

AN ACT Relating to implementing Washington's participation in a regional cap-and-trade program for reducing greenhouse gas emissions; amending RCW 70.94.151; amending RCW 70.235.005 and RCW 70.235.010; and creating new sections in RCW 70.235.

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

Sec. 1. RCW 70.235.005 and 2008 c 14 § 1 are each amended to read as follows:

(1) The legislature finds that Washington has long been a national and international leader on energy conservation and environmental stewardship, including air quality protection, renewable energy development and generation, emission standards for fossil-fuel based energy generation, energy efficiency programs, natural resource conservation, vehicle emission standards, and the use of biofuels. Washington is also unique among most states in that in addition to its commitment to reduce emissions of greenhouse gases, it has established goals to grow the clean energy sector and reduce the state's expenditures on imported fuels.

~~((2) The legislature further finds that Washington should continue its leadership on climate change policy by creating accountability for achieving the emission reductions established in RCW 70.235.020, participating in the design of a regional multisector market based system to help achieve those emissions reductions, assisting other market strategies to reduce emissions of greenhouse gases, and ensuring the state has a well trained workforce for our clean energy future.))~~

~~((3))~~(2) It is the intent of the legislature that the state will: (a) Limit and reduce emissions of greenhouse gases consistent with the emission reductions established in RCW 70.235.020; (b) minimize the potential to export pollution, jobs, and economic opportunities; and (c) reduce emissions at the lowest cost to Washington's economy, consumers, and businesses.

~~((4))~~(3) ~~((In the event the state elects to participate in a regional multisector market based system, it is the intent of the legislature that the system will become effective by January 1, 2012, after authority is provided to the department for its implementation.))~~The legislature finds that ~~((B))~~by acting now, Washington businesses and citizens will have adequate time and opportunities to be well positioned to take advantage of the low-carbon economy by developing a well trained work force and making necessary investments in low-carbon technology. Acting now also provides Washington businesses with predictability, drives investment in the new clean energy economy, positions Washington businesses to receive credit for early reductions of greenhouse gases, and will protect Washington citizens' interests in the development of any federal cap-and-trade program.

(4) The legislature finds that the regional cap-and-trade program is necessary to meet the greenhouse gas emission reductions established in RCW 70.235.020 and the job creation goals established in this section. It is therefore the intent of the legislature that Washington participate in the regional cap-and-trade program.

(5) It is also the intent of the legislature that the regional cap-and-trade program recognize Washington's unique emissions portfolio, including the state's hydroelectric system, the opportunities presented by Washington's abundant forest resources and agriculture land, ~~((and))~~ the state's leadership in energy efficiency and the actions it has already taken that have reduced its generation of greenhouse gas emissions, and that entities receive appropriate credit for early actions to reduce greenhouse gases.

(6) The legislature recognizes the importance of linking to or participating in a federal cap-and-trade program, should one be implemented.

~~((6))~~(7) If any revenues that accrue to the state are created by ((a market system)) the regional cap-and-trade program, they must be used to further the state's efforts to achieve the emission reduction requirements goals established in RCW 70.235.020, address the impacts of global warming on affected habitats, species, and communities, and increase investment in the clean energy economy, particularly for communities and workers that have been disproportionately affected by economic downturns. ((suffered from heavy job losses and chronic unemployment and underemployment.))

(8) The legislature finds that a well-functioning market is the least-cost path to achieving the state's statutory greenhouse gas reductions and that the market must be designed to prevent manipulation and avoid excessive speculation.

Sec. 2. RCW 70.235.010 and 2008 c 14 §2 are each amended to read as follows:

(1) "Allowance" means a limited authorization, issued by a jurisdiction participating in the western climate initiative or otherwise recognized by the department as having as rigorous a greenhouse gas cap-and-trade program, to emit up to one metric ton of a greenhouse gas as measured in carbon dioxide equivalents. An "allowance" is not a property right.

(2) "Allowance cap" means Washington's share of allowances from the total number of allowances available to the jurisdictions in the western climate initiative.

(3) "Banking" means the carry over of unused allowances or offsets from one compliance period to another.

(4) "Borrowing" means using allowances from a future compliance period to meet a current compliance obligation.

(5) "Capped region" means jurisdictions including Washington that are participating in the cap-and-trade program developed through the western climate initiative, and jurisdictions in other governmentally-approved cap-and-trade programs that link to the program developed through the western climate initiative.

~~((4))~~(6) "Carbon dioxide equivalents" means a metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential.

~~((2))~~(7) “Climate advisory team” means the stakeholder group formed in response to executive order 07-02.

~~((3))~~(8) “Climate impacts group” means the University of Washington’s climate impacts group.

(9) “Compliance obligation” means the requirement to turn in to the department the number of allowances or offset credits equal to the person’s emissions during the compliance period.

(10) “Compliance period” means the time period during which emissions are covered under the program and subject to the compliance obligation.

~~((4))~~(11) “Department” means the department of ecology.

~~((5))~~(12) “Direct emissions” means emissions of greenhouse gases from sources of emissions, including stationary combustion sources, mobile combustion emissions, process emissions, and fugitive emissions.

~~((6))~~(13) “Director” means the director of the department.

(14) “Early reduction allowance” means an allowance for reductions in greenhouse gas emissions that occur after January 1, 2008 and before January 1, 2012 and that are approved by the department.

(15) “Electric utility” means an electric utility as defined in RCW 80.80.010(11).

(16) “Emission threshold” means the greenhouse gas emission level at or above which a particular entity or facility has a compliance obligation.

~~((7))~~(17) “Greenhouse gas” and “greenhouse gases” includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

~~((8))~~(18) “Indirect emissions” means emissions of greenhouse gases associated with the purchase of electricity, heating, cooling, or steam.

(19) “Offset project” means a project that reduces or removes greenhouse gas emissions that meets the criteria established by the department and where the emissions would not otherwise be subject to coverage under the program.

(20) “Offset credit” means a credit that verifies and confirms the reduction or removal of greenhouse gases by an offset project that can be used to meet a compliance obligation.

~~((9))~~(21) “Person or persons” means an individual, partnership, franchise holder, association, corporation, a state, a city, a county, or any subdivision or instrumentality of the state.

(22) “Point of regulation” means the person with the compliance obligation that is covered under the program.

~~((10))~~(23) “Program” means the regional cap-and-trade program developed and implemented under this chapter~~((-department’s climate change program))~~.

(24) “Retire” means to invalidate an allowance or offset credit such that the allowance or offset credit may never be sold or otherwise used again.

~~((11))~~(25) “Total emissions of greenhouse gases” means all direct and all indirect emissions.

(26) “Transportation fuel” means any carbon based, combustible gas or liquid used for the propulsion of on-road or off-road equipment and vehicles. “Transportation fuel” does not include fuel for use by aircraft, trains, or marine vessels and does not include biofuels as that term is defined in RCW 43.325.010(4).

~~((12))~~(27) “Western climate initiative” means the collaboration of states, Canadian provinces, Mexican states, and tribes to design a regional cap-and-trade program as directed under the western regional climate action initiative signed by the governor on February 22, 2007.

NEW SECTION. Sec. 3. Annual Allowance Caps

(1) The program shall include annual allowance caps that together with other complementary policies will ensure that Washington will meet the emission reduction requirements in RCW 70.235.020.

(2) The allowance caps for each year from 2012 to 2020 will be set in advance of the program start in 2012. Allowance caps for each year after 2020 will be set not less than three years in advance of the start of the next compliance period.

(3) The allowance caps shall decline each year until Washington’s greenhouse gas emissions are reduced as required by RCW 70.235.020.

(4) The allowance cap for 2012 will be set based on the department’s best estimate of the expected actual emissions covered by the program in that year.

(5) The allowance cap for 2015 will be increased by the department’s best estimate of expected new emissions to be included in the program in that year, after the annual reduction is made to the cap.

(6) The allowance caps shall not take into account the early reduction allowances in Section 4, subsection (5)(b).

(7) Washington shall designate 1% of its 2012 allowance cap for reallocation of a portion of the 2012 regional cap to Washington. A portion of the reallocation may be made available to Washington based on a formula that shall take into account the following factors:

- (a) production and consumption of electricity megawatt hours within each western climate initiative jurisdiction;
 - (b) population growth within the western climate initiative jurisdictions; and
 - (c) Washington's share of total western climate initiative jurisdictions' emissions of greenhouse gases in 2001 through 2005.
- (8) The allowance cap may also be adjusted as necessary to account for expansion of the capped region through linkage to other governmentally approved cap-and-trade programs, changes in coverage under the program or discovery of incorrect or inaccurate data used to determine the allowance cap.

NEW SECTION. Sec. 4. Issuing and Retiring Allowances

(1) The department shall issue allowances that can be used to meet a compliance obligation under this chapter. Except for early reduction allowances, the number of allowances issued by the department may not exceed the allowance cap for any given year or compliance period.

(2) Upon receipt by the department of an allowance to meet a compliance obligation, the department shall retire the allowance.

(3) The department shall ensure that all allowances that it issues are tracked so that the department knows who holds a given allowance and when it is retired.

(4) The department may accept any allowance to satisfy a compliance obligation as long as the allowances issued outside Washington meet criteria established by the department in rule. However, the total number of allowances accepted from jurisdictions outside of the western climate initiative may be limited in accordance with a formula set by the department.

(5) The department shall also include in rules implementing the program:

- (a) A schedule for distributing Washington's allowances;
- (b) Criteria for qualifying for an early reduction allowance;
- (c) A process for allowances to be banked, such as limitations on the number of allowances any one party may hold or control; and
- (d) Restrictions or prohibitions on borrowing allowances.

NEW SECTION. Sec. 5. Distribution of Allowances

(1) The department shall distribute Washington's allowances as follows:

- (a) For the compliance period 2012 through 2014:

(i) A total of ten percent of the state's allowance cap for the compliance period shall be periodically sold at regionally conducted auctions subject to legislative approval required in Section 8;

(ii) All electric utilities that are covered by the program shall receive allowances free of charge based on historical emissions after the annual reduction is made to the cap. If a utility sells any allowances it receives free of charge, all proceeds from such sales must be used

(A) for investments in energy efficiencies at the utility or for energy efficiencies for its customers

(B) to develop or otherwise ensure the supply of renewable energy; or

(C) to reduce the energy costs borne by the utility's low-income customers.

(iii) Except for allowances that are set aside as described in subsections 4 and 5 of this section, the balance of the state's allowance cap shall be distributed to persons with a compliance obligation free of charge based on historical emissions.

(iv) The department shall develop a formula for allocating the allowances under this subsection if it expects that there will be fewer allowances than emissions.

(v) In 2012, the department shall make a one-time distribution of allowances to each electric utility based on its production and consumption of electricity megawatt hours. The allowances for this distribution shall come from the adjustment to the state's 2012 allowance cap provided for in Section 3(7) provided the state receives additional allowances as a result of the adjustment. The department shall develop a formula to prorate these allowances to each electric utility.

(b) For the compliance periods ending in 2017 and 2020:

(i) Ten percent of the state's total allowance cap for the compliance period plus all allowances associated with the inclusion of transportation fuels into the program in 2015 shall be periodically sold at regionally conducted auctions subject to the legislative approval required in Section 8;

(ii) All electric utilities that are covered by the program shall receive allowances free of charge based on historical emissions after the annual reduction is made to the cap. If a utility sells any allowances it receives free of charge, all proceeds from such sales must be used

(A) for investments in energy efficiencies at the utility or for energy efficiencies for its customers;

(B) to develop or otherwise ensure the supply of renewable energy; or

(C) to reduce the energy costs borne by the utility's low-income customers.

(iii) Except for allowances that are set aside as described in subsections (4) and (5) of this section, the balance of the state's allowance cap shall be distributed to persons with a compliance obligation, free of charge based on historical emissions, except that for emissions associated with the inclusion of residential, commercial and industrial fuels that are first brought into the program in 2015, distribution shall be based on the average emissions associated with the combustion of the amount of fuel sold during the previous five years.

(iv) The department shall develop a formula for allocating the allowances under this subsection if it expects that there will be fewer allowances than emissions.

(2) Proceeds from the sale of free allowances by investor-owned utilities are subject to review by the Washington Utilities and Transportation Commission to ensure compliance with this section. Proceeds from the sale of free allowances by non-investor owned electric utilities are subject to review by the Office of the State Auditor to ensure compliance with this section.

(3) For the years after 2020, the department shall review and recommend a distribution method for legislative review and approval in 2018.

(4) The department may by rule set aside and allocate a percentage of allowances from Washington's allowance cap for purposes specified in the rule such as new entrants doing business in Washington or hydroelectric generation where the department determines there has been a low water period.

(5) The department may by rule provide allowances from Washington's allowance cap to persons who have made greenhouse gas emissions reductions that do not qualify for early reduction allowances.

NEW SECTION. Sec. 6. Program Coverage

(1) In 2012, the program shall cover emissions that meet or exceed 25,000 metric tons of carbon dioxide equivalents from:

- (a) electricity that is generated or consumed within the state;
- (b) combustion at industrial and commercial facilities; and
- (c) industrial processes.

(2) In addition to the emission covered above in subsection (1), in 2015, the program shall cover emissions that meet or exceed 25,000 metric tons of carbon dioxide equivalents from:

- (a) transportation fuel combustion;
- (b) residential fuel combustion; and

(c) fuel delivered or sold for industrial and commercial combustion where the fuel is used by persons not otherwise covered by the program in 2012.

(3) By rule, the department:

(a) Shall determine the person who has the compliance obligation for covered emissions. However, for emissions associated with the combustion of fuels that are included in the program for the first time in 2015, the person with the compliance obligation shall not be the end user of the fuel.

(b) May expand the program to include emissions below the 25,000 metric ton threshold or beyond the scope identified within (1) and (2), as necessary to ensure consistency of coverage in the program;

(c) Shall include measures so that persons do not avoid the emissions threshold for coverage, for example, by breaking into separate power deliverers for the primary purpose of avoiding the threshold;

(4) With respect to energy facilities covered under RCW 80.50 and notwithstanding RCW 80.50.120, this act applies to all energy facilities as that term is defined in RCW 80.50.020 Nothing in this chapter shall be construed as conflicting with ch. 80.50 RCW.

NEW SECTION. Sec 7. Ensuring a Functional and Efficient Market

(1) The department shall consult with other jurisdictions in the western climate initiative, Washington state agencies with expertise on markets, and other states and federal agencies that have designed or implemented a market for regulating air pollutants to design a trading market that includes provisions to prevent market manipulation and ensure a functional and efficient market. The design provisions shall include:

(a) requiring or conducting audits, investigations and surveillance of the market;

(b) actions to prohibit conflicts of interest between emitters, verifiers, monitors, auditors, investigators or surveillance persons;

(c) establishment of measures to address market emergencies;

(d) prevention of fraud to the greatest extent possible;

(e) prevention of speculators from unfairly affecting the price of allowances in the program to the greatest extent possible;

(f) issuance of orders, and penalties established by rule, sufficient to address market manipulation;

(g) other conditions or provisions necessary to prevent market manipulation.

(2) Ecology shall refer the most egregious violations to the Attorney General or the county prosecutor for criminal prosecution; and

(3) The department shall provide a report to the legislature by January 15, 2011 on the design of the market that includes an explanation of how manipulation and excessive speculation will be avoided.

NEW SECTION. Sec. 8. Auctions

(1) The department shall develop a design for the auctioning of the state's allowances. In developing the design, the department shall consult with other jurisdictions in the western climate initiative, other states and federal agencies that have been engaged in auctioning of allowances to regulate air pollutants, and other Washington state agencies with expertise on auction design. The department shall submit the design to the legislature for approval no later than December 1, 2010. The submittal must include proposed legislation necessary to implement the design. An estimate of the cost to conduct the auctions and the expected revenues shall also be included.

(2) The auction design shall include the following:

(a) elements that minimize allowance price volatility, guard against bidder collusion, and mitigate the potential for market manipulation

(b) provisions to ensure that bidders are financially able to purchase allowances;

(c) provisions to limit the number of allowances any one party may purchase; and

(d) a flexible process that allows for ongoing modification of the auction design and procedures in response to allowance market conditions and allowance market monitoring data, provided that the process allows for public review and comment.

NEW SECTION. Sec. 9. Offsets

(1) The program shall include authorization for the limited use of offset credits to meet a person's compliance obligation. The department shall by rule set criteria for issuing and accepting offset credits addressed in this section to meet the compliance obligation. One offset credit shall be issued for each metric ton of emissions as measured in carbon dioxide equivalent associated with an offset project.

(2) The department shall issue offset credits for offset projects located in Washington and from any jurisdiction in the United States, Mexico and Canada that is outside the capped region. Priority shall be given to investigating and developing offset protocols or other criteria for projects within the agricultural, forestry, and waste management sectors.

(3) Except as provided in this section, the department may accept offset credits for compliance purposes from developed countries including “Annex 1” countries from the U.N. Framework Convention on Climate Change.

(4) The department may also accept for compliance purposes offset credits from developing countries in accordance with the Clean Development Mechanism of the Kyoto protocol or if the Clean Development Mechanism is replaced, a protocol developed by the department.

(5) Any offset credit that is used to meet a compliance obligation must conform to the rules adopted by the department, no matter which jurisdiction issues the offset credit.

(6) Upon receipt by the department of an offset credit to meet a compliance obligation, the department shall retire the offset credit.

(7) The department shall ensure that all offset credits that it issues are tracked to ensure that the department knows who holds a given offset credit and when it is retired.

NEW SECTION. Sec. 10. Compliance and Enforcement

(1) Persons with emissions covered under section 6 that the department identifies in rule as having a compliance obligation shall submit to the department allowances, offset credits, or a combination thereof equal to their total emissions of greenhouse gases during the compliance period.

(2) Compliance periods shall be three years in length. The department shall establish a date by which all allowances must be turned in to the agency to meet the compliance obligation. The date shall be after the compliance period ends.

(3) For purposes of meeting a compliance obligation, the department shall limit by rule the number of offsets credits that can be submitted. The department may limit by rule the number of allowances from other jurisdictions outside of the western climate initiative, in order to ensure that a majority of emission reductions come from within the jurisdictions participating in the western climate initiative.

(4) If sufficient allowances are not turned in to meet the compliance obligation, a penalty of three allowances shall be submitted for every one allowance that is due. When a person covered under the program knows that it is unable to meet a compliance obligation the person shall immediately notify the department. The department shall issue an order requiring the person to submit the penalty allowances. Failure to submit penalty allowances as required by this subsection, shall result in a penalty of up to \$5,000 for each allowance and penalty allowance that is not submitted.

(5) The department may issue penalties for failure to comply, and orders to require compliance, with the provisions of this act including requiring compliance plans. Except as provided in subsection (4), any person who violates the terms of the act or an order issued under this section

shall incur a penalty of up to ten thousand dollars per day for each day that the person has not complied.

(6) Appeals of orders and penalties issued pursuant to this chapter shall be to the Pollution Control Hearings Board under chapter 43.21B RCW.

(7) The department may exercise its discretion to waive or issue reduced penalties based upon criteria it establishes for violations committed in the first compliance period if the department finds that the violation was inadvertent. Penalties issued under this section are not subject to the requirements of chapter 43.05 RCW.

NEW SECTION. Sec. 11. Dedicated Fund

(1) The Climate Improvement Account is created in the state treasury. To the account shall be deposited any funds received through auction of allowances, penalties paid under [sec. 10] of this chapter and any other funds as the legislature directs.

(2) Funds from the account are subject to appropriation under chapter 43.88 RCW and can only be used for the following purposes:

(a) providing for worker transition and creating green jobs, especially in and for those communities and workers that have been disproportionately affected by economic downturns;

(b) energy efficiency and renewable energy incentives;

(c) promoting emission reductions and carbon sequestration in agriculture, forestry, and other uncapped sources;

(d) reducing consumer price impacts, especially for low-income consumers;

(e) research, development, demonstrations, and deployment of technology to reduce greenhouse gas emissions with particular emphasis on carbon capture and storage;

(f) recognizing early actions to reduce greenhouse gas emissions;

(g) community-wide efforts funded by local governments to reduce greenhouse gas emissions;

(h) adaptation to climate change impacts; and

(i) administrative costs of implementing and enforcing cap-and-trade program including the payment of reasonable administrative fees to the regional organization described in [section 12] of this act.

NEW SECTION. Sec. 12. Regional Organization

(1) The director is authorized to enter into an agreement with representatives of other jurisdictions within the capped region for the formation of an organization, including a non-profit corporation, that may carry out the following administrative functions:

- (a) coordination of a regional auction of allowances;
- (b) tracking of emissions and providing of public information about progress towards the regional greenhouse gas reduction goals;
- (c) monitoring and reporting on market activity, including potential market manipulation;
- (d) serving as a forum for jurisdictions within the capped region to update one another on program progress;
- (e) coordination of review and adoption of protocols for offsets;
- (f) coordination of review and adoption of updated reporting protocols for greenhouse gas emissions;
- (g) coordination of review and issuance of offset credits; and
- (h) suggesting criteria and means to accredit service providers to deliver validation and verification services.

(2) Any agreement entered into under this section must include provisions for Washington to exercise oversight of the organization, including authority to audit the organization's finances and records. The agreement must also authorize Washington to withdraw from the agreement without penalty if the organization fails to meet its obligations under the agreement.

(3) An organization formed under this section is not a state agency and shall have no regulatory or enforcement authority

(4) Nothing in this act shall be deemed to constitute a waiver of the Washington's sovereign immunity. By entering into any agreement or arrangement authorized under this section, neither the director nor his designees nor Washington consents to suit outside of Washington or consents to the governance of such suit under any law other than that of Washington.

NEW SECTION. Sec. 13. Coordinated Release of Information

(1) The department shall compile and post for public information annual summaries of greenhouse gas emissions covered by the program. In order to limit price volatility and prevent manipulation of the market public posting of the summaries and underlying data may be subject to a temporary embargo by the department prior to a common posting schedule developed in coordination with other jurisdictions within the western climate initiative. Prior to the common posting date, the summaries and underlying data are exempt from public disclosure under chapter 42.56 RCW.

NEW SECTION. Sec. 14.

(1) The department shall adopt rules to implement the program described in this act. The rules shall include all requirements of this act and shall require that Washington's participation in the program will begin on January 1, 2012. The rules must be developed in coordination with other jurisdictions participating in the western climate initiative.

(2) The department's rules must be adopted no later than December 31, 2010. The rules shall not go into effect until May 1, 2011.

NEW SECTION. Sec. 15. Federal cap –and-trade program.

The department may modify the rules developed under this act as needed to link to or participate in a federal cap-and-trade program. If the legislature determines that Washington's participation in the regional cap-and-trade program should be terminated in favor of participation in a federal program, the department may repeal rules developed under this act using the process for expedited rulemaking under RCW 34.05.353. Nothing in this subsection prevents Washington from participating in a federal program.

NEW SECTION. Sec. 16. 2008 c 14 § 4, RCW 70.235.030, shall expire May 1, 2012.

NEW SECTION. Sec. 17. Sections 3 through 16 of this act are each added to chapter 70.235 RCW.

Sec. 18. RCW 70.94.151 and 2008 c 14 §5 are each amended as follows:

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

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

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

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

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

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

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

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

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

(5)(a) The department shall adopt rules requiring the reporting of emissions of greenhouse gases as defined in RCW [70.235.010](#). The rules must include a de minimis amount of emissions below which reporting will not be required for both indirect and direct emissions. The rules must require that emissions of greenhouse gases resulting from the burning of fossil fuels be reported separately from emissions of greenhouse gases resulting from the burning of biomass.

(b) Except as provided in (g) of this subsection, the department shall, under the authority granted in subsection (1) of this section, adopt rules requiring (i) any owner or operator (≠ (i) ⊖) of a fleet of on-road motor vehicles that as a fleet emit at least twenty-five hundred metric tons of greenhouse gas annually in the state to report the emissions of greenhouse gases generated from or emitted by that fleet; and (ii) any owner or operator of a source or combination of sources that emit at least ten thousand metric tons of greenhouse gas annually in the state to report their total annual emissions of greenhouse gases; and (iii) the importer, seller, deliverer or distributor of electricity from outside Washington for consumption in Washington to report the emissions of greenhouse gases associated with the generation of the electricity delivered into the state; and (iv) the importer, seller, deliverer or distributor of fuels for use in Washington to report the emissions of greenhouse gases associated with the combustion of those fuels. Reporting required in subsections (b)(i) and (b)(ii) must begin in 2010 for emissions in 2009. Reporting required in subsections (b)(iii) and (b)(iv) must begin in 2013 for emissions in 2012. In the rule, the person or persons in subsection (5)(b)(iii) and (iv) who must report shall be consistent with the person with the compliance obligation under the cap-and-trade program established under [Section 10].

(c) In calculating emissions of greenhouse gases for purposes of determining whether or not reporting is required, only direct emissions shall be included. For purposes of reporting emissions of greenhouse gases in chapter 14, Laws of 2008, "source" means any stationary source as defined in RCW [70.94.030](#), or mobile source used for transportation of people or cargo. The emissions of greenhouse gases must be reported as carbon dioxide equivalents.

(d) The rules must require that persons report 2009 emissions starting in 2010. The rules must establish an annual reporting schedule that takes into account the time needed to allow the owner or operator reporting emissions of greenhouse gases to gather the information needed and to verify the emissions being reported. However, in no event may reports be submitted later than October 31st of the year in which the report is due.

~~(e)~~ The department may phase in the reporting requirements for sources or combinations of sources under (b)(ii) of this subsection until the reporting threshold is met, which must be met by January 1, 2012. The department may from time to time amend the rules to include other persons that emit less than the annual greenhouse gas emissions levels set out in this subsection if necessary to comply with any federal reporting requirements for emissions of greenhouse gases.

~~((b))~~(f) In its rules, the department may defer the reporting requirement under (b) of this subsection for emissions associated with interstate and international commercial aircraft, rail, truck, or marine vessels until (i) there is a federal requirement to report these emissions; or (ii) the department finds that there is a generally accepted reporting protocol for determining interstate emissions from these sources.

~~((e))~~(g) The department shall share any reporting information reported to it with the local air authority in which the owner or operator reporting under the rules adopted by the department operates.

~~((d))~~(h) The fee provisions in subsection (2) of this section apply to reporting of emissions of greenhouse gases. Owners and operators required to report under (a) of this subsection who fail to report or pay the fee required in subsection (2) of this section are subject to enforcement penalties under this chapter. The department shall enforce the reporting rule requirements unless it approves a local air authority's request to enforce the requirements for sources operating within the authority's jurisdiction.

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

~~((f))~~(j) In developing its rules, the department shall, with the assistance of the department of transportation, identify a mechanism to report an aggregate estimate of the annual emissions of greenhouse gases generated from or emitted by otherwise unreported on-road motor vehicles.

~~((j))~~(k) The inclusion or failure to include any person, source, classes of persons or sources, or types of emissions of greenhouse gases into the department's rules for reporting under this section does not indicate whether such a person, source, or category is appropriate for inclusion in the multisector market-based system designed under RCW [70.235.020](#).

~~((h))~~(l) Should the federal government adopt rules sufficient to track progress toward the emissions reductions required by chapter 14, Laws of 2008 governing the reporting of greenhouse gases, the department shall amend its rules, as necessary, to seek consistency with the federal rules to ensure duplicate reporting is not required. Nothing in this section requires the

department to increase the reporting threshold established in (a) of this subsection or otherwise require the department's rules be identical to the federal rules in scope.

~~((+))~~(m) The definitions in RCW [70.235.010](#) apply throughout this subsection (5) unless the context clearly requires otherwise. The definition of “person” in RCW 70.94.030 shall apply to this section.

(n) In addition to other enforcement authority under this chapter, the department may levy penalties for violations of this subsection on a per day basis, for each day that emissions are not reported beyond the deadline established in the rule to report.

Sec. 19. RCW 43.21B.110 is amended as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, and the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, or local health departments:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, [70.235](#), 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and 90.56.330.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, [70.235](#), 70.105.095, 86.16.020, 88.46.070, 90.14.130, 90.48.120, and 90.56.330.

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

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

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

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

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

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

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

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

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

(c) Proceedings conducted by the department, or the department's designee, under RCW 90.03.160 through 90.03.210 or 90.44.220.

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

(e) Appeals of decisions by the department as provided in chapter 43.21L RCW.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW.