

The Carbon Pollution Accountability Act of 2015

DRAFT

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: Z-0307.2/15 2nd draft

ATTY/TYPIST: ML:akl

BRIEF DESCRIPTION: Implementing a carbon pollution market program to reduce greenhouse gas emissions.

1 AN ACT Relating to implementing a carbon pollution market program
2 to reduce greenhouse gas emissions; amending RCW 43.21B.110,
3 43.21B.110, 70.235.010, and 70.94.151; reenacting and amending RCW
4 42.56.270; adding a new section to chapter 82.04 RCW; adding a new
5 chapter to Title 70 RCW; creating new sections; prescribing
6 penalties; providing an effective date; providing an expiration date;
7 and declaring an emergency.

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

9 NEW SECTION. **Sec. 1.** INTENT AND FINDINGS. (1) The legislature
10 finds that climate change is harming the state and that without
11 substantial reductions in greenhouse gas emissions the harm to the
12 state will be greatly increased. While Washington's emissions are
13 only a small part of the global emissions of greenhouse gases, the
14 state must act to reduce its own emissions while providing leadership
15 and a model for action by other jurisdictions to address their own
16 emissions. The 2008 legislature established statewide emission limits
17 that are to be achieved by 2020, 2035, and 2050, but did not enact a
18 comprehensive program to ensure that the emission reductions would be
19 accomplished. The legislature intends to provide such a program by
20 this act to meet Washington state's commitment to its present and
21 future generations to fully address the climate change challenge.

1 (2) The centerpiece of this program is the creation of a cost-
2 effective carbon pollution market for reducing greenhouse gas
3 emissions that is capable of being integrated with emission reduction
4 programs in other jurisdictions. The Washington program will allow
5 the state to achieve the statewide emission reductions required by
6 current law in the most cost-effective manner through market trading
7 of emission allowances. By implementing this program, the state will
8 not only contribute its fair share of necessary global emission
9 reductions, but will also grow the state's clean energy economy and
10 provide greater certainty to Washington businesses.

11 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
12 section apply throughout this chapter unless the context clearly
13 requires otherwise.

14 (1) "Allowance" means a tradable authorization to emit up to one
15 metric ton of carbon dioxide equivalent.

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

21 (3) "Annual allowance budget" means the total number of
22 greenhouse gas allowances allocated for auction or distribution for
23 one calendar year by the department.

24 (4) "Auction" means the process of selling greenhouse gas
25 allowances, along with allowances from external greenhouse gas
26 emissions trading programs with which Washington has linked its
27 carbon pollution market program, by offering them up for bid, taking
28 bids, and then distributing the allowances to winning bidders.

29 (5) "Auction floor price" means a price for allowances below
30 which bids at auction would not be accepted.

31 (6) "Auction purchase limit" means the limit on the number of
32 allowances one registered entity or a group of affiliated registered
33 entities may purchase from the share of allowances sold at an
34 auction.

35 (7) "Carbon dioxide equivalent" means a measure used to compare
36 the emissions from various greenhouse gases based on their global
37 warming potential.

38 (8) "Compliance instrument" means an allowance or offset credit,
39 issued by the department or by an external greenhouse gas emissions

1 trading program to which Washington has linked its carbon pollution
2 market program. A covered or opt-in entity may use one compliance
3 instrument to fulfill each compliance obligation equivalent to one
4 metric ton of carbon dioxide equivalent.

5 (9) "Compliance obligation" means the requirement to turn in to
6 the department the number of compliance instruments equal to a
7 covered or opt-in entity's covered emissions during the compliance
8 period.

9 (10) "Compliance period" means the three-year period for which
10 the compliance obligation is calculated for covered entities except
11 for the first compliance period. The first compliance period is from
12 July 1, 2016, through December 31, 2017.

13 (11) "Covered entity" means a person with a compliance
14 obligation, and who has emitted or is otherwise responsible, as
15 specified in this chapter, for emissions that are more than the
16 applicable emission threshold.

17 (12) "Department" means the department of ecology.

18 (13) "Emission threshold" means the greenhouse gas emission level
19 at or above which a person has a compliance obligation.

20 (14) "External greenhouse gas emission trading program" means a
21 government program, other than Washington's carbon pollution market
22 program created in this chapter, that controls greenhouse gas
23 emissions from sources outside of Washington through an emissions
24 trading program.

25 (15) "Facility," unless otherwise specified in subparts C through
26 II of 40 C.F.R. Part 98 as adopted on April 25, 2011, or proposed by
27 December 1, 2010, means any physical property, plant, building,
28 structure, source, or stationary equipment located on one or more
29 contiguous or adjacent properties in actual physical contact or
30 separated solely by a public roadway or other public right-of-way and
31 under common ownership or common control, that emits or may emit any
32 greenhouse gas.

33 (16) "First jurisdictional deliverer" means the first person over
34 which the state of Washington has jurisdiction that generates or
35 procures electricity for use within the state and delivers that
36 electricity to the first point of delivery.

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

1 (18) "Greenhouse gas" means carbon dioxide (CO₂), methane (CH₄),
2 nitrogen trifluoride (NF₃), nitrous oxide (N₂O), sulfur hexafluoride
3 (SF₆), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and other
4 fluorinated greenhouse gases.

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

7 (20) "Imported electricity" means electricity generated outside
8 the state of Washington and delivered for use within the state, but
9 which did not originate from any jurisdiction with which Washington
10 has a linkage agreement.

11 (21) "Limits" means the greenhouse gas emission reductions
12 required for Washington state by 2020, 2035, and 2050, as specified
13 in RCW 70.235.020(1).

14 (22) "Linkage agreement" means a formal agreement that connects
15 two or more carbon market programs to reciprocally recognize each
16 jurisdiction's compliance instruments.

17 (23) "Offset credit" means a tradable compliance instrument that
18 represents an emission reduction or emission removal of one metric
19 ton of carbon dioxide equivalent.

20 (24) "Offset project" means a project that reduces or removes
21 greenhouse gases that derive from sources not covered by the program.

22 (25) "Offset protocols" means a set of procedures and
23 requirements to quantify greenhouse gas reductions or greenhouse gas
24 removals achieved by an offset project.

25 (26) "Opt-in entity" is a person responsible for the emission of
26 greenhouse gases not covered by the program and that voluntarily
27 chooses to participate in the program as if it were a covered entity.

28 (27) "Person" means an individual, firm, partnership, franchise
29 holder, association, organization, corporation, business trust,
30 company, limited liability company, or government entity.

31 (28) "Point of delivery" means a point on the electricity
32 transmission or distribution system physically located in Washington
33 where a power supplier delivers electricity for use in the
34 state. This point can be an interconnection with another system or a
35 substation where the transmission provider's transmission and
36 distribution systems are connected to another system, or a
37 distribution substation where electricity is imported into the state
38 over a multijurisdictional retail provider's distribution system.

1 (29) "Program" means the carbon pollution market program
2 implemented under this chapter.

3 (30) "Program registry" means the data system in which covered
4 entities, opt-in entities, and general market participants are
5 registered and in which compliance instruments are recorded and
6 tracked.

7 (31) "Registered entity" means a covered entity, opt-in entity,
8 or general market participant that has completed the process for
9 registration in the program registry.

10 (32) "Retire" means to permanently remove an allowance or offset
11 credit such that the allowance or offset credit may never be sold,
12 traded, or otherwise used again.

13 (33) "Surrender" means to transfer an allowance or offset credit
14 to the department, either to meet a compliance obligation or on a
15 voluntary basis.

16 NEW SECTION. **Sec. 3.** CARBON POLLUTION MARKET PROGRAM CREATED.

17 (1) In order for the state's emission reduction limits established in
18 RCW 70.235.020 to be achieved, the department shall implement a
19 carbon pollution market program for emissions from covered entities
20 by creating and distributing allowances that are tradable regionally,
21 nationally, and internationally.

22 (2) The program shall consist of:

23 (a) Annual allowance budgets that limit emissions from covered
24 entities, as provided in section 4 of this act;

25 (b) Defining those entities covered by the program, and those
26 entities that may voluntarily opt into coverage under the program, as
27 provided in sections 5 and 6 of this act;

28 (c) Distribution of emission allowances by auction, as provided
29 in section 7 of this act, and allowance price containment provisions
30 under section 8 of this act;

31 (d) Providing for offset credits as a method for meeting a
32 compliance obligation, pursuant to section 9 of this act;

33 (e) Defining the compliance obligation for covered entities, as
34 provided in section 10 of this act;

35 (f) Establishing the authority of the department to enforce the
36 program requirements, as provided in section 11 of this act;

37 (g) Creating a carbon pollution reduction account for the deposit
38 of receipts from the distribution of emission allowances and
39 authorizing the use of program funds in the account to address state

1 budget priorities, mitigate disproportionate effects on at-risk
2 communities and business sectors, and further reduce emissions, as
3 described in section 12 of this act;

4 (h) Establishing programs to support businesses that may be
5 significantly affected by the program, as provided in sections 13
6 through 16 of this act;

7 (i) Providing for the transfer of allowances and recognition of
8 compliance instruments issued by jurisdictions that enter into
9 linkage agreements with the state, as provided in section 17 of this
10 act;

11 (j) Providing for allowance market monitoring and oversight, and
12 creating the financial advisory committee to provide advice to the
13 department in the implementation of the program, as provided in
14 section 18 of this act; and

15 (k) Creating, in section 19 of this act, an economic justice and
16 environmental equity advisory committee to monitor for and advise on
17 solutions to unwanted program impacts on jobs and vulnerable
18 communities.

19 (3) The department shall implement the program in a manner that
20 allows linking the state's program with other jurisdictions having
21 similar programs.

22 NEW SECTION. **Sec. 4.** SETTING ANNUAL ALLOWANCE BUDGETS. (1) The
23 department shall commence the program on July 1, 2016. The department
24 shall determine the total combined emissions expected from all
25 covered entities with a compliance obligation under the program.
26 Based on those combined emissions, the department shall establish an
27 annual allowance budget for each year of the program, consistent with
28 subsections (2) through (5) of this section. The department must set
29 annual allowance budgets to gradually reduce the total combined
30 emissions from the covered entities to meet their combined share of
31 the emission reductions required for the state to achieve the
32 emission limits established in RCW 70.235.020.

33 (2) By January 1, 2016, the department shall establish by rule
34 the annual allowance budgets for July 1, 2016, to December 31, 2016,
35 and for January 1, 2017, to December 31, 2017, based on the best
36 estimate of the expected combined emissions for the sources covered
37 by the program.

1 (3) By July 1, 2017, the department shall adopt by rule the
2 annual allowance budgets for the combined emissions of the covered
3 entities for each year from January 1, 2018, to December 31, 2026.

4 (4) By January 1, 2016, annual allowance budgets for each year
5 from January 1, 2027, to December 31, 2036, must be set by rule after
6 conducting an evaluation of the performance of the program and
7 determining whether adjustments are needed. The evaluation must be
8 completed by December 31, 2024.

9 (5) The department shall adopt by rule the conditions under which
10 it may revise annual allowance budgets. However, the department may
11 not revise annual allowance budgets prior to the compliance period
12 beginning January 1, 2021.

13 NEW SECTION. **Sec. 5.** ENTITIES REQUIRED TO BE COVERED IN THE
14 PROGRAM. (1) Except as provided in subsections (2) and (5) of this
15 section, a person is a covered entity as of the beginning of the
16 first compliance period and all subsequent compliance periods if the
17 person reported emissions under RCW 70.94.151 in any calendar year
18 from 2012 through 2014 that equals or exceeds any of the following
19 thresholds:

20 (a) Where the person operates a facility and the facility's
21 emissions equal or exceed twenty-five thousand metric tons of carbon
22 dioxide equivalent;

23 (b) Where the person is a first jurisdictional deliverer bringing
24 electricity into the state, and the cumulative annual total of
25 emissions associated with imported electricity into the state from
26 specified or unspecified sources equals or exceeds twenty-five
27 thousand metric tons of carbon dioxide equivalent. For a specified
28 source, the person must have either full or partial ownership in the
29 facility, or a written power contract to procure electricity at the
30 facility, at the time of entry of the transaction to procure
31 electricity;

32 (c) Where the person is a fuel supplier and has reported twenty-
33 five thousand metric tons or more of carbon dioxide equivalent
34 emissions that would result from the full combustion or oxidation of
35 the supplied fuels.

36 (2) When a covered entity reports, during a compliance period,
37 emissions for a facility under RCW 70.94.151 that are below the
38 thresholds specified in subsection (1) of this section, the covered
39 entity continues to have a compliance obligation through the current

1 compliance period. When a covered entity demonstrates emissions below
2 the threshold during an entire compliance period, or has ceased all
3 processes at the facility requiring reporting under RCW 70.94.151,
4 the entity is no longer a covered entity having a compliance
5 obligation.

6 (3) For emission sources described in subsection (1) of this
7 section that begin or modify operation after January 1, 2014,
8 coverage under the program starts in the calendar year where
9 emissions from the source exceed the applicable thresholds in
10 subsection (1) of this section, or upon formal notice from the
11 department that the source is expected to exceed the applicable
12 emissions threshold, whichever happens first. Sources meeting these
13 conditions are required to surrender their first allowances on the
14 first surrender deadline of the year following the year in which
15 their emissions were equal to or exceeded the emissions threshold.

16 (4) For emission sources described in subsection (1) of this
17 section that are in operation or otherwise active between 2012
18 through 2014 but were not required to report emissions for those
19 years, coverage under the program starts in the calendar year
20 following the year where emissions from the source exceed the
21 applicable thresholds in subsection (1) of this section as reported
22 pursuant to RCW 70.94.151, or upon formal notice from the department
23 that the source is expected to exceed the applicable emissions
24 threshold for the first year that source is required to report
25 emissions, whichever happens first. Sources meeting these conditions
26 are required to surrender their first allowances on the first
27 surrender deadline of the year following the year in which their
28 emissions, as reported under RCW 70.235.010, were equal to or
29 exceeded the emissions threshold.

30 (5) The following emissions are not covered by the program,
31 regardless of the emissions reported under RCW 70.94.151:

32 (a) Emissions from the combustion of biomass in the form of fuel
33 wood, wood waste, wood by-products, and wood residuals, as long as
34 the source biomass is harvested pursuant to an approved timber
35 management plan prepared in accordance with the forest practices act
36 under chapter 76.09 RCW, a habitat conservation plan, or other state
37 or federally approved management plan, or harvested under an approved
38 forest fire fuel reduction or forest stand improvement plan;

1 (b) Emissions from combustion of biofuels or the biofuel
2 component of blended fuels, as the term "biofuels" is defined in RCW
3 43.325.010;

4 (c) Vented or fugitive emissions that are unintentional and could
5 not reasonably pass through a stack, chimney, vent, or other
6 functionally equivalent opening;

7 (d) Emissions from a coal-fired electric generation facility
8 exempted from additional greenhouse gas limitations, requirements, or
9 performance standards under RCW 80.80.110;

10 (e) Emissions from facilities with 2012 North American industry
11 classification system code 92811 (national security); and

12 (f) Emissions from sources exempted from reporting in RCW
13 70.94.151(5)(h)(iv).

14 NEW SECTION. **Sec. 6.** REGISTRATION REQUIREMENTS FOR PROGRAM
15 PARTICIPATION. (1) All covered entities must register to participate
16 in the program, following procedures adopted by the department by
17 rule.

18 (2) Entities registering to participate in the program must
19 describe any direct or indirect affiliation with other registered
20 entities.

21 (3) A person responsible for greenhouse gas emissions that is not
22 a covered entity may voluntarily participate in the program by
23 registering as an opt-in entity. An opt-in entity must satisfy the
24 same registration requirements as covered entities. Once registered,
25 an opt-in entity is allowed to participate as a covered entity in
26 auctions and assume the same compliance obligation to surrender
27 compliance instruments equal to their emissions at the appointed
28 surrender dates. An opt-in entity may opt out of the program at the
29 end of any compliance period by providing written notice to the
30 department at least six months prior to the end of the compliance
31 period. The opt-in entity continues to have a compliance obligation
32 through the current compliance period.

33 (4) A person that is not covered by the program and is not a
34 covered entity or opt-in entity may voluntarily participate in the
35 program as a general market participant. General market participants
36 must meet all applicable registration requirements specified in rule.

37 (5) Tribal governments and federal agencies may elect to
38 participate in the program as opt-in entities or general market
39 participants.

1 NEW SECTION. **Sec. 7.** ALLOWANCE DISTRIBUTION THROUGH AUCTIONS.

2 (1) The department shall distribute the allowances established in
3 section 4 of this act through auctions as provided in this section
4 and in rules adopted by the department. An allowance is not a
5 property right.

6 (2) The department shall hold a maximum of four auctions
7 annually. An auction may include allowances from the annual allowance
8 budget of the current year and allowances from the annual allowance
9 budgets from prior years that remained unsold at previous auctions.
10 The department must auction allowances from future annual allowance
11 budgets separately from allowances from current and previous annual
12 allowance budgets.

13 (3) The department shall engage a qualified, independent
14 contractor to run the auctions. The department shall also engage a
15 qualified financial services administrator to hold bid guarantees,
16 evaluate bid guarantees, and inform the department of the value of
17 bid guarantees once the bids are accepted.

18 (4) The department shall issue notice for an upcoming auction at
19 least ninety days prior to the auction. The auction must consist of a
20 single round of sealed bids with a three hour open window and must be
21 conducted through a secure online system.

22 (5) To help minimize allowance price volatility in the auction
23 and any secondary markets, the department shall adopt by rule an
24 auction floor price and a schedule for the floor price to increase by
25 a predetermined amount every year through 2026. The department may
26 not sell allowances at bids lower than the auction floor price. The
27 department's rules shall specify holding limits that determine the
28 maximum number of allowances that may be held for use or trade by a
29 registered entity at any one time.

30 (6) Auctions are open to covered entities, opt-in entities, and
31 general market participants that are registered entities in good
32 standing. The department shall adopt by rule the requirements for a
33 registered entity to register and participate in a given auction.

34 (a) Registered entities intending to participate in an auction
35 must submit an application to participate at least thirty days prior
36 to the auction. The application must include the documentation
37 required for review and approval by the department. A registered
38 entity is eligible to participate only after receiving a notice of
39 approval from the department or its designee.

1 (b) Each registered entity that elects to participate in the
2 auction must have a different representative. Only representatives
3 with an approved auction account are authorized to access the auction
4 platform to submit an application or confirm the intent to bid for
5 the registered entity, submit bids on behalf of the registered entity
6 during the bidding window, or to download reports specific to the
7 auction.

8 (c) A registered entity intending to participate in an auction
9 must submit to the financial services administrator a bid guarantee,
10 payable to the financial services administrator, in an amount greater
11 than or equal to the sum of the maximum value of the bids to be
12 submitted by the registered entity. The bid guarantee can be cash in
13 the form of a wire transfer, an irrevocable letter of credit from a
14 financial institution with a United States banking license, a bond
15 issued by a financial institution with a United States banking
16 license, or a security bond issued by an institution named in the
17 United States treasury department list of acceptable security
18 companies.

19 (7) To protect the integrity of the auctions, a registered entity
20 or group of registered entities with a direct corporate association
21 are subject to the following auction purchase limits:

22 (a) A covered entity or an opt-in entity may not buy more than
23 fifteen percent of the allowances offered during a single auction,
24 except as provided in subsection (8) of this section;

25 (b) A general market participant may not buy more than four
26 percent of the allowances offered during a single auction;

27 (c) No registered entity may purchase more than the entity's bid
28 guarantee; and

29 (d) No registered entity may purchase allowances that would
30 exceed the entity's holding limit at the time of the auction.

31 (8) A covered entity or opt-in entity with a compliance
32 obligation that exceeds fifteen percent of the annual allowance
33 budget may, subject to advance approval by the department, purchase
34 allowances beyond the allowance purchase limit in subsection (7)(a)
35 of this section, not to exceed the entity's proportionate share, on a
36 percentage basis, of the annual allowance budget plus ten percent of
37 the allowances available during a single auction. Approval to
38 purchase these additional allowances must be secured prior to the
39 auction and must be requested from the department at least thirty
40 days prior to the auction.

1 (9) Upon completion and verification of the auction results, the
2 financial services administrator shall notify winning bidders and
3 transfer the auction proceeds to the state treasurer for deposit in
4 the carbon pollution reduction account created in section 12 of this
5 act.

6 (10) The department shall adopt by rule provisions to guard
7 against bidder collusion and minimize the potential for market
8 manipulation. A registered entity may not release or disclose any
9 bidding information including: Intent to participate or refrain from
10 participation; auction approval status; intent to bid; bidding
11 strategy; bid price or bid quantity; or information on the bid
12 guarantee provided to the financial services administrator. The
13 department may cancel or restrict a previously approved auction
14 participation application or reject a new application if the
15 department determines that a registered entity has:

- 16 (a) Provided false or misleading facts;
- 17 (b) Withheld material information that could influence a decision
18 by the department;
- 19 (c) Violated any part of the auction rules;
- 20 (d) Violated registration requirements; or
- 21 (e) Violated any of the rules regarding the conduct of the
22 auction.

23 (11) Any cancellation or restriction approved by the department
24 may be permanent or for a specified number of auctions and the
25 cancellation or restriction imposed is in addition to any other
26 penalties, fines, and additional remedies available under the law.

27 (12) The department shall design allowance auctions so as to
28 allow, to the maximum extent practicable, linking with external
29 greenhouse gas emissions trading programs in other jurisdictions and
30 to facilitate the transfer of allowances when the state's program is
31 linked with other external greenhouse gas emissions trading programs.
32 The department may conduct auctions jointly with other jurisdictions
33 with which it has a linkage agreement under section 17 of this act.
34 For joint auctions, the financial services administrator, the market
35 monitor, and the auction administrator must be the same as the one
36 employed by those jurisdictions.

37 NEW SECTION. **Sec. 8.** ALLOWANCE PRICE CONTAINMENT RESERVE. (1)
38 At the start of the program, the department shall place four percent
39 of the total number of allowances available for 2017 to 2026 in the

1 allowance price containment reserve. The price containment reserve
2 must be designed as a mechanism to assist in containing compliance
3 costs for covered entities in the event of unanticipated high costs
4 for compliance instruments.

5 (2) The department shall auction allowances from the allowance
6 price containment reserve once a quarter each year through reserve
7 sales, separate from the auction of other allowances. Allowances
8 unsold through the reserve auction must be made available again at
9 future reserve auctions.

10 (3) Only covered and opt-in entities may participate in the
11 auction of allowances from the allowance price containment reserve.

12 (4) The process for reserve auctions is the same as the process
13 outlined in section 7 of this act and the proceeds from reserve
14 auctions must be treated the same.

15 (5) The department shall by rule:

16 (a) Set the auction floor price for allowances from the allowance
17 price containment reserve in advance of the reserve auction. The
18 department shall set the auction floor price high enough to
19 incentivize direct emissions reductions. The department may choose to
20 establish multiple price tiers for the allowances from the allowance
21 price containment reserve;

22 (b) Establish the requirements and schedule for the allowance
23 price containment reserve auctions; and

24 (c) Establish the percent of allowances to be set aside for the
25 allowance price containment reserve after the compliance period
26 ending in 2026.

27 NEW SECTION. **Sec. 9.** OFFSET CREDITS. (1) The department shall
28 adopt by rule the protocols for establishing offset projects and
29 securing offset credits that can be used to meet a portion of a
30 covered entity's or opt-in entity's compliance obligation under
31 section 10 of this act.

32 (2) The protocols must require that offset projects result in
33 greenhouse gas emission reductions or removals from the atmosphere
34 that are real, quantifiable, permanent, verifiable, and enforceable,
35 and that would occur in addition to other existing requirements. The
36 offset protocols must, where available, use established criteria,
37 methods to determine baseline assumptions, emission factors, and
38 monitoring methods. The protocols must:

1 (a) Specify the amount of greenhouse gas emission reductions and
2 removals achieved by the offset project type, in relation to a
3 project baseline that estimates business-as-usual performance or
4 practices for the offset project type, and accounting for any
5 uncertainty in quantification protocols;

6 (b) Ensure greenhouse gas emission reductions and removals are
7 permanent as defined by the particular offset protocol, including the
8 length of time for which an offset project can generate offset
9 credits; and

10 (c) Specify the data collection and monitoring procedures
11 required for each offset project type.

12 (3) The department shall coordinate the review, development, and
13 approval of offset protocols with any jurisdiction to which
14 Washington has a linkage agreement pursuant to section 17 of this
15 act.

16 (4) Until January 1, 2021, an offset credit may only be created
17 for the following offset types and only if offset protocols have been
18 adopted by rule by the department:

19 (a) Projects that prevent greenhouse gas emissions through
20 anaerobic digestion of organic wastes;

21 (b) Projects that reduce emissions of ozone depleting substances;

22 (c) Projects that capture methane from mining and other resource
23 extraction and transmission projects; and

24 (d) Projects that sequester biogenic or atmospheric carbon
25 through forestry and agricultural practices.

26 (5) An offset project proponent must apply to register a project
27 with the department within one year of commencing the project.

28 (6) The department shall submit a report to the legislature by
29 September 1, 2019, that describes any decision of the department to
30 expand or modify the eligible project categories starting in 2021.

31 (7) The department shall adopt rules setting out the criteria and
32 procedures for the recognition of offset credits as a method for
33 meeting a part of a compliance obligation by a covered entity. The
34 rules must incorporate the following criteria and limitations:

35 (a) The offset project proponent must be registered to conduct
36 business in Washington, or have a designated agent legally qualified
37 to receive service of process, and is responsible for all statements
38 and information required for recognition of the credit;

1 (b) A single offset credit must represent a reduction or removal
2 of one metric ton of carbon dioxide equivalent that results from a
3 clearly identified action or decision. A credit:

4 (i) May be created only for an offset project or activity that
5 commenced on or after January 1, 2016;

6 (ii) May be awarded only for the portion of the emission
7 reductions or removals that would not have occurred under the project
8 baseline;

9 (iii) Must not derive from emissions otherwise subject to a
10 compliance obligation under the program;

11 (iv) Must result from actions that are not already required by
12 law, regulation, court order, or legally binding agreement; and

13 (v) Is not allowed if the offset credit has been claimed in any
14 other external greenhouse gas emission trading program;

15 (c) The geographic boundary for an offset project must be within
16 the United States, Canada, or Mexico;

17 (d) The offset project's greenhouse gas reduction or removal must
18 be quantified and verified by an independent third-party verifier
19 accredited by the department or accredited by any jurisdiction with
20 which Washington has a linkage agreement pursuant to section 17 of
21 this act; and

22 (e) Offset credits generated from offset projects located in
23 Washington are not valid until approved by the department. Offset
24 credits for projects located outside of Washington are subject to
25 approval by Washington unless, through a linkage agreement,
26 responsibility for offset approval is shared across linked
27 jurisdictions.

28 (8) The offset credit must be registered and tracked as a
29 compliance instrument under section 20 of this act.

30 (9) All information on offset protocols, projects, and credits
31 must be made public and posted on the department's web site.

32 (10) The department shall invalidate offset credits if they are
33 found to be fraudulent through a process adopted by rule by the
34 department. The offset credit buyer is liable if the offset credits
35 are invalidated. If some or all of the offset credits are
36 invalidated, the covered entity must, within six months of that
37 invalidation, surrender replacement credits or allowances to meet its
38 compliance obligation.

1 NEW SECTION. **Sec. 10.** COMPLIANCE REQUIREMENTS. (1) A covered or
2 opt-in entity has a compliance obligation for its emissions from each
3 three-year compliance period, except for the first compliance period
4 that will only cover emissions from July 1, 2016, through December
5 31, 2017.

6 (2) A covered or opt-in entity shall surrender a number of
7 compliance instruments equal to their total verified emissions as
8 reported in accordance with RCW 70.94.151 as follows:

9 (a) By November 1, 2018, all covered and opt-in entities shall
10 submit all of their compliance instruments for the first compliance
11 period.

12 (b) Beginning November 1, 2019, thirty percent of a covered or
13 opt-in entity's compliance obligation for the previous year's covered
14 emissions must be submitted annually on November 1st for the first
15 and second years of each three-year compliance period thereafter.

16 (c) Beginning November 1, 2021, and every three years thereafter
17 by November 1st, every covered and opt-in entity must submit
18 compliance instruments covering the remainder of their emissions for
19 the prior compliance period.

20 (d) Submission of allowances occurs through the transfer of
21 compliance instruments, on or before the surrender date, from the
22 holding account to the compliance account of the covered or opt-in
23 entity as described in section 20 of this act.

24 (3) The department must determine whether the covered entity
25 submitted, by the specified surrender date, a sufficient number of
26 compliance instruments. A covered entity or opt-in entity submitting
27 insufficient compliance instruments to meet its compliance obligation
28 is subject to a penalty as provided in section 11 of this act.

29 (4) Surrendered allowances must be from an allowance budget year
30 that is from the current year or any previous compliance year.

31 (5) An emission allowance may be surrendered in the same
32 compliance period in which it is created or in any future compliance
33 period. An emission allowance does not expire and may be banked by a
34 registered entity for future use.

35 (6) A covered entity may not borrow an allowance from a future
36 allowance year to meet a current or past compliance obligation.

37 (7) A compliance instrument representing an offset credit
38 provided by the covered entity or opt-in entity pursuant to section 9
39 of this act may be submitted to meet a compliance obligation. A
40 covered entity may submit offset credits in an amount that does not

1 exceed eight percent of the entity's compliance obligation in a
2 compliance period.

3 (8) Upon receipt by the department of all compliance instruments
4 surrendered by a covered entity or opt-in entity to meet its
5 compliance obligation, the department shall retire the allowances or
6 offset credits.

7 NEW SECTION. **Sec. 11.** ENFORCEMENT. (1) All covered and opt-in
8 entities are required to submit compliance instruments in a timely
9 manner to meet the entities' compliance obligations and shall comply
10 with all requirements for monitoring, reporting, holding, and
11 submitting emission allowances and other provisions of this chapter.

12 (2) If a covered or opt-in entity does not submit sufficient
13 allowances to meet its compliance obligation by the specified
14 surrender dates, a penalty of four allowances for every one allowance
15 that is missing must be submitted to the department within six
16 months. When a covered entity or opt-in entity reasonably believes
17 that it will be unable to meet a compliance obligation, the entity
18 shall immediately notify the department. Upon receiving notification,
19 the department shall issue an order requiring the entity to submit
20 the penalty allowances. Three of every four penalty allowances must
21 be offered by the department for purchase in future auctions. One of
22 the four allowances must be retired to fulfill the covered entity's
23 or opt-in entity's original compliance obligation.

24 (3) If a covered entity or opt-in entity fails to submit penalty
25 allowances as required by subsection (2) of this section, the
26 department may issue a civil penalty to the entity of up to ten
27 thousand dollars for each penalty allowance that is not submitted per
28 day. The department may also issue an order or issue a penalty of up
29 to ten thousand dollars per day per violation, or both, for failure
30 to comply with any provision of this chapter or the rules adopted
31 under this chapter. The order may include a plan and schedule for
32 coming into compliance.

33 (4) Except as provided in subsection (3) of this section, any
34 person that violates the terms of this chapter or an order issued
35 under this chapter incurs a penalty of up to ten thousand dollars per
36 day per violation for each day that the person does not comply. All
37 penalties must be deposited into the state general fund.

1 (5) Appeals of orders and penalties issued under this chapter
2 must be to the pollution control hearings board under chapter 43.21B
3 RCW.

4 (6) For the first compliance period, the department may reduce
5 the amount of the penalty by adjusting the monetary amount or the
6 number of penalty allowances described in subsections (2) and (3) of
7 this section.

8 NEW SECTION. **Sec. 12.** CARBON POLLUTION REDUCTION ACCOUNT. (1)
9 The carbon pollution reduction account is created in the state
10 treasury. All receipts from the auction of allowances paid under
11 sections 7 and 8 of this act, and other moneys directed to the
12 account by the legislature, must be deposited into the account.
13 Moneys in the account may only be spent after appropriation.

14 (2) Beginning in fiscal year 2017 and for each fiscal year
15 thereafter, the state treasurer shall distribute, at the start of
16 each quarter during each fiscal year, the moneys deposited into the
17 account during the prior quarter, as follows:

18 (a) Forty percent of the moneys, and additional moneys or a
19 lesser percentage as needed to equal but not exceed four hundred
20 million dollars in each fiscal year, deposited into the
21 sustainability account created in chapter (House Bill
22 No. /Senate Bill No.), Laws of 2015 to support
23 transportation projects with a priority for transit and other
24 projects that will reduce greenhouse gas emissions, and to support
25 transportation system maintenance and safety;

26 (b) Forty percent of the moneys, and additional moneys as needed
27 to equal at least three hundred eighty million dollars in each fiscal
28 year, deposited into the general fund;

29 (c) Ten percent of the moneys, and additional moneys as needed to
30 equal at least one hundred eight million dollars in each fiscal year,
31 deposited into the state general fund to implement the working
32 families tax rebate in RCW 82.08.0206;

33 (d) Two percent of the moneys, as needed to equal and not exceed
34 fifteen million five hundred thousand dollars in fiscal year 2017, as
35 needed to equal at least nineteen million five hundred thousand
36 dollars in fiscal year 2018, and as needed to equal at least twenty
37 million dollars in each fiscal year thereafter, deposited into the
38 Washington housing trust fund created in RCW 43.185.030;

1 (e) Two percent of the moneys, and additional moneys as needed to
2 equal at least twenty million dollars in each fiscal year, deposited
3 into the general fund for purpose of funding the carbon pollution
4 competitiveness tax credit, pursuant to section 14 of this act; and

5 (f) Two percent of the moneys, and additional moneys as needed to
6 equal at least twenty million dollars in each fiscal year, deposited
7 into the general fund to be appropriated to the department of
8 commerce for economic assistance to Washington rural businesses,
9 pursuant to section 16(2) of this act.

10 (3) Moneys remaining in the account must be expended for the
11 following purposes:

12 (a) The department's and other agencies' costs to support and
13 administer the program including coordination of regional auction
14 allowance, tracking of emissions inventory, monitoring and
15 verification, market monitor contracting, and stakeholder
16 communication and outreach; and

17 (b) Investments in clean energy and other programs that achieve
18 the purposes of this chapter.

19 NEW SECTION. **Sec. 13.** CARBON POLLUTION COMPETITIVENESS TAX
20 CREDIT PERFORMANCE. This section is the tax preference performance
21 statement for the carbon pollution competitiveness tax credit in
22 section 14 of this act. The performance statement is only intended to
23 be used for subsequent evaluation of the tax preference. It is not
24 intended to create a private right of action by any party or be used
25 to determine eligibility for preferential tax treatment.

26 (1) The legislature categorizes this tax preference as one
27 intended to accomplish the general purpose indicated in RCW
28 82.32.808(2) (a) through (f).

29 (2) It is the legislature's specific public policy objective to
30 mitigate the impacts of compliance obligations for energy intense and
31 trade-exposed businesses that would experience significant
32 competitive disadvantage in selling manufactured products in other
33 countries due to the costs of compliance with the carbon pollution
34 reduction program.

35 (3) To measure the effectiveness of the credit provided in
36 section 14 of this act in achieving the public policy objectives
37 described in subsection (2) of this section, the joint legislative
38 audit and review committee must evaluate the following:

1 (a) The number of businesses that obtain a certificate from the
2 department of commerce;

3 (b) The change in total taxable income for taxpayers claiming the
4 credit under section 14 of this act;

5 (c) The change in total employment for taxpayers claiming the
6 credit under section 14 of this act; and

7 (d) For each calendar year, the total tax credits claimed under
8 section 14 of this act as a percentage of total taxable income for
9 taxpayers within taxable income categories.

10 (4) The information provided in the annual survey submitted by
11 the organization under RCW 82.32.585, tax data collected by the
12 department of revenue, and data collected by the employment security
13 department is intended to provide the informational basis for the
14 evaluation under subsection (3) of this section.

15 (5) In addition to the data sources described under subsection
16 (4) of this section, the joint legislative audit and review committee
17 may use any other data it deems necessary in performing the
18 evaluation under subsection (3) of this section.

19 NEW SECTION. **Sec. 14.** A new section is added to chapter 82.04
20 RCW to read as follows:

21 CARBON POLLUTION COMPETITIVENESS TAX CREDIT. (1) In computing the
22 tax imposed under this chapter, a credit is allowed for each person
23 that possesses a valid certificate from the department of commerce
24 under section 15 of this act. A person must file a claim for credit
25 electronically using the department's web site.

26 (2) The credit is equal to fifty percent of the eligible costs
27 incurred to satisfy the compliance obligation under section 10 of
28 this act. The credit may not exceed the amount of tax otherwise due
29 under this chapter for the calendar year. Credit earned in one
30 calendar year may be carried over to be credited against taxes
31 incurred in a subsequent calendar year until used, except that no
32 credit may be claimed more than ten years from the end of the tax
33 reporting period in which the credit was earned. No refunds may be
34 granted for credits under this section.

35 (3) For any person claiming the credit who does not have a valid
36 certificate from the department of commerce, the department must
37 disallow the credit and declare the taxes against which the credit
38 was claimed to be immediately due and payable. The department must
39 assess interest on the taxes against which the credit was claimed,

1 and may assess penalties. Interest must be assessed at the rate
2 provided under chapter 82.32 RCW, retroactively to the date the
3 credit was claimed, and accrues until the taxes against which the
4 credit was claimed are repaid.

5 (4) Credits are available on a first-in-time basis. The
6 department must disallow any credits, or portion thereof, that would
7 cause the total amount of credits claimed under this section during
8 any calendar year to exceed the greater of twenty million dollars, or
9 the amount of funding transferred by the treasurer under section
10 12(2)(e) of this act. If this limitation is reached, the department
11 must provide notification on its web site that the annual statewide
12 limit has been reached. In addition, the department must provide
13 written notice to any person who has claimed tax credits in excess of
14 the limitation in this subsection. The notice must indicate the
15 amount of tax due and provide that the tax be paid within thirty days
16 from the date of the notice. The department may not assess penalties
17 and interest as provided in chapter 82.32 RCW on the amount due in
18 the initial notice if the amount due is paid by the due date
19 specified in the notice, or any extension thereof.

20 (5) A person claiming the credit provided in this section must
21 file a complete annual survey with the department under RCW
22 82.32.585.

23 (6) For the purposes of this section, "eligible costs" means the
24 costs of allowances, offset credits, or other compliance instruments
25 surrendered to the department of ecology under section 10 of this
26 act, where the person has a valid certificate from the department of
27 commerce at the time the compliance instruments are surrendered.

28 NEW SECTION. **Sec. 15.** CARBON POLLUTION COMPETITIVENESS
29 CERTIFICATE PROGRAM. (1) By January 31, 2016, the department of
30 commerce must adopt rules to establish:

31 (a) The criteria for identifying energy intense and trade-exposed
32 businesses that would experience significant competitive disadvantage
33 in selling manufactured products in other countries due to the costs
34 of compliance with the carbon pollution reduction program created in
35 section 3 of this act;

36 (b) The process for a business to apply to the department of
37 commerce for a certificate to be used to claim the tax credit
38 established under section 14 of this act, including the information
39 required to determine if the business meets the criteria; and

1 (c) The process for a business to renew the certificate every
2 five years.

3 (2) The department of commerce must issue a certificate to
4 businesses that meet the requirements of this section.

5 NEW SECTION. **Sec. 16.** ECONOMIC OPPORTUNITIES FOR WASHINGTON
6 FORESTRY AND RURAL COMMUNITIES. (1) Recognizing that Washington's
7 uniquely abundant forests are a significant factor in the state's
8 carbon cycle, that they sequester carbon, and that forest management
9 can be part of the solution to solving climate change, the department
10 shall seek opportunities to further reduce and remove carbon
11 emissions and to support the forestry sector through the management
12 of forest carbon.

13 (2) The department of commerce, working with the departments of
14 agriculture and natural resources, shall identify existing programs
15 or develop new programs to:

16 (a) Provide financial assistance to assist in creating or
17 expanding new market opportunities for Washington forest products;

18 (b) Help mitigate the impacts of the program on transporters of
19 wood and food products due to potential increased fuel costs; and

20 (c) Otherwise assist businesses in rural communities with any
21 potential disproportionate economic impacts of the program.

22 (3) The department shall work with the department of natural
23 resources in the development of offset protocols as called for in
24 section 9 (1) and (2) of this act that consider opportunities
25 including but not limited to:

26 (a) Reducing emissions through the additional use of wood
27 products in construction and expanded wood substitution
28 opportunities;

29 (b) Incentives for forest health treatments that reduce
30 deforestation risks;

31 (c) Programs to maintain or increase forest carbon stocks;

32 (d) Improving technical understanding of sequestration;

33 (e) Developing the requirements and exploring the opportunities
34 to develop offset projects that are recognized in other external
35 greenhouse gas emissions trading programs;

36 (f) Expanding transfer of development rights programs to reduce
37 conversion risk; and

38 (g) Supporting ecosystem service payment programs.

1 NEW SECTION. **Sec. 17.** LINKING TO OTHER CARBON MARKETS. (1) The
2 department shall seek to link with other jurisdictions with
3 established market-based carbon emissions reduction programs in order
4 to:

5 (a) Allow for the mutual use and recognition of compliance
6 instruments issued by Washington and other linked jurisdictions;

7 (b) Broaden the carbon market to provide Washington businesses
8 with greater flexibility and opportunities for reduced costs to meet
9 their compliance obligations;

10 (c) Enable allowance auctions to be held jointly and provide for
11 the use of a unified tracking system for compliance instruments;

12 (d) Enhance market security;

13 (e) Reduce program administration costs; and

14 (f) Provide consistent requirements for covered entities whose
15 operations span jurisdictional boundaries.

16 (2) The department is authorized to execute linkage agreements
17 with other jurisdictions with established market-based carbon
18 emissions reduction programs consistent with the requirements in this
19 chapter and any rule adopted by the department. A linkage agreement
20 must cover the following:

21 (a) Provisions related to quarterly auctions, including
22 requirements for eligibility for auction participation, the use of a
23 single auction provider to facilitate joint auctions, publication of
24 auction-related information, process for auction participation,
25 settlement for an auction, purchase limits by auction participant
26 type, bidding process, dates of auctions, and financial requirements;

27 (b) Provisions related to holding limits to ensure no entities in
28 any of the programs are disadvantaged relative to their counterparts
29 in the other jurisdictions;

30 (c) Other requirements such as greenhouse gas reporting and
31 verification, offset protocols, criteria and process, and supervision
32 and enforcement to prevent fraud, abuse, and market manipulation;

33 (d) Common program registry, electronic auction platform,
34 tracking systems for compliance instruments, monitoring of compliance
35 instruments, and auctions;

36 (e) Provisions to ensure coordinated administrative and technical
37 support;

38 (f) Provisions to share information collected and developed under
39 each individual jurisdiction's program, including confidential
40 information;

1 (g) Provisions for public notice and participation; and

2 (h) Provisions to collectively resolve differences, amend the
3 agreements, and delink or otherwise withdraw from the agreements.

4 (3) The state shall retain legal and policymaking authority over
5 its program design and enforcement.

6 NEW SECTION. **Sec. 18.** ALLOWANCE MARKET MONITORING AND

7 OVERSIGHT. (1) The department shall adopt by rule the processes
8 required to buy, sell, transfer, or surrender compliance instruments.

9 (2) The department shall contract with an independent
10 organization to provide the following services relating to the
11 functioning of the compliance instrument market:

12 (a) Creating a market monitoring and security plan;

13 (b) Reviewing auction and reserve sale procedures and protocols
14 to ensure fair and competitive auctions;

15 (c) Auditing and monitoring the auctions to assess the adherence
16 of participants and the auction operator to the adopted procedures
17 and protocols;

18 (d) Monitoring compliance instrument holding, transfer activity,
19 and secondary market behavior;

20 (e) Preparing reports on auction results, market activities, and
21 trends; and

22 (f) Reviewing program guidance documents, program rules, and
23 other policies to mitigate market risk and improve the efficiency of
24 the auctions and market activities.

25 (3) The department shall coordinate with existing state and
26 federal market regulatory agencies, including the United States
27 commodity futures trading commission, to ensure that all regulatory
28 requirements for conducting trading in allowances are met. The
29 department may consult with other jurisdictions administering
30 emissions trading programs to observe and track market participant
31 behavior across multiple emission trading venues.

32 (4) By July 1, 2016, the department shall create a financial
33 advisory committee composed of financial market professionals to
34 provide an independent assessment of the market monitoring functions
35 and performance of the program. This committee shall provide the
36 assessment to the department by July 1, 2018, and every two years
37 thereafter.

1 NEW SECTION. **Sec. 19.** CITIZEN ACCOUNTABILITY. (1) The
2 department shall create an economic justice and environmental equity
3 advisory committee comprised of representatives from low-income
4 citizens, communities of color, front-line workers in fossil fuel
5 dependent sectors from around the state, and other communities that
6 may be disproportionately impacted by the program, to periodically
7 evaluate the socioeconomic effects of the state's carbon emission
8 reduction policies. The committee shall evaluate the potential for
9 the program to disproportionally impact low-income and other
10 vulnerable communities and provide advice to the department on the
11 expenditure of receipts from allowance auctions if adverse impacts
12 are identified by the committee or the department.

13 (2) To inform the work of the committee, the department shall
14 conduct a study, using existing geospatial methods, to identify
15 communities of color and other communities that may be subject to
16 disproportionate impacts from carbon pollution, related changes to
17 the climate, or from actions intended to reduce carbon pollution.

18 (3) The department shall report on the committee's evaluation and
19 findings to the legislature and the governor by July 1, 2017, and
20 every two years thereafter.

21 NEW SECTION. **Sec. 20.** ALLOWANCE TRADING AND TRACKING COMPLIANCE
22 INSTRUMENTS. (1) The department shall use a secure, online electronic
23 tracking system to: Register entities in the state program; issue
24 compliance instruments; track ownership of compliance instruments;
25 enable and record compliance instrument transfers; facilitate program
26 compliance; and support market oversight. The department shall use an
27 existing market tracking system in use by potential linked
28 jurisdictions.

29 (2) Covered and opt-in entities are each allowed two accounts:

30 (a) A compliance account where the allowances are transferred to
31 the department for retirement. Allowances in compliance accounts may
32 not be sold, traded, or transferred to another account or person.

33 (b) A holding account that is used when a registered entity is
34 interested or potentially interested in trading allowances.
35 Allowances in holding accounts can be bought, sold, or traded. The
36 amount of allowances a registered entity may have in its holding
37 account is constrained to the holding limit.

38 (3) Registered general market participants are each allowed one
39 account, to hold, trade, sell, or surrender allowances.

1 (4) The department shall maintain an account for the purpose of
2 retiring allowances surrendered by registered entities.

3 (5) The department may establish or use other existing tracking
4 systems as needed for a functioning carbon market.

5 NEW SECTION. **Sec. 21.** PUBLIC RECORDS. In the administration of
6 the program required by this chapter, the department shall ensure the
7 protection from public disclosure of financial, commercial, and
8 proprietary information whose release would place the registered
9 entity submitting the information at a competitive disadvantage. The
10 department shall require any of its contractors working on the
11 program to comply with the disclosure requirements of RCW 42.56.070.
12 Nothing in this chapter affects the department's ability to release
13 air quality data or emissions data pursuant to RCW 70.94.205.

14 NEW SECTION. **Sec. 22.** RULES. (1) The department may adopt rules
15 to implement the provisions of this chapter. To the extent possible
16 and consistent with this chapter, the rules adopted by the department
17 must be compatible with regulations adopted by other external
18 greenhouse gas emissions trading programs to facilitate linkage
19 agreements between these programs. The department must periodically
20 review and, as necessary, update its rules to ensure compatibility
21 with carbon market programs in linked jurisdictions.

22 (2) The department shall adopt emergency rules pursuant to RCW
23 34.05.350 for initial implementation of the program, to implement the
24 state omnibus appropriations act for the 2015-2017 fiscal biennium,
25 and to ensure that reporting and other program requirements are
26 determined early for the purpose of program design and early notice
27 to registered entities with a compliance obligation under the
28 program.

29 NEW SECTION. **Sec. 23.** The department shall evaluate and report
30 on the implementation of the program created in section 3 of this act
31 including a review of progress on emission reductions and other
32 observed benefits and costs of the program. The department shall
33 submit the report, along with any recommendations for changes to the
34 program, to the governor and the legislature by November 1, 2016, and
35 every two years thereafter.

1 **Sec. 24.** RCW 42.56.270 and 2014 c 192 s 6, 2014 c 174 s 5, and
2 2014 c 144 s 6 are each reenacted and amended to read as follows:

3 The following financial, commercial, and proprietary information
4 is exempt from disclosure under this chapter:

5 (1) Valuable formulae, designs, drawings, computer source code or
6 object code, and research data obtained by any agency within five
7 years of the request for disclosure when disclosure would produce
8 private gain and public loss;

9 (2) Financial information supplied by or on behalf of a person,
10 firm, or corporation for the purpose of qualifying to submit a bid or
11 proposal for (a) a ferry system construction or repair contract as
12 required by RCW 47.60.680 through 47.60.750 or (b) highway
13 construction or improvement as required by RCW 47.28.070;

14 (3) Financial and commercial information and records supplied by
15 private persons pertaining to export services provided under chapters
16 43.163 and 53.31 RCW, and by persons pertaining to export projects
17 under RCW 43.23.035;

18 (4) Financial and commercial information and records supplied by
19 businesses or individuals during application for loans or program
20 services provided by chapters 43.325, 43.163, 43.160, 43.330, and
21 43.168 RCW, or during application for economic development loans or
22 program services provided by any local agency;

23 (5) Financial information, business plans, examination reports,
24 and any information produced or obtained in evaluating or examining a
25 business and industrial development corporation organized or seeking
26 certification under chapter 31.24 RCW;

27 (6) Financial and commercial information supplied to the state
28 investment board by any person when the information relates to the
29 investment of public trust or retirement funds and when disclosure
30 would result in loss to such funds or in private loss to the
31 providers of this information;

32 (7) Financial and valuable trade information under RCW 51.36.120;

33 (8) Financial, commercial, operations, and technical and research
34 information and data submitted to or obtained by the clean Washington
35 center in applications for, or delivery of, program services under
36 chapter 70.95H RCW;

37 (9) Financial and commercial information requested by the public
38 stadium authority from any person or organization that leases or uses
39 the stadium and exhibition center as defined in RCW 36.102.010;

1 (10)(a) Financial information, including but not limited to
2 account numbers and values, and other identification numbers supplied
3 by or on behalf of a person, firm, corporation, limited liability
4 company, partnership, or other entity related to an application for a
5 horse racing license submitted pursuant to RCW 67.16.260(1)(b),
6 marijuana producer, processor, or retailer license, liquor license,
7 gambling license, or lottery retail license;

8 (b) Internal control documents, independent auditors' reports and
9 financial statements, and supporting documents: (i) Of house-banked
10 social card game licensees required by the gambling commission
11 pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted
12 by tribes with an approved tribal/state compact for class III gaming;

13 (11) Proprietary data, trade secrets, or other information that
14 relates to: (a) A vendor's unique methods of conducting business; (b)
15 data unique to the product or services of the vendor; or (c)
16 determining prices or rates to be charged for services, submitted by
17 any vendor to the department of social and health services for
18 purposes of the development, acquisition, or implementation of state
19 purchased health care as defined in RCW 41.05.011;

20 (12)(a) When supplied to and in the records of the department of
21 commerce:

22 (i) Financial and proprietary information collected from any
23 person and provided to the department of commerce pursuant to RCW
24 43.330.050(8); and

25 (ii) Financial or proprietary information collected from any
26 person and provided to the department of commerce or the office of
27 the governor in connection with the siting, recruitment, expansion,
28 retention, or relocation of that person's business and until a siting
29 decision is made, identifying information of any person supplying
30 information under this subsection and the locations being considered
31 for siting, relocation, or expansion of a business;

32 (b) When developed by the department of commerce based on
33 information as described in (a)(i) of this subsection, any work
34 product is not exempt from disclosure;

35 (c) For the purposes of this subsection, "siting decision" means
36 the decision to acquire or not to acquire a site;

37 (d) If there is no written contact for a period of sixty days to
38 the department of commerce from a person connected with siting,
39 recruitment, expansion, retention, or relocation of that person's

1 business, information described in (a)(ii) of this subsection will be
2 available to the public under this chapter;

3 (13) Financial and proprietary information submitted to or
4 obtained by the department of ecology or the authority created under
5 chapter 70.95N RCW to implement chapter 70.95N RCW;

6 (14) Financial, commercial, operations, and technical and
7 research information and data submitted to or obtained by the life
8 sciences discovery fund authority in applications for, or delivery
9 of, grants under chapter 43.350 RCW, to the extent that such
10 information, if revealed, would reasonably be expected to result in
11 private loss to the providers of this information;

12 (15) Financial and commercial information provided as evidence to
13 the department of licensing as required by RCW 19.112.110 or
14 19.112.120, except information disclosed in aggregate form that does
15 not permit the identification of information related to individual
16 fuel licensees;

17 (16) Any production records, mineral assessments, and trade
18 secrets submitted by a permit holder, mine operator, or landowner to
19 the department of natural resources under RCW 78.44.085;

20 (17)(a) Farm plans developed by conservation districts, unless
21 permission to release the farm plan is granted by the landowner or
22 operator who requested the plan, or the farm plan is used for the
23 application or issuance of a permit;

24 (b) Farm plans developed under chapter 90.48 RCW and not under
25 the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject
26 to RCW 42.56.610 and 90.64.190;

27 (18) Financial, commercial, operations, and technical and
28 research information and data submitted to or obtained by a health
29 sciences and services authority in applications for, or delivery of,
30 grants under RCW 35.104.010 through 35.104.060, to the extent that
31 such information, if revealed, would reasonably be expected to result
32 in private loss to providers of this information;

33 (19) Information gathered under chapter 19.85 RCW or RCW
34 34.05.328 that can be identified to a particular business;

35 (20) Financial and commercial information submitted to or
36 obtained by the University of Washington, other than information the
37 university is required to disclose under RCW 28B.20.150, when the
38 information relates to investments in private funds, to the extent
39 that such information, if revealed, would reasonably be expected to
40 result in loss to the University of Washington consolidated endowment

1 fund or to result in private loss to the providers of this
2 information; (~~and~~)

3 (21) Market share data submitted by a manufacturer under RCW
4 70.95N.190(4); (~~and~~)

5 (22) Financial information supplied to the department of
6 financial institutions or to a portal under RCW 21.20.883, when filed
7 by or on behalf of an issuer of securities for the purpose of
8 obtaining the exemption from state securities registration for small
9 securities offerings provided under RCW 21.20.880 or when filed by or
10 on behalf of an investor for the purpose of purchasing such
11 securities; and

12 (23) Financial, commercial, and proprietary information submitted
13 to the department of ecology pursuant to section 21 of this act.

14 **Sec. 25.** RCW 43.21B.110 and 2013 c 291 s 33 are each amended to
15 read as follows:

16 (1) The hearings board shall only have jurisdiction to hear and
17 decide appeals from the following decisions of the department, the
18 director, local conservation districts, the air pollution control
19 boards or authorities as established pursuant to chapter 70.94 RCW,
20 local health departments, the department of natural resources, the
21 department of fish and wildlife, the parks and recreation commission,
22 and authorized public entities described in chapter 79.100 RCW:

23 (a) Civil penalties imposed pursuant to RCW 18.104.155,
24 70.94.431, 70.105.080, 70.107.050, section 11 of this act, 76.09.170,
25 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
26 90.56.310, 90.56.330, and 90.64.102.

27 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
28 43.27A.190, 70.94.211, 70.94.332, 70.105.095, section 11 of this act,
29 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

30 (c) A final decision by the department or director made under
31 chapter 183, Laws of 2009.

32 (d) Except as provided in RCW 90.03.210(2), the issuance,
33 modification, or termination of any permit, certificate, or license
34 by the department or any air authority in the exercise of its
35 jurisdiction, including the issuance or termination of a waste
36 disposal permit, the denial of an application for a waste disposal
37 permit, the modification of the conditions or the terms of a waste
38 disposal permit, or a decision to approve or deny an application for
39 a solid waste permit exemption under RCW 70.95.300.

1 (e) Decisions of local health departments regarding the grant or
2 denial of solid waste permits pursuant to chapter 70.95 RCW.

3 (f) Decisions of local health departments regarding the issuance
4 and enforcement of permits to use or dispose of biosolids under RCW
5 70.95J.080.

6 (g) Decisions of the department regarding waste-derived
7 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
8 decisions of the department regarding waste-derived soil amendments
9 under RCW 70.95.205.

10 (h) Decisions of local conservation districts related to the
11 denial of approval or denial of certification of a dairy nutrient
12 management plan; conditions contained in a plan; application of any
13 dairy nutrient management practices, standards, methods, and
14 technologies to a particular dairy farm; and failure to adhere to the
15 plan review and approval timelines in RCW 90.64.026.

16 (i) Any other decision by the department or an air authority
17 which pursuant to law must be decided as an adjudicative proceeding
18 under chapter 34.05 RCW.

19 (j) Decisions of the department of natural resources, the
20 department of fish and wildlife, and the department that are
21 reviewable under chapter 76.09 RCW, and the department of natural
22 resources' appeals of county, city, or town objections under RCW
23 76.09.050(7).

24 (k) Forest health hazard orders issued by the commissioner of
25 public lands under RCW 76.06.180.

26 (l) Decisions of the department of fish and wildlife to issue,
27 deny, condition, or modify a hydraulic project approval permit under
28 chapter 77.55 RCW.

29 (m) Decisions of the department of natural resources that are
30 reviewable under RCW 78.44.270.

31 (n) Decisions of an authorized public entity under RCW 79.100.010
32 to take temporary possession or custody of a vessel or to contest the
33 amount of reimbursement owed that are reviewable by the hearings
34 board under RCW 79.100.120.

35 (2) The following hearings shall not be conducted by the hearings
36 board:

37 (a) Hearings required by law to be conducted by the shorelines
38 hearings board pursuant to chapter 90.58 RCW.

1 (b) Hearings conducted by the department pursuant to RCW
2 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
3 90.44.180.

4 (c) Appeals of decisions by the department under RCW 90.03.110
5 and 90.44.220.

6 (d) Hearings conducted by the department to adopt, modify, or
7 repeal rules.

8 (3) Review of rules and regulations adopted by the hearings board
9 shall be subject to review in accordance with the provisions of the
10 administrative procedure act, chapter 34.05 RCW.

11 **Sec. 26.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to
12 read as follows:

13 (1) The hearings board shall only have jurisdiction to hear and
14 decide appeals from the following decisions of the department, the
15 director, local conservation districts, the air pollution control
16 boards or authorities as established pursuant to chapter 70.94 RCW,
17 local health departments, the department of natural resources, the
18 department of fish and wildlife, the parks and recreation commission,
19 and authorized public entities described in chapter 79.100 RCW:

20 (a) Civil penalties imposed pursuant to RCW 18.104.155,
21 70.94.431, 70.105.080, 70.107.050, section 11 of this act, 76.09.170,
22 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
23 90.56.310, 90.56.330, and 90.64.102.

24 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
25 43.27A.190, 70.94.211, 70.94.332, 70.105.095, section 11 of this act,
26 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

27 (c) Except as provided in RCW 90.03.210(2), the issuance,
28 modification, or termination of any permit, certificate, or license
29 by the department or any air authority in the exercise of its
30 jurisdiction, including the issuance or termination of a waste
31 disposal permit, the denial of an application for a waste disposal
32 permit, the modification of the conditions or the terms of a waste
33 disposal permit, or a decision to approve or deny an application for
34 a solid waste permit exemption under RCW 70.95.300.

35 (d) Decisions of local health departments regarding the grant or
36 denial of solid waste permits pursuant to chapter 70.95 RCW.

37 (e) Decisions of local health departments regarding the issuance
38 and enforcement of permits to use or dispose of biosolids under RCW
39 70.95J.080.

1 (f) Decisions of the department regarding waste-derived
2 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
3 decisions of the department regarding waste-derived soil amendments
4 under RCW 70.95.205.

5 (g) Decisions of local conservation districts related to the
6 denial of approval or denial of certification of a dairy nutrient
7 management plan; conditions contained in a plan; application of any
8 dairy nutrient management practices, standards, methods, and
9 technologies to a particular dairy farm; and failure to adhere to the
10 plan review and approval timelines in RCW 90.64.026.

11 (h) Any other decision by the department or an air authority
12 which pursuant to law must be decided as an adjudicative proceeding
13 under chapter 34.05 RCW.

14 (i) Decisions of the department of natural resources, the
15 department of fish and wildlife, and the department that are
16 reviewable under chapter 76.09 RCW, and the department of natural
17 resources' appeals of county, city, or town objections under RCW
18 76.09.050(7).

19 (j) Forest health hazard orders issued by the commissioner of
20 public lands under RCW 76.06.180.

21 (k) Decisions of the department of fish and wildlife to issue,
22 deny, condition, or modify a hydraulic project approval permit under
23 chapter 77.55 RCW.

24 (l) Decisions of the department of natural resources that are
25 reviewable under RCW 78.44.270.

26 (m) Decisions of an authorized public entity under RCW 79.100.010
27 to take temporary possession or custody of a vessel or to contest the
28 amount of reimbursement owed that are reviewable by the hearings
29 board under RCW 79.100.120.

30 (2) The following hearings shall not be conducted by the hearings
31 board:

32 (a) Hearings required by law to be conducted by the shorelines
33 hearings board pursuant to chapter 90.58 RCW.

34 (b) Hearings conducted by the department pursuant to RCW
35 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
36 90.44.180.

37 (c) Appeals of decisions by the department under RCW 90.03.110
38 and 90.44.220.

39 (d) Hearings conducted by the department to adopt, modify, or
40 repeal rules.

1 (3) Review of rules and regulations adopted by the hearings board
2 shall be subject to review in accordance with the provisions of the
3 administrative procedure act, chapter 34.05 RCW.

4 **Sec. 27.** RCW 70.235.010 and 2010 c 146 s 1 are each amended to
5 read as follows:

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

8 (1) "Carbon dioxide equivalents" means a metric measure used to
9 compare the emissions from various greenhouse gases based upon their
10 global warming potential.

11 (2) "Climate advisory team" means the stakeholder group formed in
12 response to executive order 07-02.

13 (3) "Climate impacts group" means the University of Washington's
14 climate impacts group.

15 (4) "Department" means the department of ecology.

16 (5) "Director" means the director of the department.

17 (6) "Greenhouse gas" and "greenhouse gases" includes carbon
18 dioxide, methane, nitrogen trifluoride nitrous oxide,
19 hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, other
20 fluorinated greenhouse gases, and any other gas or gases designated
21 by the department by rule.

22 (7) "Person" means an individual, partnership, franchise holder,
23 association, corporation, a state, a city, a county, or any
24 subdivision or instrumentality of the state.

25 (8) "Program" means the department's climate change program.

26 (~~(9) "Western climate initiative" means the collaboration of~~
27 ~~states, Canadian provinces, Mexican states, and tribes to design a~~
28 ~~multisector market-based mechanism as directed under the western~~
29 ~~regional climate action initiative signed by the governor on February~~
30 ~~22, 2007.~~)

31 **Sec. 28.** RCW 70.94.151 and 2010 c 146 s 2 are each amended to
32 read as follows:

33 (1) The board of any activated authority or the department, may
34 classify air contaminant sources, by ordinance, resolution, rule or
35 regulation, which in its judgment may cause or contribute to air
36 pollution, according to levels and types of emissions and other
37 characteristics which cause or contribute to air pollution, and may
38 require registration or reporting or both for any such class or

1 classes. Classifications made pursuant to this section may be for
2 application to the area of jurisdiction of such authority, or the
3 state as a whole or to any designated area within the jurisdiction,
4 and shall be made with special reference to effects on health,
5 economic and social factors, and physical effects on property.

6 (2) Except as provided in subsection (3) of this section, any
7 person operating or responsible for the operation of air contaminant
8 sources of any class for which the ordinances, resolutions, rules or
9 regulations of the department or board of the authority, require
10 registration or reporting shall register therewith and make reports
11 containing information as may be required by such department or board
12 concerning location, size and height of contaminant outlets,
13 processes employed, nature of the contaminant emission and such other
14 information as is relevant to air pollution and available or
15 reasonably capable of being assembled. In the case of emissions of
16 greenhouse gases as defined in RCW 70.235.010 the department shall
17 adopt rules requiring reporting of those emissions. The department or
18 board may require that such registration or reporting be accompanied
19 by a fee, and may determine the amount of such fee for such class or
20 classes: PROVIDED, That the amount of the fee shall only be to
21 compensate for the costs of administering such registration or
22 reporting program which shall be defined as initial registration and
23 annual or other periodic reports from the source owner providing
24 information directly related to air pollution registration, on-site
25 inspections necessary to verify compliance with registration
26 requirements, data storage and retrieval systems necessary for
27 support of the registration program, emission inventory reports and
28 emission reduction credits computed from information provided by
29 sources pursuant to registration program requirements, staff review,
30 including engineering or other reliable analysis for accuracy and
31 currentness, of information provided by sources pursuant to
32 registration program requirements, clerical and other office support
33 provided in direct furtherance of the registration program, and
34 administrative support provided in directly carrying out the
35 registration program: PROVIDED FURTHER, That any such registration
36 made with either the board or the department shall preclude a further
37 registration and reporting with any other board or the department,
38 except that emissions of greenhouse gases as defined in RCW
39 70.235.010 must be reported as required under subsection (5) of this
40 section.

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

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

18 This subsection does not apply to a grain warehouse or grain
19 elevator if the warehouse or elevator handles more than ten million
20 bushels of grain annually.

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

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

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

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

34 (5)(a) The department shall adopt rules requiring persons to
35 report emissions of greenhouse gases as defined in RCW 70.235.010
36 where those emissions from a single facility, (~~source, or site,~~) or
37 from the sale of electricity or fossil fuels sold in Washington by a
38 single supplier, meet or exceed ten thousand metric tons of carbon
39 dioxide equivalent annually. The (~~department may phase in the~~
40 ~~requirement to report greenhouse gas emissions until the reporting~~

1 ~~threshold in this subsection is met, which must occur by January 1,~~
2 ~~2012)) rules adopted by the department must support implementation of~~
3 ~~the program created in section 3 of this act.~~ In addition, the rules
4 must require that:

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

8 ~~((Reporting will start in 2010 for 2009 emissions.))~~ Each
9 annual report must include emissions data for the preceding calendar
10 year and must be submitted to the department by ~~((October 31st))~~
11 April 10th of the year in which the report is due. ~~((However,~~
12 ~~starting in 2011, a person who is required to report greenhouse gas~~
13 ~~emissions to the United States environmental protection agency under~~
14 ~~40 C.F.R. Part 98, as adopted on September 22, 2009, must submit the~~
15 ~~report required under this section to the department concurrent with~~
16 ~~the submission to the United States environmental protection agency.~~
17 ~~Except as otherwise provided in this section, the data for emissions~~
18 ~~in Washington and any corrections thereto that are reported to the~~
19 ~~United States environmental protection agency must be the emissions~~
20 ~~data reported to the department; and~~

21 ~~((iii))~~ Emissions of carbon dioxide associated with the complete
22 combustion or oxidation of liquid motor vehicle fuel, special fuel,
23 or aircraft fuel that is sold in Washington where the annual
24 emissions associated with that combustion or oxidation equal or
25 exceed ten thousand metric tons be reported to the department. Each
26 person who is required to file periodic tax reports of motor vehicle
27 fuel sales under RCW 82.36.031 or special fuel sales under RCW
28 82.38.150, or each distributor of aircraft fuel required to file
29 periodic tax reports under RCW 82.42.040 must report to the
30 department the annual emissions of carbon dioxide from the complete
31 combustion or oxidation of the fuels listed in those reports as sold
32 in the state of Washington. The department shall not require
33 suppliers to use additional data to calculate greenhouse gas
34 emissions other than the data the suppliers report to the department
35 of licensing. The rules may allow this information to be aggregated
36 when reported to the department. The department and the department of
37 licensing shall enter into an interagency agreement to ensure
38 proprietary and confidential information is protected if the
39 departments share reported information. Any proprietary or
40 confidential information exempt from disclosure when reported to the

1 ~~department of licensing is exempt from disclosure when shared by the~~
2 ~~department of licensing with the department under this provision))~~
3 Electric power entities and persons filing an abbreviated report must
4 submit their annual report for the preceding year by June 1st.

5 (b)(i) ~~((Except as otherwise provided in this subsection, the~~
6 ~~rules adopted by the department under (a) of this subsection must be~~
7 ~~consistent with the regulations adopted by the United States~~
8 ~~environmental protection agency in 40 C.F.R. Part 98 on September 22,~~
9 ~~2009))~~ The department may allow facility operators without a
10 compliance obligation under section 10 of this act to submit an
11 abbreviated report. Abbreviated reports must be consistent with full
12 reports, but may use less stringent monitoring, calculation, and
13 verification methods.

14 (ii) The department may by rule include additional gases to the
15 definition of "greenhouse gas" in RCW 70.235.010 only if the gas has
16 been designated as a greenhouse gas by the United States congress
17 ~~((or)),~~ by the United States environmental protection agency, or
18 included in external greenhouse gas emission trading programs where
19 Washington has a linkage agreement in effect pursuant to section 17
20 of this act. Prior to including additional gases to the definition of
21 "greenhouse gas" in RCW 70.235.010, the department shall notify the
22 appropriate committees of the legislature. ~~((Decisions to amend the~~
23 ~~rule to include additional gases must be made prior to December 1st~~
24 ~~of any year and the amended rule may not take effect before the end~~
25 ~~of the regular legislative session in the next year.))~~

26 (iii) The department may by rule exempt persons who are required
27 to report greenhouse gas emissions to the United States environmental
28 protection agency and who emit less than ten thousand metric tons
29 carbon dioxide equivalent annually.

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

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

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

38 (B) Needed to ensure consistency with emissions reporting
39 requirements for jurisdictions with a linkage agreement pursuant to
40 section 17 of this act. ((However,))

1 (ii) The department shall not amend its rules in a manner that
2 conflicts with ~~((a) of)~~ this ~~((subsection))~~ section.

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

6 (e) The fee provisions in subsection (2) of this section apply to
7 reporting of emissions of greenhouse gases. Persons required to
8 report under (a) of this subsection who fail to report or pay the fee
9 required in subsection (2) of this section are subject to enforcement
10 penalties under this chapter. The department shall enforce the
11 reporting rule requirements ~~((unless it approves a local air
12 authority's request to enforce the requirements for persons operating
13 within the authority's jurisdiction. However, neither the department
14 nor a local air authority approved under this section are authorized
15 to assess enforcement penalties on persons required to report under
16 (a) of this subsection until six months after the department adopts
17 its reporting rule in 2010))~~. When a person that holds a compliance
18 obligation under section 10 of this act fails to submit an emission
19 data report or fails to obtain a positive emissions data verification
20 statement in accordance with (g)(iii) of this subsection, the
21 department must develop an assigned emissions level for that person.

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

35 (g) ~~The ((inclusion or failure to include any person, source,
36 classes of persons or sources, or types of emissions of greenhouse
37 gases into the department's rules for reporting under this section
38 does not indicate whether such a person, source, or category is
39 appropriate for inclusion in state, regional, or national greenhouse
40 gas reduction programs or strategies. Furthermore, aircraft fuel~~

1 ~~purchased in the state may not be considered equivalent to aircraft~~
2 ~~fuel combusted in the state))~~ department must establish by rule the
3 methods of verifying the accuracy of emissions reports.

4 (i) Verification requirements apply to persons required to report
5 under (a) of this subsection with emissions that equal or exceed
6 twenty-five thousand metric tons of carbon dioxide equivalent
7 emissions, including carbon dioxide from biomass-derived fuels, or to
8 persons who have a compliance obligation under section 10 of this act
9 in any year of the current compliance period.

10 (ii) Persons subject to verification must obtain third-party
11 verification services for that report from a verification body
12 accredited by the department. The verification body must not have a
13 conflict of interest when verifying the reporting person's report.

14 (iii) Persons are responsible for ensuring that verification
15 services are completed and verification statements must be submitted
16 by the verification body to the department by September 1st each year
17 for emissions data for the preceding calendar year.

18 (h)(i) The definitions in RCW 70.235.010 apply throughout this
19 subsection (5) unless the context clearly requires otherwise.

20 (ii) For the purpose of this subsection (5), the term "supplier"
21 includes: (A) ~~((A motor vehicle fuel supplier or a motor vehicle fuel~~
22 ~~importer, as those terms are defined in RCW 82.36.010; (B) a special~~
23 ~~fuel supplier or a special fuel importer, as those terms are defined~~
24 ~~in RCW 82.38.020; and (C) a distributor of aircraft fuel, as those~~
25 ~~terms are defined in RCW 82.42.010))~~ Suppliers of fuels that produce,
26 import, or deliver, or any combination of producing, importing, or
27 delivering, a quantity of fuel in Washington that, if completely
28 combusted, oxidized, or used in other processes, would result in the
29 release of greenhouse gases equivalent to or higher than the
30 threshold established under (a) of this subsection; and (B) suppliers
31 of carbon dioxide that produce, import, or deliver a quantity of
32 carbon dioxide in Washington that, if released, would result in
33 emissions equivalent to or higher than the threshold established
34 under (a) of this subsection.

35 (iii) For the purpose of this subsection (5), the term "person"
36 includes: (A) An owner or operator(~~(, as those terms are defined by~~
37 ~~the United States environmental protection agency in its mandatory~~
38 ~~greenhouse gas reporting regulation in 40 C.F.R. Part 98, as adopted~~
39 ~~on September 22, 2009))~~ of a facility; ((and)) (B) a supplier; or (C)
40 an electric power entity.

1 (iv) For the purpose of this subsection (5), the term "facility"
2 includes facilities that directly emit greenhouse gases in Washington
3 equivalent to the threshold established under (a) of this subsection
4 with at least one source category listed in the United States
5 environmental protection agency's mandatory greenhouse gas reporting
6 regulation, 40 C.F.R. Part 98 Subparts C through II and RR through
7 UU, as adopted on April 25, 2011, except for the following source
8 categories: (A) Municipal solid waste landfills; (B) industrial waste
9 landfills; (C) industrial wastewater treatment; and (D) manure
10 management.

11 (v) For the purpose of this subsection (5), the term "electric
12 power entity" includes any of the following that supply electric
13 power in Washington with associated emissions of greenhouse gases
14 equal to or above the threshold established under (a) of this
15 subsection: (A) Electricity importers and exporters; (B) retail
16 providers, including multijurisdictional retail providers; (C)
17 federal power market agencies; and (D) first jurisdictional
18 deliverers, as defined in section 2 of this act, not otherwise
19 included here.

20 NEW SECTION. Sec. 29. Except where explicitly stated otherwise,
21 nothing in this chapter limits any state agency authority as it
22 existed prior to the effective date of this section. This act
23 supercedes the provisions of RCW 70.235.005 to the extent that
24 section is inconsistent with the provisions of this chapter.

25 NEW SECTION. Sec. 30. This act may be known and cited as the
26 carbon pollution accountability act.

27 NEW SECTION. Sec. 31. Sections 1 through 12, 15 through 23, and
28 29 of this act constitute a new chapter in Title 70 RCW and must be
29 codified immediately following chapter 70.235 RCW.

30 NEW SECTION. Sec. 32. Section 25 of this act expires June 30,
31 2019.

32 NEW SECTION. Sec. 33. Section 26 of this act takes effect June
33 30, 2019.

1 NEW SECTION. **Sec. 34.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 35.** This act is necessary for the immediate
6 preservation of the public peace, health, or safety, or support of
7 the state government and its existing public institutions, and takes
8 effect immediately.

--- END ---