAFE PRODUCTS

Sections

70A.430.010	Definitions.
70A.430.020	Prohibition on the manufacturing and sale of children's products containing lead, cadmium, or phthalates.
70A.430.030	Prohibition on the manufacturing and sale of children's products and residential upholstered furniture containing certain flame retardants.
70A.430.040	Identification of high priority chemicals—Report.
70A.430.050	Certain flame retardant chemicals—Review—Stakeholder advisory committee—Report.
70A.430.060	Notice that a children's product or a consumer product contains a high priority chemical.
70A.430.070	Manufacturers of restricted products—Notice to sellers and distributors—Civil penalty.
70A.430.080	Adoption of rules.

70A.430.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Additive TBBPA" means the chemical tetrabromobisphenol A, chemical abstracts service number 79-94-7, as of June 9, 2016, in a form that has not undergone a reactive process and is not covalently bonded to a polymer in a product or product component.

(2) "Children's cosmetics" means cosmetics that are made for, marketed for use by, or marketed to children under the age of twelve. "Children's cosmetics" includes cosmetics that meet any of the following conditions:

(a) Represented in its packaging, display, or advertising as appropriate for use by children;

(b) Sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children; or

(c) Sold in any of the following:

(i) Retail store, catalogue, or online website, in which a person exclusively offers for sale products that are packaged, displayed, or advertised as appropriate for use by children; or

(ii) A discrete portion of a retail store, catalogue, or online website, in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(3) "Children's jewelry" means jewelry that is made for, marketed for use by, or marketed to children under the age of twelve. "Children's jewelry" includes jewelry that meets any of the following conditions:

(a) Represented in its packaging, display, or advertising as appropriate for use by children under the age of twelve;

(b) Sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children;

(c) Sized for children and not intended for use by adults; or

(d) Sold in any of the following:

(i) A vending machine;

(ii) Retail store, catalogue, or online website, in which a person exclusively offers for sale products that are packaged, displayed, or advertised as appropriate for use by children; or

(iii) A discrete portion of a retail store, catalogue, or online website, in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(4)(a) "Children's product" includes any of the following:

(i) Toys;

(ii) Children's cosmetics;

(iii) Children's jewelry;

(iv) A product designed or intended by the manufacturer to help a child with sucking or teething, to facilitate sleep, relaxation, or the feeding of a child, or to be worn as clothing by children; or

(v) Portable infant or child safety seat designed to attach to an automobile seat.

(b) "Children's product" does not include the following:

(i) Batteries;

(ii) Slings and catapults;

(iii) Sets of darts with metallic points;

(iv) Toy steam engines;

(v) Bicycles and tricycles;

(vi) Video toys that can be connected to a video screen and are operated at a nominal voltage exceeding twenty-four volts;

(vii) Chemistry sets;

(viii) Consumer and children's electronic products, including but not limited to personal computers, audio and video equipment, calculators, wireless phones, game consoles, and handheld devices incorporating a video screen, used to access interactive software and their associated peripherals;

(ix) Interactive software, intended for leisure and entertainment, such as computer games, and their storage media, such as compact disks;

(x) BB guns, pellet guns, and air rifles;

(xi) Snow sporting equipment, including skis, poles, boots, snow boards, sleds, and bindings;

(xii) Sporting equipment, including, but not limited to bats, balls, gloves, sticks, pucks, and pads;

(xiii) Roller skates;

(xiv) Scooters;

(xv) Model rockets;

(xvi) Athletic shoes with cleats or spikes; and

(xvii) Pocketknives and multitools.

(5) "Cosmetics" includes articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and articles intended for use as a component of such an article. "Cosmetics" does not include soap, dietary supplements, or food and drugs approved by the United States food and drug administration.

(6) "Decabromodiphenyl ether" means the chemical decabromodiphenyl ether, chemical abstracts service number 1163-19-5, as of June 9, 2016.

(7) "Department" means the department of ecology.

(8) "HBCD" means the chemical hexabromocyclododecane, chemical abstracts service number 25637-99-4, as of June 9, 2016.

(9) "High priority chemical" means a chemical identified by a state agency, federal agency, or accredited research university, or other scientific evidence deemed authoritative by the department on the basis of credible scientific evidence as known to do one or more of the following:

(a) Harm the normal development of a fetus or child or cause other developmental toxicity;

(b) Cause cancer, genetic damage, or reproductive harm;

(c) Disrupt the endocrine system;

(d) Damage the nervous system, immune system, or organs or cause other systemic toxicity;

(e) Be persistent, bioaccumulative, and toxic; or

(f) Be very persistent and very bioaccumulative.

(10) "IPTPP" means the chemical isopropylated triphenyl phosphate, chemical abstracts service number 68937-41-7, as of June 9, 2016.

(11) "Manufacturer" includes any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces residential upholstered furniture as defined in RCW 70A.405.010 or children's product or an importer or domestic distributor of residential upholstered furniture as defined in RCW 70A.405.010 or children's product. For the purposes of this subsection, "importer" means the owner of the residential upholstered furniture as defined in RCW 70A.405.010 or children's product.

(12) "Phthalates" means di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), benzyl butyl phthalate (BBP), diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP).

(13) "TBB" means the chemical (2-ethylhexyl)-2,3,4,5-tetrabromobenzoate, chemical abstracts service number 183658-27-7, as of June 9, 2016.

(14) "TBPH" means the chemical bis (2-ethylhexyl)-2,3,4,5-tetrabromophthalate, chemical abstracts service number 26040-51-7, as of June 9, 2016.

(15) "TCEP" means the chemical (tris(2-chloroethyl)phosphate); chemical abstracts service number 115-96-8, as of June 9, 2016.

(16) "TCPP" means the chemical tris (1-chloro-2-propyl) phosphate); chemical abstracts service number 13674-84-5, as of June 9, 2016.

(17) "TDCPP" means the chemical (tris(1,3-dichloro-2-propyl)phosphate); chemical abstracts service number 13674-87-8, as of June 9, 2016.

(18) "Toy" means a product designed or intended by the manufacturer to be used by a child at play.

(19) "TPP" means the chemical triphenyl phosphate, chemical abstracts service number 115-86-6, as of June 9, 2016.

(20) "Trade association" means a membership organization of persons engaging in a similar or related line of commerce, organized to promote and improve business conditions in that line of commerce and not to engage in a regular business of a kind ordinarily carried on for profit.

(21) "V6" means the chemical bis(chloromethyl) propane-1,3-diyltetrakis (2-chloroethyl) bisphosphate, chemical abstracts service number 385051-10-4, as of June 9, 2016.

(22) "Very bioaccumulative" means having a bioconcentration factor or bioaccumulation factor greater than or equal to five thousand, or if neither are available, having a log Kow greater than 5.0.

(23) "Very persistent" means having a half-life greater than or equal to one of the following:

(a) A half-life in soil or sediment of greater than one hundred eighty days;

(b) A half-life greater than or equal to sixty days in water or evidence of long-range transport. [2020 c 20 § 1405. Prior: 2016 c 176 § 1; 2008 c 288 § 2. Formerly RCW 70.240.010.]

70A.430.020 Prohibition on the manufacturing and sale of children's products containing lead, cadmium, or phthalates. (1) Beginning July 1, 2009, no manufacturer, wholesaler, or retailer may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state a children's product or product component containing the following:

(a) Except as provided in subsection (2) of this section, lead at more than .009 percent by weight (ninety parts per million);

(b) Cadmium at more than .004 percent by weight (forty parts per million); or

(c) Phthalates, individually or in combination, at more than 0.10 percent by weight (one thousand parts per million).

(2) If determined feasible for manufacturers to achieve and necessary to protect children's health, the department, in consultation with the department of health, may by rule require that no manufacturer, wholesaler, or retailer may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state a children's product or product component containing lead at more than .004 percent by weight (forty parts per million). [2008 c 288 § 3. Formerly RCW 70.240.020.]

70A.430.030 Prohibition on the manufacturing and sale of children's products and residential upholstered furniture containing certain flame retardants. Beginning July 1, 2017, no manufacturer, wholesaler, or retailer may manufacture, knowingly sell, offer for sale, distribute for

sale, or distribute for use in this state children's products or residential upholstered furniture, as defined in RCW 70A.405.010, containing any of the following flame retardants in amounts greater than one thousand parts per million in any product component:

(1) TDCPP;

(2) TCEP;

(3) Decabromodiphenyl ether;

(4) HBCD; or

(5) Additive TBBPA. [2020 c 20 § 1406; 2016 c 176 § 2. Formerly RCW 70.240.025.]

70A.430.040 Identification of high priority chemicals—Report. (1) By January 1, 2009, the department, in consultation with the department of health, shall identify high priority chemicals that are of high concern for children after considering a child's or developing fetus's potential for exposure to each chemical. In identifying the chemicals, the department shall include chemicals that meet one or more of the following criteria:

(a) The chemical has been found through biomonitoring studies that demonstrate the presence of the chemical in human umbilical cord blood, human breast milk, human urine, or other bodily tissues or fluids;

(b) The chemical has been found through sampling and analysis to be present in household dust, indoor air, drinking water, or elsewhere in the home environment; or

(c) The chemical has been added to or is present in a consumer product used or present in the home.

(2) By January 1, 2009, the department shall identify children's products or product categories that may contain chemicals identified under subsection (1) of this section.

(3) By January 1, 2009, the department shall submit a report on the chemicals of high concern to children and the children's products or product categories they identify to the appropriate standing committees of the legislature. The report shall include policy options for addressing children's products that contain chemicals of high concern for children, including recommendations for additional ways to inform consumers about toxic chemicals in products, such as labeling. [2008 c 288 § 4. Formerly RCW 70.240.030.]

70A.430.050 Certain flame retardant chemicals—Review—Stakeholder advisory committee—Report. (1) The department shall consider whether the following flame retardants meet the criteria of a chemical of high concern for children:

(a) IPTPP;

(b) TBB;

(c) TBPH;

(d) TCPP;

(e) TPP;

(f) V6.

(2)(a) Within one year of the department adopting a rule that identifies a flame retardant in subsection (1) of this section as a chemical of high concern for children, the department of health, in consultation with the department, must create a stakeholder advisory committee for each flame retardant chemical to provide stakeholder input, expertise, and additional information in the development of recommendations as

provided under subsection (4) of this section. All advisory committee meetings must be open to the public.

(b) The advisory committee membership must include, but is not limited to, representatives from: Large and small business sectors; community, environmental, and public health advocacy groups; local governments; affected and interested businesses; and public health agencies.

(c) The department may request state agencies and technical experts to participate. The department of health shall provide technical expertise on human health impacts including: Early childhood and fetal exposure, exposure reduction, and safer substitutes.

(3) When developing policy options and recommendations consistent with subsection (4) of this section, the department must rely on credible scientific evidence and consider information relevant to the hazards based on the quantitative extent of exposures to the chemical under its intended or reasonably anticipated conditions of use. The department of health, in consultation with the department, must include the following:

(a) Chemical name, properties, uses, and manufacturers;

(b) An analysis of available information on the production, unintentional production, uses, and disposal of the chemical;

(c) Quantitative estimates of the potential human and environmental exposures associated with the use and release of the chemical;

(d) An assessment of the potential impacts on human health and the environment resulting from the quantitative exposure estimates referred to in (c) of this subsection;

(e) An evaluation of:

(i) Environmental and human health benefits;

(ii) Economic and social impacts;

(iii) Feasibility;

(iv) Availability and effectiveness of safer substitutes for uses of the chemical;

(v) Consistency with existing federal and state regulatory requirements; and

(f) Recommendations for:

(i) Managing, reducing, and phasing out the different uses and releases of the chemical;

(ii) Minimizing exposure to the chemical;

(iii) Using safer substitutes; and

(iv) Encouraging the development of safer alternatives.

(4)(a) The department of health must submit to the legislature recommendations on policy options for reducing exposure, designating and developing safer substitutes, and restricting or prohibiting the use of the flame retardant chemicals identified in subsection (1) of this section as a chemical of high concern for children.

(b) When the department of health, in consultation with the department, determines that flame retardant chemicals identified in subsection (1) of this section as a chemical of high concern for children should be restricted or prohibited from use in children's products, residential upholstered furniture as defined in RCW 70A.405.010, or other commercial products or processes, the department of health must include citations of the peer-reviewed science and other sources of information reviewed and ultimately relied upon in support of the recommendation to restrict or prohibit the chemical.

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[2020 c 20 § 1407; 2016 c 176 § 3. Formerly RCW 70.240.035.]

70A.430.060 Notice that a children's product or a consumer product contains a high priority chemical. A manufacturer of a children's product or a consumer product containing a priority chemical subject to a rule adopted to implement a determination made consistent with RCW 70A.350.040(1)(b), or a trade organization on behalf of its member manufacturers, shall provide notice to the department that the manufacturer's product contains a high priority chemical or a priority chemical identified under chapter 70A.350 RCW. The notice must be filed annually with the department and must include the following information:

(1) The name of the chemical used or produced and its chemical abstracts service registry number;

(2) A brief description of the product or product component containing the substance;

(3) A description of the function of the chemical in the product;

(4) The amount of the chemical used in each unit of the product or product component. The amount may be reported in ranges, rather than the exact amount;

(5) The name and address of the manufacturer and the name, address, and phone number of a contact person for the manufacturer; and

(6) Any other information the manufacturer deems relevant to the appropriate use of the product. [2020 c 20 § 1408; 2019 c 292 § 9; 2008 c 288 § 5. Formerly RCW 70.240.040.]

Short title—2019 c 292: See RCW 70A.350.900.

70A.430.070 Manufacturers of restricted products—Notice to sellers and distributors—Civil penalty. (1) A manufacturer of products that are restricted under this chapter must notify persons that sell the manufacturer's products in this state about the provisions of this chapter no less than ninety days prior to the effective date of the restrictions.

(2) A manufacturer that produces, sells, or distributes a product prohibited from manufacture, sale, or distribution in this state under this chapter must recall the product and reimburse the retailer or any other purchaser for the product.

(3) A manufacturer of products in violation of this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty not to exceed ten thousand dollars for each repeat offense. Penalties collected under this section must be deposited in the model toxics control operating account created in RCW 70A.305.180.

(4) Retailers who unknowingly sell products that are restricted from sale under this chapter are not liable under this chapter.

(5) The sale or purchase of any previously owned products containing a chemical restricted under this chapter made in casual or isolated sales as defined in RCW 82.04.040, or by a nonprofit organization, is exempt from this chapter. [2020 c 20 § 1409; 2019 c 422 § 407; 2016 c 176 § 4; 2008 c 288 § 7. Formerly RCW 70.240.050.]

Effective date—Intent—2019 c 422: See notes following RCW 82.21.010.

70A.430.080 Adoption of rules. The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter. [2008 c 288 § 9. Formerly RCW 70.240.060.]

Chapter 70A.435 RCW REPLACEMENT OF LEAD WHEEL WEIGHTS

Sections

70A.435.010	Findings.
70A.435.020	Definitions.
70A.435.030	Replacement of lead wheel weights with environmentally preferred wheel weights—Failure to comply.
70A.435.040	Department's duties—Enforcement sequence.
70A.435.050	Penalties.
70A.435.060	Adoption of rules.

70A.435.010 Findings. The legislature finds that:

(1) Environmental health hazards associated with lead wheel weights are a preventable problem. People are exposed to lead fragments and dust when lead wheel weights fall from motor vehicles onto Washington roadways and are then abraded and pulverized by traffic. Lead wheel weights on and alongside roadways can contribute to soil, surface, and groundwater contamination and pose hazards to downstream aquatic life.

(2) Lead negatively affects every bodily system. While it is injurious to people of all ages, lead is especially harmful to fetuses, children, and adults of childbearing age. Effects of lead on a child's cognitive, behavioral, and developmental abilities may necessitate large expenditures of public funds for health care and special education. Irreversible damage to children and subsequent expenditures could be avoided if exposure to lead is reduced.

(3) There are no federal regulatory controls governing use of lead wheel weights. The legislature recognizes the state's need to protect the public from exposure to lead hazards. [2009 c 243 § 1. Formerly RCW 70.270.010.]

70A.435.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of ecology.

(2) "Environmentally preferred wheel weight" means any wheel weight used for balancing motor vehicle wheels that do not include more than 0.5 percent by weight of any chemical, group of chemicals, or metal of concern identified by rule under chapter 173-333 WAC.

(3) "Lead wheel weight" means any externally affixed or attached wheel weight used for balancing motor vehicle wheels and composed of greater than 0.1 percent lead by weight.

(4) "Person" includes any individual, firm, association, partnership, corporation, governmental entity, organization, or joint venture.

(5) "Vehicle" means any motor vehicle registered in Washington with a wheel diameter of less than 19.5 inches or a gross vehicle weight of fourteen thousand pounds or less. [2009 c 243 § 2. Formerly RCW 70.270.020.]

70A.435.030 Replacement of lead wheel weights with environmentally preferred wheel weights—Failure to comply. (1) On and after January 1, 2011, a person who

replaces or balances motor vehicle tires must replace lead wheel weights with environmentally preferred wheel weights on all vehicles when they replace or balance tires in Washington. However, the person may use alternatives to lead wheel weights that are determined by the department to not qualify as environmentally preferred wheel weights for up to two years following the date of that determination, but must thereafter use environmentally preferred wheel weights.

(2) A person who is subject to the requirement in subsection (1) of this section must recycle the lead wheel weights that they remove.

(3) A person who fails to comply with subsection (1) of this section is subject to penalties prescribed in RCW 70A.435.050. A violation of subsection (1) of this section occurs with respect to each vehicle for which lead wheel weights are not replaced in compliance with subsection (1) of this section.

(4) An owner of a vehicle is not subject to any requirement in this section. [2020 c 20 § 1411; 2009 c 243 § 3. Formerly RCW 70.270.030.]

70A.435.040 Department's duties—Enforcement sequence. (1) The department shall achieve compliance with RCW 70A.435.030 through the enforcement sequence specified in this section.

(2) To provide assistance in identifying environmentally preferred wheel weights, the department shall, by October 1, 2010, prepare and distribute information regarding this chapter to the maximum extent practicable to:

(a) Persons that replace or balance motor vehicle tires in Washington; and

(b) Persons generally in the motor vehicle tire and wheel weight manufacturing, distribution, wholesale, and retail industries.

(3) The department shall issue a warning letter to a person who fails to comply with RCW 70A.435.030 and offer information or other appropriate assistance. If the person does not comply with RCW 70A.435.030(1) within one year of the department's issuance of the warning letter, the department may assess civil penalties under RCW 70A.435.050. [2020 c 20 § 1412; 2009 c 243 § 4. Formerly RCW 70.270.040.]

70A.435.050 Penalties. (1) An initial violation of RCW 70A.435.030(1) is punishable by a civil penalty not to exceed five hundred dollars. Subsequent violations of RCW 70A.435.030(1) are punishable by civil penalties not to exceed one thousand dollars for each violation.

(2) Penalties collected under this section must be deposited in the model toxics control operating account created in RCW 70A.305.180. [2020 c 20 § 1413; 2019 c 422 § 408; 2009 c 243 § 5. Formerly RCW 70.270.050.]

Effective date—Intent—2019 c 422: See notes following RCW 82.21.010.

70A.435.060 Adoption of rules. The department may adopt rules to fully implement this chapter. [2009 c 243 § 6. Formerly RCW 70.270.060.]

Chapter 70A.440 RCW
STORMWATER POLLUTION—COAL TAR

Sections

- 70A.440.010 Definitions.
70A.440.020 Coal tar pavement product—Sale or application prohibited—
Notice of corrective action—Authority to adopt ordinance
to enforce section.

70A.440.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Coal tar" means a viscous substance obtained by the destructive distillation of coal and containing levels of polycyclic aromatic hydrocarbons in excess of ten thousand milligrams per kilogram. "Coal tar" includes, but is not limited to, refined coal tar, high temperature coal tar, coal tar pitch, or any substance identified by chemical abstract number 65996-93-2.

(2) "Coal tar pavement product" means a material that contains coal tar that is intended for use as a pavement sealant.

(3) "Department" means the department of ecology. [2011 c 268 § 1. Formerly RCW 70.295.010.]

70A.440.020 Coal tar pavement product—Sale or application prohibited—Notice of corrective action—Authority to adopt ordinance to enforce section. (1) After January 1, 2012, no person may sell at wholesale or retail a coal tar pavement product that is labeled as containing coal tar.

(2) After July 1, 2013, a person may not apply a coal tar pavement product on a driveway or parking area.

(3) The department may issue a notice of corrective action to a person in violation of subsection (1) or (2) of this section.

(4) A city or county may adopt an ordinance providing for enforcement of the requirements of subsection (1) or (2) of this section. A city or county adopting an ordinance has jurisdiction concurrent with the department to enforce this section. [2011 c 268 § 2. Formerly RCW 70.295.020.]

Chapter 70A.445 RCW
RECREATIONAL WATER VESSELS—
ANTIFOULING PAINTS

Sections

- 70A.445.005 Intent.
70A.445.010 Definitions.
70A.445.020 Antifouling paint—Review—Report to the legislature—
Restrictions on sale and application.
70A.445.030 Recreational water vessel hull cleaning—Best practices.
70A.445.040 Civil penalty.
70A.445.050 Statewide advisory committee—Survey—Report to the legislature.
70A.445.060 Rule-making authority.
70A.445.070 Prohibition on sales of new recreational water vessels containing certain antifouling paint.
70A.445.080 Notice to the department.

70A.445.005 Intent. Antifouling paints and coatings are necessary for the proper performance and preservation of boats and other marine craft. However, many of these substances contain copper, biocides, and other chemicals that are toxic to many aquatic organisms, including salmon. The leg-

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islature intends to phase out the use of copper-based and other antifouling paints and coatings that pose an undue threat to the environment when used on recreational water vessels. The legislature also intends to encourage the development of safer alternatives to traditional antifouling paints and coatings. [2018 c 94 § 1; 2011 c 248 § 1. Formerly RCW 70.300.005.]

70A.445.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of ecology.

(2) "Director" means the director of the department of ecology.

(3)(a) "Recreational water vessel" means any vessel that is no more than sixty-five feet in length and is: (i) Manufactured or used primarily for pleasure; or (ii) leased, rented, or chartered by a person for the pleasure of that person.

(b) "Recreational water vessel" does not include a vessel that is subject to United States coast guard inspection and that: (i) Is engaged in commercial use; or (ii) carries paying passengers.

(4) "Wood boat" means a recreational water vessel with an external hull surface entirely constructed of wood planks or sheets. A vessel with a wood hull sheathed in a nonwood material, such as fiberglass, is not a "wood boat" for purposes of this chapter. [2018 c 94 § 2; 2011 c 248 § 2. Formerly RCW 70.300.010.]

70A.445.020 Antifouling paint—Review—Report to the legislature—Restrictions on sale and application. (1) The department will conduct a review of information about antifouling paints and ingredients, including information received from manufacturers and others pursuant to this chapter; information on the feasibility of best management practices and nonbiocidal antifouling alternatives; and any additional scientific or technical information and studies it determines are relevant to that review.

(2) The department must submit a report to the legislature summarizing its findings no later than June 30, 2024. Prior to submitting the report to the legislature, the department will conduct a public comment process to obtain expertise, input, and a review of the department's proposed determinations by relevant stakeholders and other interested parties. The input received from the public comment process must be considered before finalizing the report.

(3) If the department determines that safer and effective alternatives to copper-based antifouling paints are feasible, reasonable, and readily available, then:

(a) Beginning January 1, 2026, no manufacturer, wholesaler, retailer, or distributor may sell or offer for sale in this state any new recreational water vessel manufactured on or after January 1, 2026, with antifouling paint containing more than 0.5 percent copper. This restriction does not apply to wood boats.

(b) Beginning January 1, 2026, antifouling paint that is intended for use on a recreational water vessel and that contains more than 0.5 percent copper may not be offered for sale in this state.

(c) Beginning January 1, 2026, antifouling paint containing more than 0.5 percent copper may not be applied to a rec-

reational water vessel in this state. This restriction does not apply to wood boats.

(4) If the department does not determine by June 30, 2024, that safer and effective alternatives to copper-based antifouling paints are feasible, reasonable, and readily available, then the department must conduct a second review of relevant studies and information on alternatives to copper-based antifouling paints and submit a report to the legislature summarizing its findings no later than June 30, 2029.

(5) Nothing in this section restricts the department from reviewing and restricting antifouling paints under chapter 70A.350 RCW. [2021 c 65 § 76; 2020 c 67 § 1; 2018 c 94 § 3; 2011 c 248 § 3. Formerly RCW 70.300.020.]

Explanatory statement—2021 c 65: See note following RCW 53.54.030.

Effective date—2018 c 94 § 3: "Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 15, 2018]." [2018 c 94 § 5.]

70A.445.030 Recreational water vessel hull cleaning—Best practices. The department, in consultation and cooperation with other state natural resources agencies, must increase educational efforts regarding recreational water vessel hull cleaning to reduce the spread of invasive species. This effort must include a review of best practices that consider the type of antifouling paint used and recommendations regarding appropriate hull cleaning that includes in-water methods. [2011 c 248 § 4. Formerly RCW 70.300.030.]

70A.445.040 Civil penalty. (1) The department must enforce the requirements of this chapter.

(2)(a) A person or entity that violates this chapter is subject to a civil penalty. The department may assess and collect a civil penalty of up to ten thousand dollars per day per violation.

(b) All penalties collected by the department under this chapter must be deposited in the model toxics control operating account created in RCW 70A.305.180. [2020 c 20 § 1425; 2019 c 422 § 411; 2011 c 248 § 5. Formerly RCW 70.300.040.]

Effective date—Intent—2019 c 422: See notes following RCW 82.21.010.

70A.445.050 Statewide advisory committee—Survey—Report to the legislature. (1) On or after January 1, 2016, the director may establish and maintain a statewide advisory committee to assist the department in implementing the requirements of this chapter.

(2)(a) By January 1, 2017, the department shall survey the manufacturers of antifouling paints sold or offered for sale in this state to determine the types of antifouling paints that are available in this state. The department shall also study how antifouling paints affect marine organisms and water quality. The department shall report its findings to the legislature, consistent with RCW 43.01.036, by December 31, 2017.

(b) If the statewide advisory committee authorized under subsection (1) of this section is established by the director, the department may consult with the statewide advisory committee to prepare the report required under (a) of this subsection. [2011 c 248 § 6. Formerly RCW 70.300.050.]

70A.445.060 Rule-making authority. The department may adopt rules as necessary to implement this chapter. [2011 c 248 § 7. Formerly RCW 70.300.060.]

70A.445.070 Prohibition on sales of new recreational water vessels containing certain antifouling paint. (1) Beginning January 1, 2023, no manufacturer, wholesaler, retailer, or distributor may sell or offer for sale in this state any new recreational water vessel manufactured on or after January 1, 2023, with antifouling paint containing cybutryne, chemical abstracts service registration number 28159-98-0.

(2) Beginning January 1, 2023, antifouling paint that is intended for use on a recreational water vessel and that contains cybutryne may not be offered for sale in this state.

(3) Beginning January 1, 2023, antifouling paint containing cybutryne may not be applied to a recreational water vessel in this state. [2020 c 67 § 2.]

70A.445.080 Notice to the department. (1) The department may require a manufacturer, wholesaler, or retailer of antifouling paints or related substances to submit a notice to the department containing the following information:

(a) A list of products, including a brief description of each product or product component containing the substance;

(b) Product ingredients, including the names of the chemicals used or produced and applicable chemical abstracts service registry numbers;

(c) Information regarding exposure and chemical hazard;

(d) A description of the function of each chemical in the product;

(e) The amount of the chemical used in each unit of the product or product component;

(f) The name and address of the manufacturer and the name, address, and phone number of a contact person for the manufacturer;

(g) Any other information the manufacturer deems relevant to the appropriate use of the product; and

(h) Any other information requested by the department.

(2) The manufacturer must provide the notice required in subsection (1) of this section to the department no later than six months after receipt of such a demand by the department. [2020 c 67 § 3.]

Chapter 70A.450 RCW LABELING OF BUILDING MATERIALS CONTAINING ASBESTOS

Sections

70A.450.010	Purpose of chapter.
70A.450.020	Definitions.
70A.450.030	Labeling requirement for asbestos-containing building materials.
70A.450.040	Placement of label—Content of label's notice—Tampering with label unlawful.
70A.450.050	Enforcement of chapter—Penalties.
70A.450.060	Use of asbestos-containing building materials in new construction—Prohibition—Exceptions.
70A.450.070	Inspection of certain facilities for asbestos-containing building materials—Asbestos management plan—Content—Penalties.

70A.450.010 Purpose of chapter. Asbestos is a known human carcinogen that causes painful, premature deaths due

to diseases such as asbestosis, mesothelioma, lung and gastrointestinal cancers, and other diseases and cancers. Activities that can lead to the release of asbestos fibers include installation, use, maintenance, repair, removal, and disposal of asbestos-containing building materials.

Many people are unaware that asbestos-containing building materials are still imported, sold, and used in the United States. Because few regulations exist that require the disclosure of asbestos in building materials, people can unknowingly be exposed to asbestos. Asbestos is generally invisible, odorless, very durable, and highly aerodynamic. Exposure can occur well after it has been disturbed and long distances from where the asbestos release occurred.

The purpose of this chapter is to allow people to make informed decisions regarding whether or not they purchase or use building materials containing asbestos. More specifically, building materials that contain asbestos must be clearly labeled as such by manufacturers, wholesalers, and distributors. [2013 c 51 § 1. Formerly RCW 70.310.010.]

70A.450.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Asbestos" includes the asbestiform varieties of actinolite, amosite (cummingtonite-grunerite), tremolite, chrysotile (serpentine), crocidolite (riebeckite), anthophyllite, and any of these minerals that have been chemically treated or altered. The chemical abstracts service registry number for each is as follows: Asbestos (1332-21-4), actinolite (13768-00-8), amosite (12172-73-5), tremolite (14567-73-8), chrysotile (12001-29-5), crocidolite (12001-28-4), and anthophyllite (17068-78-9).

(2) "Asbestos-containing building material" means:

(a) Until January 1, 2025, any building material to which asbestos is deliberately added in any concentration or that contains more than one percent asbestos by weight or area as determined using the United States environmental protection agency method for the determination of asbestos in building materials, EPA/600/R-93/116, July 1993; and

(b) Beginning January 1, 2025, any building material to which asbestos is deliberately added in any concentration or that contains more than one-tenth of one percent asbestos by weight or area as determined using the United States environmental protection agency method for the determination of asbestos in building materials, EPA/600/R-93/116, July 1993.

(3) "Building material" includes materials designed for, or used in, construction, renovation, repair, or maintenance of institutional, commercial, public, industrial, or residential buildings and structures. The term does not include automobiles, recreational vehicles, boats, or other mobile means of transportation.

(4) "Consumer" means any person that acquires a building material for direct use or ownership, rather than for resale or use in production and manufacturing.

(5) "Department" means the department of ecology.

(6) "Interested party" means any contractor, subcontractor, or worker that performs, or is reasonably expected to perform, work at a facility covered under RCW 70A.450.070 or any organization whose members perform, or are reasonably

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expected to perform, work at a facility covered under RCW 70A.450.070.

(7) "Person" means any individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

(8) "Residential construction" means construction, alteration, repair, improvement, or maintenance of single-family dwellings, duplexes, apartments, condominiums, and other residential structures not to exceed four stories in height, including the basement.

(9) "Retailer" means any person that sells goods or commodities directly to consumers. [2020 c 100 § 2; 2013 c 51 § 2. Formerly RCW 70.310.020.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

70A.450.030 Labeling requirement for asbestos-containing building materials. (1) Effective January 1, 2014, it is unlawful to manufacture, wholesale, or distribute for sale an asbestos-containing building material that is not labeled as required by RCW 70A.450.040 or as required under federal law, 40 C.F.R. part 763, subpart I, Sec. 173.171 (1994). The labeling requirement also applies to stock-on-hand, meaning any asbestos-containing building material in their possession or control after December 31, 2013, must be labeled. Retailers that do not manufacture, wholesale, or distribute asbestos-containing building materials are exempt from this chapter.

(2)(a) Subsection (1) of this section does not apply to asbestos-containing building materials that have already been installed, applied, or used by the consumer.

(b) Subsection (1) of this section does not apply to asbestos-containing building materials used solely for United States military purposes.

(3) Any manufacturer, wholesaler, or distributor may submit a written request for an exemption from the labeling requirements of this chapter, and the department may grant such an exemption if it determines that the labeling requirements are technically infeasible or create an undue economic hardship. Each exemption is in effect for a period not to exceed three years from the date issued and is subject to the terms and conditions prescribed by the department. [2020 c 20 § 1426; 2013 c 51 § 3. Formerly RCW 70.310.030.]

70A.450.040 Placement of label—Content of label's notice—Tampering with label unlawful. (1) A label must be placed in a prominent location adjacent to the product name or description on the exterior of the wrapping and packaging in which the asbestos-containing building material is placed for storage, shipment, and sale.

(2) A label must also be placed on the exterior surface of the asbestos-containing building material itself unless it is sold as a liquid or paste, is sand or gravel, or an exemption is granted pursuant to RCW 70A.450.030(3).

(3) Asbestos-containing building materials must have a legible label that clearly identifies it as containing asbestos. The department may adopt rules regarding the implementation of this chapter. At a minimum, the label must state the following:

(4) Asbestos-containing building materials must have a legible label that clearly identifies it as containing asbestos. The department may adopt rules regarding the implementation of this chapter. At a minimum, the label must state the following:

CAUTION!

This product contains ASBESTOS which is known to cause cancer and lung disease. Avoid creating dust. Intentionally removing or tampering with this label is a violation of state law.

(4) It is unlawful for any person to remove, deface, cover, or otherwise obscure or tamper with a label or sticker that has been applied in compliance with this section, unless the asbestos-containing building material is in the possession of the end user. [2020 c 20 § 1427; 2013 c 51 § 4. Formerly RCW 70.310.040.]

70A.450.050 Enforcement of chapter—Penalties. (1) The provisions of this chapter may be enforced by the department, local air authorities, or their designees.

(2) A person found in violation of this chapter is subject to the penalties provided under RCW 70A.15.3160. [2020 c 20 § 1428; 2013 c 51 § 5. Formerly RCW 70.310.050.]

70A.450.060 Use of asbestos-containing building materials in new construction—Prohibition—Exceptions.

(1) Except as provided in subsection (2) of this section, the use of asbestos-containing building materials in new construction or renovations is prohibited.

(2) Subsection (1) of this section does not apply to:

(a) The use of asbestos-containing building materials in residential construction;

(b) The use of asbestos-containing building materials that are, as of June 11, 2020, already ordered by a contractor or currently in the possession of the contractor; or

(c) The use of asbestos-containing building materials if complying with subsection (1) of this section would result in the breach of a contract existing as of June 11, 2020. [2020 c 100 § 1.]

70A.450.070 Inspection of certain facilities for asbestos-containing building materials—Asbestos management plan—Content—Penalties. (1) Every owner of a facility that is engaged in activities described in codes 31 through 33 of the North American industry classification system must:

(a) Perform an inspection of the facility to determine whether asbestos-containing building materials are present and, if asbestos-containing building materials are found during the initial inspection, reinspect asbestos-containing building materials every five years thereafter. The inspections must be conducted by persons meeting the accreditation requirements of the federal toxic substances control act, 15 U.S.C. Sec. 2646 (b) or (c); and

(b) Develop, maintain, and update an asbestos management plan and keep a copy at the facility. The asbestos management plan must be updated every five years and after any material changes in asbestos-containing building materials in the facility. The asbestos management plan must include:

(i) The name and address of the facility and whether the facility has asbestos-containing building materials, and the type of asbestos-containing building material;

(ii) The date of the original facility inspection;

(iii) A plan for reinspections;

(iv) A blueprint of the facility that clearly identifies the location of asbestos-containing building materials;

(v) A description of any response action or prevention measures taken to reduce asbestos exposure;

(vi) A copy of the analysis of any building or facility, and the name and address of any laboratory that sampled the material;

(vii) The name, address, and telephone number of a designated contact to whom the owner has assigned responsibility for ensuring that the duties of the owner are carried out; and

(viii) A description of steps taken to inform workers about inspections, reinspections, response actions, and periodic surveillance of the asbestos-containing building materials.

(2) Upon request, the asbestos management plan required under subsection (1)(b) of this section must be made available to the department, the department of labor and industries, local air pollution control authorities in jurisdictions where they have been created under this chapter, and any interested party. In addition to the penalties established by this chapter, failure to create or maintain a required asbestos management plan is a violation of chapter 49.17 RCW and subject to the penalties established under RCW 49.17.180 and 49.17.190. [2020 c 100 § 3.]

Chapter 70A.455 RCW

PLASTIC PRODUCT DEGRADABILITY

Sections

70A.455.010	Findings—Intent.
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70A.455.070	Producers of plastic film bags or food service products—Prohibited, discouraged, and encouraged acts.
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70A.455.090	Enforcement of chapter—Penalties—Enforcement.
70A.455.100	Producers in violation of chapter—Penalties.
70A.455.120	Rules—Producers' declaration—Enforcement.

70A.455.010 Findings—Intent. (1) The legislature finds and declares that it is the public policy of the state that:

(a) Environmental marketing claims for plastic products, whether implicit or implied, should adhere to uniform and recognized standards for "compostability" and "biodegradability," since misleading, confusing, and deceptive labeling can negatively impact local composting programs and compost processors. Plastic products marketed as being "compostable" should be readily and easily identifiable as meeting these standards;

(b) Legitimate and responsible packaging and plastic product manufacturers are already properly labeling their compostable products, but many manufacturers are not. Not all compost facilities and their associated processing technologies accept or are required to accept compostable packaging as feedstocks. However, implementing a standardized system and test methods may create the ability for them to take these products in the future.

(2) Therefore, it is the intent of the legislature to authorize the department of ecology, cities, and counties to pursue false or misleading environmental claims and "greenwashing" for plastic products claiming to be "compostable" or

"biodegradable" when in fact they are not. [2022 c 180 § 801; 2019 c 265 § 1. Formerly RCW 70.360.010.]

Findings—Intent—Scope of authority of chapter 180, Laws of 2022—2022 c 180: See notes following RCW 70A.205.007.

70A.455.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "ASTM" means the American society for testing and materials.

(2) "Biodegradable mulch film" means film plastic used as a technical tool in commercial farming applications that biodegrades in soil after being used, and:

(a) The film product fulfills plant growth and regulated metals requirements of ASTM D6400; and

(b)(i) Meets the requirements of Vincotte's "OK Biodegradable Soil" certification scheme, as that certification existed as of January 1, 2019;

(ii) At ambient temperatures and in soil, shows at least 90 percent biodegradation absolute or relative to microcrystalline cellulose in less than two years' time, tested according to ISO 17556 or ASTM 5988 standard test methods, as those test methods existed as of January 1, 2019; or

(iii) Meets the requirements of EN 17033 "plastics-biodegradable mulch films for use in agriculture and horticulture" as it existed on January 1, 2019.

(3) "Department" means the department of ecology.

(4) "Federal trade commission guides" means the United States federal trade commission's guides for the use of environmental marketing claims (Part 260, commencing at section 260.1), compostability claims, including section 260.8, and degradation claims (subchapter B of chapter I of Title 16 of the Code of Federal Regulations), as those guides existed as of January 1, 2019.

(5) "Film product" means a bag, sack, wrap, or other sheet film product.

(6) "Food service product" has the same meaning as defined in RCW 70A.245.010.

(7) "Person" means individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(8) "Plastic food packaging and food service products" means food packaging and food service products that is composed of:

(a) Plastic; or

(b) Fiber or paper with a plastic coating, window, component, or additive.

(9) "Plastic product" means a product made of plastic, whether alone or in combination with another material including, but not limited to, paperboard. A plastic product includes, but is not limited to, any of the following:

(a) A product or part of a product that is used, bought, or leased for use by a person for any purpose;

(b) A package or a packaging component including, but not limited to, packaging peanuts;

(c) A film product; or

(d) Plastic food packaging and food service products.

(10) "Producer" means the following person responsible for compliance under this chapter for a product sold, offered for sale, or distributed in or into this state:

(a) If the product is sold under the manufacturer's own brand or lacks identification of a brand, the producer is the person who manufactures the product;

(b) If the product is manufactured by a person other than the brand owner, the producer is the person that is the licensee of a brand or trademark under which a product is used in a commercial enterprise, sold, offered for sale, or distributed in or into this state, whether or not the trademark is registered in this state, unless the manufacturer or brand owner of the product has agreed to accept responsibility under this chapter; or

(c) If there is no person described in (a) and (b) of this subsection over whom the state can constitutionally exercise jurisdiction, the producer is the person who imports or distributes the product in or into the state.

(11) "Standard specification" means either:

(a) ASTM D6400 - standard specification labeling of plastics designed to be aerobically composted in municipal or industrial facilities, as it existed as of January 1, 2019; or

(b) ASTM D6868 - standard specification for labeling of end items that incorporate plastics and polymers as coatings or additives with paper and other substrates designed to be aerobically composted in municipal or industrial facilities, as it existed as of January 1, 2019.

(12) "Utensil" means a product designed to be used by a consumer to facilitate the consumption of food or beverages, including knives, forks, spoons, cocktail picks, chopsticks, splash sticks, and stirrers. [2022 c 180 § 802; 2019 c 265 § 2. Formerly RCW 70.360.020.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Findings—Intent—Scope of authority of chapter 180, Laws of 2022—2022 c 180: See notes following RCW 70A.205.007.

70A.455.030 Use of terms on label. (1) Except as provided in this chapter, no producer may sell, offer for sale, or distribute for use in this state a plastic product that is labeled with the term "biodegradable," "degradable," "decomposable," "oxo-degradable," or any similar form of those terms, or in any way imply that the plastic product will break down, fragment, biodegrade, or decompose in a landfill or other environment.

(2) This section does not apply to biodegradable mulch film that meets the required testing and has the appropriate third-party certifications. [2022 c 180 § 811; 2019 c 265 § 3. Formerly RCW 70.360.030.]

Findings—Intent—Scope of authority of chapter 180, Laws of 2022—2022 c 180: See notes following RCW 70A.205.007.

70A.455.040 Requirements for a product labeled "compostable." (1) A product labeled as "compostable" that is sold, offered for sale, or distributed for use in Washington by a producer must:

(a) Meet ASTM standard specification D6400;

(b) Meet ASTM standard specification D6868; or

(c) Be comprised of wood, which includes renewable wood, or fiber-based substrate only.

(2) A product described in subsection (1)(a) or (b) of this section must:

(a) Meet labeling requirements established under the United States federal trade commission's guides; and

(b) Feature labeling that:

(i) Meets industry standards for being distinguishable upon quick inspection in both public sorting areas and in processing facilities;

(ii) Uses a logo indicating the product has been certified by a recognized third-party independent verification body as meeting the ASTM standard specification;

(iii) Displays the word "compostable," where possible, indicating the product has been tested by a recognized third-party independent body and meets the ASTM standard specification; and

(iv) Uses green, beige, or brown labeling, color striping, or other green, beige, or brown symbols, colors, tinting, marks, or design patterns that help differentiate compostable items from noncompostable items. [2022 c 180 § 803; 2019 c 265 § 4. Formerly RCW 70.360.040.]

Findings—Intent—Scope of authority of chapter 180, Laws of 2022—2022 c 180: See notes following RCW 70A.205.007.

70A.455.050 Film bags—Identification. (1) A producer of a film bag that meets ASTM standard specification D6400 and is distributed or sold by retailers must ensure that the film bag is readily and easily identifiable from other film bags in a manner that is consistent with the federal trade commission guides.

(2) For purposes of this section, "readily and easily identifiable" products must meet the following requirements:

(a) Be labeled with a certification logo indicating the bag meets the ASTM D6400 standard specification if the bag has been certified as meeting that standard by a recognized third-party independent verification body;

(b) Be labeled in accordance with one of the following:

(i) The bag is tinted or made of a uniform color of green, beige, or brown and labeled with the word "compostable" on one side of the bag and the label must be at least one inch in height; or

(ii) Be labeled with the word "compostable" on both sides of the bag and the label must be one of the following:

(A) Green, beige, or brown color lettering at least one inch in height; or

(B) Within a contrasting green, beige, or brown color band of at least one inch in height on both sides of the bag with color contrasting lettering of at least one-half inch in height; and

(c) Meet industry standards for being distinguishable upon quick inspection in both public sorting areas and in processing facilities.

(3) If a bag is smaller than 14 inches by 14 inches, the lettering and stripe required under subsection (2)(b)(ii) of this section must be in proportion to the size of the bag.

(4) A film bag that meets ASTM standard specification D6400 that is sold or distributed in this state may not display a chasing arrow resin identification code or recycling type of symbol in any form.

(5) A producer is required to comply with this section only to the extent that the labeling requirements do not conflict with the federal trade commission guides. [2022 c 180 § 804; 2019 c 265 § 5. Formerly RCW 70.360.050.]

Findings—Intent—Scope of authority of chapter 180, Laws of 2022—2022 c 180: See notes following RCW 70A.205.007.

70A.455.060 Plastic food service products/film products—Identification. (1)(a) A producer of plastic food service products or film products that meet ASTM standard specification D6400 or ASTM standard specification D6868 must ensure that the items are readily and easily identifiable from other plastic food service products or plastic film products in a manner that is consistent with the federal trade commission guides.

(b) Film bags are exempt from the requirements of this section, and are instead subject to the requirements of RCW 70A.455.050.

(2) For the purposes of this section, "readily and easily identifiable" products must:

(a) Be labeled with a logo indicating the product has been certified by a recognized third-party independent verification body as meeting the ASTM standard specification;

(b) Be labeled with the word "compostable," where possible, indicating the food packaging or film product has been tested by a recognized third-party independent body and meets the ASTM standard specification;

(c) Meet industry standards for being distinguishable upon quick inspection in both public sorting areas and in processing facilities;

(d) If the product is a plastic food service product or food contact film product, be at least partially colored or partially tinted green, beige, or brown, or have a green, beige, or brown stripe or band at least .25 inches wide; and

(e) If the product is a nonfood contact film product, be at least partially colored or partially tinted green or have a green stripe or band at least .25 inches wide and display the word "compostable."

(3) It is encouraged that each product described in subsection (1) of this section display labeling language via printing, embossing, or compostable adhesive stickers using, when possible, either the colors green, beige, or brown that contrast with background product color for easy identification.

(4) Graphic elements are encouraged to increase legibility of the word "compostable" and overall product distinction that may include text boxes, stripes, bands, or a green, beige, or brown tint of the product.

(5) A producer is required to comply with this section only to the extent that the labeling requirements do not conflict with the federal trade commission guides. [2022 c 180 § 805; 2020 c 20 § 1446; 2019 c 265 § 6. Formerly RCW 70.360.060.]

Findings—Intent—Scope of authority of chapter 180, Laws of 2022—2022 c 180: See notes following RCW 70A.205.007.

Effective date—2020 c 20 §§ 1446-1450: "Sections 1446 through 1450 of this act take effect July 1, 2020." [2020 c 20 § 104.]

70A.455.070 Producers of plastic film bags or food service products—Prohibited, discouraged, and encouraged acts. (1) A producer of plastic film bags sold, offered for sale, or distributed for use in Washington that does not meet the applicable ASTM standard specifications provided in RCW 70A.455.050 is:

(a) Prohibited from using tinting, color schemes, labeling, or terms that are required of products that meet the applicable ASTM standard specifications under RCW 70A.455.050;

(b) Discouraged from using labeling, images, and terms that may reasonably be anticipated to confuse consumers into believing that noncompostable products are compostable; and

(c) Encouraged to use labeling, images, and terms to help consumers identify noncompostable bags as either: (i) Suitable for recycling; or (ii) necessary to dispose as waste.

(2) A producer of food service products, or plastic film products other than plastic film bags subject to subsection (1) of this section, sold, offered for sale, or distributed for use in Washington that does not meet the applicable ASTM standard specifications provided in RCW 70A.455.060 is:

(a) Prohibited from using labeling, or terms that are required of products that meet the applicable ASTM standard specifications under RCW 70A.455.060;

(b) Discouraged from using labeling, images, and terms that may reasonably be anticipated to confuse consumers into believing that noncompostable products are compostable; and

(c) Encouraged to use tinting, coloration, labeling, images, and terms to help consumers identify film products and food service packaging as either: (i) Suitable for recycling; or (ii) necessary to dispose as waste. [2022 c 180 § 806; 2020 c 20 § 1447; 2019 c 265 § 7. Formerly RCW 70.360.070.]

Findings—Intent—Scope of authority of chapter 180, Laws of 2022—2022 c 180: See notes following RCW 70A.205.007.

Effective date—2020 c 20 §§ 1446-1450: See note following RCW 70A.455.060.

70A.455.080 Submission of information demonstrating compliance with chapter—Other information. (1) Upon the request by a person, including the department, a producer shall submit to that person or the department, within 90 days of the request, nonconfidential business information and documentation demonstrating compliance with this chapter, in a format that is easy to understand and scientifically accurate.

(2) Upon request by a commercial compost processing facility, producers of compostable products are encouraged to provide the facility with information regarding the technical aspects of a commercial composting environment, such as heat or moisture, in which the producer's product has been field tested and found to degrade. [2022 c 180 § 807; 2019 c 265 § 8. Formerly RCW 70.360.080.]

Findings—Intent—Scope of authority of chapter 180, Laws of 2022—2022 c 180: See notes following RCW 70A.205.007.

70A.455.090 Enforcement of chapter—Penalties—Enforcement. (1)(a) The department and cities and counties have concurrent authority to enforce this chapter and to issue and collect civil penalties for a violation of this chapter, subject to the conditions in this section and RCW 70A.455.100. An enforcing government entity may impose a civil penalty in the amount of up to \$2,000 for the first violation of this chapter, up to \$5,000 for the second violation of this chapter, and up to \$10,000 for the third and any subsequent violation of this chapter. If a producer has paid a prior penalty for the same violation to a different government entity with enforcement authority under this subsection, the penalty imposed by a government entity is reduced by the amount of the payment.

(2022 Ed.)

(b) The enforcement of this chapter must be based primarily on complaints filed with the department and cities and counties. The department must establish a forum for the filing of complaints. Cities, counties, or any person may file complaints with the department using the forum, and cities and counties may review complaints filed with the department via the forum. The forum established by the department may include a complaint form on the department's website, a telephone hotline, or a public outreach strategy relying upon electronic social media to receive complaints that allege violations. The department, in collaboration with the cities and counties, must provide education and outreach activities to inform retail establishments, consumers, and producers about the requirements of this chapter.

(2) Penalties issued by the department are appealable to the pollution control hearings board established in chapter 43.21B RCW.

(3) The remedies provided by this section are not exclusive and are in addition to the remedies that may be available pursuant to chapter 19.86 RCW or other consumer protection laws, if applicable.

(4) In addition to penalties recovered under this section, the enforcing city or county may recover reasonable enforcement costs and attorneys' fees from the liable producer. [2022 c 180 § 808; 2020 c 20 § 1448; 2019 c 265 § 9. Formerly RCW 70.360.090.]

Findings—Intent—Scope of authority of chapter 180, Laws of 2022—2022 c 180: See notes following RCW 70A.205.007.

Effective date—2020 c 20 §§ 1446-1450: See note following RCW 70A.455.060.

70A.455.100 Producers in violation of chapter—Penalties. (1) Producers who violate the requirements of this chapter are subject to civil penalties described in RCW 70A.455.090. A specific violation is deemed to have occurred upon the sale of noncompliant product by stock-keeping unit number or unique item number. The repeated sale of the same noncompliant product by stock-keeping unit number or unique item number is considered a single violation.

(2)(a) A city or county enforcing a requirement of this chapter must send a written notice and a copy of the requirements to a noncompliant producer of an alleged violation, who will have 90 days to become compliant.

(b) A city or county enforcing a requirement of this chapter may assess a first penalty if the producer has not met the requirements 90 days following the date the notification was sent. A city or county may impose second, third, and subsequent penalties on a producer that remains noncompliant with the requirements of this chapter for every month of non-compliance.

(3) The department may only impose penalties under this chapter consistent with the standards established in RCW 43.21B.300. [2022 c 180 § 809; 2020 c 20 § 1449; 2019 c 265 § 10. Formerly RCW 70.360.100.]

Findings—Intent—Scope of authority of chapter 180, Laws of 2022—2022 c 180: See notes following RCW 70A.205.007.

Effective date—2020 c 20 §§ 1446-1450: See note following RCW 70A.455.060.

70A.455.120 Rules—Producers' declaration—Enforcement. (1) The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter.

(2) Producers of a product subject to RCW 70A.455.040, 70A.455.050, or 70A.455.060 must submit, under penalty of perjury, a declaration that the product meets the standards established under those sections of this chapter for the product. This declaration must be submitted to the department:

(a) By January 1, 2024, for a product that is or will be sold or distributed into Washington beginning January 1, 2024;

(b) Prior to the sale or distribution of a product newly sold or distributed into Washington after January 1, 2024; and

(c) Prior to the sale or distribution of a product whose method of compliance with the standards established in RCW 70A.455.040, 70A.455.050, or 70A.455.060 is materially changed from the method of compliance used at the last declaration submission under this section.

(3) The department must begin enforcing the requirements of this chapter by July 1, 2024. [2022 c 180 § 810.]

Findings—Intent—Scope of authority of chapter 180, Laws of 2022—2022 c 180: See notes following RCW 70A.205.007.

Chapter 70A.500 RCW

ELECTRONIC PRODUCT RECYCLING

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70A.500.901	Effective date—2006 c 183.

70A.500.010 Findings. The legislature finds that a convenient, safe, and environmentally sound system for the collection, transportation, and recycling of covered electronic products must be established. The legislature further finds that the system must encourage the design of electronic products that are less toxic and more recyclable. The legislature further finds that the responsibility for this system must be shared among all stakeholders, with manufacturers financing the collection, transportation, and recycling system. [2006 c 183 § 1. Formerly RCW 70.95N.010.]

70A.500.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Authority" means the Washington materials management and financing authority created under RCW 70A.500.270.

(2) "Authorized party" means a manufacturer who submits an individual independent plan or the entity authorized to submit an independent plan for more than one manufacturer.

(3) "Board" means the board of directors of the Washington materials management and financing authority created under RCW 70A.500.280.

(4) "Collector" means an entity licensed to do business in the state that gathers unwanted covered electronic products from households, small businesses, school districts, small governments, and charities for the purpose of recycling and meets minimum standards that may be developed by the department.

(5) "Contract for services" means an instrument executed by the authority and one or more persons or entities that delineates collection, transportation, and recycling services, in whole or in part, that will be provided to the citizens of the state within service areas as described in the approved standard plan.

(6) "Covered electronic product" includes a cathode ray tube or flat panel computer monitor having a viewable area greater than four inches when measured diagonally, a desktop computer, a laptop or a portable computer, or a cathode ray tube or flat panel television having a viewable area greater than four inches when measured diagonally that has been used in the state by any covered entity regardless of original point of purchase. "Covered electronic product" does not include: (a) A motor vehicle or replacement parts for use in motor vehicles or aircraft, or any computer, computer monitor, or television that is contained within, and is not separate from, the motor vehicle or aircraft; (b) monitoring and control instruments or systems; (c) medical devices; (d) products including materials intended for use as ingredients in those products as defined in the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.) or the virus-serum-toxin act of 1913 (21 U.S.C. Sec. 151 et seq.), and regulations issued

under those acts; (e) equipment used in the delivery of patient care in a health care setting; (f) a computer, computer monitor, or television that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; or (g) handheld portable voice or data devices used for commercial mobile services as defined in 47 U.S.C. Sec. 332 (d)(1).

(7) "Covered entity" means any household, charity, school district, small business, or small government located in Washington state.

(8) "Curbside service" means a collection service providing regularly scheduled pickup of covered electronic products from households or other covered entities in quantities generated from households.

(9) "Department" means the department of ecology.

(10) "Electronic product" includes a cathode ray tube or flat panel computer monitor having a viewable area greater than four inches when measured diagonally; a desktop computer; a laptop or a portable computer; or a cathode ray tube or flat screen television having a viewable area greater than four inches when measured diagonally.

(11) "Equivalent share" means the weight in pounds of covered electronic products identified for an individual manufacturer under this chapter as determined by the department under RCW 70A.500.200.

(12) "Household" means a single detached dwelling unit or a single unit of a multiple dwelling unit and appurtenant structures.

(13) "Independent plan" means a plan for the collection, transportation, and recycling of unwanted covered electronic products that is developed, implemented, and financed by an individual manufacturer or by an authorized party.

(14) "Manufacturer" means any person, in business or no longer in business but having a successor in interest, who, irrespective of the selling technique used, including by means of distance or remote sale:

(a) Manufactures or has manufactured a covered electronic product under its own brand names for sale in or into this state;

(b) Assembles or has assembled a covered electronic product that uses parts manufactured by others for sale in or into this state under the assembler's brand names;

(c) Resells or has resold in or into this state under its own brand names a covered electronic product produced by other suppliers, including retail establishments that sell covered electronic products under their own brand names;

(d) Manufactures or manufactured a cobranded product for sale in or into this state that carries the name of both the manufacturer and a retailer;

(e) Imports or has imported a covered electronic product into the United States that is sold in or into this state. However, if the imported covered electronic product is manufactured by any person with a presence in the United States meeting the criteria of manufacturer under (a) through (d) of this subsection, that person is the manufacturer. For purposes of this subsection, "presence" means any person that performs activities conducted under the standards established for interstate commerce under the commerce clause of the United States Constitution;

(f) Sells at retail a covered electronic product acquired from an importer that is the manufacturer as described in (e) of this subsection, and elects to register in lieu of the importer as the manufacturer for those products; or

(g) Beginning in program year 2016, elects to assume the responsibility and register in lieu of a manufacturer as defined under this section. In the event the entity who assumes responsibility fails to comply, the manufacturer as defined under (a) through (f) of this subsection remains fully responsible.

(15) "Market share" means the percentage of covered electronic products by weight identified for an individual manufacturer, as determined by the department under RCW 70A.500.190.

(16) "New entrant" means: (a) A manufacturer of televisions that have been sold in the state for less than ten years; or (b) a manufacturer of desktop computers, laptop and portable computers, or computer monitors that have been sold in the state for less than five years. However, a manufacturer of both televisions and computers or a manufacturer of both televisions and computer monitors that is deemed a new entrant under either only (a) or (b) of this subsection is not considered a new entrant for purposes of this chapter.

(17) "Orphan product" means a covered electronic product that lacks a manufacturer's brand or for which the manufacturer is no longer in business and has no successor in interest.

(18) "Plan's equivalent share" means the weight in pounds of covered electronic products for which a plan is responsible. A plan's equivalent share is equal to the sum of the equivalent shares of each manufacturer participating in that plan.

(19) "Plan's market share" means the sum of the market shares of each manufacturer participating in that plan.

(20) "Plan's return share" means the sum of the return shares of each manufacturer participating in that plan.

(21) "Premium service" means services such as at-location system upgrade services provided to covered entities and at-home pickup services offered to households. "Premium service" does not include curbside service.

(22) "Processor" means an entity engaged in disassembling, dismantling, or shredding electronic products to recover materials contained in the electronic products and prepare those materials for reclaiming or reuse in new products in accordance with processing standards established by this chapter and by the department. A processor may also salvage parts to be used in new products.

(23) "Product type" means one of the following categories: Computer monitors; desktop computers; laptop and portable computers; and televisions.

(24) "Program" means the collection, transportation, and recycling activities conducted to implement an independent plan or the standard plan.

(25) "Program year" means each full calendar year after the program has been initiated.

(26) "Recycling" means transforming or remanufacturing unwanted electronic products, components, and by-products into usable or marketable materials for use other than landfill disposal or incineration. "Recycling" does not include energy recovery or energy generation by means of combusting unwanted electronic products, components, and

by-products with or without other waste. Smelting of electronic materials to recover metals for reuse in conformance with all applicable laws and regulations is not considered disposal or energy recovery.

(27) "Retailer" means a person who offers covered electronic products for sale at retail through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or the internet, but does not include a sale that is a wholesale transaction with a distributor or a retailer.

(28) "Return share" means the percentage of covered electronic products by weight identified for an individual manufacturer, as determined by the department under RCW 70A.500.190.

(29) "Reuse" means any operation by which an electronic product or a component of a covered electronic product changes ownership and is used for the same purpose for which it was originally purchased.

(30) "Small business" means a business employing less than fifty people.

(31) "Small government" means a city in the state with a population less than fifty thousand, a county in the state with a population less than one hundred twenty-five thousand, and special purpose districts in the state.

(32) "Standard plan" means the plan for the collection, transportation, and recycling of unwanted covered electronic products developed, implemented, and financed by the authority on behalf of manufacturers participating in the authority.

(33) "Transporter" means an entity that transports covered electronic products from collection sites or services to processors or other locations for the purpose of recycling, but does not include any entity or person that hauls their own unwanted electronic products.

(34) "Unwanted electronic product" means a covered electronic product that has been discarded or is intended to be discarded by its owner.

(35) "White box manufacturer" means a person who manufactured unbranded covered electronic products offered for sale in the state within ten years prior to a program year for televisions or within five years prior to a program year for desktop computers, laptop or portable computers, or computer monitors. [2020 c 20 § 1247. Prior: 2013 c 305 § 1; 2006 c 183 § 2. Formerly RCW 70.95N.020.]

Effective date—2013 c 305: "This act takes effect January 1, 2014." [2013 c 305 § 15.]

70A.500.030 Manufacturer participation. (1) A manufacturer must participate in an independent plan or the standard plan to implement and finance the collection, transportation, and recycling of covered electronic products.

(2) An independent plan or the standard plan must be implemented and fully operational no later than January 1, 2009.

(3) The manufacturers participating in an approved plan are responsible for covering all administrative and operational costs associated with the collection, transportation, and recycling of their plan's equivalent share of covered electronic products. If costs are passed on to consumers, it must be done without any fees at the time the unwanted electronic product is delivered or collected for recycling. However, this does not prohibit collectors providing premium or curbside

services from charging customers a fee for the additional collection cost of providing this service, when funding for collection provided by an independent plan or the standard plan does not fully cover the cost of that service.

(4) Nothing in this chapter changes or limits the authority of the Washington utilities and transportation commission to regulate collection of solid waste in the state of Washington, including curbside collection of residential recyclable materials, nor does this chapter change or limit the authority of a city or town to provide such service itself or by contract pursuant to RCW 81.77.020.

(5) Manufacturers are encouraged to collaborate with electronic product retailers, certificated waste haulers, processors, recyclers, charities, and local governments within the state in the development and implementation of their plans. [2006 c 183 § 3. Formerly RCW 70.95N.030.]

70A.500.040 Manufacturer registration. (1) By January 1, 2007, and annually thereafter, each manufacturer must register with the department.

(2) A manufacturer must submit to the department with each registration or annual renewal a fee to cover the administrative costs of this chapter as determined by the department under RCW 70A.500.230.

(3) The department shall review the registration or renewal application and notify the manufacturer if their registration does not meet the requirements of this section. Within thirty days of receipt of such a notification from the department, the manufacturer must file with the department a revised registration addressing the requirements noted by the department.

(4) The registration must include the following information:

(a) The name and contact information of the manufacturer submitting the registration;

(b) The manufacturer's brand names of covered electronic products, including all brand names sold in the state in the past, all brand names currently being sold in the state, and all brand names for which the manufacturer has legal responsibility under RCW 70A.500.100;

(c) The method or methods of sale used in the state; and

(d) Whether the registrant will be participating in the standard plan or submitting an independent plan to the department for approval.

(5) The registrant shall submit any changes to the information provided in the registration to the department within fourteen days of such change.

(6) The department shall identify, using all reasonable means, manufacturers that are in business or that are no longer in business but that have a successor in interest by examining best available return share data, product advertisements, and other pertinent data. The department shall notify manufacturers that have been identified and for whom an address has been found of the requirements of this chapter, including registration and plan requirements under this section and RCW 70A.500.050. [2020 c 20 § 1248; 2013 c 305 § 2; 2006 c 183 § 4. Formerly RCW 70.95N.040.]

Effective date—2013 c 305: See note following RCW 70A.500.020.

70A.500.050 Independent plan requirements. (1) A manufacturer must participate in the standard plan adminis-

tered by the authority, unless the manufacturer obtains department approval for an independent plan for the collection, transportation, and recycling of unwanted electronic products.

(2) An independent plan may be submitted by an individual manufacturer or by a group of manufacturers, provided that:

(a) For program years 2009 through 2015, each independent plan represents at least a five percent return share of covered electronic products. For program year 2016 and all subsequent program years, each independent plan represents at least a five percent market share of covered electronic products; and

(b) No manufacturer may participate in an independent plan if it is a new entrant or a white box manufacturer.

(3) An individual manufacturer submitting an independent plan to the department is responsible for collecting, transporting, and recycling its equivalent share of covered electronic products.

(4)(a) Manufacturers collectively submitting an independent plan are responsible for collecting, transporting, and recycling the sum of the equivalent shares of each participating manufacturer.

(b) Each group of manufacturers submitting an independent plan must designate a party authorized to file the plan with the department on their behalf. A letter of certification from each of the manufacturers designating the authorized party must be submitted to the department together with the plan.

(5) Each manufacturer in the standard plan or in an independent plan retains responsibility and liability under this chapter in the event that the plan fails to meet the manufacturer's obligations under this chapter. [2013 c 305 § 3; 2006 c 183 § 5. Formerly RCW 70.95N.050.]

Effective date—2013 c 305: See note following RCW 70A.500.020.

70A.500.060 Standard, independent plan requirements—Fees to be set by the department—Acceptance or rejection by department. (1) All initial independent plans and the initial standard plan required under RCW 70A.500.050 must be submitted to the department by February 1, 2008. The department shall review each independent plan and the standard plan.

(2) The authority submitting the standard plan and each authorized party submitting an independent plan to the department must pay a fee to the department to cover the costs of administering and implementing this chapter. The department shall set the fees as described under RCW 70A.500.230.

(3) The fees in subsection (2) of this section apply to the initial plan submission and plan updates and revisions required in RCW 70A.500.070.

(4) Within ninety days after receipt of a plan, the department shall determine whether the plan complies with this chapter. If the plan is approved, the department shall send a letter of approval. If a plan is rejected, the department shall provide the reasons for rejecting the plan to the authority or authorized party. The authority or authorized party must submit a new plan within sixty days after receipt of the letter of disapproval.

(2022 Ed.)

(5) An independent plan and the standard plan must contain the following elements:

(a) Contact information for the authority or authorized party and a comprehensive list of all manufacturers participating in the plan and their contact information;

(b) A description of the collection, transportation, and recycling systems and service providers used, including a description of how the authority or authorized party will:

(i) Seek to use businesses within the state, including retailers, charities, processors, and collection and transportation services;

(ii) Fairly compensate collectors for providing collection services; and

(iii) Fairly compensate processors for providing processing services;

(c) The method or methods for the reasonably convenient collection of all product types of covered electronic products in rural and urban areas throughout the state, including how the plan will provide for collection services in each county of the state and for a minimum of one collection site or alternate collection service for each city or town with a population greater than ten thousand. A collection site for a county may be the same as a collection site for a city or town in the county;

(d) A description of how the plan will provide service to small businesses, small governments, charities, and school districts in Washington;

(e) The processes and methods used to recycle covered electronic products including a description of the processing that will be used and the facility location;

(f) Documentation of audits of each processor used in the plan and compliance with processing standards established under RCW 70A.500.250;

(g) A description of the accounting and reporting systems that will be employed to track progress toward the plan's equivalent share;

(h) A timeline describing start-up, implementation, and progress towards milestones with anticipated results;

(i) A public information campaign to inform consumers about how to recycle their covered electronic products at the end of the product's life; and

(j) A description of how manufacturers participating in the plan will communicate and work with processors utilized by that plan to promote and encourage design of electronic products and their components for recycling.

(6) The standard plan shall address how it will incorporate and fairly compensate registered collectors providing curbside or premium services such that they are not compensated at a lower rate for collection costs than the compensation offered other collectors providing drop-off collection sites in that geographic area.

(7) All transporters, collectors, and processors used to fulfill the requirements of this section must be registered as described in RCW 70A.500.240. [2020 c 20 § 1249; 2006 c 183 § 6. Formerly RCW 70.95N.060.]

70A.500.070 Plan updates—Revised plan. (1) An independent plan and the standard plan must be updated at least every five years and as required in (a) and (b) of this subsection.

(a) If the program fails to provide service in each county in the state or meet other plan requirements, the authority or authorized party shall submit to the department within sixty days of failing to provide service an updated plan addressing how the program will be adjusted to meet the program geographic coverage and collection service requirements established in RCW 70A.500.090.

(b) The authority or authorized party shall notify the department of any modification to the plan. If the department determines that the authority or authorized party has significantly modified the program described in the plan, the authority or authorized party shall submit a revised plan describing the changes to the department within sixty days of notification by the department.

(2) Within sixty days after receipt of a revised plan, the department shall determine whether the revised plan complies with this chapter. If the revised plan is approved, the department shall send a letter of approval. If the revised plan is rejected, the department shall provide the reasons for rejecting the plan to the authority or authorized party. The authority or authorized party must submit a new plan revision within sixty days after receipt of the letter of disapproval.

(3) The authority or authorized parties may buy and sell collected covered electronic products with other programs without submitting a plan revision for review. [2020 c 20 § 1250; 2006 c 183 § 7. Formerly RCW 70.95N.070.]

70A.500.080 Independent plan participants changing to standard plan. (1) A manufacturer participating in an independent plan may join the standard plan by notifying the authority and the department of its intention at least five months prior to the start of the next program year.

(2) Manufacturers may not change from one plan to another plan during a program year.

(3) A manufacturer participating in the standard plan wishing to implement or participate in an independent plan may do so by complying with rules adopted by the department under RCW 70A.500.230. [2020 c 20 § 1251; 2006 c 183 § 8. Formerly RCW 70.95N.080.]

70A.500.090 Collection services. (1) A program must provide collection services for covered electronic products of all product types and produced by any manufacturer that are reasonably convenient and available to all citizens of the state residing within its geographic boundaries, including both rural and urban areas. Each program must provide collection service in every county of the state. A program may provide collection services jointly with another plan or plans.

(a) For any city or town with a population of greater than ten thousand, each program shall provide a minimum of one collection site or alternate collection service described in subsection (3) of this section or a combination of sites and alternate service that together provide at least one collection opportunity for all product types. A collection site for a county may be the same as a collection site for a city or town in the county.

(b) Collection sites may include electronics recyclers and repair shops, recyclers of other commodities, reuse organizations, charities, retailers, government recycling sites, or other suitable locations.

(c) Collection sites must be staffed, open to the public at a frequency adequate to meet the needs of the area being served, and on an ongoing basis.

(2) A program may limit the number of covered electronic products or covered electronic products by product type accepted per customer per day or per delivery at a collection site or service. All covered entities may use a collection site as long as the covered entities adhere to any restrictions established in the plans.

(3) A program may provide collection services in forms different than collection sites, such as curbside services, if those alternate services provide equal or better convenience to citizens and equal or increased recovery of unwanted covered electronic products.

(4) For rural areas without commercial centers or areas with widely dispersed population, a program may provide collection at the nearest commercial centers or solid waste sites, collection events, mail-back systems, or a combination of these options.

(5) For small businesses, small governments, charities, and school districts that may have large quantities of covered electronic products that cannot be handled at collection sites or curbside services, a program may provide alternate services. At a minimum, a program must provide for processing of these large quantities of covered electronic products at no charge to the small businesses, small governments, charities, and school districts. [2013 c 305 § 4; 2006 c 183 § 9. Formerly RCW 70.95N.090.]

Effective date—2013 c 305: See note following RCW 70A.500.020.

70A.500.100 Successor duties. Any person acquiring a manufacturer, or who has acquired a manufacturer, shall have all responsibility for the acquired company's covered electronic products, including covered electronic products manufactured prior to July 1, 2006, unless that responsibility remains with another entity per the purchase agreement and the acquiring manufacturer provides the department with a letter from the other entity accepting responsibility for the covered electronic products. Cobranding manufacturers may negotiate with retailers for responsibility for those products and must notify the department of the results of their negotiations. [2006 c 183 § 10. Formerly RCW 70.95N.100.]

70A.500.110 Covered electronic sampling. (1) For program years 2009 through 2014, an independent plan and the standard plan must implement and finance an auditable, statistically significant sampling of covered electronic products entering its program every program year. The information collected must include a list of the brand names of covered electronic products by product type, the number of covered electronic products by product type, the weight of covered electronic products that are identified for each brand name or that lack a manufacturer's brand, the total weight of the sample by product type, and any additional information needed to assign return share.

(2) For program years 2009 through 2014, the sampling must be conducted in the presence of the department or a third-party organization approved by the department. The department may, at its discretion, audit the methodology and the results.

(3) After the fifth program year through the 2014 program year, the department may reassess the sampling required in this section. The department may adjust the frequency at which manufacturers must implement the sampling or may adjust the frequency at which manufacturers must provide certain information from the sampling. Prior to making any changes, the department shall notify the public, including all registered manufacturers, and provide a comment period. The department shall notify all registered manufacturers of any such changes. [2013 c 305 § 5; 2006 c 183 § 11. Formerly RCW 70.95N.110.]

Effective date—2013 c 305: See note following RCW 70A.500.020.

70A.500.120 Promotion of covered product recycling. (1) An independent plan and the standard plan must inform covered entities about where and how to reuse and recycle their covered electronic products at the end of the product's life, including providing a website or a toll-free telephone number that gives information about the recycling program in sufficient detail to educate covered entities regarding how to return their covered electronic products for recycling.

(2) The department shall promote covered electronic product recycling by:

(a) Posting information describing where to recycle unwanted covered electronic products on its website;

(b) Providing information about recycling covered electronic products through a toll-free telephone service; and

(c) Developing and providing artwork for use in flyers and signage to retailers upon request.

(3) Local governments shall promote covered electronic product recycling, including listings of local collection sites and services, through existing educational methods typically used by each local government.

(4) A retailer who sells new covered electronic products shall provide information to consumers describing where and how to recycle covered electronic products and opportunities and locations for the convenient collection or return of the products. This requirement can be fulfilled by providing the department's toll-free telephone number and website. Remote sellers may include the information in a visible location on their website as fulfillment of this requirement.

(5) Manufacturers, state government, local governments, retailers, and collection sites and services shall collaborate in the development and implementation of the public information campaign. [2006 c 183 § 12. Formerly RCW 70.95N.120.]

70A.500.130 Electronic products recycling account.

(1) The electronic products recycling account is created in the custody of the state treasurer. All payments resulting from plans not reaching their equivalent share, as described in RCW 70A.500.220, shall be deposited into the account. Any moneys collected for manufacturer registration fees, fees associated with reviewing and approving plans and plan revisions, and penalties levied under this chapter shall be deposited into the account.

(2) Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter

43.88 RCW, but an appropriation is not required for expenditures.

(3) Moneys in the account may be used solely by the department for the purposes of fulfilling department responsibilities specified in this chapter and for expenditures to the authority and authorized parties resulting from plans exceeding their equivalent share, as described in RCW 70A.500.220. Funds in the account may not be diverted for any purpose or activity other than those specified in this section. [2020 c 20 § 1252; 2006 c 183 § 13. Formerly RCW 70.95N.130.]

70A.500.140 Annual reports. (1) By March 1st of the second program year and each program year thereafter, the authority and each authorized party shall file with the department an annual report for the preceding program year.

(2) The annual report must include the following information:

(a) The total weight in pounds of each type of covered electronic products collected and recycled, by county, during the preceding program year including documentation verifying collection and processing of that material. The total weight in pounds includes orphan products. The report must also indicate and document the weight in pounds received from each nonprofit charitable organization primarily engaged in the business of reuse and resale used by the plan. The report must document the weight in pounds that were received in large quantities from small businesses, small governments, charities and school districts as described in RCW 70A.500.090(5);

(b) The collection services provided in each county and for each city with a population over ten thousand including a list of all collection sites and services operating in the state in the prior program year and the parties who operated them;

(c)(i) A list of processors used, the weight of covered electronic products processed by each direct processor, and a description of the processes and methods used to recycle the covered electronic products including a description of the processing and facility locations. The report must also include a list of subcontractors who further processed or recycled unwanted covered electronic products or electronic components, including facility locations.

(ii) An estimate of the weight of each type of material recovered as a result of the processing of recycled covered electronic products. Recovered materials catalogued under this subsection must include, at a minimum: Cathode ray tube glass, circuit boards, batteries, mercury-containing devices, plastics, and metals.

(iii) An estimate of the percentage, by weight, of all collected products that ultimately are reused, recycled, or end up as residual waste that is disposed of in another manner;

(d) Educational and promotional efforts that were undertaken;

(e) For program years 2009 through 2014, the results of sampling and sorting as required in RCW 70A.500.110, including a list of the brand names of covered electronic products by product type, the number of covered electronic products by product type, the weight of covered electronic products that are identified for each brand name or that lack a manufacturer's brand, and the total weight of the sample by product type;

(f) The list of manufacturers that are participating in the standard plan;

(g) A description of program revenues and costs, including: (i) The total cost of the program; and (ii) the average cost of the program per pound of covered electronic product collected;

(h) A detailed accounting of the following costs of the program: (i) Program delivery, including: (A) Education and promotional efforts; (B) collection; (C) transportation; and (D) processing and labor; and (ii) program administration;

(i) A description of the methods used by the program to collect, transport, recycle, and process covered electronic products; and

(j) Any other information deemed necessary by the department.

(3) The department shall review each report within ninety days of its submission and shall notify the authority or authorized party of any need for additional information or documentation, or any deficiency in its program.

(4) All reports submitted to the department must be available to the general public through the internet. Proprietary information submitted to the department under this chapter is exempt from public disclosure under RCW 42.56.270. [2020 c 20 § 1253. Prior: 2013 c 305 § 6; 2013 c 292 § 1; 2006 c 183 § 14. Formerly RCW 70.95N.140.]

Effective date—2013 c 305: See note following RCW 70A.500.020.

70A.500.150 Nonprofit charitable organizations—

Report. Nonprofit charitable organizations that qualify for a taxation exemption under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) that are primarily engaged in the business of reuse and resale and that are used by a plan to collect covered electronic products shall file a report with the department by March 1st of the second program year and each program year thereafter. The report must indicate and document the weight of covered electronic products sent for recycling during the previous program year attributed to each plan that the charitable organization is participating in. [2006 c 183 § 15. Formerly RCW 70.95N.150.]

70A.500.160 Electronic products for sale must include manufacturer's brand. (1) Beginning January 1, 2007, no person may sell or offer for sale an electronic product to any person in the state unless the electronic product is labeled with the manufacturer's brand. The label must be permanently affixed and readily visible.

(2) In-state retailers in possession of unlabeled products on January 1, 2007, may exhaust their stock through sales to the public. [2006 c 183 § 16. Formerly RCW 70.95N.160.]

70A.500.170 Sale of covered electronic products. No person may sell or offer for sale a covered electronic product to any person in this state unless the manufacturer of the covered electronic product has filed a registration with the department under RCW 70A.500.040 and is participating in an approved plan under RCW 70A.500.050. A person that sells or offers for sale a covered electronic product in the state shall consult the department's website for lists of manufacturers with registrations and approved plans prior to selling a covered electronic product in the state. A person is considered to have complied with this section if on the date the

product was ordered from the manufacturer or its agent, the manufacturer was listed as having registered and having an approved plan on the department's website. [2020 c 20 § 1254; 2006 c 183 § 17. Formerly RCW 70.95N.170.]

70A.500.180 Department website. (1) The department shall maintain on its website the following information:

(a) The names of the manufacturers and the manufacturer's brands that are registered with the department under RCW 70A.500.040;

(b) The names of the manufacturers and the manufacturer's brands that are participating in an approved plan under RCW 70A.500.050;

(c) The names and addresses of the collectors and transporters that are listed in registrations filed with the department under RCW 70A.500.240;

(d) The names and addresses of the processors used to fulfill the requirements of the plans;

(e) For program years 2009 through 2015, return and equivalent shares for all manufacturers.

(2) The department shall update this website information promptly upon receipt of a registration or a report. [2020 c 20 § 1255; 2013 c 305 § 7; 2006 c 183 § 18. Formerly RCW 70.95N.180.]

Effective date—2013 c 305: See note following RCW 70A.500.020.

70A.500.190 Return share calculation. (1) For program years 2009 through 2015, the department shall determine the return share for each manufacturer in the standard plan or an independent plan by dividing the weight of covered electronic products identified for each manufacturer by the total weight of covered electronic products identified for all manufacturers in the standard plan or an independent plan, then multiplying the quotient by one hundred.

(2) For the first program year, the department shall determine the return share for such manufacturers using all reasonable means and based on best available information regarding return share data from other states and other pertinent data.

(3) For 2014, the department shall determine the return share for such manufacturers using all reasonable means and based on the most recent sampling of covered electronic products conducted in the state under RCW 70A.500.110.

(4)(a) For program year 2016 and all subsequent program years, the department shall determine market share by weight for all manufacturers using any combination of the following data:

(i) Generally available market research data;

(ii) Sales data supplied by manufacturers for brands they manufacture or sell; or

(iii) Sales data provided by retailers for brands they sell.

(b) The department shall determine each manufacturer's percentage of market share by dividing each manufacturer's total pounds of covered electronic products sold in Washington by the sum total of all pounds of covered electronic products sold in Washington by all manufacturers.

(5) Data reported by manufacturers under subsection (4) of this section is exempt from public disclosure under chapter 42.56 RCW. [2020 c 20 § 1256; 2013 c 305 § 8; 2006 c 183 § 19. Formerly RCW 70.95N.190.]

Effective date—2013 c 305: See note following RCW 70A.500.020.

70A.500.200 Equivalent share calculation—Notice to manufacturers—Billing parties that do not meet their plan's equivalent share—Payments to parties that exceed their plan's equivalent share—Nonprofit charitable organizations. (1) For program years 2009 through 2015, the department shall determine the total equivalent share for each manufacturer in the standard plan or an independent plan by dividing the return share percentage for each manufacturer by one hundred, then multiplying the quotient by the total weight in pounds of covered electronic products collected for that program year, allowing as needed for the additional credit authorized in subsection (3) of this section. For program year 2016 and all subsequent program years, the department shall determine the total equivalent share for each manufacturer in the standard plan or an independent plan by dividing the market share percentage for each manufacturer by one hundred, then multiplying the quotient by the total weight in pounds of covered electronic products collected for that program year, allowing as needed for the additional credit authorized in subsection (3) of this section.

(2)(a) By June 1st of each program year, the department shall notify each manufacturer of the manufacturer's equivalent share of covered electronic products to be applied to the previous program year. The department shall also notify each manufacturer of how its equivalent share was determined.

(b) By June 1st of each program year, the department shall bill any authorized party or authority that has not attained its plan's equivalent share as determined under RCW 70A.500.220. The authorized party or authority shall remit payment to the department within sixty days from the billing date.

(c) By September 1st of each program year, the department shall pay any authorized party or authority that exceeded its plan's equivalent share.

(3) Plans that utilize the collection services of nonprofit charitable organizations that qualify for a taxation exemption under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) that are primarily engaged in the business of reuse and resale must be given an additional five percent credit to be applied toward a plan's equivalent share for pounds that are received for recycling from those organizations. The department may adjust the percentage of credit annually. [2020 c 20 § 1257; 2013 c 305 § 9; 2006 c 183 § 20. Formerly RCW 70.95N.200.]

Effective date—2013 c 305: See note following RCW 70A.500.020.

70A.500.210 Preliminary return share—Notice—Challenges—Final return share. (1) By June 1, 2007, the department shall notify each manufacturer of its preliminary return share of covered electronic products for the first program year.

(2) For program years 2009 through 2014, preliminary return share of covered electronic products must be announced annually by June 1st of each program year for the next program year. For the 2015 program year and all subsequent program years, preliminary market share of covered electronic products must be sent out to each individual manufacturer annually by June 1st of each program year for the next program year.

(3) Manufacturers may challenge the preliminary return or market share by written petition to the department. The

petition must be received by the department within thirty days of the date of publication of the preliminary return or market shares.

(4) The petition must contain a detailed explanation of the grounds for the challenge, an alternative calculation, and the basis for such a calculation, documentary evidence supporting the challenge, and complete contact information for requests for additional information or clarification.

(5) Sixty days after the publication of the preliminary return or market share, the department shall make a final decision on return or market share, having fully taken into consideration any and all challenges to its preliminary calculations.

(6) A written record of challenges received and a summary of the bases for the challenges, as well as the department's response, must be published at the same time as the publication of the final return share.

(7) By August 1, 2007, the department shall publish the final return shares for the first program year. For program years 2009 through 2014, by August 1st of each program year, the department shall publish the final return shares for use in the coming program year. For the 2015 program year and all subsequent program years, by August 1st of each program year, the department shall notify each manufacturer of its final market shares for use in the coming program year. [2013 c 305 § 10; 2006 c 183 § 21. Formerly RCW 70.95N.210.]

Effective date—2013 c 305: See note following RCW 70A.500.020.

70A.500.220 Covered electronic products collected during a program year—Payment per pound under, over equivalent share. (1) For an independent plan and the standard plan, if the total weight in pounds of covered electronic products collected during a program year is less than the plan's equivalent share of covered electronic products for that year, then the authority or authorized party shall submit to the department a payment equal to the weight in pounds of the deficit multiplied by the reasonable collection, transportation, and recycling cost for covered electronic products and an administrative fee. Moneys collected by the department must be deposited in the electronic products recycling account.

(2) For an independent plan and the standard plan, if the total weight in pounds of covered electronic products collected during a program year is more than the plan's equivalent share of covered electronic products for that year, then the department shall submit to the authority or authorized party, a payment equal to the weight in pounds of the surplus multiplied by the reasonable collection, transportation, and recycling cost for covered electronic products.

(3) For purposes of this section, the initial reasonable collection, transportation, and recycling cost for covered electronic products is forty-five cents per pound and the administrative fee is five cents per pound.

(4) The department may annually adjust the reasonable collection, transportation, and recycling cost for covered electronic products and the administrative fee described in this section. Prior to making any changes in the fees described in this section, the department shall notify the public, including all registered manufacturers, and provide a comment period. The department shall notify all registered

manufacturers of any changes to the reasonable collection, transportation, and recycling cost or the administrative fee by January 1st of the program year in which the change is to take place. [2006 c 183 § 22. Formerly RCW 70.95N.220.]

70A.500.230 Rules—Fees—Reports. (1) The department shall adopt rules to determine the process for manufacturers to change plans under RCW 70A.500.080.

(2) The department shall establish annual registration and plan review fees for administering this chapter. An initial fee schedule must be established by rule and be adjusted no more often than once every two years. All fees charged must be based on factors relating to administering this chapter and be based on a sliding scale that is representative of annual sales of covered electronic products in the state, either by weight or unit, or by representative market share. Fees must be established in amounts to fully recover and not to exceed expenses incurred by the department to implement this chapter.

(3) The department shall establish an annual process for local governments and local communities to report their satisfaction with the services provided by plans under this chapter. This information must be used by the department in reviewing plan updates and revisions.

(4) The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter. [2020 c 20 § 1258; 2013 c 305 § 11; 2006 c 183 § 23. Formerly RCW 70.95N.230.]

Effective date—2013 c 305: See note following RCW 70A.500.020.

70A.500.240 Collector, transporter, processor registration. (1) Each collector and transporter of covered electronic products in the state must register annually with the department. The registration must include all identification requirements for licensure in the state and the geographic area of the state that they serve. The department shall develop a single form for registration of both collectors and transporters.

(2) Each processor of covered electronic products utilized by an independent or standard plan must register annually with the department. The registration must include identification information and documentation of any necessary operating permits issued by state or local authorities. [2006 c 183 § 24. Formerly RCW 70.95N.240.]

70A.500.250 Processors to comply with performance standards for environmentally sound management—Rules. (1) The authority and each authorized party shall ensure that each processor used directly by the authority or the authorized party to fulfill the requirements of their respective standard plan or independent plan has provided the authority or the authorized party a written statement that the processor will comply with the requirements of this section and *section 26 of this act.

(2) The department shall establish by rule performance standards for environmentally sound management for processors directly used to fulfill the requirements of an independent plan or the standard plan. Performance standards may include financial assurance to ensure proper closure of facilities consistent with environmental standards.

(3) The department shall establish by rule guidelines regarding nonrecycled residual that may be properly disposed after covered electronic products have been processed.

(4) The department may audit processors that are utilized to fulfill the requirements of an independent plan or the standard plan.

(5) No plan or program required under this chapter may include the use of federal or state prison labor for processing. [2006 c 183 § 25. Formerly RCW 70.95N.250.]

***Reviser's note:** Section 26 of this act was vetoed by the governor.

70A.500.260 Selling covered electronic products without participating in an approved plan prohibited—Written warning—Penalty—Failure to comply with manufacturer registration requirements. (1) No manufacturer may sell or offer for sale a covered electronic product in or into the state unless the manufacturer of the covered electronic product is participating in an approved plan. The department shall send a written warning to a manufacturer that does not have an approved plan or is not participating in an approved plan as required under RCW 70A.500.050. The written warning must inform the manufacturer that it must participate in an approved plan within thirty days of the notice. Any violation after the initial written warning shall be assessed a penalty of up to ten thousand dollars for each violation.

(2) If the authority or any authorized party fails to implement their approved plan, the department must assess a penalty of up to five thousand dollars for the first violation along with notification that the authority or authorized party must implement its plan within thirty days of the violation. After thirty days, the authority or any authorized party failing to implement their approved plan must be assessed a penalty of up to ten thousand dollars for the second and each subsequent violation.

(3) Any person that does not comply with manufacturer registration requirements under RCW 70A.500.040, education and outreach requirements under RCW 70A.500.120, reporting requirements under RCW 70A.500.140, labeling requirements under RCW 70A.500.160, retailer responsibility requirements under RCW 70A.500.170, collector or transporter registration requirements under RCW 70A.500.240, or requirements under RCW 70A.500.250, must first receive a written warning including a copy of the requirements under this chapter and thirty days to correct the violation. After thirty days, a person must be assessed a penalty of up to one thousand dollars for the first violation and up to two thousand dollars for the second and each subsequent violation.

(4) All penalties levied under this section must be deposited into the electronic products recycling account created under RCW 70A.500.130.

(5) The department shall enforce this section. [2020 c 20 § 1259; 2006 c 183 § 27. Formerly RCW 70.95N.260.]

70A.500.270 Materials management and financing authority. (1) The Washington materials management and financing authority is established as a public body corporate and politic, constituting an instrumentality of the state of Washington exercising essential governmental functions.

(2) The authority shall plan and implement a collection, transportation, and recycling program for manufacturers that

have registered with the department their intent to participate in the standard program as required under RCW 70A.500.040.

(3) Membership in the authority is comprised of registered participating manufacturers. Any registered manufacturer who does not qualify or is not approved to submit an independent plan, or whose independent plan has not been approved by the department, is a member of the authority. All new entrants and white box manufacturers are also members of the authority.

(4) The authority shall act as a business management organization on behalf of the citizens of the state to manage financial resources and contract for services for collection, transportation, and recycling of covered electronic products.

(5) The authority's standard plan is responsible for collecting, transporting, and recycling the sum of the equivalent shares of each participating manufacturer.

(6) The authority shall accept into the standard program covered electronic products from any registered collector who meets the requirements of this chapter. The authority shall compensate registered collectors for the reasonable costs associated with collection, but is not required to compensate nor restricted from compensating the additional collection costs resulting from the additional convenience offered to customers through premium and curbside services.

(7) The authority shall accept and utilize in the standard program any registered processor meeting the requirements of this chapter and any requirements described in the authority's operating plan or through contractual arrangements. Processors utilized by the standard plan shall provide documentation to the authority at least annually regarding how they are meeting the requirements in RCW 70A.500.250, including enough detail to allow the standard plan to meet its reporting requirements in RCW 70A.500.140(2)(c), and must submit to audits conducted by or for the authority. The authority shall compensate such processors for the reasonable costs, as determined by the authority, associated with processing unwanted electronic products. Such processors must demonstrate that the unwanted electronic products have been received from registered collectors or transporters, and provide other documentation as may be required by the authority.

(8) Except as specifically allowed in this chapter, the authority shall operate without using state funds or lending the credit of the state or local governments.

(9) The authority shall develop innovative approaches to improve materials management efficiency in order to ensure and increase the use of secondary material resources within the economy. [2020 c 20 § 1260; 2006 c 183 § 29. Formerly RCW 70.95N.280.]

70A.500.280 Board of directors of the authority.

(1)(a) The authority is governed by a board of directors. The board of directors is comprised of eleven participating manufacturers, appointed by the director of the department. For program years 2009 through 2015, five board positions are reserved for representatives of the top ten brand owners by return share of covered electronic products, and six board positions are reserved for representatives of other brands, including at least one board position reserved for a manufacturer who is also a retailer selling their own private label. The

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return share of covered electronic products used to determine the top ten brand owners for purposes of electing the board must be determined by the department by January 1, 2007. For program years 2016 and beyond, five board positions are reserved for representatives of the top ten brand owners by market share of covered electronic products, and six board positions are reserved for representatives of other brands, including at least one board position reserved for a manufacturer who is also a retailer selling its own private label. The market share of covered electronic products used to determine the top ten brand owners for purposes of electing the board must be determined by the department by October 1, 2015.

(b) The board must have representation from both television and computer manufacturers.

(2) The board shall select from its membership the chair of the board and such other officers as it deems appropriate.

(3) A majority of the board constitutes a quorum.

(4) The directors of the department of commerce and the department of ecology serve as ex officio members. The state agency directors serving in ex officio capacity may each designate an employee of their respective departments to act on their behalf in all respects with regard to any matter to come before the authority. Ex officio designations must be made in writing and communicated to the authority director.

(5) The board shall create its own bylaws in accordance with the laws of the state of Washington.

(6) Any member of the board may be removed for misfeasance, malfeasance, or willful neglect of duty after notice and a public hearing, unless the notice and hearing are expressly waived in writing by the affected member.

(7) The members of the board serve without compensation but are entitled to reimbursement, solely from the funds of the authority, for expenses incurred in the discharge of their duties under this chapter. [2013 c 305 § 12; 2008 c 79 § 1; 2006 c 183 § 30. Formerly RCW 70.95N.290.]

Effective date—2013 c 305: See note following RCW 70A.500.020.

70A.500.290 Manufacturers to pay their apportioned share of administrative and operational costs—Performance bonds—Dispute arbitration. (1) Manufacturers participating in the standard plan shall pay the authority to cover all administrative and operational costs associated with the collection, transportation, and recycling of covered electronic products within the state of Washington incurred by the standard program operated by the authority to meet the standard plan's equivalent share obligation as described in RCW 70A.500.270(5).

(2) The authority shall assess charges on each manufacturer participating in the standard plan and collect funds from each participating manufacturer for the manufacturer's portion of the costs in subsection (1) of this section. For program years 2009 through 2015, such apportionment must be based on return share, market share, any combination of return share and market share, or any other equitable method. For the 2016 program year and all subsequent program years, such apportionment must be based on market share. The authority's apportionment of costs to manufacturers participating in the standard plan may not include nor be based on electronic products imported through the state and subsequently exported outside the state. Charges assessed under

this section must not be formulated in such a way as to create incentives to divert imported electronic products to ports or distribution centers in other states. The authority shall adjust the charges to manufacturers participating in the standard plan as necessary in order to ensure that all costs associated with the identified activities are covered.

(3) The authority may require financial assurances or performance bonds for manufacturers participating in the standard plan, including but not limited to new entrants and white box manufacturers, when determining equitable methods for apportioning costs to ensure that the long-term costs for collecting, transporting, and recycling of a covered electronic product are borne by the appropriate manufacturer in the event that the manufacturer ceases to participate in the program.

(4) Nothing in this section authorizes the authority to assess fees or levy taxes directly on the sale or possession of electronic products.

(5) If a manufacturer has not met its financial obligations as determined by the authority under this section, the authority shall notify the department that the manufacturer is no longer participating in the standard plan.

(6) For program years 2009 through 2015, the authority shall submit its plan for assessing charges and apportioning cost on manufacturers participating in the standard plan to the department for review and approval along with the standard plan as provided in RCW 70A.500.060.

(7)(a) Any manufacturer participating in the standard plan may appeal an assessment of charges or apportionment of costs levied by the authority under this section by written petition to the director of the department. The director of the department or the director's designee shall review all appeals within timelines established by the department and shall reverse any assessments of charges or apportionment of costs if the director finds that the authority's assessments or apportionment of costs was an arbitrary administrative decision, an abuse of administrative discretion, or is not an equitable assessment or apportionment of costs. The director shall make a fair and impartial decision based on sound data. If the director of the department reverses an assessment of charges, the authority must redetermine the assessment or apportionment of costs.

(b) Disputes regarding a final decision made by the director or director's designee may be challenged through arbitration. The director shall appoint one member to serve on the arbitration panel and the challenging party shall appoint one other. These two persons shall choose a third person to serve. If the two persons cannot agree on a third person, the presiding judge of the Thurston county superior court shall choose a third person. The decision of the arbitration panel shall be final and binding, subject to review by the superior court solely upon the question of whether the decision of the panel was arbitrary or capricious. [2020 c 20 § 1261; 2013 c 305 § 13; 2006 c 183 § 31. Formerly RCW 70.95N.300.]

Effective date—2013 c 305: See note following RCW 70A.500.020.

70A.500.300 Authority use of funds. (1) The authority shall use any funds legally available to it for any purpose specifically authorized by this chapter to:

(a) Contract and pay for collecting, transporting, and recycling of covered electronic products and education and other services as identified in the standard plan;

(b) Pay for the expenses of the authority including, but not limited to, salaries, benefits, operating costs and consumable supplies, equipment, office space, and other expenses related to the costs associated with operating the authority;

(c) Pay into the electronic products recycling account amounts billed by the department to the authority for any deficit in reaching the standard plan's equivalent share as required under RCW 70A.500.220; and

(d) Pay the department for the fees for submitting the standard plan and any plan revisions.

(2) If practicable, the authority shall avoid creating new infrastructure already available through private industry in the state.

(3) The authority may not receive an appropriation of state funds, other than:

(a) Funds that may be provided as a one-time loan to cover administrative costs associated with start-up of the authority, such as electing the board of directors and conducting the public hearing for the operating plan, provided that no appropriated funds may be used to pay for collection, transportation, or recycling services; and

(b) Funds received from the department from the electronic products recycling account for exceeding the standard plan's equivalent share.

(4) The authority may receive additional sources of funding that do not obligate the state to secure debt.

(5) All funds collected by the authority under this chapter, including interest, dividends, and other profits, are and must remain under the complete control of the authority and its board of directors, be fully available to achieve the intent of this chapter, and be used for the sole purpose of achieving the intent of this chapter. [2020 c 20 § 1262; 2006 c 183 § 32. Formerly RCW 70.95N.310.]

70A.500.310 General operating plan. (1) The board shall adopt a general operating plan of procedures for the authority. The board shall also adopt operating procedures for collecting funds from participating covered electronic manufacturers and for providing funding for contracted services. These operating procedures must be adopted by resolution prior to the authority operating the applicable programs.

(2) The general operating plan must include, but is not limited to: (a) Appropriate minimum reserve requirements to secure the authority's financial stability; (b) appropriate standards for contracting for services; and (c) standards for service.

(3) The board shall conduct at least one public hearing on the general operating plan prior to its adoption. The authority shall provide and make public a written response to all comments received by the public.

(4) The general operating plan must be adopted by resolution of the board. The board may periodically update the general operating plan as necessary, but must update the plan no less than once every four years. The general operating plan or updated plan must include a report on authority activities conducted since the commencement of authority operation or since the last reported general operating plan, whichever is more recent, including a statement of results achieved

under the purposes of this chapter and the general operating plan. Upon adoption, the authority shall conduct its programs in observance of the objectives established in the general operating plan. [2006 c 183 § 33. Formerly RCW 70.95N.320.]

70A.500.320 Authority employees—Initial staff support—Authority powers. (1) The authority shall employ a chief executive officer, appointed by the board, and a chief financial officer, as well as professional, technical, and support staff, appointed by the chief executive officer, necessary to carry out its duties.

(2) Employees of the authority are not classified employees of the state. Employees of the authority are exempt from state service rules and may receive compensation only from the authority at rates competitive with state service.

(3) The authority may retain its own legal counsel.

(4) The departments of ecology and *community, trade, and economic development shall provide staff to assist in the creation of the authority. If requested by the authority, the departments of ecology and *community, trade, and economic development shall also provide start-up support staff to the authority for its first twelve months of operation, or part thereof, to assist in the quick establishment of the authority. Staff expenses must be paid through funds collected by the authority and must be reimbursed to the departments from the authority's financial resources within the first twenty-four months of operation.

(5) In addition to accomplishing the activities specifically authorized in this chapter, the authority may:

(a) Maintain an office or offices;

(b) Make and execute all manner of contracts, agreements, and instruments and financing documents with public and private parties as the authority deems necessary, useful, or convenient to accomplish its purposes;

(c) Make expenditures as appropriate for paying the administrative costs and expenses of the authority in carrying out the provisions of this chapter;

(d) Give assistance to private and public bodies contracted to provide collection, transportation, and recycling services by providing information, guidelines, forms, and procedures for implementing their programs;

(e) Delegate, through contract, any of its powers and duties if consistent with the purposes of this chapter; and

(f) Exercise any other power the authority deems necessary, useful, or convenient to accomplish its purposes and exercise the powers expressly granted in this chapter. [2006 c 183 § 34. Formerly RCW 70.95N.330.]

*Reviser's note: The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

70A.500.330 Federal preemption. This chapter is void if a federal law, or a combination of federal laws, takes effect that establishes a national program for the collection and recycling of covered electronic products that substantially meets the intent of this chapter, including the creation of a financing mechanism for collection, transportation, and recycling of all covered electronic products from households, small businesses, school districts, small governments, and charities in the United States. [2006 c 183 § 35. Formerly RCW 70.95N.340.]

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70A.500.340 Entity must be registered as a collector to act as a collector in a plan—Disposition of electronic products received by a registered collector—Recordkeeping requirements—Display of notice—Site visits. (1) Only an entity registered as a collector with the department may act as a collector in a plan. All covered electronic products received by a registered collector must be submitted to a plan. Fully functioning computers that are received by a registered collector in working order may be sold or donated as whole products by the collector for reuse. Computers that require repair to make them a fully functioning unit may only be repaired on-site at the collector's place of business by the registered collector for reuse according to its original purpose.

(2) Registered collectors may use whole parts gleaned from collected computers or new parts for making repairs as long as there is a part-for-part exchange with nonfunctioning computers submitted to a plan.

(3) Registered collectors may not include computers that are gleaned for reuse in the weight totals for compensation by the plan.

(4) Registered collectors must maintain a record of computers sold or donated by the collector for a period of three years.

(5) Registered collectors must display a notice at the point of collection that computers received by the collector may be repaired and sold or donated as a fully functioning computer rather than submitted to a processor for recycling.

(6) The authority, authorized party, or the department may conduct site visits of all registered collectors that reuse or refurbish computers and who have an agreement with the authority or authorized party to provide collection services. If the authority or authorized party finds that a collector is not providing services in compliance with this chapter, the authority or authorized party shall report that finding to the department for enforcement action. [2009 c 285 § 1. Formerly RCW 70.95N.350.]

70A.500.900 Construction—2006 c 183. This act must be liberally construed to carry out its purposes and objectives. [2006 c 183 § 38. Formerly RCW 70.95N.900.]

70A.500.901 Effective date—2006 c 183. This act takes effect July 1, 2006. [2006 c 183 § 40. Formerly RCW 70.95N.902.]

Chapter 70A.505 RCW

MERCURY-CONTAINING LIGHTS—PROPER DISPOSAL

Sections

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- 70A.505.130 Adoption of rules—Report to the legislature—Invitation to entities to comment on issues—Estimate of statewide recycling rate for mercury-containing lights—Mercury vapor barrier packaging.
- 70A.505.140 Application of chapter to the Washington utilities and transportation commission.
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- 70A.505.160 Immunity from antitrust liability.
- 70A.505.900 Chapter liberally construed.
- 70A.505.901 Severability—2010 c 130.

Reviser's note—Sunset Act application: The mercury-containing lights product stewardship program is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.421. RCW 70.275.010 through 70.275.070 and 70.275.090 through 70.275.901 [70A.505.010 through 70A.505.070 and 70A.505.090 through 70A.505.901] are scheduled for future repeal under RCW 43.131.422.

70A.505.010 Findings—Purpose. The legislature finds that:

(1) Mercury is an essential component of many energy efficient lights. Improper disposal methods will lead to mercury releases that threaten the environment and harm human health. Spent mercury lighting is a hard to collect waste product that is appropriate for product stewardship;

(2) Convenient and environmentally sound product stewardship programs for mercury-containing lights that include collecting, transporting, and recycling mercury-containing lights will help protect Washington's environment and the health of state residents;

(3) The purpose of chapter 130, Laws of 2010 is to achieve a statewide goal of recycling all end-of-life mercury-containing lights by 2020 through expanded public education, a uniform statewide requirement to recycle all mercury-containing lights, and the development of a comprehensive, safe, and convenient collection system that includes use of residential curbside collection programs, mail-back containers, increased support for household hazardous waste facilities, and a network of additional collection locations;

(4) Product producers must play a significant role in financing no-cost collection and processing programs for mercury-containing lights; and

(5) Providers of premium collection services such as residential curbside and mail-back programs may charge a fee to cover the collection costs for these more convenient forms of collection. [2010 c 130 § 1. Formerly RCW 70.275.010.]

Sunset Act application: See note following chapter digest.

70A.505.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Brand" means a name, symbol, word, or mark that identifies a product, rather than its components, and attributes the product to the owner of the brand as the producer.

(2) "Collection" or "collect" means, except for persons involved in mail-back programs:

(a) The activity of accumulating any amount of mercury-containing lights at a location other than the location where the lights are used by covered entities, and includes curbside collection activities, household hazardous waste facilities, and other registered drop-off locations; and

(b) The activity of transporting mercury-containing lights in the state, where the transporter is not a generator of unwanted mercury-containing lights, to a location for purposes of accumulation.

(3) "Covered entities" means:

(a) A household generator or other person who purchases mercury-containing lights at retail and delivers no more than ten mercury-containing lights to registered collectors for a product stewardship program on any given day; and

(b) A household generator or other person who purchases mercury-containing lights at retail and utilizes a registered residential curbside collection program or a mail-back program for collection of mercury-containing lights and discards no more than fifteen mercury-containing lights into those programs on any given day.

(4) "Department" means the department of ecology.

(5) "Environmental handling charge" or "charge" means the charge approved by the department to be applied to each mercury-containing light to be sold at retail in or into Washington state. The environmental handling charge must cover all administrative and operational costs associated with the product stewardship program, including the fee for the department's administration and enforcement.

(6) "Final disposition" means the point beyond which no further processing takes place and materials from mercury-containing lights have been transformed for direct use as a feedstock in producing new products, or disposed of or managed in permitted facilities.

(7) "Hazardous substances" or "hazardous materials" means those substances or materials identified by rules adopted under chapter 70A.300 RCW.

(8) "Mail-back program" means the use of a prepaid postage container with mercury vapor barrier packaging that is used for the collection and recycling of mercury-containing lights from covered entities as part of a product stewardship program and is transported by the United States postal service or a common carrier.

(9) "Mercury-containing lights" means lamps, bulbs, tubes, or other devices that contain mercury and provide functional illumination in homes, businesses, and outdoor stationary fixtures.

(10) "Mercury vapor barrier packaging" means sealable containers that are specifically designed for the storage, handling, and transport of mercury-containing lights in order to prevent the escape of mercury into the environment by volatilization or any other means, and that meet the requirements for transporting by the United States postal service or a common carrier.

(11) "Orphan product" means a mercury-containing light that lacks a producer's brand, or for which the producer is no longer in business and has no successor in interest, or that bears a brand for which the department cannot identify an owner.

(12) "Person" means a sole proprietorship, partnership, corporation, nonprofit corporation or organization, limited liability company, firm, association, cooperative, or other legal entity located within or outside Washington state.

(13) "Processing" means recovering materials from unwanted products for use as feedstock in new products. Processing must occur at permitted facilities.

(14) "Producer" means a person that:

(a) Has or had legal ownership of the brand, brand name, or cobrand of a mercury-containing light sold in or into Washington state, unless the brand owner is a retailer whose mercury-containing light was supplied by another producer participating in a stewardship program under this chapter;

(b) Imports or has imported mercury-containing lights branded by a producer that meets the requirements of (a) of this subsection and where that producer has no physical presence in the United States;

(c) If (a) and (b) of this subsection do not apply, makes or made a mercury-containing light that is sold or has been sold in or into Washington state; or

(d)(i) Sells or sold at wholesale or retail a mercury-containing light; (ii) does not have legal ownership of the brand; and (iii) elects to fulfill the responsibilities of the producer for that product.

(15) "Product stewardship" means a requirement for a producer of mercury-containing lights to manage and reduce adverse safety, health, and environmental impacts of the product throughout its life cycle, including financing and providing for the collection, transporting, reusing, recycling, processing, and final disposition of their products.

(16) "Product stewardship plan" or "plan" means a detailed plan describing the manner in which a product stewardship program will be implemented.

(17) "Product stewardship program" or "program" means the methods, systems, and services financed in the manner provided for under RCW 70A.505.050 and provided by producers of mercury-containing lights generated by covered entities that addresses product stewardship and includes arranging for the collection, transportation, recycling, processing, and final disposition of unwanted mercury-containing lights, including orphan products.

(18) "Recovery" means the collection and transportation of unwanted mercury-containing lights under this chapter.

(19)(a) "Recycling" means transforming or remanufacturing unwanted products into usable or marketable materials for use other than landfill disposal or incineration.

(b) "Recycling" does not include energy recovery or energy generation by means of combusting unwanted products with or without other waste.

(20) "Reporting period" means the period commencing January 1st and ending December 31st in the same calendar year.

(21) "Residuals" means nonrecyclable materials left over from processing an unwanted product.

(22) "Retailer" means a person who offers mercury-containing lights for sale at retail through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or the internet, but does not include a sale that is a wholesale transaction with a distributor or a retailer.

(23)(a) "Reuse" means a change in ownership of a mercury-containing light or its components, parts, packaging, or shipping materials for use in the same manner and purpose for which it was originally purchased, or for use again, as in shipping materials, by the generator of the shipping materials.

(b) "Reuse" does not include dismantling of products for the purpose of recycling.

(24) "Stakeholder" means a person who may have an interest in or be affected by a product stewardship program.

(25) "Stewardship organization" means an organization designated by a producer or group of producers to act as an agent on behalf of each producer to operate a product stewardship program.

(26) "Unwanted product" means a mercury-containing light no longer wanted by its owner or that has been abandoned, discarded, or is intended to be discarded by its owner. [2020 c 20 § 1414. Prior: 2014 c 119 § 2; prior: 2010 c 130 § 2. Formerly RCW 70.275.020.]

Sunset Act application: See note following chapter digest.

Finding—2014 c 119: "The legislature finds that additional flexibility is needed for mercury-containing light manufacturers to comply with the requirements of chapter 70.275 RCW in order to provide a sustainable funding mechanism and provide effective state protections to producer-operated product stewardship programs under chapter 70.275 RCW." [2014 c 119 § 1.]

70A.505.030 Product stewardship program. (1) Every producer of mercury-containing lights sold in or into Washington state for retail sale in Washington state must participate in a product stewardship program for those products, operated by a stewardship organization and financed in the manner provided by RCW 70A.505.050. Every such producer must inform the department of the producer's participation in a product stewardship program by including the producer's name in a plan submitted to the department by a stewardship organization as required by RCW 70A.505.040. Producers must satisfy these participation obligations individually or may do so jointly with other producers.

(2) A stewardship organization operating a product stewardship program must pay all administrative and operational costs associated with its program with revenues received from the environmental handling charge described in RCW 70A.505.050. The stewardship organization's administrative and operational costs are not required to include a collection location's cost of receiving, accumulating and storing, and packaging mercury-containing lights. However, a stewardship organization may offer incentives or payments to collectors. The stewardship organization's administrative and operational costs do not include the collection costs associated with curbside and mail-back collection programs. The stewardship organization must arrange for collection service at locations described in subsection (4) of this section, which may include household hazardous waste facilities, charities, retailers, government recycling sites, or other suitable private locations. No such entity is required to provide collection services at their location. For curbside and mail-back programs, a stewardship organization must pay the costs of transporting mercury-containing lights from accumulation points and for processing mercury-containing lights collected by curbside and mail-back programs. For collection locations, including household hazardous waste facilities, charities, retailers, government recycling sites, or other suitable private locations, a stewardship organization must pay the costs of packaging and shipping materials as required under RCW 70A.505.070 or must compensate collectors for the costs of those materials, and must pay the costs of transportation and processing of mercury-containing lights collected from the collection locations.

(3) Product stewardship programs shall collect unwanted mercury-containing lights delivered from covered entities for

recycling, processing, or final disposition, and not charge a fee when lights are dropped off or delivered into the program.

(4) Product stewardship programs shall provide, at a minimum, no cost services in all cities in the state with populations greater than ten thousand and all counties of the state on an ongoing, year-round basis.

(5) Product stewardship programs shall promote the safe handling and recycling of mercury-containing lights to the public, including producing and offering point-of-sale educational materials to retailers of mercury-containing lights and point-of-return educational materials to collection locations.

(6) All product stewardship programs operated under approved plans must recover their fair share of unwanted covered products as determined by the department.

(7) The department or its designee may inspect, audit, or review audits of processing and disposal facilities used to fulfill the requirements of a product stewardship program.

(8) No product stewardship program required under this chapter may use federal or state prison labor for processing unwanted products.

(9) Product stewardship programs for mercury-containing lights must be fully implemented by January 1, 2015. [2020 c 20 § 1415; 2014 c 119 § 3; 2010 c 130 § 3. Formerly RCW 70.275.030.]

Sunset Act application: See note following chapter digest.

Finding—2014 c 119: See note following RCW 70A.505.020.

70A.505.040 Submission of proposed product stewardship plans—Department to establish rules—Public review—Plan update—Annual report. (1) On June 1st of the year prior to implementation, each producer must ensure that a stewardship organization submits a proposed product stewardship plan on the producer's behalf to the department for approval. Plans approved by the department must be implemented by January 1st of the following calendar year.

(2) The department shall establish rules for plan content. Plans must include but are not limited to:

(a) All necessary information to inform the department about the plan operator and participating producers and their brands;

(b) The management and organization of the product stewardship program that will oversee the collection, transportation, and processing services;

(c) The identity of collection, transportation, and processing service providers, including a description of the consideration given to existing residential curbside collection infrastructure and mail-back systems as an appropriate collection mechanism;

(d) How the product stewardship program will seek to use businesses within the state, including transportation services, retailers, collection sites and services, existing curbside collection services, existing mail-back services, and processing facilities;

(e) A description of how the public will be informed about the product stewardship program, including how consumers will be provided with information describing collection opportunities for unwanted mercury-containing lights from covered entities and safe handling of mercury-containing lights, waste prevention, and recycling. The description must also include information to make consumers aware that an environmental handling charge has been added to the pur-

chase price of mercury-containing lights sold at retail to fund the mercury-containing light stewardship programs in the state. The environmental handling charge may not be described as a department recycling fee or charge at the point of retail sale;

(f) A description of the financing system required under RCW 70A.505.050;

(g) How mercury and other hazardous substances will be handled for collection through final disposition;

(h) A public review and comment process; and

(i) Any other information deemed necessary by the department to ensure an effective mercury light product stewardship program that is in compliance with all applicable laws and rules.

(3) All plans submitted to the department must be made available for public review on the department's website and at the department's headquarters.

(4) At least two years from the start of the product stewardship program and once every four years thereafter, each stewardship organization operating a product stewardship program must update its product stewardship plan and submit the updated plan to the department for review and approval according to rules adopted by the department.

(5) By June 1, 2016, and each June 1st thereafter, each stewardship organization must submit an annual report to the department describing the results of implementing the stewardship organization's plan for the prior calendar year, including an independent financial audit once every two years. The department may adopt rules for reporting requirements. Financial information included in the annual report must include but is not limited to:

(a) The amount of the environmental handling charge assessed on mercury-containing lights and the revenue generated;

(b) Identification of confidential information pursuant to RCW 43.21A.160 submitted in the annual report; and

(c) The cost of the mercury-containing lights product stewardship program, including line item costs for:

(i) Program operations;

(ii) Communications, including media, printing and fulfillment, public relations, and other education and outreach projects;

(iii) Administration, including administrative personnel costs, travel, compliance and auditing, legal services, banking services, insurance, and other administrative services and supplies, and stewardship organization corporate expenses; and

(iv) Amount of unallocated reserve funds.

(6) Beginning in 2023 every stewardship organization must include in its annual report an analysis of the percent of total sales of lights sold at retail to covered entities in Washington that mercury-containing lights constitute, the estimated number of mercury-containing lights in use by covered entities in the state, and the projected number of unwanted mercury-containing lights to be recycled in future years.

(7) All plans and reports submitted to the department must be made available for public review, excluding sections determined to be confidential pursuant to RCW 43.21A.160, on the department's website and at the department's headquarters. [2020 c 20 § 1416; 2017 c 254 § 2; 2014 c 119 § 4; 2010 c 130 § 4. Formerly RCW 70.275.040.]

Sunset Act application: See note following chapter digest.

Finding—2014 c 119: See note following RCW 70A.505.020.

70A.505.050 Environmental handling charge—

Annual fee. (1) Each stewardship organization must recommend to the department an environmental handling charge to be added to the price of each mercury-containing light sold in or into the state of Washington for sale at retail. The environmental handling charge must be designed to provide revenue necessary and sufficient to cover all administrative and operational costs associated with the stewardship program described in the department-approved product stewardship plan for that organization, including the department's annual fee required by subsection (5) of this section, and a prudent reserve. The stewardship organization must consult with collectors, retailers, recyclers, and each of its participating producers in developing its recommended environmental handling charge. The environmental handling charge may, but is not required to, vary by the type of mercury-containing light. In developing its recommended environmental handling charge, the stewardship organization must take into consideration and report to the department:

(a) The anticipated number of mercury-containing lights that will be sold to covered entities in the state at retail during the relevant period;

(b) The number of unwanted mercury-containing lights delivered from covered entities expected to be recycled during the relevant period;

(c) The operational costs of the stewardship organization as described in RCW 70A.505.030(2);

(d) The administrative costs of the stewardship organization including the department's annual fee, described in subsection (5) of this section; and

(e) The cost of other stewardship program elements including public outreach.

(2) The department must review, adjust if necessary, and approve the stewardship organization's recommended environmental handling charge within sixty days of submittal. In making its determination, the department shall review the product stewardship plan and may consult with the producers, the stewardship organization, retailers, collectors, recyclers, and other entities.

(3) No sooner than January 1, 2015:

(a) The mercury-containing light environmental handling charge must be added to the purchase price of all mercury-containing lights sold to Washington retailers for sale at retail, and each Washington retailer shall add the charge to the purchase price of all mercury-containing lights sold at retail in this state, and the producer shall remit the environmental handling charge to the stewardship organization in the manner provided for in the stewardship plan; or

(b) Each Washington retailer must add the mercury-containing light environmental handling charge to the purchase price of all mercury-containing lights sold at retail in this state, where the retailer, by voluntary binding agreement with the producer, arranges to remit the environmental handling charge to the stewardship organization on behalf of the producer in the manner provided for in the stewardship plan. Producers may not require retailers to opt for this provision via contract, marketing practice, or any other means. The stewardship organization must allow retailers to retain a por-

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tion of the environmental handling charge as reimbursement for any costs associated with the collection and remittance of the charge.

(4) At any time, a stewardship organization may submit to the department a recommendation for an adjusted environmental handling charge for the department's review, adjustment, if necessary, and approval under subsection (2) of this section to ensure that there is sufficient revenue to fund the cost of the program, current deficits, or projected needed reserves for the next year. The department must review the stewardship organization's recommended environmental handling charge and must adjust or approve the recommended charge within thirty days of submittal if the department determines that the charge is reasonably designed to meet the criteria described in subsection (1) of this section.

(5) Beginning March 1, 2015, and each year thereafter, each stewardship organization shall pay to the department an annual fee equivalent to three thousand dollars for each participating producer to cover the department's administrative and enforcement costs. The amount paid under this section must be deposited into the product stewardship programs account created in RCW 70A.505.120. [2020 c 20 § 1417; 2017 c 254 § 1; 2014 c 119 § 5; 2010 c 130 § 5. Formerly RCW 70.275.050.]

Sunset Act application: See note following chapter digest.

Finding—2014 c 119: See note following RCW 70A.505.020.

70A.505.060 Collection and management of mer-

cury. (1) All mercury-containing lights collected in the state by product stewardship programs or other collection programs must be recycled and any process residuals must be managed in compliance with applicable laws.

(2) Mercury recovered from retorting must be recycled or placed in a properly permitted hazardous waste landfill, or placed in a properly permitted mercury repository. [2010 c 130 § 6. Formerly RCW 70.275.060.]

Sunset Act application: See note following chapter digest.

70A.505.070 Collectors of unwanted mercury-containing lights—Duties.

(1) Except for persons involved in registered mail-back programs, a person who collects unwanted mercury-containing lights in the state, receives funding through a product stewardship program for mercury-containing lights, and who is not a generator of unwanted mercury-containing lights must:

(a) Register with the department as a collector of unwanted mercury-containing lights. Until the department adopts rules for collectors, the collector must provide to the department the legal name of the person or entity owning and operating the collection location, the address and phone number of the collection location, and the name, address, and phone number of the individual responsible for operating the collection location and update any changes in this information within thirty days of the change;

(b) Maintain a spill and release response plan at the collection location that describes the materials, equipment, and procedures that will be used to respond to any mercury release from an unwanted mercury-containing light;

(c) Maintain a worker safety plan at the collection location that describes the handling of the unwanted mercury-

containing lights at the collection location and measures that will be taken to protect worker health and safety; and

(d) Use packaging and shipping material that will minimize the release of mercury into the environment and minimize breakage and use mercury vapor barrier packaging if mercury-containing lights are transported by the United States postal service or a common carrier.

(2) A person who operates a curbside collection program or owns or operates a mail-back business participating in a product stewardship program for mercury-containing lights and uses the United States postal service or a common carrier for transport must register with the department and use mercury vapor barrier packaging for curbside collection and mail-back containers. [2010 c 130 § 7. Formerly RCW 70.275.070.]

Sunset Act application: See note following chapter digest.

70A.505.080 Requirement to recycle end-of-life mercury-containing lights. (*Recodified as RCW 70A.230.150, effective July 1, 2026, subject to the contingency in 2014 c 119 § 10.*) Effective January 1, 2013:

(1) All persons, residents, government, commercial, industrial, and retail facilities and office buildings must recycle their end-of-life mercury-containing lights.

(2) No mercury-containing lights may knowingly be placed in waste containers for disposal at incinerators, waste to energy facilities, or landfills.

(3) No mercury-containing lights may knowingly be placed in a container for mixed recyclables unless there is a separate location or compartment for the mercury-containing lights that complies with local government collection standards or guidelines.

(4) No owner or operator of a solid waste facility may be found in violation of this section if the facility has posted in a conspicuous location a sign stating that mercury-containing lights must be recycled and are not accepted for disposal.

(5) No solid waste collector may be found in violation of this section for mercury-containing lights placed in a disposal container by the generator of the mercury-containing light. [2010 c 130 § 8. Formerly RCW 70.275.080.]

70A.505.090 Producers must participate in an approved product stewardship program. As of January 1, 2013, no producer, wholesaler, retailer, electric utility, or other person may distribute, sell, or offer for sale mercury-containing lights for residential use to any person in this state unless the producer is participating in a product stewardship program under a plan approved by the department. [2010 c 130 § 9. Formerly RCW 70.275.090.]

Sunset Act application: See note following chapter digest.

70A.505.100 Written warning—Penalty—Appeal.

(1) The department shall send a written warning and a copy of this chapter and any rules adopted to implement this chapter to a producer who is not participating in a product stewardship program approved by the department and whose mercury-containing lights are being sold in or into the state.

(2) A producer not participating in a product stewardship program approved by the department whose mercury-containing lights continue to be sold in or into the state sixty days after receiving a written warning from the department shall

be assessed a penalty of up to one thousand dollars for each violation. A violation is one day of sales.

(3) If any producer fails to implement its approved plan, the department shall assess a penalty of up to five thousand dollars for the first violation along with notification that the producer must implement its plan within thirty days of the violation. After thirty days, any producer failing to implement their approved plan must be assessed a penalty of up to ten thousand dollars for the second and each subsequent violation. A subsequent violation occurs each thirty-day period that the producer fails to implement the approved plan.

(4) The department shall send a written warning to a producer that fails to submit a product stewardship plan, update or change the plan when required, or submit an annual report as required under this chapter. The written warning must include compliance requirements and notification that the requirements must be met within sixty days. If requirements are not met within sixty days, the producer will be assessed a ten thousand dollar penalty per day of noncompliance starting with the first day of notice of noncompliance.

(5) Penalties prescribed under this section must be reduced by fifty percent if the producer complies within thirty days of the second violation notice.

(6) A producer may appeal penalties prescribed under this section to the pollution control hearings board created under chapter 43.21B RCW. [2010 c 130 § 10. Formerly RCW 70.275.100.]

Sunset Act application: See note following chapter digest.

70A.505.110 Department's website to list producers participating in product stewardship plan—Required participation in a product stewardship plan—Written warning—Penalty—Rules—Exemptions. (1) The department shall provide on its website a list of all producers participating in a product stewardship plan that the department has approved and a list of all producers the department has identified as noncompliant with this chapter and any rules adopted to implement this chapter.

(2) Product wholesalers, retailers, distributors, and electric utilities must check the department's website or producer-provided written verification to determine if producers of products they are selling in or into the state are in compliance with this chapter.

(3) No one may distribute or sell mercury-containing lights in or into the state from producers who are not participating in a product stewardship program or who are not in compliance with this chapter and rules adopted under this chapter.

(4) The department shall serve, or send with delivery confirmation, a written warning explaining the violation to any person known to be distributing or selling mercury-containing lights in or into the state from producers who are not participating in a product stewardship program or who are not in compliance with this chapter and rules adopted under this chapter.

(5) Any person who continues to distribute or sell mercury-containing lights from a producer that is not participating in an approved product stewardship program sixty days after receiving a written warning from the department may be assessed a penalty two times the value of the products sold in violation of this chapter or five hundred dollars, whichever is

greater. The penalty must be waived if the person verifies that the person has discontinued distribution or sales of mercury-containing lights within thirty days of the date the penalty is assessed. A retailer may appeal penalties to the pollution control hearings board.

(6) The department shall adopt rules to implement this section.

(7) A sale or purchase of mercury-containing lights as a casual or isolated sale as defined in RCW 82.04.040 is not subject to the provisions of this section.

(8) A person primarily engaged in the business of reuse and resale of a used mercury-containing light is not subject to the provisions of this section when selling used working mercury-containing lights, for use in the same manner and purpose for which it was originally purchased.

(9) In-state distributors, wholesalers, and retailers in possession of mercury-containing lights on the date that restrictions on the sale of the product become effective may exhaust their existing stock through sales to the public. [2010 c 130 § 11. Formerly RCW 70.275.110.]

Sunset Act application: See note following chapter digest.

70A.505.120 Product stewardship programs account—Refund of fees. The product stewardship programs account is created in the custody of the state treasurer. All funds received from producers under this chapter and penalties collected under this chapter must be deposited in the account. Expenditures from the account may be used only for administering this chapter. The department may not retain fees in excess of the estimated amount necessary to cover the agency's administrative costs over the coming year related to the mercury light stewardship program under this chapter. Beginning with the state fiscal year 2018, by October 1st after the closing of each state fiscal year, the department shall refund any fees collected in excess of its estimated administrative costs to any approved stewardship organization under this chapter. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2017 c 254 § 3; 2010 c 130 § 13. Formerly RCW 70.275.130.]

Sunset Act application: See note following chapter digest.

70A.505.130 Adoption of rules—Report to the legislature—Invitation to entities to comment on issues—Estimate of statewide recycling rate for mercury-containing lights—Mercury vapor barrier packaging. (1) The department may adopt rules necessary to implement, administer, and enforce this chapter.

(2) The department may adopt rules to establish performance standards for product stewardship programs and may establish administrative penalties for failure to meet the standards.

(3) By December 31, 2010, and annually thereafter until December 31, 2014, the department shall report to the appropriate committees of the legislature concerning the status of the product stewardship program and recommendations for changes to the provisions of this chapter.

(4) Beginning October 1, 2014, the department shall annually invite comments from local governments, commu-

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nities, and citizens to report their satisfaction with services provided by product stewardship programs. This information must be used by the department to determine if the plan operator is meeting convenience requirements and in reviewing proposed updates or changes to product stewardship plans.

(5) Beginning October 1, 2014, the department shall annually invite comments from retailers, consumer groups, electric utilities, the Northwest power and conservation council, and other interested parties regarding the impacts of the requirements of this chapter on the availability or purchase of energy efficient lighting within the state. If the department determines that evidence shows the requirements of this chapter have resulted in negative impacts on the availability or purchase of energy efficient lighting in the state, the department shall report this information by December 31st of each year to the appropriate committees of the legislature with recommendations for changes to the provisions of this chapter.

(6) Beginning October 1, 2014, the department shall annually invite comments from retailers, consumer groups, electric utilities, the Northwest power and conservation council, and other interested parties regarding the availability of energy efficient nonmercury lighting to replace mercury-containing lighting within the state. If the department determines that evidence shows that energy efficient nonmercury-containing lighting is available and achieves similar energy savings as mercury lighting at similar cost, the department shall report this information by December 31st of each year to the appropriate committees of the legislature with recommendations for legislative changes to reduce mercury use in lighting.

(7) Beginning October 1, 2014, the department shall annually estimate the overall statewide recycling rate for mercury-containing lights and calculate that portion of the recycling rate attributable to the product stewardship program.

(8) The department may require submission of independent performance evaluations and report evaluations documenting the effectiveness of mercury vapor barrier packaging in preventing the escape of mercury into the environment. The department may restrict the use of packaging for which adequate documentation has not been provided. Restricted packaging may not be used in any product stewardship program required under this chapter. [2010 c 130 § 14. Formerly RCW 70.275.140.]

Sunset Act application: See note following chapter digest.

70A.505.140 Application of chapter to the Washington utilities and transportation commission. Nothing in this chapter changes or limits the authority of the Washington utilities and transportation commission to regulate collection of solid waste, including curbside collection of residential recyclable materials, nor does this chapter change or limit the authority of a city or town to provide such service itself or by contract under RCW 81.77.020. [2010 c 130 § 15. Formerly RCW 70.275.150.]

Sunset Act application: See note following chapter digest.

70A.505.150 Application of chapter to entities regulated under chapter 70A.300 RCW. Nothing in this chapter changes the requirements of any entity regulated under

chapter 70A.300 RCW to comply with the requirements under that chapter. [2020 c 20 § 1418; 2010 c 130 § 16. Formerly RCW 70.275.160.]

Sunset Act application: See note following chapter digest.

70A.505.160 Immunity from antitrust liability. (1) It is the intent of the legislature that a producer, group of producers, stewardship organization preparing, submitting, and implementing a mercury-containing light product stewardship program pursuant to this chapter, as well as participating entities in the distribution chain, including retailers and distributors, are granted immunity, individually and jointly, from federal and state antitrust liability that might otherwise apply to the activities reasonably necessary for implementation and compliance with this chapter. It is further the intent of the legislature that the activities of the producer, group of producers, stewardship organization, and entities in the distribution chain, including retailers and distributors, in implementing and complying with the provisions of this chapter may not be considered to be in restraint of trade, a conspiracy, or combination thereof, or any other unlawful activity in violation of any provisions of federal or state antitrust laws.

(2) The department shall actively supervise the conduct of the stewardship organization, the producers of mercury-containing lights, and entities in the distribution chain in determination and implementation of the environmental handling charge authorized by this chapter. [2014 c 119 § 6. Formerly RCW 70.275.170.]

Sunset Act application: See note following chapter digest.

Finding—2014 c 119: See note following RCW 70A.505.020.

70A.505.900 Chapter liberally construed. This chapter must be liberally construed to carry out its purposes and objectives. [2010 c 130 § 17. Formerly RCW 70.275.900.]

Sunset Act application: See note following chapter digest.

70A.505.901 Severability—2010 c 130. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2010 c 130 § 21. Formerly RCW 70.275.901.]

Sunset Act application: See note following chapter digest.

Chapter 70A.510 RCW

PHOTOVOLTAIC MODULE STEWARDSHIP AND TAKEBACK PROGRAM

Sections

70A.510.010 Photovoltaic module stewardship and takeback program—Definitions—Requirements—Enforcement—Penalty—Fees—Rule making.

70A.510.010 Photovoltaic module stewardship and takeback program—Definitions—Requirements—Enforcement—Penalty—Fees—Rule making. (1) The legislature finds that a convenient, safe, and environmentally sound system for the recycling of photovoltaic modules, minimization of hazardous waste, and recovery of commercially valuable materials must be established. The legislature further finds that the responsibility for this system must be

shared among all stakeholders, with manufacturers financing the takeback and recycling system.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Consumer electronic device" means any device containing an electronic circuit board that is intended for everyday use by individuals, such as a watch or calculator.

(b) "Department" means the department of ecology.

(c) "Distributor" means a person who markets and sells photovoltaic modules to retailers in Washington.

(d) "Installer" means a person who assembles, installs, and maintains photovoltaic module systems.

(e) "Manufacturer" means any person in business or no longer in business but having a successor in interest who, irrespective of the selling technique used, including by means of distance or remote sale:

(i) Manufactures or has manufactured a photovoltaic module under its own brand names for use or sale in or into this state;

(ii) Assembles or has assembled a photovoltaic module that uses parts manufactured by others for use or sale in or into this state under the assembler's brand names;

(iii) Resells or has resold in or into this state under its own brand names a photovoltaic module produced by other suppliers, including retail establishments that sell photovoltaic modules under their own brand names;

(iv) Manufactures or has manufactured a cobranded photovoltaic module product for use or sale in or into this state that carries the name of both the manufacturer and a retailer;

(v) Imports or has imported a photovoltaic module into the United States that is used or sold in or into this state. However, if the imported photovoltaic module is manufactured by any person with a presence in the United States meeting the criteria of manufacturer under (e)(i) through (vi) of this subsection, that person is the manufacturer;

(vi) Sells at retail a photovoltaic module acquired from an importer that is the manufacturer and elects to register as the manufacturer for those products; or

(vii) Elects to assume the responsibility and register in lieu of a manufacturer as defined under (e)(i) through (vi) of this subsection.

(f) "Photovoltaic module" means the smallest nondivisible, environmentally protected assembly of photovoltaic cells or other photovoltaic collector technology and ancillary parts intended to generate electrical power under sunlight, except that "photovoltaic module" does not include a photovoltaic cell that is part of a consumer electronic device for which it provides electricity needed to make the consumer electronic device function. "Photovoltaic module" includes but is not limited to interconnections, terminals, and protective devices such as diodes that:

(i) Are installed on, connected to, or integral with buildings;

(ii) Are used as components of freestanding, off-grid, power generation systems, such as for powering water pumping stations, electric vehicle charging stations, fencing, street and signage lights, and other commercial or agricultural purposes; or

(iii) Are part of a system connected to the grid or utility service.

(g) "Predecessor" means an entity from which a manufacturer purchased a photovoltaic module brand, its warranty obligations, and its liabilities. "Predecessor" does not include entities from which a manufacturer purchased only manufacturing equipment.

(h) "Rare earth element" means lanthanum, cerium, praseodymium, neodymium, promethium, samarium, europium, gadolinium, terbium, dysprosium, holmium, erbium, thulium, ytterbium, lutetium, yttrium, or scandium.

(i) "Retailer" means a person who offers photovoltaic modules for retail sale in the state through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or internet sales.

(j) "Reuse" means any operation by which a photovoltaic module or a component of a photovoltaic module changes ownership and is used for the same purpose for which it was originally purchased.

(k) "Stewardship plan" means the plan developed by a manufacturer or its designated stewardship organization for a self-directed stewardship program.

(l) "Stewardship program" means the activities conducted by a manufacturer or a stewardship organization to fulfill the requirements of this chapter and implement the activities described in its stewardship plan.

(3) The department must develop guidance for a photovoltaic module stewardship and takeback program to guide manufacturers in preparing and implementing a self-directed program to ensure the convenient, safe, and environmentally sound takeback and recycling of photovoltaic modules and their components and materials. By January 1, 2018, the department must establish a process to develop guidance for photovoltaic module stewardship plans by working with manufacturers, stewardship organizations, and other stakeholders on the content, review, and approval of stewardship plans. The department's process must be fully implemented and stewardship plan guidance completed by July 1, 2019.

(4) A stewardship organization may be designated to act as an agent on behalf of a manufacturer or manufacturers in operating and implementing the stewardship program required under this chapter. Any stewardship organization that has obtained such designation must provide to the department a list of the manufacturers and brand names that the stewardship organization represents within sixty days of its designation by a manufacturer as its agent, or within sixty days of removal of such designation.

(5) Each manufacturer must prepare and submit a stewardship plan to the department by the later of July 1, 2024, or within thirty days of its first sale of a photovoltaic module in or into the state.

(a) A stewardship plan must, at a minimum:

(i) Describe how manufacturers will finance the takeback and recycling system, and include an adequate funding mechanism to finance the costs of collection, management, and recycling of photovoltaic modules and residuals sold in or into the state by the manufacturer with a mechanism that ensures that photovoltaic modules can be delivered to takeback locations without cost to the last owner or holder;

(ii) Accept all of their photovoltaic modules sold in or into the state after July 1, 2017;

(iii) Describe how the program will minimize the release of hazardous substances into the environment and maximize

the recovery of other components, including rare earth elements and commercially valuable materials;

(iv) Provide for takeback of photovoltaic modules at locations that are within the region of the state in which their photovoltaic modules were used and are as convenient as reasonably practicable, and if no such location within the region of the state exists, include an explanation for the lack of such location;

(v) Identify how relevant stakeholders, including consumers, installers, building demolition firms, and recycling and treatment facilities, will receive information required in order for them to properly dismantle, transport, and treat the end-of-life photovoltaic modules in a manner consistent with the objectives described in (a)(iii) of this subsection;

(vi) Establish performance goals, including a goal for the rate of combined reuse and recycling of collected photovoltaic modules as a percentage of the total weight of photovoltaic modules collected, which rate must be no less than eighty-five percent.

(b) A manufacturer must implement the stewardship plan.

(c) A manufacturer may periodically amend its stewardship plan. The department must approve the amendment if it meets the requirements for plan approval outlined in the department's guidance. When submitting proposed amendments, the manufacturer must include an explanation of why such amendments are necessary.

(6) The department must approve a stewardship plan if it determines the plan addresses each element outlined in the department's guidance.

(7)(a) Beginning April 1, 2026, and by April 1st in each subsequent year, a manufacturer, or its designated stewardship organization, must provide to the department a report for the previous calendar year that documents implementation of the plan and assesses achievement of the performance goals established in subsection (5)(a)(vi) of this section.

(b) The report may include any recommendations to the department or the legislature on modifications to the program that would enhance the effectiveness of the program, including management of program costs and mitigation of environmental impacts of photovoltaic modules.

(c) The manufacturer or stewardship organization must post this report on a publicly accessible website.

(8) Beginning July 1, 2025, no manufacturer, distributor, retailer, or installer may sell or offer for sale a photovoltaic module in or into the state unless the manufacturer of the photovoltaic module has submitted to the department a stewardship plan and received plan approval.

(a) The department must send a written warning to a manufacturer that is not participating in a plan. The written warning must inform the manufacturer that it must submit a plan or participate in a plan within thirty days of the notice. The department may assess a penalty of up to ten thousand dollars upon a manufacturer for each sale that occurs in or into the state of a photovoltaic module for which a stewardship plan has not been submitted by the manufacturer and approved by the department after the initial written warning. A manufacturer may appeal a penalty issued under this section to the superior court of Thurston county within one hundred eighty days of receipt of the notice.

(b) The department must send a written warning to a distributor, retailer, or installer that sells or installs a photovoltaic module made by a manufacturer that is not participating in a plan. The written warning must inform the distributor, retailer, or installer that they may no longer sell or install a photovoltaic module if a stewardship plan for that brand has not been submitted by the manufacturer and approved by the department within thirty days of the notice.

(9) The department may collect a flat fee from participating manufacturers to recover costs associated with the plan guidance, review, and approval process described in subsection (3) of this section. Other administrative costs incurred by the department for program implementation activities, including stewardship plan review and approval, enforcement, and any rule making, may be recovered by charging every manufacturer an annual fee calculated by dividing department administrative costs by the manufacturer's pro rata share of the Washington state photovoltaic module sales in the most recent preceding calendar year, based on best available information. The sole purpose of assessing the fees authorized in this subsection is to predictably and adequately fund the department's costs of administering the photovoltaic module recycling program.

(10) The photovoltaic module recycling account is created in the custody of the state treasurer. All fees collected from manufacturers under this chapter must be deposited in the account. Expenditures from the account may be used only for administering this chapter. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Funds in the account may not be diverted for any purpose or activity other than those specified in this section.

(11) The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter.

(12) In lieu of preparing a stewardship plan and as provided by subsection (5) of this section, a manufacturer may participate in a national program for the convenient, safe, and environmentally sound takeback and recycling of photovoltaic modules and their components and materials, if substantially equivalent to the intent of the state program. The department may determine substantial equivalence if it determines that the national program adequately addresses and fulfills each of the elements of a stewardship plan outlined in subsection (5)(a) of this section and includes an enforcement mechanism reasonably calculated to ensure a manufacturer's compliance with the national program. Upon issuing a determination of substantial equivalence, the department must notify affected stakeholders including the manufacturer. If the national program is discontinued or the department determines the national program is no longer substantially equivalent to the state program in Washington, the department must notify the manufacturer and the manufacturer must provide a stewardship plan as described in subsection (5)(a) of this section to the department for approval within thirty days of notification. [2021 c 45 § 1. Prior: 2020 c 287 § 1; 2017 3rd sp.s. c 36 § 12. Formerly RCW 70.355.010.]

Findings—Intent—Effective date—2017 3rd sp.s. c 36: See notes following RCW 82.16.130.

Chapter 70A.515 RCW ARCHITECTURAL PAINT STEWARDSHIP PROGRAM

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70A.515.010 Findings. The legislature finds that:

(1) Leftover architectural paints are a waste management issue and present environmental risks and health and safety risks, especially to workers in the solid waste industry. During waste collection and processing, wet paint can create spills and splashes and oil paint containers may rupture, releasing fumes hazardous to workers and the remaining liquids may contribute to leachate problems in landfills. Some local governments are able to devote resources to provide collection sites or events for latex paint in order to provide their residents with at least some disposal options and to keep latex paint out of the solid waste stream. But residents and small businesses need additional and more convenient options for disposal of architectural paint. Drying latex for disposal is difficult for many residents and is wasteful of latex paint that can otherwise be reused or recycled. Local government special and moderate-risk waste collection programs are heavily impacted by the cost of managing unwanted architectural paints and these costs decrease the available funds to address other hazardous and hard-to-handle materials.

(2) Nationally, an estimated average of ten percent of architectural paint purchased becomes leftover paint. Current programs only collect a fraction of the potential leftover paint for proper reuse, recycling, or disposal. There is not a comprehensive statewide, end-of-life management plan for architectural paint, resulting in significant missed opportunities to reduce, reuse, and recycle paint.

(3)(a) It is in the best interest of Washington for paint manufacturers to assume responsibility for the development and implementation of a cost-effective paint stewardship program that:

- (i) Develops and implements strategies to reduce the generation of leftover paint;
- (ii) Promotes the reuse of leftover paint;
- (iii) Collects, transports, and processes leftover paint for end-of-life management, including reuse, recycling, energy recovery, and disposal; and

(iv) Provides for transparency under chapter 42.56 RCW, the public records act.

(b) A paint stewardship program will follow the paint waste management hierarchy for managing and reducing leftover paint in the order as follows:

- (i) Reduce consumer generation of leftover paint;
- (ii) Reuse;
- (iii) Recycle; and
- (iv) Provide for energy recovery and disposal.

(c) The establishment of a comprehensive leftover paint management program that requires paint manufacturers to assume responsibility for the collection, recycling, reuse, transportation, and disposal of leftover paint, and that allows paint retailers to voluntarily participate in the collection of leftover paint, will provide more opportunities for consumers to properly manage their leftover paint, provide fiscal relief for local government in managing leftover paint, keep paint out of the waste stream, and conserve natural resources.

(4) The legislature further finds that Washington's existing waste collection, recycling, and disposal system leads the nation in innovation and environmentally sound practices. This system has achieved some of the highest overall recycling rates in the nation at fifty-one percent in 2012. The legislature further finds that leftover paint may be a toxic and hard-to-handle waste product that is appropriate for a product stewardship program to increase the safe, convenient, and effective reuse, recycling, and disposal of leftover paint. Product stewardship programs for toxic and hard-to-handle materials, including an architectural paint stewardship program, should integrate with and complement the existing waste collection, recycling, and disposal system.

(5) This chapter creates an architectural paint stewardship program to be enforced by the department. [2019 c 344 § 1. Formerly RCW 70.375.010.]

70A.515.020 Definitions. The definitions in this section apply throughout this chapter unless the content clearly requires otherwise.

(1)(a) "Architectural paint" or "paint" means interior and exterior architectural coatings, sold in a container of five gallons or less.

(b) "Architectural paint" or "paint" does not mean industrial coatings, original equipment coatings, or specialty coatings.

(2) "Architectural paint stewardship assessment" or "assessment" means the amount determined by a stewardship organization that must be added to the purchase price of architectural paint sold in this state to cover a stewardship organization's costs of administration, education and outreach, collecting, transporting, and processing of the leftover architectural paint managed through a statewide architectural paint stewardship program.

(3) "Conditionally exempt small quantity generator" means a dangerous waste generator whose dangerous wastes are not subject to regulation under chapter 70A.300 RCW, hazardous waste management, solely because the waste is generated or accumulated in quantities below the threshold for regulation and meets the conditions prescribed in WAC 173-303-171(1), as it existed on July 28, 2019.

(4) "Conditionally exempt small quantity generator waste" means dangerous waste generated by a conditionally exempt small quantity generator.

(5) "Consumer" includes any household, nonprofit, small business, or other entity whose leftover paint is eligible under applicable laws and regulations.

(6) "Covered entity" means any: (a) Household; (b) conditionally exempt small quantity generator of leftover oil-based and latex architectural paint; or (c) generator of dangerous waste as defined in RCW 70A.300.010 that brings leftover architectural latex paint to a paint program collection site operating under an approved Washington state paint stewardship plan.

(7) "Curbside service" means a waste collection, recycling, and disposal service providing pickup of leftover architectural paint from residential sources, such as single-family households and multifamily housing, or other covered entities in quantities generated from households or conditionally exempt small quantity generators, provided by a solid waste collection company regulated under chapter 81.77 RCW or under a contract for solid waste services with any city or town.

(8) "Department" means the department of ecology.

(9) "Distributor" means a person that has a contractual relationship with one or more manufacturers to market and sell architectural paint to retailers in Washington.

(10) "End-of-life" or "end-of-life management" means activities including, but not limited to, collection, transportation, reuse, recycling, energy recovery, and disposal for leftover architectural paint.

(11) "Energy recovery" means the recovery of energy in a useable form from mass burning or refuse-derived fuel incineration, pyrolysis, or any other means of using the heat of combustion of solid waste that involves high temperature (above twelve hundred degrees Fahrenheit) processing.

(12) "Environmentally sound management practices" means practices that comply with all applicable laws and rules to protect workers, public health, and the environment, provide for adequate recordkeeping, tracking and documenting the fate of materials within the state and beyond, and include environmental liability coverage for the stewardship organization.

(13) "Final disposition" means the point beyond which no further processing takes place and the paint has been transformed for direct use as a feedstock in producing new products or is disposed of, including for energy recovery, in permitted facilities.

(14) "Household hazardous waste" means waste that exhibits any of the properties of dangerous waste that is exempt from regulation under chapter 70A.300 RCW solely because the waste is generated by households. Household hazardous waste may also include other solid waste identified in the local hazardous waste management plan prepared pursuant to chapter 70A.300 RCW.

(15) "Leftover paint" or "leftover architectural paint" means architectural paint not used and no longer wanted by a consumer.

(16) "Moderate risk waste" means solid waste that is limited to conditionally exempt small quantity generator waste and household hazardous waste as defined in this chapter.

(17) "Paint retailer" means any person that offers architectural paint for sale at retail in Washington.

(18) "Person" includes any individual, business, manufacturer, transporter, collector, processor, retailer, charity, nonprofit organization, or government agency.

(19) "Producer" means a manufacturer of architectural paint that is sold, offered for sale, or distributed in Washington under the producer's own name or other brand name.

(20) "Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal, energy recovery, or incineration. Recycling does not include collection, compacting, repacking, and sorting for the purpose of transport.

(21) "Reuse" means any operation by which an architectural paint product changes ownership and is used for the same purpose for which it was originally purchased.

(22) "Sell" or "sale" means any transfer of title for consideration, including remote sales conducted through sales outlets, catalogues, or the internet or any other similar electronic means.

(23) "Stewardship organization" means a nonprofit organization created by a producer or group of producers to implement a paint stewardship program required under this chapter.

(24) "Urban cluster" means areas of population density of two thousand five hundred to fifty thousand, as defined by the United States census bureau.

(25) "Urbanized area" means areas of high population density with populations of fifty thousand or greater, as defined by the United States census bureau. [2020 c 20 § 1458; 2019 c 344 § 2. Formerly RCW 70.375.020.]

70A.515.030 Paint stewardship plan. (1) All producers of architectural paint selling in or into the state of Washington shall participate in an approved Washington state paint stewardship plan for covered entities through membership in and appropriate funding of a stewardship organization.

(2) Producers not participating in a stewardship plan may not sell architectural paint in or into Washington state.

(3) Paint retailers are prohibited from selling architectural paint manufactured or distributed by a producer not in compliance with this chapter. [2019 c 344 § 3. Formerly RCW 70.375.030.]

70A.515.040 Plan for the implementation of a paint stewardship program—Plan components—Funding mechanism—Collection—Promotion of a paint stewardship program—New plan or plan amendment. (1) A stewardship organization representing producers shall submit a plan for the implementation of a paint stewardship program to the department for approval by May 30, 2020, or within one year of July 28, 2019, whichever comes later. The plan must include the following components:

(a) A description of how the program proposed under the plan will collect, transport, recycle, and process leftover paint from covered entities for end-of-life management, including reuse, recycling, energy recovery, and disposal, using environmentally sound management practices;

(b) Stewardship organization contact information and a list of participating brands and producers under the program;

(c) A demonstration of sufficient funding for the architectural paint stewardship program as described in the plan. The plan must include a funding mechanism whereby each architectural paint producer remits to the stewardship organization payment of an architectural paint stewardship assessment for each container of architectural paint the producer sells in this state, unless the distributor or paint retailer has negotiated a voluntary agreement with the producer and stewardship organization to remit the architectural paint stewardship assessment directly to the stewardship organization on behalf of the producer for the producer's architectural paint sold by the distributor or paint retailer in the state. The plan must include a proposed budget and a description of the process used to determine the architectural paint stewardship assessment. The architectural paint stewardship assessment must be added to the cost of all architectural paint sold to Washington paint retailers and distributors, unless the distributor or paint retailer has negotiated an agreement voluntarily with the producer and stewardship organization to remit the assessment directly to the stewardship organization on behalf of the producer for the producer's architectural paint sold by the distributor or paint retailer in the state. Each Washington paint retailer or distributor must add the assessment to the purchase price of all architectural paint sold in this state. Manufacturers may not require retailers to opt to participate in a voluntary remittance agreement;

(d) The establishment in the plan of a uniform architectural paint stewardship assessment for all architectural paint sold in this state, in order to ensure that the funding mechanism is equitable and sustainable. For purposes of establishing the assessment, the plan must categorize the sizes of paint containers sold at retail and determine a uniform assessment amount that applies to each category of container size. The architectural paint stewardship assessment must be sufficient to recover the costs of the architectural paint stewardship program. With the exception of the annual administration costs paid to the department under RCW 70A.515.060(4), the department may not control or have spending authority related to the funds received by the stewardship organization from the assessment. Funds received by the stewardship organization are not state funds and are not eligible to be transferred for other state purposes in an appropriations act. The plan must require that any surplus funds generated from the funding mechanism that exceed a reserve greater than the most recent year's operating expenditures be put back into the program to either increase and improve program services or reduce the cost of the program and the architectural paint stewardship assessment, or both;

(e) A review by an independent financial auditor of the proposed architectural paint stewardship assessment to ensure that any added cost to paint sold in the state as a result of the paint stewardship program does not exceed the costs of the program. In a report to the department, the independent auditor must verify that the amount added to each unit of paint will cover the costs of the paint stewardship program;

(f) Assignment to the department of responsibility for the approval of the architectural paint stewardship assessment based on the information provided in the plan and the auditor's report;

(g) A description of the educational outreach strategy to reduce the generation of leftover paint, to promote the reuse

and recycling of leftover paint, for the overall collection of leftover paint, and for the proper end-of-life management of leftover paint. The strategies may be revised by a stewardship organization based on the information collected annually;

(h) A description of the reasonably convenient and available statewide collection system, including:

(i) A description of how the program will provide for reasonably convenient and available statewide collection of leftover paint from covered entities in urban and rural areas of the state, including island communities;

(ii) A description of how the program will incorporate existing public and private waste collection services and facilities for activities, which may include, but is not limited to:

(A) The reuse or processing of leftover architectural paint at the permanent collection site; and

(B) The collection, transportation, and recycling or proper disposal of leftover architectural paint;

(i) A description of how leftover paint will be managed using environmentally sound management practices, including reasonably following the paint waste management hierarchy of: Source reduction; reuse; recycling; energy recovery; and disposal;

(j) A description of education and outreach efforts to promote the paint stewardship program. The education and outreach efforts must include strategies for reaching all sectors of the population and describe how the paint stewardship program will evaluate the effectiveness of its education and outreach;

(k) A description of collection site procedural manuals for architectural paint products, including training procedures and electronic copies of materials that will be provided to collection sites; and

(l) A list of transporters that will be used to manage leftover paint collected by the stewardship organization and a list of potential processors to be used for final disposition.

(2)(a) To ensure adequate collection coverage, the plan must use geographic information modeling and the information required under subsection (1)(h) of this section to determine the number and distribution of collection sites based on the following criteria: At least ninety percent of Washington residents must have a permanent collection site within a fifteen-mile radius; and unless otherwise approved by the department, one additional permanent site must be established for every thirty thousand residents of an urbanized area and for every urban cluster of at least thirty thousand residents distributed to provide convenient and reasonably equitable access for residents within each.

(b) For the portion of the population that does not have a permanent collection location within a fifteen-mile radius, the plan must provide residents a reasonable opportunity to drop off leftover paint at collection events. The stewardship organization, in consultation with the department and the local community, will determine a reasonable frequency and location of these collection events, to be held in underserved areas. Special consideration is to be made for providing opportunities to island and geographically isolated populations.

(3)(a) Nothing in subsection (2) of this section prohibits a program plan from identifying an available curbside service for a specific area or population that provides convenient and

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reasonably equitable access for Washington residents that is at least equivalent to the level of convenience and access that would be provided by a collection site.

(b) A fee may not be charged at the time the unwanted paint is delivered or collected for management. However, this subsection (3)(b) does not prohibit collectors providing curbside services from charging customers a fee, as provided by city contract or by the Washington utilities and transportation commission under the authority of chapter 81.77 RCW, for the additional collection cost of providing this service.

(4) The program plan must utilize the existing public and private waste collection services and facilities where cost-effective and mutually agreeable.

(5) The program must utilize existing paint retail stores as collection sites where cost-effective and mutually agreeable.

(6) The plan must provide the collection site name and location of each site statewide in Washington accepting architectural paint under the program.

(7) A stewardship organization shall promote a paint stewardship program and provide consumers, covered entities, and paint retailers with educational and informational materials describing collection opportunities for leftover paint statewide, the architectural paint stewardship assessment used to finance the program, and promotion of waste prevention, reuse, and recycling. These materials may include, but are not limited to, the following:

(a) Signage that is prominently displayed and easily visible to the consumer;

(b) Written materials and templates of materials for reproduction by paint retailers to be provided to the consumer at the time of purchase or delivery, or both;

(c) Advertising or other promotional materials, or both, that include references to the architectural paint stewardship program; and

(d) An explanation that the architectural paint stewardship assessment has been added to the purchase price of architectural paint to fund the paint stewardship program in the state. The architectural paint stewardship assessment may not be described as a department recycling fee at the point of retail.

(8) A stewardship organization must submit a new plan or plan amendment to the department for approval when there is a change to the amount of the assessment, if required by the department, or every five years, if the department deems it necessary. [2020 c 20 § 1459; 2019 c 344 § 4. Formerly RCW 70.375.040.]

70A.515.050 Paint stewardship program plan—Collection site procedural manual—Educational and informational materials—Annual administrative fee. (1) Each stewardship organization shall submit a paint stewardship program plan in accordance with RCW 70A.515.040.

(2) Each stewardship organization shall develop and distribute a collection site procedural manual to collection sites to help ensure proper management of architectural paints at collection locations.

(3) A stewardship organization shall implement the paint stewardship program plan by November 30, 2020, or within six months after approval of a paint stewardship program plan under RCW 70A.515.040, whichever is later.

(4) A stewardship organization shall submit an annual report by October 15, 2020, or a later date agreed to by the department, structured to be used as a basis for annual plan review by the department. The report must be based on the requirements outlined in RCW 70A.515.080.

(5) A stewardship organization shall work with producers, distributors, paint retailers, and local governments to provide consumers with educational and informational materials describing collection opportunities for leftover paint statewide and promotion of waste prevention, reuse, and recycling of leftover paint.

(6) A stewardship organization shall pay an annual administrative fee, described in RCW 70A.515.060, in an amount sufficient to cover only the department's cost of administering and enforcing a paint stewardship program established under this chapter. [2020 c 20 § 1460; 2019 c 344 § 5. Formerly RCW 70.375.050.]

70A.515.060 Department's review of the plan—Approval/rejection—Public review—Assessment, departmental oversight—Recovery of costs for administering and enforcing chapter—Administrative fee—Penalties—List of producers and brands on the department's website—Rules. (1) The department shall review the plan within one hundred twenty days of receipt, and make a determination as to whether or not to approve the plan. The department shall provide a letter of approval for the plan if it provides for the establishment of a paint stewardship program that meets the requirements of RCW 70A.515.040 and 70A.515.050. If a plan is rejected, the department shall provide the reasons for rejecting the plan to the stewardship organization. The stewardship organization must submit a new plan within sixty days after receipt of the letter of disapproval.

(2) When a plan or an amendment to an approved plan is submitted under this section, the department shall make the proposed plan or amendment available for public review and comment for at least thirty days.

(3) The department shall provide oversight of a stewardship organization in the determination and implementation of the architectural paint stewardship assessment specified in RCW 70A.515.040(1).

(4) The department shall identify the costs it incurs under this chapter. The department shall set the fee at an amount that, when paid by every stewardship organization or producer that submits a plan, is adequate to reimburse the department's full costs of administering and enforcing this chapter. The total amount of annual fees collected under this subsection must not exceed the amount necessary to reimburse costs incurred by the department to enforce and administer this chapter.

(5) A stewardship organization or producer subject to this chapter must pay the department's administrative fee under this subsection on or before June 30, 2020, and annually thereafter. The annual administrative fee may not exceed five percent of the aggregate assessment added to the cost of all architectural paint sold by producers in the state for the preceding calendar year.

(6) The department shall enforce this chapter.

(a) The department may administratively impose a civil penalty on any person who violates this chapter in an amount of up to one thousand dollars per violation per day.

(b) The department may administratively impose a civil penalty of up to ten thousand dollars per violation per day on any person who intentionally, knowingly, or negligently violates this chapter.

(c) Any person who incurs a penalty under this section may appeal the penalty to the pollution control hearings board established by chapter 43.21B RCW.

(7) Upon the date the first plan is approved, the department shall post on its website a list of producers and their brands for which the department has approved a plan pursuant to RCW 70A.515.040. The department shall update the list of producers and brands participating under an approved program plan on a monthly basis based on information provided to the department from a stewardship organization.

(8) Upon a demonstration to the satisfaction of the department that a previously unlisted producer is in compliance with this chapter, within fourteen days the department must add the name of the producer to its website.

(9) The department shall review each annual report required pursuant to RCW 70A.515.080 within ninety days of its submission to ensure compliance with RCW 70A.515.080(1).

(10) The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter. [2020 c 20 § 1461; 2019 c 344 § 6. Formerly RCW 70.375.060.]

70A.515.070 Required participation in an approved stewardship plan—Information regarding available end-of-life paint management options. (1) A producer or paint retailer may not sell or offer for sale to any person in the state architectural paint unless the producer or brand of architectural paint is participating in an approved stewardship plan under this chapter. A retailer complies with the requirements of this section if, on the date the architectural paint was ordered from the producer or its agent, the producer of the paint was listed on the department's website as a producer participating in an approved paint stewardship program plan. However, a retailer may sell any paint purchased prior to July 28, 2019.

(2) A distributor or a paint retailer that distributes or sells architectural paint shall monitor the department's website to determine if the sale of a producer's architectural paint is in compliance with this chapter.

(3) At the time of sale to a consumer, a producer, a stewardship organization, or a paint retailer selling or offering architectural paint for sale in Washington shall provide the consumer with information regarding available end-of-life management options for leftover architectural paint collected through a paint stewardship program.

(4) Neither a paint retailer, nor any other retailer, is required to serve as a leftover paint collection facility.

(5) No fee may be charged at the time of delivery of leftover paint to a collection site. [2019 c 344 § 7. Formerly RCW 70.375.070.]

70A.515.080 Report. (1) By October 15, 2020, and annually thereafter, a stewardship organization shall submit

to the department a report describing the paint stewardship program that the stewardship organization implemented during the previous fiscal year. The report must include all of the following:

(a) A description of the methods the stewardship organization used to reduce, reuse, collect, transport, recycle, and process leftover paint statewide in Washington;

(b) The volume of latex and oil-based architectural paint collected by the stewardship organization in the preceding fiscal year in Washington, including any increase in total volume of paint collected each year, and the cost of the paint stewardship program per gallon of paint collected;

(c) The volume of latex and oil-based architectural paint collected by method of disposition, including reuse, recycling, energy recovery, and disposal;

(d) An estimate of the total weight of all paint containers recycled by the program;

(e) A list of all processors through final disposition that are used to manage leftover paint collected by the stewardship organization in the preceding year;

(f) A list of all the producers participating in the plan;

(g) The total volume of architectural paint sold in Washington during the preceding year based on the architectural paint stewardship assessment collected by the stewardship organization;

(h) An independent financial audit of the paint stewardship program implemented by the stewardship organization, including a breakdown of the program's expenses, such as collection, recycling, education, and overhead;

(i) The total cost of implementing the paint stewardship program broken out by administrative, collection, transportation and disposition, and communications costs;

(j) An evaluation of the effectiveness of the paint stewardship program from year to year, and anticipated steps, if needed, to improve performance throughout the state; and

(k) A summary of outreach and education activities undertaken and samples of the educational materials that the stewardship organization provided to consumers of architectural paint during the first year of the program and any changes to those materials in subsequent years.

(2) The department must make all reports submitted under this section available to the general public through the internet. Consistent with RCW 70A.515.130, valuable commercial information submitted to the department under this chapter is exempt from public disclosure under RCW 42.56.270. However, the department may use and disclose such information in summary or aggregated form as long as the disclosure does not directly or indirectly identify financial, production, or sales data of an individual producer or stewardship organization. The department is not required to notify individual producers prior to making available to the general public the reports submitted under this section or aggregated or summarized information from reports submitted under this section. [2020 c 20 § 1462; 2019 c 344 § 8. Formerly RCW 70.375.080.]

70A.515.090 Immunity from certain state laws. Producers or stewardship organizations acting on behalf of producers that prepare, submit, and implement a paint stewardship program plan pursuant to RCW 70A.515.040 and thereby are subject to regulation by the department are

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granted immunity from state laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade and commerce, for the limited purpose of planning, reporting, and operating a paint stewardship program and proposing and establishing the architectural paint stewardship assessment required in RCW 70A.515.040(1) (c) and (d). [2020 c 20 § 1463; 2019 c 344 § 9. Formerly RCW 70.375.090.]

70A.515.100 Paint product stewardship account.

The paint product stewardship account is created in the state treasury. All receipts received by the department from stewardship organizations must be deposited in the account. Monies in the account may be spent only after appropriation. Expenditures from the account may be used by the department only for administering and enforcing paint stewardship programs. [2019 c 344 § 10. Formerly RCW 70.375.100.]

70A.515.110 Chapter void if federal law establishes a national program.

This chapter is void if a federal law, or a combination of federal laws, takes effect that establishes a national program for the collection and recycling of architectural paint that substantially meets the intent of this chapter, including the creation of a funding mechanism for collection, transportation, recycling, and proper disposal of all architectural paint in the United States. [2019 c 344 § 11. Formerly RCW 70.375.110.]

70A.515.120 Authority of utilities and transportation commission.

Nothing in this chapter changes or limits the authority of the Washington utilities and transportation commission to regulate collection of solid waste, including curbside collection of residential recyclable materials, nor does this chapter change or limit the authority of a city or town to provide the service itself or by contract under RCW 81.77.020. [2019 c 344 § 12. Formerly RCW 70.375.120.]

70A.515.130 Protection of certain records from public inspection.

(1) Except as provided in subsection (3) of this section, records, subject to chapter 42.56 RCW, filed with the department from any person that contain valuable commercial information, including trade secrets, confidential marketing, cost, or financial information, or customer-specific usage information, are not subject to inspection or copying under chapter 42.56 RCW. When providing information to the department, a person shall designate which records or portions of records contain valuable commercial information.

(2) Upon receipt of a request to disclose valuable commercial information submitted under this chapter, the department must provide notice to the person or persons whose information is subject to possible inspection or copying under chapter 42.56 RCW.

(3) Upon the notice provided under subsection (2) of this section of the possible inspection or copying of valuable commercial information pursuant to chapter 42.56 RCW, a person may petition the superior court for an order protecting the records as confidential. The superior court must determine that the records are confidential and are not subject to inspection or copying if disclosure would result in private loss, including an unfair competitive disadvantage. If a person does not obtain an order protecting submitted records as

confidential within ten days of receiving a notice from the department under subsection (2) of this section, the department may make the records available for public inspection and copying pursuant to chapter 42.56 RCW. [2019 c 344 § 13. Formerly RCW 70.375.130.]

Chapter 70A.520 RCW
PLASTIC PACKAGING—EVALUATION AND ASSESSMENT

Sections

70A.520.010	Findings—Intent.
70A.520.020	Definitions.
70A.520.030	Evaluation and assessment—Report to the legislature.
70A.520.900	Expiration date.

70A.520.010 Findings—Intent. (Expires July 1, 2029.) (1) The legislature finds that:

(a) Convenient and environmentally sound product stewardship programs that include collecting, transporting, and reuse, recycling, or the proper end-of-life management of unwanted products help protect Washington's environment and the health of state residents;

(b) Unwanted products should be managed where priority is placed on prevention, waste reduction, source reduction, recycling, and reuse over energy recovery and landfill disposal; and

(c) Producers of plastic packaging should consider the design and management of their packaging in a manner that ensures minimal environmental impact. Producers of plastic packaging should be involved from design concept to end-of-life management to incentivize innovation and research to minimize environmental impacts.

(2) Additionally, the legislature finds that, through design and innovation, industry should strive to achieve the goals of recycling one hundred percent of packaging, using at least twenty percent postconsumer recycled content in packaging, and reducing plastic packaging when possible to optimize the use to meet the need.

(3) The legislature intends that the department, through a consultative process with industry and consumer interest, develop options to reduce plastic packaging in the waste stream for implementation by January 1, 2022. [2019 c 460 § 1. Formerly RCW 70.380.010.]

70A.520.020 Definitions. (Expires July 1, 2029.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Brand" means a name, symbol, word, or mark that identifies a product, rather than its components, and attributes the covered product to the owner of the brand as the producer.

(2) "Department" means the department of ecology.

(3) "Producer" means a person who has legal ownership of the brand, brand name, or cobrand of plastic packaging sold in or into Washington state.

(4) "Recycling" has the same meaning as defined in RCW 70A.205.015.

(5) "Stakeholder" means a person who may have an interest in or be affected by the management of plastic packaging. [2020 c 20 § 1464; 2019 c 460 § 2. Formerly RCW 70.380.020.]

70A.520.030 Evaluation and assessment—Report to the legislature. (Expires July 1, 2029.) (1) The department must evaluate and assess the amount and types of plastic packaging sold into the state as well as the management and disposal of plastic packaging. When conducting the evaluation, the department must ensure that producers, providers of solid waste management services, and stakeholders are consulted. The department must produce a report that includes:

(a) An assessment of the:

(i) Amount and types of plastic packaging currently produced in or coming into the state by category;

(ii) Full cost of managing plastic packaging waste, including the cost to ratepayers, businesses, and others, with consideration given to costs that are determined by volume or weight;

(iii) Final disposition of all plastic packaging sold into the state, based on current information available at the department;

(iv) Costs and savings to all stakeholders in existing product stewardship programs where they have been implemented including, where available, the specific costs for the management of plastic packaging;

(v) Infrastructure necessary to manage plastic packaging in the state;

(vi) Contamination and sorting issues facing the current plastic packaging recycling stream; and

(vii) Existing organizations and databases for managing plastic packaging that could be employed for use in developing a program in the state;

(b) A compilation of:

(i) All the programs currently managing plastic packaging in the state, including all end-of-life management and litter and contamination cleanup; and

(ii) Existing studies regarding the final disposition of plastic packaging and material recovery facilities residual composition, including data on cross-contamination of other recyclables, contamination in compost, and brand data in litter when available;

(c) A review and identification of businesses in Washington that use recycled plastic material as a feedstock or component of a product produced by the company; and

(d) A review of industry and any other domestic or international efforts and innovations to reduce, reuse, and recycle plastic and chemically recycle packaging, utilize recycled content in packaging, and develop new programs, systems, or technologies to manage plastics including innovative technologies such as pyrolysis and gasification processes to divert recoverable polymers and other materials away from landfills and into valuable raw, intermediate, and final products.

(2) The department must contract with a third-party independent consultant to conduct the evaluation and assessment as required under subsection (1) of this section. In developing the recommendations, the department must ensure consistency with the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et. seq.).

(3)(a) By October 31, 2020, the department must submit a report on the evaluation and assessment of plastic packaging to the appropriate committees of the legislature. The department must cite the sources of information that it relied upon in the report and that the independent consultant relied

upon in the assessment, including any sources of peer-reviewed science.

(b) The report required under this subsection must include:

(i) Findings regarding amount and types of plastic packaging sold into the state as well as the management and disposal of plastic packaging;

(ii) Recommendations to meet the goals of reducing plastic packaging, including through industry initiative or plastic packaging product stewardship, or both, to:

(A) Achieve one hundred percent recyclable, reusable, or compostable packaging in all goods sold in Washington by January 1, 2025;

(B) Achieve at least twenty percent postconsumer recycled content in packaging by January 1, 2025; and

(C) Reduce plastic packaging when possible optimizing the use to meet the need; and

(iii) For the purposes of legislative consideration, options to meet plastic packaging reduction goals, that are capable of being established and implemented by January 1, 2022. For proposed options, the department must identify expected costs and benefits of the proposal to state and local government agencies to administer and enforce the rule, and to private persons or businesses, by category of type of person or business affected. [2019 c 460 § 3. Formerly RCW 70.380.030.]

70A.520.900 Expiration date. This chapter expires July 1, 2029. [2019 c 460 § 4. Formerly RCW 70.380.900.]

Chapter 70A.525 RCW DISPOSABLE WIPES PRODUCTS—LABELING STANDARDS

Sections

70A.525.005	Finding.
70A.525.010	Definitions.
70A.525.020	Labeling requirements.
70A.525.030	Documentation demonstrating compliance with chapter.
70A.525.040	Enforcement of chapter—Civil penalties.
70A.525.050	Violation of chapter—Written notice—First and subsequent penalties.
70A.525.900	Effective date—2020 c 121.
70A.525.901	Application to certain products—July 1, 2023.
70A.525.902	Preemption by chapter.

70A.525.005 Finding. The legislature finds that creating labeling standards for disposable wipes products will protect public health, the environment, water quality, and public infrastructure used for the collection, transport, and treatment of wastewater. It is not the intent of the legislature to address standards for flushability with this chapter. [2020 c 121 § 1.]

70A.525.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Covered entity" means a manufacturer of a covered product and a wholesaler, supplier, or retailer that has contractually undertaken responsibility to the manufacturer for the "do not flush" labeling of a covered product.

(2) "Covered product" means a nonflushable nonwoven disposable wipe that is a premoistened wipe constructed from nonwoven sheets and designed and marketed for diapering,

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personal hygiene, or household hard surface cleaning purposes. A nonflushable nonwoven disposable wipe excludes any wipe product designed or marketed for cleaning or medicating the anorectal or vaginal areas on the human body and labeled "flushable," "sewer safe," "septic safe," or otherwise indicating that the product is appropriate for disposal in a toilet including, but not limited to, premoistened toilet tissue.

(3) "Label" means to represent by statement, word, picture, design, or emblem on a covered product package.

(4) "Principal display panel" means the side of a product package that is most likely to be displayed, presented, or shown under customary conditions of display for retail sale. The term is further defined as follows:

(a) In the case of a cylindrical or nearly cylindrical package, the surface area of the principal display panel constitutes forty percent of the product package, as measured by multiplying the height of the container times the circumference.

(b) In the case of a flexible film package, in which a rectangular prism or nearly rectangular prism stack of wipes is housed within the film, the surface area of the principal display panel constitutes the length times the width of the side of the package when the flexible packaging film is pressed flat against the stack of wipes on all sides of the stack. [2020 c 121 § 2.]

70A.525.020 Labeling requirements. A covered entity must clearly and conspicuously label a covered product as "do not flush" as follows:

(1) Use the "do not flush" symbol, or a gender equivalent thereof, described in the INDA/EDANA code of practice 2 (COP2, as published in "Guidelines for Assessing the Flushability of Disposable Nonwoven Products," Edition 4, May 2018, by INDA/EDANA);

(2) Place the symbol on the principal display panel in a prominent and reasonably visible location on the package which, in the case of packaging intended to dispense individual wipes, is permanently affixed in a location that is visible to a person each time a wipe is dispensed from the package;

(3) Size the symbol to cover at least two percent of the surface area of the principal display panel on which the symbol is presented;

(4) Ensure the symbol is not obscured by packaging seams, folds, or other package design elements;

(5) Ensure the symbol has sufficiently high contrast with the immediate background of the packaging to render it likely to be read by the ordinary individual under customary conditions of purchase and use. In the case of a printed symbol, "high contrast" is defined as follows:

(a) Provided with either a light symbol on a dark background or a dark symbol on a light background; and

(b) A minimum level or percentage of contrast between the symbol artwork and the background of at least seventy percent. Contrast in percent is determined by:

(i) Contrast = $(B1 - B2) \times 100 / B1$; and

(ii) Where B1 = light reflectance value of the lighter area and B2 = light reflectance value of the darker area; and

(6) Beginning January 1, 2023, no package or box containing a covered product manufactured on or before July 1, 2022, may be offered for distribution or sale in the state. [2020 c 121 § 3.]

70A.525.030 Documentation demonstrating compliance with chapter. Upon a request by a city or a county, a covered entity must submit to the requesting entity, within ninety days of the request, nonconfidential business information and documentation demonstrating compliance with this chapter, in a format that is easy to understand. [2020 c 121 § 4.]

70A.525.040 Enforcement of chapter—Civil penalties. (1) Cities and counties have concurrent and exclusive authority to enforce this chapter and to collect civil penalties for a violation of this chapter, subject to the conditions in this section. An enforcing government entity may impose a civil penalty in the amount of up to two thousand dollars for the first violation of this chapter, up to five thousand dollars for the second violation of this chapter, and up to ten thousand dollars for the third and any subsequent violation of this chapter. If a covered entity has paid a prior penalty for the same violation to a different government entity with enforcement authority under this subsection, the penalty imposed by a government entity is reduced by the amount of the payment.

(2) Any civil penalties collected pursuant to this section must be paid to the enforcing governmental entity that brought the action.

(3) The remedies provided by this section are not exclusive and are in addition to the remedies that may be available pursuant to chapter 19.86 RCW or other consumer protection laws, if applicable.

(4) In addition to penalties recovered under this section, the enforcing government entity may recover reasonable enforcement costs and attorneys' fees from the liable covered entity. [2020 c 121 § 5.]

70A.525.050 Violation of chapter—Written notice—First and subsequent penalties. Covered entities that violate the requirements of this chapter are subject to civil penalties described in RCW 70A.525.040. A specific violation is deemed to have occurred upon the sale of a noncompliant product package. The repeated sale of the same noncompliant product package is considered part of the same, single violation. A city or county must send a written notice of an alleged violation and a copy of the requirements of this chapter to a noncompliant covered entity, which will have ninety days to become compliant. A city or county may assess a first penalty if the covered entity has not met the requirements of this chapter ninety days following the date the notification was sent. A city or county may impose a second, third, and subsequent penalties on a covered entity that remains noncompliant with the requirements of this chapter for every month of noncompliance. [2020 c 121 § 6.]

70A.525.900 Effective date—2020 c 121. This act takes effect July 1, 2022. [2020 c 121 § 8.]

70A.525.901 Application to certain products—July 1, 2023. For a covered product required to be registered by the United States environmental protection agency under the federal insecticide, fungicide, and rodenticide act (7 U.S.C. Sec. 136 et seq. (1996)), chapter 121, Laws of 2020 applies beginning July 1, 2023. [2020 c 121 § 9.]

70A.525.902 Preemption by chapter. This chapter preempts all existing or future laws enacted by a county, city, town, or other political subdivision of the state regarding the labeling of a covered product. Nothing in this section is intended to preempt the enforcement authority of a city or county as provided under RCW 70A.525.040 and 70A.525.050. [2020 c 121 § 10.]

Chapter 70A.530 RCW CARRYOUT BAGS

Sections

70A.530.005	Intent.
70A.530.010	Definitions.
70A.530.020	Retail establishments—Limitations on carryout bags.
70A.530.030	Payment for any portion of pass-through charge—Violation of RCW 70A.530.020.
70A.530.040	Pulp and paper mill expansion or reconfiguration—Adoption of rules—Enforcement of chapter—Education—Civil penalty.
70A.530.050	Preemption of local ordinances.
70A.530.060	Report to the legislature.

70A.530.005 Intent. (1) State policy has long placed waste reduction as the highest priority in the collection, handling, and management of solid waste. Reducing plastic bag waste holds particular importance among state waste reduction efforts for a number of reasons:

(a) Single-use plastic carryout bags are made of nonrenewable resources and never biodegrade; instead, over time, they break down into tiny particles. Single-use plastic carryout bags, and the particles they break into, are carried into rivers, lakes, Puget Sound, and the world's oceans, posing a threat to animal life and the food chain;

(b) Plastic bags are one of the most commonly found items that litter state roads, beaches, and other public spaces; and

(c) Even when plastic bags avoid the common fate of becoming litter, they are a drain on public resources and a burden on environment and resource conservation goals. For example, if plastic bags are disposed of in commingled recycling systems rather than as garbage or in retailer drop-off programs, they clog processing and sorting machinery, resulting in missorted materials and costly inefficiencies that are ultimately borne by utility ratepayers. Likewise, when green or brown-tinted plastic bags confuse consumers into attempting to dispose of them as compost, the resultant plastic contamination undercuts the ability to use the compost in gardens, farms, landscaping, and surface water and transportation projects.

(2) Alternatives to single-use plastic carryout bags are convenient, functional, widely available, and measure as superior across most environmental performance metrics. Alternatives to single-use plastic carryout bags feature especially superior environmental performance with respect to litter and marine debris, since plastic bags do not biodegrade.

(3) As of 2020, many local governments in Washington have shown leadership in regulating the use of single-use plastic carryout bags. This local leadership has shown the value of establishing state standards that will streamline regulatory inconsistency and reduce burdens on covered retailers caused by a patchwork of inconsistent local requirements across the state.

(4) Data provided from grocery retailers has shown that requests for paper bags have skyrocketed where plastic bag bans have been implemented. To accommodate the anticipated consequences of a statewide plastic bag ban, it is rational to expect additional capacity will be needed in Washington state for manufacturing paper bags. The legislature intends to provide that capacity by prioritizing and expediting siting and permitting of expansions or reconfiguring for paper manufacturing.

(5) Therefore, in order to reduce waste, litter, and marine pollution, conserve resources, and protect fish and wildlife, it is the intent of the legislature to:

- (a) Prohibit the use of single-use plastic carryout bags;
- (b) Require a pass-through charge on compliant paper carryout bags and reusable carryout bags made of film plastic, to encourage shoppers to bring their own reusable carryout bags;
- (c) Require that bags provided by a retail establishment contain recycled content or derive from nonwood renewable fiber; and
- (d) Encourage the provision of reusable and compliant paper carryout bags by retail establishments. [2021 c 33 § 3; 2020 c 138 § 1.]

Application of RCW 82.32.805 and 82.32.808—2020 c 138: "RCW 82.32.805 and 82.32.808 do not apply to this act." [2020 c 138 § 9.]

70A.530.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Carryout bag" means any bag that is provided by a retail establishment at home delivery, the check stand, cash register, point of sale, or other point of departure to a customer for use to transport or carry away purchases.

(2) "Compliant paper carryout bag" means a paper carryout bag provided by a retail establishment to a customer that meets the requirements in RCW 70A.530.020(6)(a).

(3) "Department" means the department of ecology.

(4) "Nonwood renewable fiber" means plant-based fiber derived from wheat straw grown in North America.

(5) "Pass-through charge" means a charge to be collected and retained by retail establishments from their customers when providing compliant paper carryout bags and reusable carryout bags made of film plastic.

(6) "Retail establishment" means any person, corporation, partnership, business, facility, vendor, organization, or individual that sells or provides food, merchandise, goods, or materials directly to a customer including home delivery, temporary stores, or vendors at farmers markets, street fairs, and festivals.

(7) "Reusable carryout bag" means a carryout bag made of cloth or other durable material with handles that is specifically designed and manufactured for long-term multiple reuse and meets the requirements of RCW 70A.530.020(6)(b).

(8) "Single-use plastic carryout bag" means any carryout bag that is made from plastic that is designed and suitable only to be used once and disposed. [2021 c 33 § 1; 2020 c 138 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

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Application of RCW 82.32.805 and 82.32.808—2020 c 138: See note following RCW 70A.530.005.

70A.530.020 Retail establishments—Limitations on carryout bags. (1) Beginning January 1, 2021, except as provided in this section and RCW 70A.530.030, a retail establishment may not provide to a customer or a person at an event:

- (a) A single-use plastic carryout bag;
- (b) A paper carryout bag that does not meet the requirements of subsection (6)(a) of this section or a reusable carryout bag made of film plastic that does not meet recycled content requirements; or
- (c) Beginning January 1, 2026, a reusable carryout bag made of film plastic with a thickness of less than four mils, in the event that the 2025 legislature does not amend this section to reflect the recommendations to the legislature made consistent with RCW 70A.530.060.

(2)(a) A retail establishment may provide a reusable carryout bag or a compliant paper carryout bag of any size to a customer at the point of sale. A retail establishment may make reusable carryout bags available to customers through sale.

(b)(i) Until December 31, 2025, a retail establishment must collect a pass-through charge of eight cents for every compliant paper carryout bag with a manufacturer's stated capacity of one-eighth barrel (eight hundred eighty-two cubic inches) or greater or reusable carryout bag made of film plastic it provides, except as provided in subsection (5) of this section and RCW 70A.530.030.

(ii) Beginning January 1, 2026, a retail establishment must collect a pass-through charge of twelve cents for reusable carryout bags made of film plastic and eight cents for compliant paper carryout bags, in the event that the 2025 legislature does not amend this section to reflect the recommendations to the legislature made consistent with RCW 70A.530.060. It is the intent of the legislature for the 2025 legislature to reassess the amount of the pass-through charge authorized under this subsection (2)(b), taking into consideration the content of the report to the legislature under RCW 70A.530.060.

(c) A retail establishment must keep all revenue from pass-through charges. The pass-through charge is a taxable retail sale. A retail establishment must show all pass-through charges on a receipt provided to the customer.

(3) Carryout bags provided by a retail establishment do not include:

- (a) Bags used by consumers inside stores to:
 - (i) Package bulk items, such as fruit, vegetables, nuts, grains, candy, greeting cards, or small hardware items such as nails, bolts, or screws;
 - (ii) Contain or wrap items where dampness or sanitation might be a problem including, but not limited to:
 - (A) Frozen foods;
 - (B) Meat;
 - (C) Fish;
 - (D) Flowers; and
 - (E) Potted plants;
 - (iii) Contain unwrapped prepared foods or bakery goods;
 - (iv) Contain prescription drugs; or

(v) Protect a purchased item from damaging or contaminating other purchased items when placed in a compliant paper carryout bag or reusable carryout bag; or

(b) Newspaper bags, mailing pouches, sealed envelopes, door hanger bags, laundry/dry cleaning bags, or bags sold in packages containing multiple bags for uses such as food storage, garbage, or pet waste.

(4)(a) Any compostable film bag that a retail establishment provides to customers for products, including for products bagged in stores prior to checkout, must meet the requirements for compostable products and film bags in chapter 70A.455 RCW.

(b) A retail establishment may not use or provide polyethylene or other noncompostable plastic bags for bagging of customer products in stores, as carryout bags, or for home delivery that do not meet the requirements for noncompostable products and film bags in chapter 70A.455 RCW.

(5) Except as provided by local regulations enacted as of April 1, 2020, a retail establishment may provide a bag restricted under subsection (1) of this section from existing inventory until one year after June 11, 2020. The retail establishment, upon request by the department, must provide purchase invoices, distribution receipts, or other information documenting that the bag was acquired prior to June 11, 2020.

(6) For the purposes of this section:

(a) A compliant paper carryout bag must:

(i) Contain a minimum of forty percent postconsumer recycled materials, a minimum of 40 percent nonwood renewable fiber, or a combination of postconsumer recycled materials and nonwood renewable fiber that totals at least 40 percent;

(ii) Be capable of composting, consistent with the timeline and specifications of the entire American society of testing materials D6868 and associated test methods that must be met, as it existed as of January 1, 2020; and

(iii) Display in print on the exterior of the paper bag the minimum percentage of postconsumer content, wheat straw fiber content, or both.

(b) A reusable carryout bag must:

(i) Have a minimum lifetime of one hundred twenty-five uses, which for purposes of this subsection means the capacity to carry a minimum of twenty-two pounds one hundred twenty-five times over a distance of at least one hundred seventy-five feet;

(ii) Be machine washable or made from a durable material that may be cleaned or disinfected; and

(iii) If made of film plastic:

(A) Be made from a minimum of twenty percent postconsumer recycled content until July 1, 2022, and thereafter must be made from a minimum of forty percent postconsumer recycled content;

(B) Display in print on the exterior of the plastic bag the minimum percentage of postconsumer recycled content, the mil thickness, and that the bag is reusable; and

(C) Have a minimum thickness of no less than 2.25 mils until December 31, 2025, and beginning January 1, 2026, must have a minimum thickness of four mils.

(c) Except for the purposes of subsection (4) of this section, food banks and other food assistance programs are not retail establishments, but are encouraged to take actions to

reduce the use of single-use plastic carryout bags. [2021 c 65 § 78; 2021 c 65 § 77; 2021 c 33 § 2; 2020 c 138 § 3.]

Reviser's note: This section was amended by 2021 c 33 § 2, 2021 c 65 § 77, and by 2021 c 65 § 78, without reference to one another. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Explanatory statement—2021 c 65: See note following RCW 53.54.030.

Application of RCW 82.32.805 and 82.32.808—2020 c 138: See note following RCW 70A.530.005.

70A.530.030 Payment for any portion of pass-through charge—Violation of RCW 70A.530.020. It is a violation of RCW 70A.530.020 for any retail establishment to pay or otherwise reimburse a customer for any portion of the pass-through charge; provided that retail establishments may not collect a pass-through charge from anyone using a voucher or electronic benefits card issued under the women, infants, and children (WIC) or temporary assistance for needy families (TANF) support programs, or the federal supplemental nutrition assistance program (SNAP, also known as basic food), or the Washington state food assistance program (FAP). [2020 c 138 § 4.]

Application of RCW 82.32.805 and 82.32.808—2020 c 138: See note following RCW 70A.530.005.

70A.530.040 Pulp and paper mill expansion or reconfiguration—Adoption of rules—Enforcement of chapter—Education—Civil penalty. (1) Until June 1, 2025, the department shall prioritize the expedited processing of applications for permits related to the expansion or reconfiguration of an existing pulp and paper mill for the purpose of manufacturing paper bags or raw materials used to manufacture paper bags.

(2) The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter.

(3) The enforcement of this chapter must be based primarily on complaints filed with the department and local governments. The department must establish a forum for the filing of complaints. Local governments and any person may file complaints with the department using the forum and local governments may review complaints filed with the department via the forum for purposes of the local government carrying out education and outreach to retail establishments. The forum established by the department may include a complaint form on the department's website, a telephone hotline, or a public outreach strategy relying upon electronic social media to receive complaints that allege violations. The department, in collaboration with the local governments, must provide education and outreach activities to inform retail establishments, consumers, and other interested individuals about the requirements of this chapter.

(4) The department or local government shall work with retail establishments, retail associations, unions, and other organizations to create educational elements regarding the ban and the benefits of reusable carryout bags. Educational elements may include signage at store locations, informational literature, and employee training by October 1, 2020.

(5) Retail establishments are encouraged to educate their staff to promote reusable bags as the best option for carryout

bags and to post signs encouraging customers to use reusable carryout bags.

(6) A violation of this chapter is subject to a civil penalty of up to two hundred fifty dollars. Each calendar day of operation or activity in violation of this chapter comprises a new violation. Penalties issued under this section are appealable to the pollution control hearings board established in chapter 43.21B RCW.

(7) If specific funding for the purposes of chapter 138, Laws of 2020, referencing chapter 138, Laws of 2020 by bill or chapter number, is not provided by July 1, 2020, from the waste reduction, recycling, and litter control account for purposes of implementing the education and outreach activities required under this section, then chapter 138, Laws of 2020 is null and void. [2020 c 138 § 5.]

Application of RCW 82.32.805 and 82.32.808—2020 c 138: See note following RCW 70A.530.005.

70A.530.050 Preemption of local ordinances. (1) Except as provided in subsection (2) of this section, a city, town, county, or municipal corporation may not implement a local carryout bag ordinance. Except as provided in subsection (2) of this section, any carryout bag ordinance that was enacted as of April 1, 2020, is preempted by this chapter.

(2)(a) A city, town, county, or municipal corporation carryout bag ordinance enacted as of April 1, 2020, that has established a pass-through charge of ten cents is not preempted with respect to the amount of the pass-through charge until January 1, 2026.

(b) A city, town, county, or municipal corporation ordinance not specified in (a) of this subsection and enacted as of April 1 2020, is not preempted until January 1, 2021. [2020 c 138 § 6.]

Application of RCW 82.32.805 and 82.32.808—2020 c 138: See note following RCW 70A.530.005.

70A.530.060 Report to the legislature. (Expires July 1, 2027.) (1) By December 1, 2024, the department of commerce, in consultation with the department, must submit a report to the appropriate committees of the legislature in order to allow an opportunity for the legislature to amend the mil thickness requirements for reusable carryout bags made of film plastic, the amount of the pass-through charges for bags, or to make other needed revisions to this chapter during the 2025 legislative session. The report required under this section must include:

(a) An assessment of the effectiveness of the pass-through charge for reducing the total volume of bags purchased and encouraging the use of reusable carryout bags;

(b) An assessment of the sufficiency of the amount of the pass-through charge allowed under chapter 70A.530 RCW [this chapter] relative to the cost of the authorized bags to retail establishments and an assessment of the pricing and availability of various types of carryout bags. For purposes of conducting this assessment, the department and the department of commerce may request, but not require, retail establishments and bag distributors to furnish information regarding the cost of various types of paper and plastic carryout bags provided to retail establishments; and

(c) Recommendations for revisions to chapter 70A.530 RCW [this chapter], if needed.

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(2) This section expires July 1, 2027. [2020 c 138 § 7.]

Application of RCW 82.32.805 and 82.32.808—2020 c 138: See note following RCW 70A.530.005.

Chapter 70A.535 RCW

TRANSPORTATION FUEL—CLEAN FUELS PROGRAM

Sections

70A.535.005	Findings—Intent—2021 c 317.
70A.535.010	Definitions.
70A.535.025	Carbon intensity in transportation fuels—Standards to reduce carbon intensity—Adoption of rules—Monthly calculation.
70A.535.030	Requirements for rules adopted under RCW 70A.535.025.
70A.535.040	Rules adopted under RCW 70A.535.025 and 70A.535.030—Exemptions for certain transportation fuels.
70A.535.050	Rules adopted under RCW 70A.535.025 and 70A.535.030—Generation of credits.
70A.535.060	Adoption of rules—Harmonization with other states—Stakeholder advisory panel—Review of innovative technologies—Report requirements.
70A.535.070	Producers or importers must register with the department—Transfer of ownership of transportation fuels—Documentation—Reporting of information—Adoption of rules.
70A.535.080	Electric utilities—Use of certain revenues—Provision of information to the department.
70A.535.090	Reporting requirements—Report to the legislature—Independent analysis.
70A.535.100	Fuel supply forecast.
70A.535.110	Forecast deferral.
70A.535.120	Emergency deferral of compliance with carbon intensity standard.
70A.535.130	Fee—Clean fuels program account—Rule making to be conducted as provided in RCW 34.05.328.
70A.535.140	Joint legislative audit and review committee analysis.

70A.535.005 Findings—Intent—2021 c 317. (1) The legislature finds that rapid innovations in low carbon transportation technologies, including electric vehicles and clean transportation fuels, are at the threshold of widespread commercial deployment. In order to help prompt the use of clean fuels, other states have successfully implemented programs that reduce the carbon intensity of their transportation fuels. California and Oregon have both implemented low carbon fuel standards that are similar to the program created in chapter 317, Laws of 2021, and both states have experienced biofuel sector growth and have successfully sited large biofuel projects that had originally been planned for Washington. Washington state has extensively studied the potential impact of a clean fuels program, and most projections show that a low carbon fuel standard would decrease greenhouse gas and conventional air pollutant emissions, while positively impacting the state's economy.

(2) The legislature further finds that the health and welfare of the people of the state of Washington is threatened by the prospect of crumbling or swamped coastlines, rising water, and more intense forest fires caused by higher temperatures and related droughts, all of which are intensified and made more frequent by the volume of greenhouse gas emissions. As of 2017, the transportation sector contributes 45 percent of Washington's greenhouse gas emissions, and the legislature's interest in the life cycle of the fuels used in the state arises from a concern for the effects of the production and use of these fuels on Washington's environment and public health, including its air quality, snowpack, and coastline.

(3) Therefore, it is the intent of the legislature to support the deployment of clean transportation fuel technologies through a carefully designed program that reduces the carbon intensity of fuel used in Washington, in order to:

- (a) Reduce levels of conventional air pollutants from diesel and gasoline that are harmful to public health;
- (b) Reduce greenhouse gas emissions associated with transportation fuels, which are the state's largest source of greenhouse gas emissions; and
- (c) Create jobs and spur economic development based on innovative clean fuel technologies. [2021 c 317 § 1.]

Severability—2021 c 317: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. In the event that there is litigation on the provisions of section 3(6) of this act or any other provision of this act, it is the intent of the legislature that the remainder of the act shall continue to be enforced and if such provisions are held invalid, the remainder of the act shall not be affected." [2021 c 317 § 31.]

70A.535.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Carbon dioxide equivalents" has the same meaning as defined in RCW 70A.45.010.

(2) "Carbon intensity" means the quantity of life-cycle greenhouse gas emissions, per unit of fuel energy, expressed in grams of carbon dioxide equivalent per megajoule (gCO₂e/MJ).

(3) "Clean fuels program" means the requirements established under this chapter.

(4) "Cost" means an expense connected to the manufacture, distribution, or other aspects of the provision of a transportation fuel product.

(5) "Credit" means a unit of measure generated when a transportation fuel with a carbon intensity that is less than the applicable standard adopted by the department under RCW 70A.535.025 is produced, imported, or dispensed for use in Washington, such that one credit is equal to one metric ton of carbon dioxide equivalents. A credit may also be generated through other activities consistent with this chapter.

(6) "Deficit" means a unit of measure generated when a transportation fuel with a carbon intensity that is greater than the applicable standard adopted by the department under RCW 70A.535.025 is produced, imported, or dispensed for use in Washington, such that one deficit is equal to one metric ton of carbon dioxide equivalents.

(7) "Department" means the department of ecology.

(8) "Electric utility" means a consumer-owned utility or investor-owned utility, as those terms are defined in RCW 19.29A.010.

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

(10) "Military tactical vehicle" means a motor vehicle owned by the United States department of defense or the United States military services and that is used in combat, combat support, combat service support, tactical or relief operations, or training for such operations.

(11) "Motor vehicle" has the same meaning as defined in RCW 46.04.320.

(12) "Price" means the amount of payment or compensation provided as consideration for a specified quantity of

transportation fuel by a consumer or end user of the transportation fuel.

(13) "Regulated party" means a producer or importer of any amount of a transportation fuel that is ineligible to generate credits under this chapter.

(14)(a) "Tactical support equipment" means equipment using a portable engine, including turbines, that meets military specifications, owned by the United States military services or its allies, and that is used in combat, combat support, combat service support, tactical or relief operations, or training for such operations.

(b) "Tactical support equipment" includes, but is not limited to, engines associated with portable generators, aircraft start carts, heaters, and lighting carts.

(15) "Transportation fuel" means electricity and any liquid or gaseous fuel sold, supplied, offered for sale, or used for the propulsion of a motor vehicle or that is intended for use for transportation purposes. [2022 c 182 § 409; 2021 c 317 § 2.]

Effective date—2022 c 182 §§ 313, 408-414, and 421: See note following RCW 82.21.030.

Intent—2022 c 182: See note following RCW 70A.65.240.

Severability—2021 c 317: See note following RCW 70A.535.005.

70A.535.025 Carbon intensity in transportation fuels—Standards to reduce carbon intensity—Adoption of rules—Monthly calculation.

(1) The department shall adopt rules that establish standards that reduce carbon intensity in transportation fuels used in Washington. The standards established by the rules must be based on the carbon intensity of gasoline and gasoline substitutes and the carbon intensity of diesel and diesel substitutes. The standards:

(a) Must reduce the overall, aggregate carbon intensity of transportation fuels used in Washington;

(b) May only require carbon intensity reductions at the aggregate level of all transportation fuels and may not require a reduction in carbon intensity to be achieved by any individual type of transportation fuel;

(c) Must assign a compliance obligation to fuels whose carbon intensity exceeds the standards adopted by the department, consistent with the requirements of RCW 70A.535.030; and

(d) Must assign credits that can be used to satisfy or offset compliance obligations to fuels whose carbon intensity is below the standards adopted by the department and that elect to participate in the program, consistent with the requirements of RCW 70A.535.030.

(2) The clean fuels program adopted by the department must be designed such that:

(a) Regulated parties generate deficits and may reconcile the deficits, and thus comply with the clean fuels program standards for a compliance period, by obtaining and retiring credits;

(b) Regulated parties and credit generators may generate credits for fuels used as substitutes or alternatives for gasoline or diesel;

(c) Regulated parties, credit generators, and credit aggregators shall have opportunities to trade credits; and

(d) Regulated parties shall be allowed to carry over to the next compliance period a small deficit without penalty.

(3) The department shall, throughout a compliance period, regularly monitor the availability of fuels needed for compliance with the clean fuels program.

(4)(a) Under the clean fuels program, the department shall monthly calculate the volume-weighted average price of credits and, no later than the last day of the month immediately following the month for which the calculation is completed, post the formula and the nonaggregated data the department used for the calculation and the results of the calculation on the department's website.

(b) In completing the calculation required by this subsection, the department may exclude from the data set credit transfers without a price or other credit transfers made for a price that falls two standard deviations outside of the mean credit price for the month. Data posted on the department's website under this section may not include any individually identifiable information or information that would constitute a trade secret.

(5)(a) Except as provided in this section, the rules adopted under this section must reduce the greenhouse gas emissions attributable to each unit of the fuels to 20 percent below 2017 levels by 2038 based on the following schedule:

(i) No more than 0.5 percent each year in 2023 and 2024;

(ii) No more than an additional one percent each year beginning in 2025 through 2027;

(iii) No more than an additional 1.5 percent each year beginning in 2028 through 2031; and

(iv) No change in 2032 and 2033.

(b) The rules must establish a start date for the clean fuels program of no later than January 1, 2023.

(6) Beginning with the program year beginning in calendar year 2028, the department may not increase the carbon intensity reductions required by the applicable clean fuels program standard adopted by the department under subsection (5) of this section beyond a 10 percent reduction in carbon intensity until the department demonstrates that the following have occurred:

(a) At least a 15 percent net increase in the volume of in-state liquid biofuel production and the use of feedstocks grown or produced within the state relative to the start of the program; and

(b) At least one new or expanded biofuel production facility representing an increase in production capacity or producing, in total, in excess of 60,000,000 gallons of biofuels per year has or have received after July 1, 2021, all necessary siting, operating, and environmental permits post all timely and applicable appeals. As part of the threshold of 60,000,000 gallons of biofuel under this subsection, at least one new facility producing at least 10,000,000 gallons per year must have received all necessary siting, operating, and environmental permits. Timely and applicable appeals must be determined by the attorney general's office.

(7) Beginning with the program year beginning in calendar year 2031, the department may not increase the carbon intensity reductions required by the applicable clean fuels program standard adopted by the department under subsection (5) of this section beyond a 10 percent reduction in carbon intensity until the:

(a) Joint legislative audit and review committee report required in RCW 70A.535.140 has been completed; and

(b) 2033 regular legislative session has adjourned, in order to allow an opportunity for the legislature to amend the requirements of this chapter in light of the report required in (a) of this subsection.

(8) Transportation fuels exported from Washington are not subject to the greenhouse gas emissions reduction requirements in this section.

(9) To the extent the requirements of this chapter conflict with the requirements of chapter 19.112 RCW, the requirements of this chapter prevail. [2022 c 182 § 408.]

Effective date—2022 c 182 §§ 313, 408-414, and 421: See note following RCW 82.21.030.

Intent—2022 c 182: See note following RCW 70A.65.240.

70A.535.030 Requirements for rules adopted under RCW 70A.535.025. The rules adopted by the department to achieve the greenhouse gas emissions reductions per unit of fuel energy specified in RCW 70A.535.025 must include, but are not limited to, the following:

(1) Standards for greenhouse gas emissions attributable to the transportation fuels throughout their life cycles, including but not limited to emissions from the production, storage, transportation, and combustion of transportation fuels and from changes in land use associated with transportation fuels and any permanent greenhouse gas sequestration activities.

(a) The rules adopted by the department under this subsection (1) may:

(i) Include provisions to address the efficiency of a fuel as used in a powertrain as compared to a reference fuel;

(ii) Consider carbon intensity calculations for transportation fuels developed by national laboratories or used by similar programs in other states; and

(iii) Consider changes in land use and any permanent greenhouse gas sequestration activities associated with the production of any type of transportation fuel.

(b) The rules adopted by the department under this subsection (1) must:

(i) Neutrally consider the life-cycle emissions associated with transportation fuels with respect to the political jurisdiction in which the fuels originated and may not discriminate against fuels on the basis of having originated in another state or jurisdiction. Nothing in this subsection may be construed to prohibit inclusion or assessment of emissions related to fuel production, storage, transportation, or combustion or associated changes in land use in determining the carbon intensity of a fuel;

(ii) Measure greenhouse gas emissions associated with electricity and hydrogen based on a mix of generation resources specific to each electric utility participating in the clean fuels program. The department may apply an asset-controlling supplier emission factor certified or approved by a similar program to reduce the greenhouse gas emissions associated with transportation fuels in another state;

(iii) Include mechanisms for certifying electricity that has a carbon intensity of zero. This electricity must include, at minimum, electricity:

(A) For which a renewable energy credit or other environmental attribute has been retired or used; and

(B) Produced using a zero emission resource including, but not limited to, solar, wind, geothermal, or the industrial combustion of biomass consistent with RCW 70A.45.020(3),

that is directly supplied as a transportation fuel by the generator of the electricity to a metered customer for electric vehicle charging or refueling;

(iv) Allow the generation of credits associated with electricity with a carbon intensity lower than that of standard adopted by the department. The department may not require electricity to have a carbon intensity of zero in order to be eligible to generate credits from use as a transportation fuel; and

(v) Include procedures for setting and adjusting the amounts of greenhouse gas emissions per unit of fuel energy that is assigned to transportation fuels under this subsection.

(c) If the department determines that it is necessary for purposes of accurately measuring greenhouse gas emissions associated with transportation fuels, the department may require transportation fuel suppliers to submit data or information to be used for purposes of calculating greenhouse gas emissions that is different from or additional to the greenhouse gas emissions data reported under *RCW 70A.15.2200(5)(a)(iii).

(d) If the department determines that it is necessary for purposes of accurately measuring greenhouse gas emissions associated with electricity supplied to retail customers or hydrogen production facilities by an electric utility, the department may require electric utilities participating in the clean fuels program to submit data or information to be used for purposes of calculating greenhouse gas emissions that is different from or additional to the fuel mix disclosure information submitted under chapter 19.29A RCW. To the extent practicable, rules adopted by the department may allow data requested of utilities to be submitted in a form and manner consistent with other required state or federal data submissions;

(2) Provisions allowing for the achievement of limits on the greenhouse gas emissions intensity of transportation fuels in RCW 70A.535.025 to be achieved by any combination of credit generating activities capable of meeting such standards. Where such provisions would not produce results counter to the emission reduction goals of the program or prove administratively burdensome for the department, the rules should provide each participant in the clean fuels program with the opportunity to demonstrate appropriate carbon intensity values taking into account both emissions from production facilities and elsewhere in the production cycle, including changes in land use and permanent greenhouse gas sequestration activities;

(3)(a) Methods for assigning compliance obligations and methods for tracking tradable credits. The department may assign the generation of a credit when a fuel with associated life-cycle greenhouse gas emissions that are lower than the applicable per-unit standard adopted by the department under RCW 70A.535.025 is produced, imported, or dispensed for use in Washington, or when specified activities are undertaken that support the reduction of greenhouse gas emissions associated with transportation in Washington;

(b) Mechanisms that allow credits to be traded and to be banked for future compliance periods; and

(c) Procedures for verifying the validity of credits and deficits generated under the clean fuels program;

(4) Mechanisms to elect to participate in the clean fuels program for persons associated with the supply chains of transportation fuels that are eligible to generate credits con-

sistent with subsection (3) of this section, including producers, importers, distributors, users, or retailers of such fuels, and electric vehicle manufacturers;

(5) Mechanisms for persons associated with the supply chains of transportation fuels that are used for purposes that are exempt from the clean fuels program compliance obligations including, but not limited to, fuels used by aircraft, vessels, railroad locomotives, and other exempt fuels specified in RCW 70A.535.040, to elect to participate in the clean fuels program by earning credits for the production, import, distribution, use, or retail of exempt fuels with associated life-cycle greenhouse gas emissions lower than the per-unit standard established in RCW 70A.535.025;

(6) Mechanisms that allow for the assignment of credits to an electric utility for electricity used within its utility service area, at minimum, for residential electric vehicle charging or fueling;

(7) Cost containment mechanisms.

(a) Cost containment mechanisms must include the credit clearance market specified in subsection (8) of this section and may also include, but are not limited to:

(i) Procedures similar to the credit clearance market required in subsection (8) of this section that provide a means of compliance with the clean fuels program requirements in the event that a regulated person has not been able to acquire sufficient volumes of credits at the end of a compliance period; or

(ii) Similar procedures that ensure that credit prices do not significantly exceed credit prices in other jurisdictions that have adopted similar programs to reduce the carbon intensity of transportation fuels.

(b) Any cost containment mechanisms must be designed to provide financial disincentive for regulated persons to rely on the cost containment mechanism for purposes of program compliance instead of seeking to generate or acquire sufficient credits under the program.

(c) The department shall harmonize the program's cost containment mechanisms with the cost containment rules in the states specified in RCW 70A.535.060(1).

(d) The department shall consider mechanisms such as the establishment of a credit price cap or other alternative cost containment measures if deemed necessary to harmonize market credit costs with those in the states specified in RCW 70A.535.060(1);

(8)(a)(i) A credit clearance market for any compliance period in which at least one regulated party reports that the regulated party has a net deficit balance at the end of the compliance period, after retirement of all credits held by the regulated party, that is greater than a small deficit. A regulated party described by this subsection is required to participate in the credit clearance market.

(ii) If a regulated party has a small deficit at the end of a compliance period, the regulated party shall notify the department that it will achieve compliance with the clean fuels program during the compliance period by either: (A) Participating in a credit clearance market; or (B) carrying forward the small deficit.

(b) For the purposes of administering a credit clearance market required by this section, the department shall:

(i) Allow any regulated party, credit generator, or credit aggregator that holds excess credits at the end of the compli-

ance period to voluntarily participate in the credit clearance market as a seller by pledging a specified number of credits for sale in the market;

(ii) Require each regulated party participating in the credit clearance market as purchaser of credits to:

(A) Have retired all credits in the regulated party's possession prior to participating in the credit clearance market; and

(B) Purchase the specified number of the total pledged credits that the department has determined are that regulated party's pro rata share of the pledged credits;

(iii) Require all sellers to:

(A) Agree to sell pledged credits at a price no higher than a maximum price for credits;

(B) Accept all offers to purchase pledged credits at the maximum price for credits; and

(C) Agree to withhold any pledged credits from sale in any transaction outside of the credit clearance market until the end of the credit clearance market, or if no credit clearance market is held in a given year, then until the date on which the department announces it will not be held.

(c)(i) The department shall set a maximum price for credits in a credit clearance market, consistent with states that have adopted similar clean fuels programs, not to exceed \$200 in 2018 dollars for 2023.

(ii) For 2024 and subsequent years, the maximum price may exceed \$200 in 2018 dollars, but only to the extent that a greater maximum price for credits is necessary to annually adjust for inflation, beginning on January 1, 2024, pursuant to the increase, if any, from the preceding calendar year in the consumer price index for all urban consumers, west region (all items), as published by the bureau of labor statistics of the United States department of labor.

(d) A regulated party that has a net deficit balance after the close of a credit clearance market:

(i) Must carry over the remaining deficits into the next compliance period; and

(ii) May not be subject to interest greater than five percent, penalties, or assertions of noncompliance that accrue based on the carryover of deficits under this subsection.

(e) If a regulated party has been required under (a) of this subsection to participate as a purchaser in two consecutive credit clearance markets and continues to have a net deficit balance after the close of the second consecutive credit clearance market, the department shall complete, no later than two months after the close of the second credit clearance market, an analysis of the root cause of an inability of the regulated party to retire the remaining deficits. The department may recommend and implement any remedy that the department determines is necessary to address the root cause identified in the analysis including, but not limited to, issuing a deferral, provided that the remedy implemented does not:

(i) Require a regulated party to purchase credits for an amount that exceeds the maximum price for credits in the most recent credit clearance market; or

(ii) Compel a person to sell credits.

(f) If credits sold in a credit clearance market are subsequently invalidated as a result of fraud or any other form of noncompliance on the part of the generator of the credit, the department may not pursue civil penalties against, or require credit replacement by, the regulated party that purchased the

credits unless the regulated party was a party to the fraud or other form of noncompliance.

(g) The department may not disclose the deficit balances or pro rata share purchase requirements of a regulated party that participates in the credit clearance market;

(9) Authority for the department to designate an entity to aggregate and use unclaimed credits associated with persons that elect not to participate in the clean fuels program under subsection (4) of this section. [2022 c 182 § 410; 2021 c 317 § 4.]

***Reviser's note:** RCW 70A.15.2200 was amended by 2021 c 316 § 33, deleting subsection (5)(a)(iii) entirely.

Effective date—2022 c 182 §§ 313, 408-414, and 421: See note following RCW 82.21.030.

Intent—2022 c 182: See note following RCW 70A.65.240.

Severability—2021 c 317: See note following RCW 70A.535.005.

70A.535.040 Rules adopted under RCW 70A.535.025 and 70A.535.030—Exemptions for certain transportation fuels.

(1) The rules adopted under RCW 70A.535.030 and 70A.535.025 must include exemptions for, at minimum, the following transportation fuels:

(a) Fuels used in volumes below thresholds adopted by the department;

(b) Fuels used for the propulsion of all aircraft, vessels, and railroad locomotives; and

(c) Fuels used for the operation of military tactical vehicles and tactical support equipment.

(2)(a) The rules adopted under RCW 70A.535.030 and 70A.535.025 must exempt the following transportation fuels from greenhouse gas emissions intensity reduction requirements until January 1, 2028:

(i) Special fuel used off-road in vehicles used primarily to transport logs;

(ii) Dyed special fuel used in vehicles that are not designed primarily to transport persons or property, that are not designed to be primarily operated on highways, and that are used primarily for construction work including, but not limited to, mining and timber harvest operations; and

(iii) Dyed special fuel used for agricultural purposes exempt from chapter 82.38 RCW.

(b) Prior to January 1, 2028, fuels identified in this subsection (2) are eligible to generate credits, consistent with subsection (5) of this section. Beginning January 1, 2028, the fuels identified in this subsection (2) are subject to the greenhouse gas emissions intensity reduction requirements applicable to transportation fuels specified in RCW 70A.535.025.

(3) The department may adopt rules to specify the standards for persons to qualify for the exemptions provided in this section. The department may implement the exemptions under subsection (2) of this section to align with the implementation of exemptions for similar fuels exempt from chapter 82.38 RCW.

(4) The rules adopted under RCW 70A.535.030 and 70A.535.025 may include exemptions in addition to those described in subsections (1) and (2) of this section, but only if such exemptions are necessary, with respect to the relationship between the program and similar greenhouse gas emissions requirements or low carbon fuel standards, in order to avoid:

(a) Mismatched incentives across programs;

(b) Fuel shifting between markets; or

(c) Other results that are counter to the intent of this chapter.

(5) Nothing in this chapter precludes the department from adopting rules under RCW 70A.535.030 and 70A.535.025 that allow the generation of credits associated with electric or alternative transportation infrastructure that existed prior to July 25, 2021, or to the start date of program requirements. The department must apply the same baseline years to credits associated with electric or alternative transportation infrastructure that apply to gasoline and diesel liquid fuels in any market-based program enacted by the legislature that establishes a cap on greenhouse gas emissions. [2022 c 182 § 411; 2021 c 317 § 5.]

Effective date—2022 c 182 §§ 313, 408-414, and 421: See note following RCW 82.21.030.

Intent—2022 c 182: See note following RCW 70A.65.240.

Severability—2021 c 317: See note following RCW 70A.535.005.

70A.535.050 Rules adopted under RCW 70A.535.025 and 70A.535.030—Generation of credits. (1) The rules adopted under RCW 70A.535.030 and 70A.535.025 may allow the generation of credits from activities that support the reduction of greenhouse gas emissions associated with transportation in Washington, including but not limited to:

(a) Carbon capture and sequestration projects, including but not limited to:

(i) Innovative crude oil production projects that include carbon capture and sequestration;

(ii) Project-based refinery greenhouse gas mitigation including, but not limited to, process improvements, renewable hydrogen use, and carbon capture and sequestration; or

(iii) Direct air capture projects;

(b) Investments and activities that support deployment of machinery and equipment used to produce gaseous and liquid fuels from nonfossil feedstocks, and derivatives thereof;

(c) The fueling of battery or fuel cell electric vehicles by a commercial, nonprofit, or public entity that is not an electric utility, which may include, but is not limited to, the fueling of vehicles using electricity certified by the department to have a carbon intensity of zero; and

(d) The use of smart vehicle charging technology that results in the fueling of an electric vehicle during times when the carbon intensity of grid electricity is comparatively low.

(2)(a) The rules adopted under RCW 70A.535.030 and 70A.535.025 must allow the generation of credits based on capacity for zero emission vehicle refueling infrastructure, including DC fast charging infrastructure and hydrogen refueling infrastructure.

(b) The rules adopted under RCW 70A.535.030 and 70A.535.025 may allow the generation of credits from the provision of low carbon fuel infrastructure not specified in (a) of this subsection.

(3) The rules adopted under RCW 70A.535.030 and 70A.535.025 must allow the generation of credits from state transportation investments funded in an omnibus transportation appropriations act for activities and projects that reduce greenhouse gas emissions and decarbonize the transportation sector. These include, but are not limited to: (a) Electrical grid and hydrogen fueling infrastructure investments; (b) ferry operating and capital investments; (c) electrification of

the state ferry fleet; (d) alternative fuel vehicle rebate programs; (e) transit grants; (f) infrastructure and other costs associated with the adoption of alternative fuel use by transit agencies; (g) bike and pedestrian grant programs and other activities; (h) complete streets and safe walking grants and allocations; (i) rail funding; and (j) multimodal investments.

(4) The rules adopted by the department may establish limits for the number of credits that may be earned each year by persons participating in the program for some or all of the activities specified in subsections (1) and (2) of this section. The department must limit the number of credits that may be earned each year under subsection (3) of this section to 10 percent of the total program credits. Any limits established under this subsection must take into consideration the return on investment required in order for an activity specified in subsection (2) of this section to be financially viable.

(5)(a) In coordination with the department, the Washington state department of transportation must immediately begin work on identifying the amount of credit revenues likely to be generated under subsection (3) of this section from the state transportation investments funded in an omnibus transportation appropriations act, including the move ahead WA transportation package. It is the intent of the legislature that these credits will be maximized to allow further investment in efforts to reduce greenhouse gas emissions and decarbonize the transportation sector including, but not limited to, additional funding in future years, for ferry electrification beyond four new hybrid electric vessels, active transportation, and transit programs and projects.

(b) Beginning November 1, 2022, and annually thereafter, the Washington state department of transportation must present a detailed projection of the credit revenues generated under subsection (3) of this section and a preferred reinvestment strategy for the revenues for the following 10-year time period to the joint transportation committee. [2022 c 182 § 412; 2021 c 317 § 6.]

Effective date—2022 c 182 §§ 313, 408-414, and 421: See note following RCW 82.21.030.

Intent—2022 c 182: See note following RCW 70A.65.240.

Severability—2021 c 317: See note following RCW 70A.535.005.

70A.535.060 Adoption of rules—Harmonization with other states—Stakeholder advisory panel—Review of innovative technologies—Report requirements. (1) Except where otherwise provided in this chapter, the department shall seek to adopt rules that are harmonized with the regulatory standards, exemptions, reporting obligations, and other clean fuels program compliance requirements and methods for credit generation of other states that:

(a) Have adopted low carbon fuel standards or similar greenhouse gas emissions requirements applicable specifically to transportation fuels; and

(b)(i) Supply, or have the potential to supply, significant quantities of transportation fuel to Washington markets; or

(ii) To which Washington supplies, or has the potential to supply, significant quantities of transportation fuel.

(2) The department must establish and periodically consult a stakeholder advisory panel, including representatives of forestland and agricultural landowners, for purposes of soliciting input on how to best incentivize and allot credits for the sequestration of greenhouse gases through activities on

agricultural and forestlands in a manner that is consistent with the goals and requirements of this chapter.

(3) The department must conduct a biennial review of innovative technologies and pathways that reduce carbon and increase credit generation opportunities and must modify rules or guidance as needed to maintain stable credit markets.

(4) In any reports to the legislature under RCW 70A.535.090, on the department's website, or in other public documents or communications that refer to assumed public health benefits associated with the program created in this chapter, the department must distinguish between public health benefits from small particulate matter and other conventional pollutant reductions achieved primarily as a result of vehicle emission standards established under chapter 70A.30 RCW, and the incremental benefits to air pollution attributable to the program created under this chapter. [2021 c 317 § 7.]

Severability—2021 c 317: See note following RCW 70A.535.005.

70A.535.070 Producers or importers must register with the department—Transfer of ownership of transportation fuels—Documentation—Reporting of information—Adoption of rules. (1)(a) Each producer or importer of any amount of a transportation fuel that is ineligible to generate credits consistent with the requirements of RCW 70A.535.030(3) must register with the department.

(b) Electric vehicle manufacturers and producers, importers, distributors, users, and retailers of transportation fuels that are eligible to generate credits consistent with RCW 70A.535.030(3) must register with the department if they elect to participate in the clean fuels program.

(c) Other persons must register with the department to generate credits from other activities that support the reduction of greenhouse gas emissions associated with transportation in Washington.

(2) Each transaction transferring ownership of transportation fuels for which clean fuels program participation is mandated must be accompanied by documentation, in a format approved by the department, that assigns the clean fuels program compliance responsibility associated with the fuels, including the assignment of associated credits. The department may also require documentation assigning clean fuels program compliance responsibility associated with fuels for which program participation has been elected.

(3) The department may adopt rules requiring the periodic reporting of information to the department by persons associated with the supply chains of transportation fuels participating in the clean fuels program. To the extent practicable, the rules must establish reporting procedures and timelines that are consistent with similar programs in other states that reduce the greenhouse gas emission intensity of transportation fuel and with procedures and timelines of state programs requiring similar information to be reported by regulated parties, including electric utilities.

(4) RCW 70A.15.2510 applies to records or information submitted to the department under this chapter. [2021 c 317 § 8.]

Severability—2021 c 317: See note following RCW 70A.535.005.

70A.535.080 Electric utilities—Use of certain revenues—Provision of information to the department. (1)(a)

(2022 Ed.)

Fifty percent of the revenues generated by an electric utility from credits earned from the electricity supplied to retail customers by an electric utility under the clean fuels program must be expended by the electric utility on transportation electrification projects, which may include projects to support the production and provision of hydrogen and other gaseous fuels produced from nonfossil feedstocks, and derivatives thereof as a transportation fuel.

(b) Sixty percent of the revenues described in (a) of this subsection, or 30 percent of the revenues generated by an electric utility from credits earned from the electricity supplied to retail customers by an electric utility under the clean fuels program, must be expended by the electric utility on transportation electrification projects, which may include projects to support the production and provision of hydrogen and other gaseous fuels produced from nonfossil feedstocks, and derivatives thereof as a transportation fuel, located within or directly benefiting a federally designated nonattainment or maintenance area, a federally designated nonattainment or maintenance area that existed as of January 1, 2021, a disproportionately impacted community identified by the department of health, or an area designated by the department as being at risk of nonattainment, if such a nonattainment or maintenance area or disproportionately impacted community is within the service area of the utility.

(2)(a) Each electric utility must spend 50 percent of revenues not subject to the requirements of subsection (1) of this section on one or more transportation electrification programs or projects it selects from a list of types of programs and projects jointly developed by the department and the Washington state department of transportation. The department and the Washington state department of transportation must develop the list based on those with the highest impact on reducing greenhouse gas emissions and decarbonizing the transportation sector. The types of transportation electrification projects or programs placed on the list must include, but are not limited to:

(i) Provision of new or used zero emissions vehicles at no cost or at a discount to nonprofit service providers, transit agencies, or public fleets for the purpose of providing transportation services for low-income or vulnerable populations or to reduce transportation costs for the nonprofits, transit agencies, or public fleets serving low-income or vulnerable populations;

(ii) Construction, operation, or maintenance of, or funding for charging infrastructure, including smart charging infrastructure, or hydrogen fueling infrastructure;

(iii) Expanding grid capacity to enable transportation electrification investments directly associated with expenditures permitted by this chapter; and

(iv) Partnership programs with public and private vehicle fleet owners to enable increased electrification of transportation.

(b) Under (a) of this subsection, electric utilities should consider programs or projects that expand low and moderate-income customer access to zero emissions transportation, when prioritizing program expenditures.

(3) Electric utilities that participate in the clean fuels program must annually provide information to the department accounting for and briefly describing all expenditures of rev-

enues generated from credits earned under the clean fuels program. [2021 c 317 § 9.]

Severability—2021 c 317: See note following RCW 70A.535.005.

70A.535.090 Reporting requirements—Report to the legislature—Independent analysis. (1) Beginning May 1, 2025, and each May 1st thereafter, the department must post a report on the department's website that includes the following information regarding the previous calendar year of clean fuels program activities:

(a) The program-wide number of credits and deficits generated by entities participating in the clean fuels program;

(b) The volumes of each transportation fuel and average price per credit used to comply with the requirements of the clean fuels program;

(c) The best estimate or range in probable costs or cost savings attributable to the clean fuels program per gallon of gasoline and per gallon of diesel, as determined by an independent consultant whose services the department has contracted. The estimate or range in probable costs or cost savings from the independent consultant must be announced in a press release to the news media at the time that the report under this subsection (1) is posted to the department's website, and must be simultaneously reported to the transportation committees of the house of representatives and the senate;

(d) The total greenhouse gas emissions reductions attributable to the clean fuels program isolated from the greenhouse gas emissions reductions attributable to other state and national programs on the same fuels; and

(e) The range in the probable cost per ton of greenhouse gas emissions reductions attributable to fuels supported by the clean fuels program, taking into account the information in (c) and (d) of this subsection.

(2) Nothing in this section prohibits the department from posting information described in subsection (1) of this section on a more frequent basis than once per year.

(3) By May 1, 2025, and each May 1st thereafter, the department must submit the report required under subsection (1) of this section to the appropriate committees of the house of representatives and senate.

(4) The department must contract for a one-time ex ante independent analysis of the information specified in subsection (1)(c) of this section covering each year of the program through 2038. The analysis must be informed by input from stakeholders, including regulated industries, and informed by experience from other jurisdictions. The analysis must impute price impacts using multiple analytical methodologies and must make clear how the assumptions or factors considered differed in each methodology used and price impact imputed. The analysis required in this subsection must be completed and submitted to the appropriate committees of the legislature by July 1, 2022. [2021 c 317 § 10.]

Severability—2021 c 317: See note following RCW 70A.535.005.

70A.535.100 Fuel supply forecast. (1) In consultation with the department, the utilities and transportation commission, and the department of agriculture, the department of commerce must develop a periodic fuel supply forecast to project the availability of fuels to Washington necessary for compliance with clean fuels program requirements.

(2) Based upon the estimates in subsection (3) of this section, the fuel supply forecast must include a prediction by the department of commerce regarding whether sufficient credits will be available to comply with clean fuels program requirements.

(3) The fuel supply forecast for each upcoming compliance period must include, but is not limited to, the following:

(a) An estimate of the potential volumes of gasoline, gasoline substitutes, and gasoline alternatives, and diesel, diesel substitutes, and diesel alternatives available to Washington. In developing this estimate, the department of commerce must consider, but is not limited to considering:

(i) The existing and future vehicle fleet in Washington; and

(ii) Any constraints that might be preventing access to available and cost-effective low carbon fuels by Washington, such as geographic and logistical factors, and alleviating factors to the constraints;

(b) An estimate of the total banked credits and carried over deficits held by regulated parties, credit generators, and credit aggregators at the beginning of the compliance period, and an estimate of the total credits attributable to fuels described in (a) of this subsection;

(c) An estimate of the number of credits needed to meet the applicable clean fuels program requirements during the forecasted compliance period; and

(d) A comparison in the estimates of (a) and (b) of this subsection with the estimate in (c) of this subsection, for the purpose of indicating the availability of fuels and banked credits needed for compliance with the requirements of this chapter.

(4) The department of commerce, in coordination with the department, may appoint a forecast review team of relevant experts to participate in the fuel supply forecast or examination of data required by this section. The department of commerce must finalize a fuel supply forecast for an upcoming compliance period by no later than 90 days prior to the start of the compliance period. [2021 c 317 § 11.]

Severability—2021 c 317: See note following RCW 70A.535.005.

70A.535.110 Forecast deferral. (1) No later than 30 calendar days before the commencement of a compliance period, the department shall issue an order declaring a forecast deferral if the fuel supply forecast under RCW 70A.535.100 projects that the amount of credits that will be available during the forecast compliance period will be less than 100 percent of the credits projected to be necessary for regulated parties to comply with the scheduled applicable clean fuels program standard adopted by the department for the forecast compliance period.

(2) An order declaring a forecast deferral under this section must set forth:

(a) The duration of the forecast deferral;

(b) The types of fuel to which the forecast deferral applies; and

(c) Which of the following methods the department has selected for deferring compliance with the scheduled applicable clean fuels program standard during the forecast deferral:

(i) Temporarily adjusting the scheduled applicable clean fuels program standard to a standard identified in the order that better reflects the forecast availability of credits during

the forecast compliance period and requiring regulated parties to comply with the temporary standard;

(ii) Requiring regulated parties to comply only with the clean fuels program standard applicable during the compliance period prior to the forecast compliance period; or

(iii) Suspending deficit accrual for part or all of the forecast deferral period.

(3)(a) In implementing a forecast deferral, the department may take an action for deferring compliance with the clean fuels program standard other than, or in addition to, selecting a method under subsection (2)(c) of this section only if the department determines that none of the methods under subsection (2)(c) of this section will provide a sufficient mechanism for containing the costs of compliance with the clean fuels program standards during the forecast deferral.

(b) If the department makes the determination specified in (a) of this subsection, the department shall:

(i) Include in the order declaring a forecast deferral the determination and the action to be taken; and

(ii) Provide written notification and justification of the determination and the action to:

(A) The governor;

(B) The president of the senate;

(C) The speaker of the house of representatives;

(D) The majority and minority leaders of the senate; and

(E) The majority and minority leaders of the house of representatives.

(4) The duration of a forecast deferral may not be less than one calendar quarter or longer than one compliance period. Only the department may terminate, by order, a forecast deferral before the expiration date of the forecast deferral. Termination of a forecast deferral is effective on the first day of the next calendar quarter after the date that the order declaring the termination is adopted. [2021 c 317 § 12.]

Severability—2021 c 317: See note following RCW 70A.535.005.

70A.535.120 Emergency deferral of compliance with carbon intensity standard. (1) The director of the department may issue an order declaring an emergency deferral of compliance with the carbon intensity standard established under RCW 70A.535.025 no later than 15 calendar days after the date the department determines, in consultation with the governor's office and the department of commerce, that:

(a) Extreme and unusual circumstances exist that prevent the distribution of an adequate supply of renewable fuels needed for regulated parties to comply with the clean fuels program taking into consideration all available methods of obtaining sufficient credits to comply with the standard;

(b) The extreme and unusual circumstances are the result of a natural disaster, an act of God, a significant supply chain disruption or production facility equipment failure, or another event that could not reasonably have been foreseen or prevented and not the lack of prudent planning on the part of the suppliers of the fuels to the state; and

(c) It is in the public interest to grant the deferral such as when a deferral is necessary to meet projected temporary shortfalls in the supply of the renewable fuel in the state and that other methods of obtaining compliance credits are unavailable to compensate for the shortage of renewable fuel supply.

(2022 Ed.)

(2) If the director of the department makes the determination required under subsection (1) of this section, such a temporary extreme and unusual deferral is permitted only if:

(a) The deferral applies only for the shortest time necessary to address the extreme and unusual circumstances;

(b) The deferral is effective for the shortest practicable time period the director of the department determines necessary to permit the correction of the extreme and unusual circumstances; and

(c) The director has given public notice of a proposed deferral.

(3) An order declaring an emergency deferral under this section must set forth:

(a) The duration of the emergency deferral;

(b) The types of fuel to which the emergency deferral applies;

(c) Which of the following methods the department has selected for deferring compliance with the clean fuels program during the emergency deferral:

(i) Temporarily adjusting the scheduled applicable carbon intensity standard to a standard identified in the order that better reflects the availability of credits during the emergency deferral and requiring regulated parties to comply with the temporary standard;

(ii) Allowing for the carryover of deficits accrued during the emergency deferral into the next compliance period without penalty; or

(iii) Suspending deficit accrual during the emergency deferral period.

(4) An emergency deferral may be terminated prior to the expiration date of the emergency deferral if new information becomes available indicating that the shortage that provided the basis for the emergency deferral has ended. The director of the department shall consult with the department of commerce and the governor's office in making an early termination decision. Termination of an emergency deferral is effective 15 calendar days after the date that the order declaring the termination is adopted.

(5)(a) In addition to the emergency deferral specified in subsection (1) of this section, the department may issue a full or partial deferral for one calendar quarter of a person's obligation to furnish credits for compliance under RCW 70A.535.030 if it finds that the person is unable to comply with the requirements of this chapter due to reasons beyond the person's reasonable control. The department may initiate a deferral under this subsection at its own discretion or at the request of a person regulated under this chapter. The department may renew issued deferrals. In evaluating whether to issue a deferral under this subsection, the department may consider the results of the fuel supply forecast in RCW 70A.535.100, but is not bound in its decision-making discretion by the results of the forecast.

(b) If the department issues a deferral pursuant to this subsection, the department may:

(i) Direct the person subject to the deferral to file a progress report on achieving full compliance with the requirements of this chapter within an amount of time determined to be reasonable by the department; and

(ii) Direct the person to take specific actions to achieve full compliance with the requirements of this chapter.

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(c) The issuance of a deferral under this subsection does not permanently relieve the deferral recipient of the obligation to comply with the requirements of this chapter. [2022 c 182 § 413; 2021 c 317 § 13.]

Effective date—2022 c 182 §§ 313, 408-414, and 421: See note following RCW 82.21.030.

Intent—2022 c 182: See note following RCW 70A.65.240.

Severability—2021 c 317: See note following RCW 70A.535.005.

70A.535.130 Fee—Clean fuels program account—Rule making to be conducted as provided in RCW 34.05.328. (1) The department may require that persons that are required or elect to register or report under this chapter pay a fee. If the department elects to require program participants to pay a fee, the department must, after an opportunity for public review and comment, adopt rules to establish a process to determine the payment schedule and the amount of the fee charged. The amount of the fee must be set so as to equal but not exceed the projected direct and indirect costs to the department for developing and implementing the program and the projected direct and indirect costs to the department of commerce to carry out its responsibilities under RCW 70A.535.100. The department and the department of commerce must prepare a biennial workload analysis and provide an opportunity for public review of and comment on the workload analysis. The department shall enter into an inter-agency agreement with the department of commerce to implement this section.

(2) The clean fuels program account is created in the state treasury. All receipts from fees and penalties received under the program created in this chapter must be deposited into the account. Moneys in the account may be spent only after appropriation. The department may only use expenditures from the account for carrying out the program created in this chapter.

(3) All rule making authorized under chapter 317, Laws of 2021 must be conducted according to the standards for significant legislative rules provided in RCW 34.05.328. [2021 c 317 § 14.]

Severability—2021 c 317: See note following RCW 70A.535.005.

70A.535.140 Joint legislative audit and review committee analysis. (Expires June 30, 2030.) (1) By December 1, 2030, the joint legislative audit and review committee must analyze the impacts of the initial five years of clean fuels program implementation and must submit a report summarizing the analysis to the legislature. The analysis must include, at minimum, the following components:

(a) Costs and benefits, including environmental and public health costs and benefits, associated with this chapter for categories of persons participating in the clean fuels program or that are most impacted by air pollution, as defined in consultation with the departments of ecology and health and as measured on a census tract scale. This component of the analysis must, at minimum, assess the costs and benefits of changes in the following metrics since the start of the program:

(i) Levels of greenhouse gas emissions and criteria air pollutants for which the United States environmental protection agency has established national ambient air quality standards;

(ii) Fuel prices; and

(iii) Total employment in categories of industries generating credits or deficits. The categories of industries assessed must include but are not limited to electric utilities, oil refineries, and other industries involved in the production of high carbon fuels, industries involved in the delivery and sale of high carbon fuels, biofuel refineries, and industries involved in the delivery and sale of low carbon fuels;

(b) An evaluation of the information calculated and provided by the department under RCW 70A.535.090(1);

(c) A summary of the estimated total statewide costs and benefits attributable to the clean fuels program, including state agency administrative costs and regulated entity compliance costs. For purposes of calculating the benefits of the program, the summary may rely, in part, on a constant value of the social costs attributable to greenhouse gas emissions, as identified in contemporary internationally accepted estimates of such global social cost. This summary must include an estimate of the total statewide costs of the program per ton of greenhouse gas emissions reductions achieved by the clean fuels program;

(d) An evaluation of the impacts of the program on low-income households; and

(e) The outcomes of proposals to site biofuel facilities through the energy facility site evaluation council review process that is allowed by *RCW 80.50.060(2).

(2) This section expires June 30, 2030. [2021 c 317 § 15.]

***Reviser's note:** RCW 80.50.060 was amended by 2022 c 183 § 6, deleting subsection (2).

Severability—2021 c 317: See note following RCW 70A.535.005.

Chapter 70A.540 RCW LANDFILLS—METHANE EMISSIONS

Sections

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70A.540.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Active municipal solid waste landfill" means a municipal solid waste landfill that has accepted or is accepting solid waste for disposal and has not been closed in accordance with the requirements set forth in WAC 173-351-500 as it existed on January 10, 2022.

(2) "Air pollution" is presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or

which unreasonably interfere with enjoyment of life and property. For the purpose of this chapter, air pollution does not include air contaminants emitted in compliance with chapter 17.21 RCW.

(3) "Ambient air" means the surrounding outside air.

(4) "Authority" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(5) "Closed municipal solid waste landfill" means a municipal solid waste landfill that is no longer accepting solid waste for disposal and has been closed in accordance with the requirements set forth in WAC 173-351-500 as it existed on January 10, 2022.

(6) "Department" means the department of ecology.

(7) "Emission" means a release of air contaminants into the ambient air.

(8) "Gas collection system" means any system that employs various gas collection wells and connected piping, and mechanical blowers, fans, pumps, or compressors to create a pressure gradient and actively extract landfill gas.

(9) "Gas control device" means any device used to dispose of or treat collected landfill gas including, but not limited to, enclosed flares, internal combustion engines, boilers and boiler-to-steam turbine systems, fuel cells, and gas turbines.

(10) "Gas control system" means any system that disposes of or treats collected landfill gas by one or more of the following means: Combustion; gas treatment for subsequent sale, or sale for processing offsite, including for transportation fuel and injection into a natural gas pipeline.

(11) "Municipal solid waste landfill" means a discrete area of land or an excavation that receives household waste and that is not a land application site, surface impoundment, injection well, or pile.

(12) "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision of the state, municipality, or governmental agency. [2022 c 179 § 1.]

70A.540.020 Application of chapter—Rules. (1) This chapter applies to all municipal solid waste landfills that received solid waste after January 1, 1992, except as provided in subsection (2) of this section.

(2) This chapter does not apply to the following landfills:

(a) Landfills that receive only hazardous waste, or are currently regulated under the comprehensive environmental response, compensation, and liability act, 42 U.S.C. chapter 103; and

(b) Landfills that receive only inert waste or nondecomposable wastes.

(3) The department must adopt rules to implement this chapter. The rules adopted by the department must be informed by landfill methane regulations adopted by the California air resources board, the Oregon environmental quality commission, and the United States environmental protection agency. [2022 c 179 § 2.]

70A.540.030 Waste in place report—Calculation of landfill gas heat input capacity. (1) Each owner or operator of an active municipal solid waste landfill having fewer than 450,000 tons of waste in place must submit an annual waste

in place report to the department or local authority pursuant to RCW 70A.540.070.

(a) The waste in place report must be prepared for the period of January 1st through December 31st of each year. The report must be submitted to the department or local authority during the subsequent calendar year, with the date of submission to be established by rule as adopted by the department.

(b) The waste in place report must be submitted annually until either:

(i) The active municipal solid waste landfill reaches a size greater than or equal to 450,000 tons of waste in place; or

(ii) The owner or operator submits a closure notification pursuant to RCW 70A.540.070.

(2) Each owner or operator of either an active municipal solid waste landfill having greater than or equal to 450,000 tons of waste in place or a closed municipal solid waste landfill having greater than or equal to 750,000 tons of waste in place must calculate the landfill gas heat input capacity pursuant to RCW 70A.540.080 and the department's implementing rules and must submit a landfill gas heat input capacity report to the department or local authority.

(a) If the calculated landfill gas heat input capacity is less than 3,000,000 British thermal units per hour recovered, the owner or operator must:

(i) Recalculate the landfill gas heat input capacity annually using the procedures specified in RCW 70A.540.080 and the department's implementing rules; and

(ii) Submit an annual landfill gas heat input capacity report to the department or local authority until either of the following conditions are met:

(A) The calculated landfill gas heat input capacity is greater than or equal to 3,000,000 British thermal units per hour recovered; or

(B) If the municipal solid waste landfill is active, the owner or operator submits a closure notification pursuant to RCW 70A.540.070.

(b) If the landfill gas heat input capacity is greater than or equal to 3,000,000 British thermal units per hour recovered, the owner or operator must either:

(i) Comply with the requirements of this chapter and the department's implementing rules; or

(ii) Demonstrate to the satisfaction of the department or local authority that after four consecutive quarterly monitoring periods there is no measured concentration of methane of 200 parts per million by volume or greater using the instantaneous surface monitoring procedures specified in RCW 70A.540.080 and the department's implementing rules. Based on the monitoring results, the owner or operator must do one of the following:

(A) If there is any measured concentration of methane of 200 parts per million by volume or greater from the surface of an active, inactive, or closed municipal solid waste landfill, comply with this chapter and the department's implementing rules adopted pursuant to RCW 70A.540.020;

(B) If there is no measured concentration of methane of 200 parts per million by volume or greater from the surface of an active municipal solid waste landfill, recalculate the landfill gas heat input capacity annually as required in (a) of this subsection until such time that the owner or operator submits a closure notification pursuant to RCW 70A.540.070 and the

department's implementing rules adopted pursuant to RCW 70A.540.020; or

(C) If there is no measured concentration of methane of 200 parts per million by volume or greater from the surface of a closed or inactive municipal solid waste landfill, the requirements of this chapter and the department's implementing rules adopted pursuant to RCW 70A.540.020 no longer apply, provided that the following information is submitted to and approved by the department or local authority:

(I) A waste in place report pursuant to RCW 70A.540.070 and the department's implementing rules adopted pursuant to RCW 70A.540.020; and

(II) All instantaneous surface monitoring records. [2022 c 179 § 3.]

70A.540.040 Gas collection and control system. (1) The owner or operator of any municipal solid waste landfill that has a calculated landfill gas heat input capacity greater than or equal to 3,000,000 British thermal units per hour recovered must install a gas collection and control system that meets the requirements of this section and the department's implementing rules adopted pursuant to RCW 70A.540.020, unless the owner or operator demonstrates to the satisfaction of the department or local authority that after four consecutive quarterly monitoring periods there is no measured concentration of methane of 200 parts per million by volume or greater using the instantaneous surface monitoring procedures specified in RCW 70A.540.080 and the department's implementing rules adopted pursuant to RCW 70A.540.020. If a municipal solid waste landfill partners with a third party to operate all or a portion of the gas collection and control system or energy recovery device, the obligation to comply with the requirements of this chapter are the responsibility of the owner or operator of the relevant portion of the gas collection and control system or energy recovery device.

(2) The gas collection and control system must handle the expected gas generation flow rate from the entire area of the municipal solid waste landfill and must collect gas at an extraction rate to comply with the surface methane emission limits set forth in RCW 70A.540.050 and the department's implementing rules.

(3) The gas collection and control system must be designed and operated so that there is no landfill gas leak that exceeds 500 parts per million by volume, measured as methane, at any component under positive pressure.

(4) The gas collection and control system, if it uses a flare, must achieve a methane destruction efficiency of at least 99 percent by weight and must use either an enclosed flare or, if the system uses an open flare, the open flare must comply with the following requirements:

(a) The open flare must meet the requirements of 40 C.F.R. Sec. 60.18 (as last amended by 73 Fed. Reg. 78209, December 22, 2008);

(b) An open flare installed and operating prior to December 31, 2022, may operate until January 1, 2032, unless the owner or operator demonstrates to the satisfaction of the department or local authority that the landfill gas heat input capacity is less than 3,000,000 British thermal units per hour pursuant to RCW 70A.540.080 and the department's implementing rules adopted pursuant to RCW 70A.540.020 and is

insufficient to support the continuous operation of an enclosed flare or other gas control device; and

(c) The owner or operator may temporarily operate an open flare during the repair or maintenance of the gas control system, or while awaiting the installation of an enclosed flare, or to address offsite gas migration issues. Any owner or operator seeking to temporarily operate an open flare must submit a written request to the department or local authority pursuant to RCW 70A.540.100 and the department's implementing rules adopted pursuant to RCW 70A.540.020.

(5) If the gas collection and control system does not use a flare, it must either route the collected gas to an energy recovery device or devices, or must route the collected gas to a treatment system that processes the collected gas for subsequent sale or use.

(6) If a gas collection and control system routes the collected gas to an energy recovery device or devices, the owner or operator of the energy recovery device or devices must comply with the following requirements:

(a) The device or devices must achieve a methane destruction efficiency of at least 97 percent by weight, except for lean-burn internal combustion engines that were installed and operating prior to January 1, 2022, which must reduce the outlet methane concentration to less than 3,000 parts per million by volume, dry basis corrected to 15 percent oxygen; and

(b) If a boiler or a process heater is used as the gas control device, the landfill gas stream must be introduced into the flame zone, except that where the landfill gas is not the primary fuel for the boiler or process heater, introduction of the landfill gas stream into the flame zone is not required.

(7) If a gas collection and control system routes the collected gas to a treatment system that processes the collected gas for subsequent sale or use, the owner or operator of the treatment system must ensure the system achieves a methane leak rate of three percent or less by weight. Venting of processed landfill gas to the ambient air is not allowed. If the processed landfill gas cannot be routed for subsequent sale or use, then the treated landfill gas must be controlled according to subsection (4) of this section.

(8) The owner or operator of a municipal solid waste landfill must conduct a source test for any gas control device or devices subject to this section using the test methods identified in RCW 70A.540.080 and the department's implementing rules adopted pursuant to RCW 70A.540.020. If a gas control device is currently in compliance with source testing requirements as of June 9, 2022, the owner or operator must conduct the source test no less frequently than once every five years. If a gas control device is currently not in compliance with source testing requirements as of June 9, 2022, or if a subsequent source test shows the gas control device is out of compliance, the owner or operator must conduct the source test no less frequently than once per year until two subsequent consecutive tests both show compliance. Upon two subsequent consecutive compliant tests, the owner or operator may return to conducting the source test no less frequently than once every five years. [2022 c 179 § 4.]

70A.540.050 Methane concentration limits. (1) Except as provided in RCW 70A.540.040, beginning January 1st of the year following the year in which the department adopts rules to implement this chapter, or upon commencing

operation of a newly installed gas collection and control system or modification of an existing gas collection and control system pursuant to RCW 70A.540.040, whichever is later, and except as provided by the department to accommodate significant technological improvements, which may include the installation of an energy recovery device or devices, not to exceed 24 months after the department adopts rules to implement this chapter, no location on a municipal solid waste landfill surface may exceed the following methane concentration limits, dependent upon whether the owner or operator of the municipal solid waste landfills conducts, pursuant to RCW 70A.540.060, instantaneous surface emissions monitoring or integrated surface emissions monitoring:

(a) Five hundred parts per million by volume, other than nonrepeatable, momentary readings, as determined by instantaneous surface emissions monitoring; or

(b) An average methane concentration limit of 25 parts per million by volume as determined by integrated surface emissions monitoring.

(2) Any reading exceeding the limits set forth in subsection (1) of this section must be recorded as an exceedance and the following actions must be taken:

(a) The owner or operator must record the date, location, and value of each exceedance, along with retest dates and results. The location of each exceedance must be clearly marked and identified on a topographic map of the municipal solid waste landfill, drawn to scale, with the location of both the monitoring grids and the gas collection system clearly identified; and

(b) The owner or operator must take corrective action, which may include, but not be limited to, maintenance or repair of the cover, or well vacuum adjustments. The location or locations of any exceedance must be remonitored within 10 calendar days of a measured exceedance.

(3) The requirements of this section do not apply to:

(a) The working face of the landfill;

(b) Areas of the landfill surface where the landfill cover material has been removed for the purpose of installing, expanding, replacing, or repairing components of the landfill cover system, the landfill gas collection and control system, the leachate collection and removal system, or a landfill gas condensate collection and removal system;

(c) Areas of the landfill surface where the landfill cover material has been removed for law enforcement activities requiring excavation; or

(d) Areas of the landfill in which the landfill owner or operator, or a designee of the owner or operator, is engaged in active mining for minerals or metals. [2022 c 179 § 5.]

70A.540.060 Monitoring. (1) The owner or operator of a municipal solid waste landfill with a gas collection and control system must conduct instantaneous or integrated surface monitoring of the landfill surface according to the requirements specified in implementing rules adopted by the department pursuant to RCW 70A.540.020.

(2) The owner or operator of a municipal solid waste landfill with a gas collection and control system must monitor the gas control system according to the requirements specified in implementing rules adopted by the department pursuant to RCW 70A.540.020.

(3) The owner or operator of a municipal solid waste landfill with a gas collection and control system must monitor each individual wellhead to determine the gauge pressure according to the requirements specified in implementing rules adopted by the department pursuant to RCW 70A.540.020. [2022 c 179 § 6.]

70A.540.070 Records and reporting requirements.

(1) The owner or operator of a municipal solid waste landfill must maintain records and prepare reports as prescribed in this section and in the department's implementing rules adopted pursuant to RCW 70A.540.020.

(2) The owner or operator of a municipal solid waste landfill must maintain records related to monitoring, testing, landfill operations, and the operation of the gas control device, gas collection system, and gas control system. The records must be provided by the owner or operator to the department or local authority within five business days of a request from the department or local authority.

(3) The owner or operator of a municipal solid waste landfill that ceases to accept waste must submit a closure notification to the department or local authority within 30 days of ceasing to accept waste.

(4) The owner or operator of a municipal solid waste landfill must submit a gas collection and control system equipment removal report to the department or local authority within 30 days of well capping or the removal or cessation of operation of the gas collection, treatment, or control system equipment.

(5) The owner or operator of either an active municipal solid waste landfill with 450,000 or more tons of waste in place or a closed municipal solid waste landfill with 750,000 or more tons of waste in place must prepare an annual report for the period of January 1st through December 31st of each year. The annual report must include a calculation of landfill gas heat input capacity. Each annual report must be submitted to the department and local authority during the subsequent calendar year, with the date of submission to be established through rules adopted by the department.

(6) The owner or operator of an active municipal solid waste landfill with fewer than 450,000 tons of waste in place must submit a waste in place report to the department or local authority. [2022 c 179 § 7.]

70A.540.080 Measurements—Test methods. (1) Any instrument used for the measurement of methane must be a hydrocarbon detector or other equivalent instrument approved by the department or local authority based on standards adopted by the department that address calibration, specifications, and performance criteria.

(2) The determination of landfill gas heat input capacity must be calculated consistent with the department's implementing rules adopted pursuant to RCW 70A.540.020.

(3) The owner or operator of a municipal solid waste landfill must measure the landfill surface concentration of methane using a hydrocarbon detector meeting the requirements of this section and the department's implementing rules adopted pursuant to RCW 70A.540.020.

(4) The owner or operator of a municipal solid waste landfill must measure leaks using a hydrocarbon detector

meeting the requirements of this section and the department's implementing rules adopted pursuant to RCW 70A.540.020.

(5) The expected gas generation flow rate must be determined according to the department's implementing rules adopted pursuant to RCW 70A.540.020.

(6) The control device destruction efficiency must be determined according to the department's implementing rules adopted pursuant to RCW 70A.540.020.

(7) Gauge pressure must be determined using a hand-held manometer, magnehelic gauge, or other pressure measuring device approved by the department or local authority.

(8) Alternative test methods may be used if they are approved in writing by the department or local authority. [2022 c 179 § 8.]

70A.540.090 Gas collection and control system—Capping or removal. (1) The department or local authority must allow the capping or removal of the gas collection and control system at a closed municipal solid waste landfill, provided the following three requirements are met:

(a) The gas collection and control system was in operation for at least 15 years, unless the owner or operator demonstrates to the satisfaction of the department or local authority that due to declining methane rates, the municipal solid waste landfill will be unable to operate the gas collection and control system for a 15-year period;

(b) Surface methane concentration measurements do not exceed the limits specified in RCW 70A.540.050; and

(c) The owner or operator submits an equipment removal report to the department or local authority pursuant to RCW 70A.540.070 and the department's implementing rules adopted pursuant to RCW 70A.540.020.

(2) Nothing in this section may be interpreted to modify or supersede requirements related to the capping or removal of gas collection and control systems that may exist under the state clean air act, the federal clean air act, or rules adopted pursuant to either the state clean air act or the federal clean air act. [2022 c 179 § 9.]

70A.540.100 Alternative compliance measures. (1) The owner or operator of a municipal solid waste landfill may request alternatives to the compliance measures, monitoring requirements, and test methods and procedures set forth in RCW 70A.540.040, 70A.540.060, and 70A.540.080, and the department's implementing rules adopted pursuant to RCW 70A.540.020. Any alternatives requested by the owner or operator must be submitted in writing to the department.

(2) The criteria that the department may use to evaluate alternative compliance option requests include, but are not limited to: Compliance history; documentation containing the landfill gas flow rate and measured methane concentrations for individual gas collection wells or components; permits; component testing and surface monitoring results; gas collection and control system operation, maintenance, and inspection records; and historical meteorological data.

(3) The department must review the requested alternatives and either approve or disapprove the alternatives within 120 days. The department may request that additional information be submitted as part of the review of the requested alternatives.

(4) If a request for an alternative compliance option is denied, the department must provide written reasons for the denial.

(5) The department must deny a request for alternative compliance measures if the request does not provide levels of enforceability or methane emissions control that are equivalent to those set forth in this chapter or in the department's implementing rules adopted pursuant to RCW 70A.540.020. [2022 c 179 § 10.]

70A.540.110 Applicability criteria specified in RCW 70A.540.020—Request for demonstration. The department or local authority may request that any owner or operator of a municipal solid waste landfill demonstrate that a landfill does not meet the applicability criteria specified in RCW 70A.540.020. Such a demonstration must be submitted to the department or local authority within 90 days of a written request received from the department or local authority. [2022 c 179 § 11.]

70A.540.120 Violation of chapter—Civil penalty. Any person who violates this chapter or any rules that implement this chapter may incur a civil penalty pursuant to RCW 70A.15.3160. The department shall waive penalties in the event the owner or operator of the landfill is actively taking corrective actions to control any methane exceedances. Penalties collected under this section must be deposited into the air pollution control account created in RCW 70A.15.1010 and may only be used to implement chapter 70A.540 RCW. [2022 c 179 § 12.]

70A.540.130 Fees—Assessment and collection. The department and local authorities may assess and collect such fees as may be necessary to recover the direct and indirect costs associated with the implementation of this chapter. [2022 c 179 § 13.]