
Environment & Energy Committee

HB 2401

Brief Description: Providing for the responsible management of refrigerant gases with a higher global warming potential than carbon dioxide that are used in appliances or other infrastructure.

Sponsors: Representatives Duerr, Doglio, Berry, Fitzgibbon, Ramel and Pollet.

<p>Brief Summary of Bill</p> <ul style="list-style-type: none">• Requires producers of bulk refrigerants and precharged appliances to participate in and implement a refrigerant gas stewardship program.
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Hearing Date: 1/22/24

Staff: Jacob Lipson (786-7196).

Background:

Extended Producer Responsibility and Product Stewardship Programs.

The Legislature has enacted laws that require the establishment of product stewardship programs for the management of five types of products: (1) electronic products; (2) light bulbs that contain mercury, such as compact fluorescent lights; (3) photovoltaic solar panels; (4) pharmaceuticals; and (5) paint.

In general, the state's product stewardship programs require producers to participate in a stewardship organization or program that is responsible for the collection, transport, and end-of-life management of covered products. The Department of Ecology (Ecology) is responsible for the oversight of the state's product stewardship programs, with the exception of the Pharmaceutical Stewardship Program, which is overseen by the Department of Health.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Hydrofluorocarbon and Refrigerant Regulations.

Hydrofluorocarbons (HFCs) are a category of gases used primarily as refrigerants in a variety of commercial and industrial applications. Hydrofluorocarbons are among the greenhouse gases (GHGs) identified by the United States Environmental Protection Agency (EPA) and Ecology as a result of their capacity to trap heat in the earth's atmosphere. According to the EPA, the global warming potential (GWP) of HFCs and other GHGs is measured as a function of how much of the gas is concentrated in the atmosphere, how long the gas stays in the atmosphere, and how strongly the particular gas affects global atmospheric temperatures. Under state law, the GWP of GHGs are measured in terms of their equivalence to the emission of an identical volume of carbon dioxide over a 100-year timeframe.

In recent years, the Legislature has established a number of new regulatory programs to restrict emissions of HFCs and other refrigerants. Refrigerant emission restrictions include:

- a requirement that repair or disposal services of refrigeration equipment use refrigerant extraction equipment to recover unused refrigerants;
- prohibiting the willful release of refrigerants from air conditioning, heating and refrigeration systems, and consumer appliances;
- establishing a maximum global warming potential for refrigerants in numerous categories of uses, including foam-blowing agents like polyurethane or spray foam, refrigeration equipment, and air conditioning equipment; and
- establishing a refrigerant management program to reduce refrigerant emissions from larger stationary refrigeration systems and larger commercial air conditioning systems.

Ecology has adopted rules to implement many of these requirements, including establishing required service practices for persons performing the installation, maintenance, service, repair, or disposal of a refrigeration or air conditioning system with a charge of at least 50 pounds and that uses a refrigerant with a GWP of at least 150.

As a result of legislation enacted in 2021 Ecology submitted a report to the Legislature that provided recommendations on the design of a program to address end-of-life management and disposal of refrigerants. Ecology determined in its report that a more extensive stakeholder process would be needed in order to develop recommendations for an optimal design for an end-of-life refrigerant management program. Ecology also recommended that an end-of-life refrigerant management program be based on a number of enumerated principles, including that the program address refrigerants as well as refrigerant-containing equipment and appliances.

Other.

Under the Federal Clean Air Act, the EPA has adopted regulations to maximize the recapture and recycling of refrigerants during the maintenance, service, repair, and disposal of appliances and motor vehicle air conditioning systems. The EPA regulations require the certification of technicians that service, repair, or dispose of equipment that could release refrigerants, who must

pass a test to become certified.

Washington imposes a Business and Occupation tax (B&O tax) on the gross receipts of business activities conducted within the state. Business and Occupation tax revenues are deposited into the State General Fund. There are several categories of B&O tax rates that apply to businesses engaged in different activities. State law provides for a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Legislation that establishes or expands a tax preference must include a Tax Preference Performance Statement that identifies the public policy objective of the preference, as well as specific metrics that the Joint Legislative Audit and Review Committee can use to evaluate the effectiveness of the preference.

The Pollution Control Hearings Board (PCHB) is an appeals board with jurisdiction to hear appeals of certain decisions, orders, and penalties issued by Ecology and several other state agencies. Parties aggrieved by a PCHB decision may obtain subsequent judicial review.

Summary of Bill:

Refrigerant Stewardship Organization Participation and Plan Submission Requirements.

Producers who sell or otherwise enter into commerce bulk covered refrigerants or equipment, including air conditioning, refrigeration, and heat pump equipment, containing a covered refrigerant (precharged equipment) join a refrigerant stewardship organization (RSO) or serve as its own RSO by directly implementing a stewardship plan for covered refrigerants. Key terms establishing the parameters for RSO activities include:

- Covered refrigerants are defined as fluorinated refrigerant gases that are regulated under other state law restrictions on refrigerants, including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs).
- The producer of a bulk refrigerant is the person who is the first point of sale of the refrigerant in or into Washington.
- Producers of precharged equipment are defined as a product manufacturer, brand owner, licensee of a brand or trademark, importer, or distributor of the precharged equipment.

Significant implementation deadlines applicable to a refrigerant stewardship organization include:

- by January 1, 2025, registration with the Department of Ecology (Ecology) through an RSO, and participation in and funding of the operations of an RSO;
- beginning July 1, 2025, producers that do not participate in an RSO are prohibited from selling bulk covered refrigerants or precharged equipment in or into Washington;
- by July 1, 2027, entities that are not producers but that sell, distribute, or enter into commerce bulk covered refrigerants after an initial point of sale in Washington must register with an RSO. These nonproducer participants may include distributors, wholesalers, reclaimers, and service technicians;
- by January 1, 2028, producers must participate in an approved RSO plan;

- the RSO must submit a plan by July 1, 2028 to Ecology for approval; and
- by January 1, 2029, producers through the RSO must implement an Ecology-approved plan.

Ecology may approve an RSO plan that addresses specified components. Ecology may also amend a plan submitted for approval to render it in compliance with a significant requirement and require an RSO to implement the amended plan. Timelines and processes for the submission to Ecology and approval of RSO plans are specified. Plans must be updated no less than every five years, or when required by Ecology upon certain significant changes, including a change to the method of financing plan implementation.

If multiple RSO plans are approved, the RSOs must coordinate on specified aspects of plan implementation, including education and outreach and on the reimbursement of RSOs to avoid inequitable subsidization of one RSO by another RSO.

Charges to Fund Program Costs, and Financial Incentives for Refrigerant Recovery.

The RSO must ensure that adequate funding is available to fully implement its stewardship plan, including all costs of collection, transportation, processing, education, administration, and agency reimbursement. The RSO must reimburse collection site costs associated with the program.

The RSO must develop and implement a system to collect charges from participating producers to cover the costs of plan implementation in an equitable, environmentally sound, and socially just manner. The system of charges must use a standard per-mass unit assessment applied based on the volume of covered refrigerants introduced into Washington, as bulk refrigerants or in precharged equipment:

- the initial rate in 2029 must be at least \$7 per pound of covered refrigerant introduced by a producer; and
- in subsequent years, the RSO may propose an adjustment of this amount to Ecology for approval, or Ecology may adjust the per-producer rate based on its assessment of refrigerant recovery rates achieved by the program.

Beginning in 2031, the standard per-mass unit assessment may be converted by the RSO or Ecology to an assessment weighted based on the GWP of introduced gases. The system of charges to producers must also use eco-modulated fees to encourage lower environmental impacts of covered refrigerants.

The RSO must propose in its plan and carry out a financial incentive for each mass unit of refrigerant furnished to the program for management. This financial incentive may be of a different value than the per-mass unit charge to producers that begins at \$7 per pound in 2029. The RSO must demonstrate that the financial incentive will be sufficient to incentivize use of the program by service technicians and to discourage illegal dumping or venting. The financial incentive payment may vary, and may consider the volume of refrigerant furnished to the

program, the type and purity of recovered refrigerants, and whether it is furnished in a manner that facilitates reuse of the refrigerant rather than its destruction.

Nonproducer participants may not be required to fund the RSO, but may receive financial incentives aimed at enhancing refrigerant recovery.

Program Performance Goals, Collection and Management, and Education and Outreach Requirements.

The RSO must achieve a 70 percent annual recovery rate of covered refrigerants by 2032, and must set reasonable interim annual performance targets in its plan. Ecology must review interim annual performance targets, and may adjust the annual recovery rates in years subsequent to 2032 with a goal of optimizing refrigerant recovery. Ecology must publish an annual report assessing the performance of the RSO in October of each year, following the submission of an annual report to Ecology by the RSO. The RSO is not authorized to cease collection activities based on the achievement of the performance target.

The RSO must provide for the collection of covered refrigerants without charging a fee for collection, but with the payment of the required financial incentives to service technicians. At minimum, collection must occur through:

- at least one permanent collection site in each county, unless Ecology grants an infeasibility waiver based on the RSO determining that no distributor, wholesaler, or service provider exists to provide a collection site, and no local government or retail establishments will voluntarily serve as a collection site, in which case a county may be served by at least two collection events each year; and
- existing commercial sites operated by distributors and wholesalers of covered refrigerants who participate in the RSO. Distributors and wholesalers must offer sites as program collection sites for recovered bulk covered refrigerants.

In addition, retail establishments that sell precharged equipment, and local government and nonprofit household hazardous waste facilities may serve as collection locations, but are not required to do so. Retail establishments may not sell precharged equipment unless the producer of the covered refrigerant is a member of the RSO.

The RSO and its contractors must manage covered refrigerants in a manner consistent with best practices consistent with the United States Environmental Protection Agency's refrigerant management regulations and Ecology-adopted rules governing refrigerant service practices.

The goal of the program must not be to incentivize refrigerant destruction, but as the use of hydrofluorocarbon refrigerants phases down, beginning in 2035 Ecology may by rule set an incentive for the destruction of covered refrigerants.

The RSO must carry out specified promotional activities in support of plan implementation, such as educational materials towards service technician and to be used at the point of sale for

precharged equipment. Retail establishments must provide information to customers regarding the available end-of-life management options for refrigerants. The RSO must provide educational materials to retail establishments for their use. The RSO must carry out an awareness survey of the program's nonproducer participants, and must share the results with Ecology.

Other.

Beginning in 2030, the RSO must submit an annual report to Ecology containing specified information about program implementation. Ecology must review annual reports and determine whether to approve the annual report as complete. Refrigerant distributors and wholesalers must report specified information to the RSO, beginning in 2029. Nonproducer participants must maintain records needed by the RSO to fulfill annual reporting requirements. The RSO must also submit a quarterly list of participating producers to Ecology.

Ecology must implement, administer, and enforce requirements related to RSO operations. Ecology must adopt rules to implement requirements by December 31, 2027. Beginning in 2028, Ecology must identify projected annual costs related to RSO oversight and enforcement, and must notify the RSO of fee amounts due each year to Ecology for oversight and enforcement.

Ecology may impose civil penalties of up to \$1,000 per day for initial violations, or \$10,000 per day for subsequent violations. Prior to imposing penalties, Ecology must provide a written warning and a 30-day period to come into compliance. Ecology may take actions additional to the issuance of penalties, such as the issuance of corrective action orders or the revocation of a RSO's plan approval, if a RSO fails to meet a significant requirement. Penalties and Ecology-issued orders are appealable to the Pollution Control Hearings Board. Penalties are to be deposited in the Climate Commitment Account.

An RSO may not use collected funds to pay an administrative penalty or appeal an order or penalty for litigation against Washington, to compensate lobbyists, or for paid advertisements encouraging a position on legislation during a previous, current, or upcoming legislative session.

Receipts of an RSO from charges to participating producers are not subject to the state's business and occupation tax (B&O tax). A tax preference performance statement is not required to be prepared for the B&O tax preference.

Producers and RSOs are granted immunity from state antitrust laws in establishing the stewardship program.

Refrigerant stewardship organizations that submit information may request that information or records be kept confidential, and Ecology must grant that request consistent with existing procedures related to confidential information if the action is not detrimental to the public interest.

A severability clause is included.

Appropriation: None.

Fiscal Note: Requested on January 16, 2024.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.