E2SHB 1912 - S COMM AMD
By Committee on Environment, Energy & Technology

ADOPTED AS AMENDED 04/16/2025

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** A new section is added to chapter 70A.65 RCW to read as follows:

(1) By October 1, 2025, the department must post and periodically update on its website a directory tool, by county and, if applicable, city, of the name and address of each retail fuel seller of exempt agricultural fuel under RCW 70A.65.080(7)(e) that has notified the department under subsection (3) of this section including, but not limited to, retail fuel sellers that rely on a cardholder or membership program and exempt fuel purchase aggregators. The department may only identify in the directory entities that make available exempt agricultural fuel under RCW 70A.65.080(7)(e) for purchase at a price that is different than the price of fuel that is not exempt under RCW 70A.65.080(7)(e). The directory tool must allow a user to use a simple search function to find a retail seller of exempt agricultural fuel in a specific jurisdiction within the state.

(2)(a) By October 1, 2025, the department must publish on its website a guide for potentially eligible users of exempt agricultural fuel under RCW 70A.65.080(7)(e) that describes:

(i) In consultation with the department of licensing, the mechanisms by which the exempt fuel user may obtain a remittance; or

(ii) The mechanisms by which the exempt fuel user may purchase exempt fuel including, but not limited to, exempt fuel purchase aggregators and cardholder or membership-based payment options offered by private parties. The information that the department is required to publish under this subsection is limited to information that is voluntarily disclosed by retail fuel sellers or exempt fuel purchase aggregators.

(b) This guide must include a description of the information submission and procedural requirements associated with obtaining a

remittance payment under the remittance program implemented by the department of licensing.

(3) A retail fuel seller including, but not limited to, an exempt fuel purchase aggregator or cardholder or membership-based payment option, may voluntarily notify the department of locations where exempt agricultural fuel under RCW 70A.65.080(7)(e) is available for purchase, including contact information for the location, types of exempt fuel for sale, and the address and latitude and longitude of each location.

(4) Nothing in this section establishes, limits, or otherwise alters the obligation of a person to be a covered or opt-in entity under RCW 70A.65.080, an opt-in entity under RCW 70A.65.090(3), or to report emissions under RCW 70A.15.2200. Nothing in this section makes a fuel seller that is not a covered entity under this chapter subject to the penalties provided in RCW 70A.65.200(5).

(5) It is the intent of the legislature to pair the activities described in this section with a continuation, through the 2025-2027 biennium of the payment program for exempt fuel specified in RCW 70A.65.080(7)(e) implemented by the department of licensing as required by the 2024 supplemental omnibus operating appropriations act, ESSB 5950. It is the intent of the legislature to fund the continuation of the department of licensing's remittance program with all unexpended funds appropriated in the 2024 supplemental omnibus operating appropriations act for purposes of that program. It is the intent of the legislature that the department of licensing's remittance program include payments to farm fuel users who purchased kerosene, liquified petroleum gas (also called propane), or natural gas for agricultural purposes.

(6) For purposes of this section "exempt fuel purchase aggregator" means a for-profit or nonprofit entity that makes exempt agricultural fuel available to customers for purchase at a differential rate than the rate charged for nonexempt fuels, and that has established procedures for verifying that the fuel purchased qualifies as exempt, as well as procedures for tracking and reporting the volumes of exempt fuel sales to covered or opt-in entities from which the aggregator purchases fuel.

Sec. 2. RCW 70A.65.080 and 2024 c 352 s 4 are each amended to read as follows:

(1) A person is a covered entity as of the beginning of the first compliance period and all subsequent compliance periods if the person reported emissions under RCW 70A.15.2200 for any calendar year from 2015 through 2019, or if additional data provided as required by this chapter indicates that emissions for any calendar year from 2015 through 2019 equaled or exceeded any of the following thresholds, or if the person is a first jurisdictional deliverer and imports electricity into the state during the compliance period:

(a) Where the person owns or operates a facility and the facility's emissions equal or exceed 25,000 metric tons of carbon dioxide equivalent;

(b) Where the person is a first jurisdictional deliverer and generates electricity in the state and emissions associated with this generation equals or exceeds 25,000 metric tons of carbon dioxide equivalent;

(c)(i) Where the person is a first jurisdictional deliverer importing electricity into the state and:

(A) For specified sources, the cumulative annual total of emissions associated with the imported electricity exceeds 25,000 metric tons of carbon dioxide equivalent;

(B) For unspecified sources, the cumulative annual total of emissions associated with the imported electricity exceeds 0 metric tons of carbon dioxide equivalent; or

(C) For electricity purchased from a federal power marketing administration pursuant to section 5(b) of the Pacific Northwest electric power planning and conservation act of 1980, P.L. 96-501, if the department determines such electricity is not from a specified source, the cumulative annual total of emissions associated with the imported electricity exceeds 25,000 metric tons of carbon dioxide equivalent.

(ii) In consultation with any linked jurisdiction to the program created by this chapter, by October 1, 2026, the department, in consultation with the department of commerce and the utilities and transportation commission, shall adopt by rule a methodology for addressing imported electricity associated with a centralized electricity market;

(d) Where the person is a supplier of fossil fuel other than natural gas and from that fuel 25,000 metric tons or more of carbon dioxide equivalent emissions would result from the full combustion or oxidation, excluding the amounts for fuel products that are produced

or imported with a documented final point of delivery outside of Washington and combusted outside of Washington; and

(e)(i) Where the person supplies natural gas in amounts that would result in exceeding 25,000 metric tons of carbon dioxide equivalent emissions if fully combusted or oxidized, excluding the amounts for fuel products that are produced or imported with a documented final point of delivery outside of Washington and combusted outside of Washington, and excluding the amounts: (A) Supplied to covered entities under (a) through (d) of this subsection; and (B) delivered to opt-in entities;

(ii) Where the person who is not a natural gas company and has a tariff with a natural gas company to deliver to an end-use customer in the state in amounts that would result in exceeding 25,000 metric tons of carbon dioxide equivalent emissions if fully combusted or oxidized, excluding the amounts: (A) Supplied to covered entities under (a) through (d) of this subsection; and (B) the amounts delivered to opt-in entities;

(iii) Where the person is an end-use customer in the state who directly purchases natural gas from a person that is not a natural gas company and has the natural gas delivered through an interstate pipeline to a distribution system owned by the purchaser in amounts that would result in exceeding 25,000 metric tons of carbon dioxide equivalent emissions if fully combusted or oxidized, excluding the amounts: (A) Supplied to covered entities under (a) through (d) of this subsection; and (B) delivered to opt-in entities.

(2) A person is a covered entity as of the beginning of the second compliance period and all subsequent compliance periods if the person reported emissions under RCW 70A.15.2200 or provided emissions data as required by this chapter for any calendar year from 2023 through 2025, where the person owns or operates a waste to energy facility utilized by a county and city solid waste management program and the facility's emissions equal or exceed 25,000 metric tons of carbon dioxide equivalent.

(3) A person is a covered entity as of the beginning of the third compliance period, and all subsequent compliance periods if the person reported emissions under RCW 70A.15.2200 or provided emissions data as required by this chapter for 2027 or 2028, where the person owns or operates a railroad company, as that term is defined in RCW 81.04.010, and the railroad company's emissions equal or exceed 25,000 metric tons of carbon dioxide equivalent.

(4) When a covered entity reports, during a compliance period, emissions from a facility under RCW 70A.15.2200 that are below the thresholds specified in subsection (1) or (2) of this section, the covered entity continues to have a compliance obligation through the current compliance period. When a covered entity reports emissions below the threshold for each year during an entire compliance period, or has ceased all processes at the facility requiring reporting under RCW 70A.15.2200, the entity is no longer a covered entity as of the beginning of the subsequent compliance period unless the department provides notice at least 12 months before the end of the compliance period that the facility's emissions were within 10 percent of the threshold and that the person will continue to be designated as a covered entity in order to ensure equity among all covered entities. Whenever a covered entity ceases to be a covered entity, the department shall notify the appropriate policy and fiscal committees of the legislature of the name of the entity and the reason the entity is no longer a covered entity.

(5) For types of emission sources described in subsection (1) of this section that begin or modify operation after January 1, 2023, and types of emission sources described in subsection (2) of this section that begin or modify operation after 2027, coverage under the program starts in the calendar year in which emissions from the source exceed the applicable thresholds in subsection (1) or (2) of this section, or upon formal notice from the department that the source is expected to exceed the applicable emissions threshold, whichever happens first. Sources meeting these conditions are required to transfer their first allowances on the first transfer deadline of the year following the year in which their emissions were equal to or exceeded the emissions threshold.

(6) For emission sources described in subsection (1) of this section that are in operation or otherwise active between 2015 and 2019 but were not required to report emissions for those years under RCW 70A.15.2200 for the reporting periods between 2015 and 2019, coverage under the program starts in the calendar year following the year in which emissions from the source exceed the applicable thresholds in subsection (1) of this section as reported pursuant to RCW 70A.15.2200 or provided as required by this chapter, or upon formal notice from the department that the source is expected to exceed the applicable emissions threshold for the first year that source is required to report emissions, whichever happens first.

Sources meeting these criteria are required to transfer their first allowances on the first transfer deadline of the year following the year in which their emissions, as reported under RCW 70A.15.2200 or provided as required by this chapter, were equal to or exceeded the emissions threshold.

(7) The following emissions are exempt from coverage in the program, regardless of the emissions reported under RCW 70A.15.2200 or provided as required by this chapter:

(a) Emissions from the combustion of aviation fuels;

(b) Emissions from watercraft fuels supplied in Washington that are combusted outside of Washington;

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

(d) Carbon dioxide emissions from the combustion of biomass or biofuels;

(e)(i) Motor vehicle fuel or special fuel that is used exclusively for agricultural purposes by a farm fuel user. This exemption is available only if a buyer of motor vehicle fuel or special fuel provides the seller with an exemption certificate in a form and manner prescribed by the department. ((~~For the purposes of this subsection, "agricultural purposes" and "farm fuel user" have the same meanings as provided in RCW 82.08.865.~~)) Prior to January 1, 2030, this exemption is available whether motor vehicle fuel or special fuel is used to propel a motor vehicle or not, but beginning January 1, 2030, this exemption only applies to motor vehicle fuel or special fuel that the farm fuel user uses to propel a motor vehicle.

(ii) The department must determine a method for expanding the exemption provided under (e)(i) of this subsection to include fuels used for the purpose of transporting agricultural products on public highways. The department must maintain this expanded exemption ((~~for a period of five years~~)) until December 31, 2029, in order to provide the agricultural sector with a feasible transition period.

(iii) For the purposes of this subsection:

(A) "Agricultural purposes" and "farm fuel user" have the same meanings as provided in RCW 82.08.865;

(B) "Motor vehicle fuel" means gasoline, the chief use of which is as a fuel for the propulsion of motor vehicles or vessels; and

(C) "Special fuel" means diesel and biodiesel;

(f) Emissions from facilities with North American industry classification system code 92811 (national security); and

(g) Emissions from municipal solid waste landfills that are subject to, and in compliance with, chapter 70A.540 RCW.

(8) The department shall not require multiple covered entities to have a compliance obligation for the same emissions. The department may by rule authorize refineries, fuel suppliers, facilities using natural gas, and natural gas utilities to provide by agreement for the assumption of the compliance obligation for fuel or natural gas supplied and combusted in the state. The department must be notified of such an agreement at least 12 months prior to the compliance obligation period for which the agreement is applicable.

(9)(a) The legislature intends to promote a growing and sustainable economy and to avoid leakage of emissions from manufacturing to other locations. The legislature further intends to see innovative new businesses locate and grow in Washington that contribute to Washington's prosperity and environmental objectives.

(b) Consistent with the intent of the legislature to avoid the leakage of emissions to other jurisdictions, in achieving the state's greenhouse gas limits in RCW 70A.45.020, the state, including lead agencies under chapter 43.21C RCW, shall pursue the limits in a manner that recognizes that the siting and placement of new or expanded best-in-class facilities with lower carbon emitting processes is in the economic and environmental interests of the state of Washington.

(c) In conducting a life-cycle analysis, if required, for new or expanded facilities that require review under chapter 43.21C RCW, a lead agency must evaluate and attribute any potential net cumulative greenhouse gas emissions resulting from the project as compared to other existing facilities or best available technology including best-in-class facilities and emerging lower carbon processes that supply the same product or end use. The department may adopt rules to determine the appropriate threshold for applying this analysis.

(d) Covered emissions from an entity that is or will be a covered entity under this chapter may not be the basis for denial of a permit for a new or expanded facility. Covered emissions must be included in the analysis undertaken pursuant to (c) of this subsection. Nothing in this subsection requires a lead agency or a permitting agency to approve or issue a permit to a permit applicant, including to a new or expanded fossil fuel project.

(e) A lead agency under chapter 43.21C RCW or a permitting agency shall allow a new or expanded facility that is a covered entity or opt-in entity to satisfy a mitigation requirement for its covered emissions under this chapter and under any greenhouse gas emission mitigation requirements for covered emissions under chapter 43.21C RCW by submitting to the department the number of compliance instruments equivalent to its covered emissions during a compliance period.

NEW SECTION. **Sec. 3.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

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On page 1, line 2 of the title, after "act;" strike the remainder of the title and insert "amending RCW 70A.65.080; adding a new section to chapter 70A.65 RCW; and declaring an emergency."

EFFECT: (1) Defines "motor vehicle fuel" to mean gasoline, the chief use of which is as a fuel for the propulsion of motor vehicles or vessels; and "special fuel" to mean diesel and biodiesel.

(2) Provides that the exemption relating to motor vehicle fuel or special fuel used exclusively for agricultural purposes by a farm fuel user is available whether the fuel is used to propel a motor vehicle or not until January 1, 2030, and after that date, it only applies to fuel used to propel a motor vehicle.

(3) Removes proposed language relating to the Department of Commerce providing financial incentives or removing financial barriers to retail fuel sellers for making exempt fuels available for purchase at a price different from that for nonexempt fuels.

(4) Provides legislative intent to include payments to farm fuel users who purchased kerosene, propane, or natural gas for agricultural purposes in the remittance program administered by the Department of Licensing.

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