

Chapter 70A.535 RCW
TRANSPORTATION FUEL—CLEAN FUELS PROGRAM

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RCW 70A.535.005 Findings—Intent—2021 c 317. (1) The legislature finds that rapid innovations in low carbon transportation technologies, including electric vehicles and clean transportation fuels, are at the threshold of widespread commercial deployment. In order to help prompt the use of clean fuels, other states have successfully implemented programs that reduce the carbon intensity of their transportation fuels. California and Oregon have both implemented low carbon fuel standards that are similar to the program created in chapter 317, Laws of 2021, and both states have experienced biofuel sector growth and have successfully sited large biofuel projects that had originally been planned for Washington. Washington state has extensively studied the potential impact of a clean fuels program, and most projections show that a low carbon fuel standard would decrease greenhouse gas and conventional air pollutant emissions, while positively impacting the state's economy.

(2) The legislature further finds that the health and welfare of the people of the state of Washington is threatened by the prospect of crumbling or swamped coastlines, rising water, and more intense forest

fires caused by higher temperatures and related droughts, all of which are intensified and made more frequent by the volume of greenhouse gas emissions. As of 2017, the transportation sector contributes 45 percent of Washington's greenhouse gas emissions, and the legislature's interest in the life cycle of the fuels used in the state arises from a concern for the effects of the production and use of these fuels on Washington's environment and public health, including its air quality, snowpack, and coastline.

(3) Therefore, it is the intent of the legislature to support the deployment of clean transportation fuel technologies through a carefully designed program that reduces the carbon intensity of fuel used in Washington, in order to:

(a) Reduce levels of conventional air pollutants from diesel and gasoline that are harmful to public health;

(b) Reduce greenhouse gas emissions associated with transportation fuels, which are the state's largest source of greenhouse gas emissions; and

(c) Create jobs and spur economic development based on innovative clean fuel technologies. [2021 c 317 s 1.]

Severability—2021 c 317: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. In the event that there is litigation on the provisions of section 3(6) of this act or any other provision of this act, it is the intent of the legislature that the remainder of the act shall continue to be enforced and if such provisions are held invalid, the remainder of the act shall not be affected." [2021 c 317 s 31.]

RCW 70A.535.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Alternative jet fuel" means a fuel that can be blended and used with conventional petroleum jet fuels without the need to modify aircraft engines and existing fuel distribution infrastructure, and that have a lower carbon intensity than the applicable annual carbon intensity standard in Table 2 of WAC 173-424-900, as it existed on July 1, 2023. Alternative jet fuel includes jet fuels derived from coprocessed feedstocks at a conventional petroleum refinery.

(2) "Carbon dioxide equivalents" has the same meaning as defined in RCW 70A.45.010.

(3) "Carbon intensity" means the quantity of life-cycle greenhouse gas emissions, per unit of fuel energy, expressed in grams of carbon dioxide equivalent per megajoule (gCO₂e/MJ).

(4) "Clean fuels program" means the requirements established under this chapter.

(5) "Cost" means an expense connected to the manufacture, distribution, or other aspects of the provision of a transportation fuel product.

(6) "Credit" means a unit of measure generated when a transportation fuel with a carbon intensity that is less than the applicable standard adopted by the department under RCW 70A.535.025 is produced, imported, or dispensed for use in Washington, such that one credit is equal to one metric ton of carbon dioxide equivalents. A

credit may also be generated through other activities consistent with this chapter.

(7) "Deficit" means a unit of measure generated when a transportation fuel with a carbon intensity that is greater than the applicable standard adopted by the department under RCW 70A.535.025 is produced, imported, or dispensed for use in Washington, such that one deficit is equal to one metric ton of carbon dioxide equivalents.

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

(9) "Electric utility" means a consumer-owned utility or investor-owned utility, as those terms are defined in RCW 19.29A.010.

(10) "Greenhouse gas" has the same meaning as defined in RCW 70A.45.010.

(11) "Military tactical vehicle" means a motor vehicle owned by the United States department of defense or the United States military services and that is used in combat, combat support, combat service support, tactical or relief operations, or training for such operations.

(12) "Motor vehicle" has the same meaning as defined in RCW 46.04.320.

(13) "Price" means the amount of payment or compensation provided as consideration for a specified quantity of transportation fuel by a consumer or end user of the transportation fuel.

(14) "Regulated party" means a producer or importer of any amount of a transportation fuel that is ineligible to generate credits under this chapter.

(15)(a) "Tactical support equipment" means equipment using a portable engine, including turbines, that meets military specifications, owned by the United States military services or its allies, and that is used in combat, combat support, combat service support, tactical or relief operations, or training for such operations.

(b) "Tactical support equipment" includes, but is not limited to, engines associated with portable generators, aircraft start carts, heaters, and lighting carts.

(16) "Transportation fuel" means electricity and any liquid or gaseous fuel sold, supplied, offered for sale, or used for the propulsion of a motor vehicle or that is intended for use for transportation purposes. [2023 c 232 s 2; 2022 c 182 s 409; 2021 c 317 s 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2023 c 232 ss 1-7: "Sections 1 through 7 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2023." [2023 c 232 s 16.]

Intent—2023 c 232: "The legislature intends to use funds from the climate commitment act to promote the production and use of sustainable aviation fuels, thereby growing the clean energy sector, addressing greenhouse gas emissions, and creating family wage manufacturing jobs in Washington. Sustainable aviation fuels represent the most significant near and midterm opportunity for aviation to reduce its greenhouse gas emissions. The use of sustainable aviation fuels will also improve air quality for airport workers and communities surrounding airports. While many efforts are underway to

advance the use of sustainable aviation fuels, this act is intended to assist and accelerate those efforts." [2023 c 232 s 1.]

Automatic expiration date exemption—2023 c 232: See note following RCW 82.04.287.

Effective date—2022 c 182 ss 313, 408-414, and 421: See note following RCW 82.21.030.

Intent—2022 c 182: See note following RCW 70A.65.240.

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

RCW 70A.535.025 Carbon intensity in transportation fuels—Standards to reduce carbon intensity—Adoption of rules—Monthly calculation. (1) The department shall adopt rules that establish standards that reduce carbon intensity in transportation fuels used in Washington. The standards established by the rules must be based on the carbon intensity of gasoline and gasoline substitutes and the carbon intensity of diesel and diesel substitutes. The standards:

(a) Must reduce the overall, aggregate carbon intensity of transportation fuels used in Washington;

(b) May only require carbon intensity reductions at the aggregate level of all transportation fuels and may not require a reduction in carbon intensity to be achieved by any individual type of transportation fuel;

(c) Must assign a compliance obligation to fuels whose carbon intensity exceeds the standards adopted by the department, consistent with the requirements of RCW 70A.535.030; and

(d) Must assign credits that can be used to satisfy or offset compliance obligations to fuels whose carbon intensity is below the standards adopted by the department and that elect to participate in the program, consistent with the requirements of RCW 70A.535.030.

(2) The clean fuels program adopted by the department must be designed such that:

(a) Regulated parties generate deficits and may reconcile the deficits, and thus comply with the clean fuels program standards for a compliance period, by obtaining and retiring credits;

(b) Regulated parties and credit generators may generate credits for fuels used as substitutes or alternatives for gasoline or diesel;

(c) Regulated parties, credit generators, and credit aggregators shall have opportunities to trade credits; and

(d) Regulated parties shall be allowed to carry over to the next compliance period a small deficit without penalty.

(3) The department shall, throughout a compliance period, regularly monitor the availability of fuels needed for compliance with the clean fuels program.

(4) (a) Under the clean fuels program, the department shall monthly calculate the volume-weighted average price of credits and, no later than the last day of the month immediately following the month for which the calculation is completed, post the formula and the nonaggregated data the department used for the calculation and the results of the calculation on the department's website.

(b) In completing the calculation required by this subsection, the department may exclude from the data set credit transfers without

a price or other credit transfers made for a price that falls two standard deviations outside of the mean credit price for the month. Data posted on the department's website under this section may not include any individually identifiable information or information that would constitute a trade secret.

(5) (a) Except as provided in this section, the rules adopted under this section must reduce the greenhouse gas emissions attributable to each unit of the fuels to 20 percent below 2017 levels by 2038 based on the following schedule:

(i) No more than 0.5 percent each year in 2023 and 2024;

(ii) No more than an additional one percent each year beginning in 2025 through 2027;

(iii) No more than an additional 1.5 percent each year beginning in 2028 through 2031; and

(iv) No change in 2032 and 2033.

(b) The rules must establish a start date for the clean fuels program of no later than January 1, 2023.

(6) Beginning with the program year beginning in calendar year 2028, the department may not increase the carbon intensity reductions required by the applicable clean fuels program standard adopted by the department under subsection (5) of this section beyond a 10 percent reduction in carbon intensity until the department demonstrates that the following have occurred:

(a) At least a 15 percent net increase in the volume of in-state liquid biofuel production and the use of feedstocks grown or produced within the state relative to the start of the program; and

(b) At least one new or expanded biofuel production facility representing an increase in production capacity or producing, in total, in excess of 60,000,000 gallons of biofuels per year has or have received after July 1, 2021, all necessary siting, operating, and environmental permits post all timely and applicable appeals. As part of the threshold of 60,000,000 gallons of biofuel under this subsection, at least one new facility producing at least 10,000,000 gallons per year must have received all necessary siting, operating, and environmental permits. Timely and applicable appeals must be determined by the attorney general's office.

(7) Beginning with the program year beginning in calendar year 2031, the department may not increase the carbon intensity reductions required by the applicable clean fuels program standard adopted by the department under subsection (5) of this section beyond a 10 percent reduction in carbon intensity until the:

(a) Joint legislative audit and review committee report required in RCW 70A.535.140 has been completed; and

(b) 2033 regular legislative session has adjourned, in order to allow an opportunity for the legislature to amend the requirements of this chapter in light of the report required in (a) of this subsection.

(8) Transportation fuels exported from Washington are not subject to the greenhouse gas emissions reduction requirements in this section.

(9) To the extent the requirements of this chapter conflict with the requirements of chapter 19.112 RCW, the requirements of this chapter prevail. [2022 c 182 s 408.]

Effective date—2022 c 182 ss 313, 408-414, and 421: See note following RCW 82.21.030.

Intent—2022 c 182: See note following RCW 70A.65.240.

RCW 70A.535.030 Requirements for rules adopted under RCW 70A.535.025. The rules adopted by the department to achieve the greenhouse gas emissions reductions per unit of fuel energy specified in RCW 70A.535.025 must include, but are not limited to, the following:

(1) Standards for greenhouse gas emissions attributable to the transportation fuels throughout their life cycles, including but not limited to emissions from the production, storage, transportation, and combustion of transportation fuels and from changes in land use associated with transportation fuels and any permanent greenhouse gas sequestration activities.

(a) The rules adopted by the department under this subsection (1) may:

(i) Include provisions to address the efficiency of a fuel as used in a powertrain as compared to a reference fuel;

(ii) Consider carbon intensity calculations for transportation fuels developed by national laboratories or used by similar programs in other states; and

(iii) Consider changes in land use and any permanent greenhouse gas sequestration activities associated with the production of any type of transportation fuel.

(b) The rules adopted by the department under this subsection (1) must:

(i) Neutrally consider the life-cycle emissions associated with transportation fuels with respect to the political jurisdiction in which the fuels originated and may not discriminate against fuels on the basis of having originated in another state or jurisdiction. Nothing in this subsection may be construed to prohibit inclusion or assessment of emissions related to fuel production, storage, transportation, or combustion or associated changes in land use in determining the carbon intensity of a fuel;

(ii) Measure greenhouse gas emissions associated with electricity and hydrogen based on a mix of generation resources specific to each electric utility participating in the clean fuels program. The department may apply an asset-controlling supplier emission factor certified or approved by a similar program to reduce the greenhouse gas emissions associated with transportation fuels in another state;

(iii) Include mechanisms for certifying electricity that has a carbon intensity of zero. This electricity must include, at minimum, electricity:

(A) For which a renewable energy credit or other environmental attribute has been retired or used; and

(B) Produced using a zero emission resource including, but not limited to, solar, wind, geothermal, or the industrial combustion of biomass consistent with RCW 70A.45.020(3), that is directly supplied as a transportation fuel by the generator of the electricity to a metered customer for electric vehicle charging or refueling;

(iv) Allow the generation of credits associated with electricity with a carbon intensity lower than that of standard adopted by the department. The department may not require electricity to have a carbon intensity of zero in order to be eligible to generate credits from use as a transportation fuel; and

(v) Include procedures for setting and adjusting the amounts of greenhouse gas emissions per unit of fuel energy that is assigned to transportation fuels under this subsection.

(c) If the department determines that it is necessary for purposes of accurately measuring greenhouse gas emissions associated with transportation fuels, the department may require transportation fuel suppliers to submit data or information to be used for purposes of calculating greenhouse gas emissions that is different from or additional to the greenhouse gas emissions data reported under *RCW 70A.15.2200(5)(a)(iii).

(d) If the department determines that it is necessary for purposes of accurately measuring greenhouse gas emissions associated with electricity supplied to retail customers or hydrogen production facilities by an electric utility, the department may require electric utilities participating in the clean fuels program to submit data or information to be used for purposes of calculating greenhouse gas emissions that is different from or additional to the fuel mix disclosure information submitted under chapter 19.29A RCW. To the extent practicable, rules adopted by the department may allow data requested of utilities to be submitted in a form and manner consistent with other required state or federal data submissions;

(2) Provisions allowing for the achievement of limits on the greenhouse gas emissions intensity of transportation fuels in RCW 70A.535.025 to be achieved by any combination of credit generating activities capable of meeting such standards. Where such provisions would not produce results counter to the emission reduction goals of the program or prove administratively burdensome for the department, the rules should provide each participant in the clean fuels program with the opportunity to demonstrate appropriate carbon intensity values taking into account both emissions from production facilities and elsewhere in the production cycle, including changes in land use and permanent greenhouse gas sequestration activities;

(3)(a) Methods for assigning compliance obligations and methods for tracking tradable credits. The department may assign the generation of a credit when a fuel with associated life-cycle greenhouse gas emissions that are lower than the applicable per-unit standard adopted by the department under RCW 70A.535.025 is produced, imported, or dispensed for use in Washington, or when specified activities are undertaken that support the reduction of greenhouse gas emissions associated with transportation in Washington;

(b) Mechanisms that allow credits to be traded and to be banked for future compliance periods; and

(c) Procedures for verifying the validity of credits and deficits generated under the clean fuels program;

(4) Mechanisms to elect to participate in the clean fuels program for persons associated with the supply chains of transportation fuels that are eligible to generate credits consistent with subsection (3) of this section, including producers, importers, distributors, users, or retailers of such fuels, and electric vehicle manufacturers;

(5) Mechanisms for persons associated with the supply chains of transportation fuels that are used for purposes that are exempt from the clean fuels program compliance obligations including, but not limited to, fuels used by aircraft, vessels, railroad locomotives, and other exempt fuels specified in RCW 70A.535.040, to elect to participate in the clean fuels program by earning credits for the production, import, distribution, use, or retail of exempt fuels with

associated life-cycle greenhouse gas emissions lower than the per-unit standard established in RCW 70A.535.025;

(6) Mechanisms that allow for the assignment of credits to an electric utility for electricity used within its utility service area, at minimum, for residential electric vehicle charging or fueling;

(7) Cost containment mechanisms.

(a) Cost containment mechanisms must include the credit clearance market specified in subsection (8) of this section and may also include, but are not limited to:

(i) Procedures similar to the credit clearance market required in subsection (8) of this section that provide a means of compliance with the clean fuels program requirements in the event that a regulated person has not been able to acquire sufficient volumes of credits at the end of a compliance period; or

(ii) Similar procedures that ensure that credit prices do not significantly exceed credit prices in other jurisdictions that have adopted similar programs to reduce the carbon intensity of transportation fuels.

(b) Any cost containment mechanisms must be designed to provide financial disincentive for regulated persons to rely on the cost containment mechanism for purposes of program compliance instead of seeking to generate or acquire sufficient credits under the program.

(c) The department shall harmonize the program's cost containment mechanisms with the cost containment rules in the states specified in RCW 70A.535.060(1).

(d) The department shall consider mechanisms such as the establishment of a credit price cap or other alternative cost containment measures if deemed necessary to harmonize market credit costs with those in the states specified in RCW 70A.535.060(1);

(8) (a) (i) A credit clearance market for any compliance period in which at least one regulated party reports that the regulated party has a net deficit balance at the end of the compliance period, after retirement of all credits held by the regulated party, that is greater than a small deficit. A regulated party described by this subsection is required to participate in the credit clearance market.

(ii) If a regulated party has a small deficit at the end of a compliance period, the regulated party shall notify the department that it will achieve compliance with the clean fuels program during the compliance period by either: (A) Participating in a credit clearance market; or (B) carrying forward the small deficit.

(b) For the purposes of administering a credit clearance market required by this section, the department shall:

(i) Allow any regulated party, credit generator, or credit aggregator that holds excess credits at the end of the compliance period to voluntarily participate in the credit clearance market as a seller by pledging a specified number of credits for sale in the market;

(ii) Require each regulated party participating in the credit clearance market as purchaser of credits to:

(A) Have retired all credits in the regulated party's possession prior to participating in the credit clearance market; and

(B) Purchase the specified number of the total pledged credits that the department has determined are that regulated party's pro rata share of the pledged credits;

(iii) Require all sellers to:

(A) Agree to sell pledged credits at a price no higher than a maximum price for credits;

(B) Accept all offers to purchase pledged credits at the maximum price for credits; and

(C) Agree to withhold any pledged credits from sale in any transaction outside of the credit clearance market until the end of the credit clearance market, or if no credit clearance market is held in a given year, then until the date on which the department announces it will not be held.

(c)(i) The department shall set a maximum price for credits in a credit clearance market, consistent with states that have adopted similar clean fuels programs, not to exceed \$200 in 2018 dollars for 2023.

(ii) For 2024 and subsequent years, the maximum price may exceed \$200 in 2018 dollars, but only to the extent that a greater maximum price for credits is necessary to annually adjust for inflation, beginning on January 1, 2024, pursuant to the increase, if any, from the preceding calendar year in the consumer price index for all urban consumers, west region (all items), as published by the bureau of labor statistics of the United States department of labor.

(d) A regulated party that has a net deficit balance after the close of a credit clearance market:

(i) Must carry over the remaining deficits into the next compliance period; and

(ii) May not be subject to interest greater than five percent, penalties, or assertions of noncompliance that accrue based on the carryover of deficits under this subsection.

(e) If a regulated party has been required under (a) of this subsection to participate as a purchaser in two consecutive credit clearance markets and continues to have a net deficit balance after the close of the second consecutive credit clearance market, the department shall complete, no later than two months after the close of the second credit clearance market, an analysis of the root cause of an inability of the regulated party to retire the remaining deficits. The department may recommend and implement any remedy that the department determines is necessary to address the root cause identified in the analysis including, but not limited to, issuing a deferral, provided that the remedy implemented does not:

(i) Require a regulated party to purchase credits for an amount that exceeds the maximum price for credits in the most recent credit clearance market; or

(ii) Compel a person to sell credits.

(f) If credits sold in a credit clearance market are subsequently invalidated as a result of fraud or any other form of noncompliance on the part of the generator of the credit, the department may not pursue civil penalties against, or require credit replacement by, the regulated party that purchased the credits unless the regulated party was a party to the fraud or other form of noncompliance.

(g) The department may not disclose the deficit balances or pro rata share purchase requirements of a regulated party that participates in the credit clearance market;

(9) Authority for the department to designate an entity to aggregate and use unclaimed credits associated with persons that elect not to participate in the clean fuels program under subsection (4) of this section. [2022 c 182 s 410; 2021 c 317 s 4.]

***Reviser's note:** RCW 70A.15.2200 was amended by 2021 c 316 s 33, deleting subsection (5)(a)(iii) entirely.

Effective date—2022 c 182 ss 313, 408-414, and 421: See note following RCW 82.21.030.

Intent—2022 c 182: See note following RCW 70A.65.240.

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

RCW 70A.535.040 Rules adopted under RCW 70A.535.025 and 70A.535.030—Exemptions for certain transportation fuels. (1) The rules adopted under RCW 70A.535.030 and 70A.535.025 must include exemptions for, at minimum, the following transportation fuels:

(a) Fuels used in volumes below thresholds adopted by the department;

(b) Fuels used for the propulsion of all aircraft, vessels, and railroad locomotives; and

(c) Fuels used for the operation of military tactical vehicles and tactical support equipment.

(2)(a) The rules adopted under RCW 70A.535.030 and 70A.535.025 must exempt the following transportation fuels from greenhouse gas emissions intensity reduction requirements until January 1, 2028:

(i) Special fuel used off-road in vehicles used primarily to transport logs;

(ii) Dyed special fuel used in vehicles that are not designed primarily to transport persons or property, that are not designed to be primarily operated on highways, and that are used primarily for construction work including, but not limited to, mining and timber harvest operations; and

(iii) Dyed special fuel used for agricultural purposes exempt from chapter 82.38 RCW.

(b) Prior to January 1, 2028, fuels identified in this subsection (2) are eligible to generate credits, consistent with subsection (5) of this section. Beginning January 1, 2028, the fuels identified in this subsection (2) are subject to the greenhouse gas emissions intensity reduction requirements applicable to transportation fuels specified in RCW 70A.535.025.

(3) The department may adopt rules to specify the standards for persons to qualify for the exemptions provided in this section. The department may implement the exemptions under subsection (2) of this section to align with the implementation of exemptions for similar fuels exempt from chapter 82.38 RCW.

(4) The rules adopted under RCW 70A.535.030 and 70A.535.025 may include exemptions in addition to those described in subsections (1) and (2) of this section, but only if such exemptions are necessary, with respect to the relationship between the program and similar greenhouse gas emissions requirements or low carbon fuel standards, in order to avoid:

(a) Mismatched incentives across programs;

(b) Fuel shifting between markets; or

(c) Other results that are counter to the intent of this chapter.

(5) Nothing in this chapter precludes the department from adopting rules under RCW 70A.535.030 and 70A.535.025 that allow the generation of credits associated with electric or alternative transportation infrastructure that existed prior to July 25, 2021, or to the start date of program requirements. The department must apply the same baseline years to credits associated with electric or

alternative transportation infrastructure that apply to gasoline and diesel liquid fuels in any market-based program enacted by the legislature that establishes a cap on greenhouse gas emissions. [2022 c 182 s 411; 2021 c 317 s 5.]

Effective date—2022 c 182 ss 313, 408-414, and 421: See note following RCW 82.21.030.

Intent—2022 c 182: See note following RCW 70A.65.240.

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

RCW 70A.535.050 Rules adopted under RCW 70A.535.025 and 70A.535.030—Generation of credits. (1) The rules adopted under RCW 70A.535.030 and 70A.535.025 may allow the generation of credits from activities that support the reduction of greenhouse gas emissions associated with transportation in Washington, including but not limited to:

(a) Carbon capture and sequestration projects, including but not limited to:

(i) Innovative crude oil production projects that include carbon capture and sequestration;

(ii) Project-based refinery greenhouse gas mitigation including, but not limited to, process improvements, renewable hydrogen use, and carbon capture and sequestration; or

(iii) Direct air capture projects;

(b) Investments and activities that support deployment of machinery and equipment used to produce gaseous and liquid fuels from nonfossil feedstocks, and derivatives thereof;

(c) The fueling of battery or fuel cell electric vehicles by a commercial, nonprofit, or public entity that is not an electric utility, which may include, but is not limited to, the fueling of vehicles using electricity certified by the department to have a carbon intensity of zero; and

(d) The use of smart vehicle charging technology that results in the fueling of an electric vehicle during times when the carbon intensity of grid electricity is comparatively low.

(2) (a) The rules adopted under RCW 70A.535.030 and 70A.535.025 must allow the generation of credits based on capacity for zero emission vehicle refueling infrastructure, including DC fast charging infrastructure and hydrogen refueling infrastructure.

(b) The rules adopted under RCW 70A.535.030 and 70A.535.025 may allow the generation of credits from the provision of low carbon fuel infrastructure not specified in (a) of this subsection.

(3) The rules adopted under RCW 70A.535.030 and 70A.535.025 must allow the generation of credits from state transportation investments funded in an omnibus transportation appropriations act for activities and projects that reduce greenhouse gas emissions and decarbonize the transportation sector. These include, but are not limited to: (a) Electrical grid and hydrogen fueling infrastructure investments; (b) ferry operating and capital investments; (c) electrification of the state ferry fleet; (d) alternative fuel vehicle rebate programs; (e) transit grants; (f) infrastructure and other costs associated with the adoption of alternative fuel use by transit agencies; (g) bike and pedestrian grant programs and other activities; (h) complete streets

and safe walking grants and allocations; (i) rail funding; and (j) multimodal investments.

(4) The rules adopted by the department may establish limits for the number of credits that may be earned each year by persons participating in the program for some or all of the activities specified in subsections (1) and (2) of this section. The department must limit the number of credits that may be earned each year under subsection (3) of this section to 10 percent of the total program credits. Any limits established under this subsection must take into consideration the return on investment required in order for an activity specified in subsection (2) of this section to be financially viable.

(5) (a) In coordination with the department, the Washington state department of transportation must immediately begin work on identifying the amount of credit revenues likely to be generated under subsection (3) of this section from the state transportation investments funded in an omnibus transportation appropriations act, including the move ahead WA transportation package. It is the intent of the legislature that these credits will be maximized to allow further investment in efforts to reduce greenhouse gas emissions and decarbonize the transportation sector including, but not limited to, additional funding in future years, for ferry electrification beyond four new hybrid electric vessels, active transportation, and transit programs and projects.

(b) Beginning November 1, 2022, and annually thereafter, the Washington state department of transportation must present a detailed projection of the credit revenues generated under subsection (3) of this section and a preferred reinvestment strategy for the revenues for the following 10-year time period to the joint transportation committee. [2022 c 182 s 412; 2021 c 317 s 6.]

Effective date—2022 c 182 ss 313, 408-414, and 421: See note following RCW 82.21.030.

Intent—2022 c 182: See note following RCW 70A.65.240.

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

RCW 70A.535.060 Adoption of rules—Harmonization with other states—Stakeholder advisory panel—Review of innovative technologies—Report requirements. (1) Except where otherwise provided in this chapter, the department shall seek to adopt rules that are harmonized with the regulatory standards, exemptions, reporting obligations, and other clean fuels program compliance requirements and methods for credit generation of other states that:

(a) Have adopted low carbon fuel standards or similar greenhouse gas emissions requirements applicable specifically to transportation fuels; and

(b) (i) Supply, or have the potential to supply, significant quantities of transportation fuel to Washington markets; or

(ii) To which Washington supplies, or has the potential to supply, significant quantities of transportation fuel.

(2) The department must establish and periodically consult a stakeholder advisory panel, including representatives of forestland and agricultural landowners, for purposes of soliciting input on how

to best incentivize and allot credits for the sequestration of greenhouse gases through activities on agricultural and forestlands in a manner that is consistent with the goals and requirements of this chapter.

(3) The department must conduct a biennial review of innovative technologies and pathways that reduce carbon and increase credit generation opportunities and must modify rules or guidance as needed to maintain stable credit markets.

(4) In any reports to the legislature under RCW 70A.535.090, on the department's website, or in other public documents or communications that refer to assumed public health benefits associated with the program created in this chapter, the department must distinguish between public health benefits from small particulate matter and other conventional pollutant reductions achieved primarily as a result of vehicle emission standards established under chapter 70A.30 RCW, and the incremental benefits to air pollution attributable to the program created under this chapter. [2021 c 317 s 7.]

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

RCW 70A.535.070 Producers or importers must register with the department—Transfer of ownership of transportation fuels—

Documentation—Reporting of information—Adoption of rules. (1) (a)

Each producer or importer of any amount of a transportation fuel that is ineligible to generate credits consistent with the requirements of RCW 70A.535.030(3) must register with the department.

(b) Electric vehicle manufacturers and producers, importers, distributors, users, and retailers of transportation fuels that are eligible to generate credits consistent with RCW 70A.535.030(3) must register with the department if they elect to participate in the clean fuels program.

(c) Other persons must register with the department to generate credits from other activities that support the reduction of greenhouse gas emissions associated with transportation in Washington.

(2) Each transaction transferring ownership of transportation fuels for which clean fuels program participation is mandated must be accompanied by documentation, in a format approved by the department, that assigns the clean fuels program compliance responsibility associated with the fuels, including the assignment of associated credits. The department may also require documentation assigning clean fuels program compliance responsibility associated with fuels for which program participation has been elected.

(3) The department may adopt rules requiring the periodic reporting of information to the department by persons associated with the supply chains of transportation fuels participating in the clean fuels program. To the extent practicable, the rules must establish reporting procedures and timelines that are consistent with similar programs in other states that reduce the greenhouse gas emission intensity of transportation fuel and with procedures and timelines of state programs requiring similar information to be reported by regulated parties, including electric utilities.

(4) RCW 70A.15.2510 applies to records or information submitted to the department under this chapter. [2021 c 317 s 8.]

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

RCW 70A.535.080 Electric utilities—Use of certain revenues—

Provision of information to the department. (1) (a) Fifty percent of the revenues generated by an electric utility from credits earned from the electricity supplied to retail customers by an electric utility under the clean fuels program must be expended by the electric utility on transportation electrification projects, which may include projects to support the production and provision of hydrogen and other gaseous fuels produced from nonfossil feedstocks, and derivatives thereof as a transportation fuel.

(b) Sixty percent of the revenues described in (a) of this subsection, or 30 percent of the revenues generated by an electric utility from credits earned from the electricity supplied to retail customers by an electric utility under the clean fuels program, must be expended by the electric utility on transportation electrification projects, which may include projects to support the production and provision of hydrogen and other gaseous fuels produced from nonfossil feedstocks, and derivatives thereof as a transportation fuel, located within or directly benefiting a federally designated nonattainment or maintenance area, a federally designated nonattainment or maintenance area that existed as of January 1, 2021, a disproportionately impacted community identified by the department of health, or an area designated by the department as being at risk of nonattainment, if such a nonattainment or maintenance area or disproportionately impacted community is within the service area of the utility.

(2) (a) Each electric utility must spend 50 percent of revenues not subject to the requirements of subsection (1) of this section on one or more transportation electrification programs or projects it selects from a list of types of programs and projects jointly developed by the department and the Washington state department of transportation. The department and the Washington state department of transportation must develop the list based on those with the highest impact on reducing greenhouse gas emissions and decarbonizing the transportation sector. The types of transportation electrification projects or programs placed on the list must include, but are not limited to:

(i) Provision of new or used zero emissions vehicles at no cost or at a discount to nonprofit service providers, transit agencies, or public fleets for the purpose of providing transportation services for low-income or vulnerable populations or to reduce transportation costs for the nonprofits, transit agencies, or public fleets serving low-income or vulnerable populations;

(ii) Construction, operation, or maintenance of, or funding for charging infrastructure, including smart charging infrastructure, or hydrogen fueling infrastructure;

(iii) Expanding grid capacity to enable transportation electrification investments directly associated with expenditures permitted by this chapter; and

(iv) Partnership programs with public and private vehicle fleet owners to enable increased electrification of transportation.

(b) Under (a) of this subsection, electric utilities should consider programs or projects that expand low and moderate-income customer access to zero emissions transportation, when prioritizing program expenditures.

(3) Electric utilities that participate in the clean fuels program must annually provide information to the department accounting

for and briefly describing all expenditures of revenues generated from credits earned under the clean fuels program. [2021 c 317 s 9.]

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

RCW 70A.535.090 Reporting requirements—Report to the legislature—Independent analysis. (1) Beginning May 1, 2025, and each May 1st thereafter, the department must post a report on the department's website that includes the following information regarding the previous calendar year of clean fuels program activities:

(a) The program-wide number of credits and deficits generated by entities participating in the clean fuels program;

(b) The volumes of each transportation fuel and average price per credit used to comply with the requirements of the clean fuels program;

(c) The best estimate or range in probable costs or cost savings attributable to the clean fuels program per gallon of gasoline and per gallon of diesel, as determined by an independent consultant whose services the department has contracted. The estimate or range in probable costs or cost savings from the independent consultant must be announced in a press release to the news media at the time that the report under this subsection (1) is posted to the department's website, and must be simultaneously reported to the transportation committees of the house of representatives and the senate;

(d) The total greenhouse gas emissions reductions attributable to the clean fuels program isolated from the greenhouse gas emissions reductions attributable to other state and national programs on the same fuels; and

(e) The range in the probable cost per ton of greenhouse gas emissions reductions attributable to fuels supported by the clean fuels program, taking into account the information in (c) and (d) of this subsection.

(2) Nothing in this section prohibits the department from posting information described in subsection (1) of this section on a more frequent basis than once per year.

(3) By May 1, 2025, and each May 1st thereafter, the department must submit the report required under subsection (1) of this section to the appropriate committees of the house of representatives and senate.

(4) The department must contract for a one-time ex ante independent analysis of the information specified in subsection (1)(c) of this section covering each year of the program through 2038. The analysis must be informed by input from stakeholders, including regulated industries, and informed by experience from other jurisdictions. The analysis must impute price impacts using multiple analytical methodologies and must make clear how the assumptions or factors considered differed in each methodology used and price impact imputed. The analysis required in this subsection must be completed and submitted to the appropriate committees of the legislature by July 1, 2022. [2021 c 317 s 10.]

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

RCW 70A.535.100 Fuel supply forecast. (1) In consultation with the department, the utilities and transportation commission, and the department of agriculture, the department of commerce must develop a periodic fuel supply forecast to project the availability of fuels to Washington necessary for compliance with clean fuels program requirements.

(2) Based upon the estimates in subsection (3) of this section, the fuel supply forecast must include a prediction by the department of commerce regarding whether sufficient credits will be available to comply with clean fuels program requirements.

(3) The fuel supply forecast for each upcoming compliance period must include, but is not limited to, the following:

(a) An estimate of the potential volumes of gasoline, gasoline substitutes, and gasoline alternatives, and diesel, diesel substitutes, and diesel alternatives available to Washington. In developing this estimate, the department of commerce must consider, but is not limited to considering:

(i) The existing and future vehicle fleet in Washington; and

(ii) Any constraints that might be preventing access to available and cost-effective low carbon fuels by Washington, such as geographic and logistical factors, and alleviating factors to the constraints;

(b) An estimate of the total banked credits and carried over deficits held by regulated parties, credit generators, and credit aggregators at the beginning of the compliance period, and an estimate of the total credits attributable to fuels described in (a) of this subsection;

(c) An estimate of the number of credits needed to meet the applicable clean fuels program requirements during the forecasted compliance period; and

(d) A comparison in the estimates of (a) and (b) of this subsection with the estimate in (c) of this subsection, for the purpose of indicating the availability of fuels and banked credits needed for compliance with the requirements of this chapter.

(4) The department of commerce, in coordination with the department, may appoint a forecast review team of relevant experts to participate in the fuel supply forecast or examination of data required by this section. The department of commerce must finalize a fuel supply forecast for an upcoming compliance period by no later than 90 days prior to the start of the compliance period. [2021 c 317 s 11.]

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

RCW 70A.535.110 Forecast deferral. (1) No later than 30 calendar days before the commencement of a compliance period, the department shall issue an order declaring a forecast deferral if the fuel supply forecast under RCW 70A.535.100 projects that the amount of credits that will be available during the forecast compliance period will be less than 100 percent of the credits projected to be necessary for regulated parties to comply with the scheduled applicable clean fuels program standard adopted by the department for the forecast compliance period.

(2) An order declaring a forecast deferral under this section must set forth:

(a) The duration of the forecast deferral;

(b) The types of fuel to which the forecast deferral applies; and
(c) Which of the following methods the department has selected for deferring compliance with the scheduled applicable clean fuels program standard during the forecast deferral:

(i) Temporarily adjusting the scheduled applicable clean fuels program standard to a standard identified in the order that better reflects the forecast availability of credits during the forecast compliance period and requiring regulated parties to comply with the temporary standard;

(ii) Requiring regulated parties to comply only with the clean fuels program standard applicable during the compliance period prior to the forecast compliance period; or

(iii) Suspending deficit accrual for part or all of the forecast deferral period.

(3) (a) In implementing a forecast deferral, the department may take an action for deferring compliance with the clean fuels program standard other than, or in addition to, selecting a method under subsection (2)(c) of this section only if the department determines that none of the methods under subsection (2)(c) of this section will provide a sufficient mechanism for containing the costs of compliance with the clean fuels program standards during the forecast deferral.

(b) If the department makes the determination specified in (a) of this subsection, the department shall:

(i) Include in the order declaring a forecast deferral the determination and the action to be taken; and

(ii) Provide written notification and justification of the determination and the action to:

(A) The governor;

(B) The president of the senate;

(C) The speaker of the house of representatives;

(D) The majority and minority leaders of the senate; and

(E) The majority and minority leaders of the house of representatives.

(4) The duration of a forecast deferral may not be less than one calendar quarter or longer than one compliance period. Only the department may terminate, by order, a forecast deferral before the expiration date of the forecast deferral. Termination of a forecast deferral is effective on the first day of the next calendar quarter after the date that the order declaring the termination is adopted.
[2021 c 317 s 12.]

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

RCW 70A.535.120 Emergency deferral of compliance with carbon intensity standard. (1) The director of the department may issue an order declaring an emergency deferral of compliance with the carbon intensity standard established under RCW 70A.535.025 no later than 15 calendar days after the date the department determines, in consultation with the governor's office and the department of commerce, that:

(a) Extreme and unusual circumstances exist that prevent the distribution of an adequate supply of renewable fuels needed for regulated parties to comply with the clean fuels program taking into consideration all available methods of obtaining sufficient credits to comply with the standard;

(b) The extreme and unusual circumstances are the result of a natural disaster, an act of God, a significant supply chain disruption or production facility equipment failure, or another event that could not reasonably have been foreseen or prevented and not the lack of prudent planning on the part of the suppliers of the fuels to the state; and

(c) It is in the public interest to grant the deferral such as when a deferral is necessary to meet projected temporary shortfalls in the supply of the renewable fuel in the state and that other methods of obtaining compliance credits are unavailable to compensate for the shortage of renewable fuel supply.

(2) If the director of the department makes the determination required under subsection (1) of this section, such a temporary extreme and unusual deferral is permitted only if:

(a) The deferral applies only for the shortest time necessary to address the extreme and unusual circumstances;

(b) The deferral is effective for the shortest practicable time period the director of the department determines necessary to permit the correction of the extreme and unusual circumstances; and

(c) The director has given public notice of a proposed deferral.

(3) An order declaring an emergency deferral under this section must set forth:

(a) The duration of the emergency deferral;

(b) The types of fuel to which the emergency deferral applies;

(c) Which of the following methods the department has selected for deferring compliance with the clean fuels program during the emergency deferral:

(i) Temporarily adjusting the scheduled applicable carbon intensity standard to a standard identified in the order that better reflects the availability of credits during the emergency deferral and requiring regulated parties to comply with the temporary standard;

(ii) Allowing for the carryover of deficits accrued during the emergency deferral into the next compliance period without penalty; or

(iii) Suspending deficit accrual during the emergency deferral period.

(4) An emergency deferral may be terminated prior to the expiration date of the emergency deferral if new information becomes available indicating that the shortage that provided the basis for the emergency deferral has ended. The director of the department shall consult with the department of commerce and the governor's office in making an early termination decision. Termination of an emergency deferral is effective 15 calendar days after the date that the order declaring the termination is adopted.

(5) (a) In addition to the emergency deferral specified in subsection (1) of this section, the department may issue a full or partial deferral for one calendar quarter of a person's obligation to furnish credits for compliance under RCW 70A.535.030 if it finds that the person is unable to comply with the requirements of this chapter due to reasons beyond the person's reasonable control. The department may initiate a deferral under this subsection at its own discretion or at the request of a person regulated under this chapter. The department may renew issued deferrals. In evaluating whether to issue a deferral under this subsection, the department may consider the results of the fuel supply forecast in RCW 70A.535.100, but is not bound in its decision-making discretion by the results of the forecast.

(b) If the department issues a deferral pursuant to this subsection, the department may:

(i) Direct the person subject to the deferral to file a progress report on achieving full compliance with the requirements of this chapter within an amount of time determined to be reasonable by the department; and

(ii) Direct the person to take specific actions to achieve full compliance with the requirements of this chapter.

(c) The issuance of a deferral under this subsection does not permanently relieve the deferral recipient of the obligation to comply with the requirements of this chapter. [2022 c 182 s 413; 2021 c 317 s 13.]

Effective date—2022 c 182 ss 313, 408-414, and 421: See note following RCW 82.21.030.

Intent—2022 c 182: See note following RCW 70A.65.240.

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

RCW 70A.535.130 Fee—Clean fuels program account—Rule making to be conducted as provided in RCW 34.05.328. (1) The department may require that persons that are required or elect to register or report under this chapter pay a fee. If the department elects to require program participants to pay a fee, the department must, after an opportunity for public review and comment, adopt rules to establish a process to determine the payment schedule and the amount of the fee charged. The amount of the fee must be set so as to equal but not exceed the projected direct and indirect costs to the department for developing and implementing the program and the projected direct and indirect costs to the department of commerce to carry out its responsibilities under RCW 70A.535.100. The department and the department of commerce must prepare a biennial workload analysis and provide an opportunity for public review of and comment on the workload analysis. The department shall enter into an interagency agreement with the department of commerce to implement this section.

(2) The clean fuels program account is created in the state treasury. All receipts from fees and penalties received under the program created in this chapter must be deposited into the account. Moneys in the account may be spent only after appropriation. The department may only use expenditures from the account for carrying out the program created in this chapter.

(3) All rule making authorized under chapter 317, Laws of 2021 must be conducted according to the standards for significant legislative rules provided in RCW 34.05.328. [2021 c 317 s 14.]

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

RCW 70A.535.140 Joint legislative audit and review committee analysis. (Expires June 30, 2030.) (1) By December 1, 2030, the joint legislative audit and review committee must analyze the impacts of the initial five years of clean fuels program implementation and must submit a report summarizing the analysis to the legislature. The analysis must include, at minimum, the following components:

(a) Costs and benefits, including environmental and public health costs and benefits, associated with this chapter for categories of persons participating in the clean fuels program or that are most impacted by air pollution, as defined in consultation with the departments of ecology and health and as measured on a census tract scale. This component of the analysis must, at minimum, assess the costs and benefits of changes in the following metrics since the start of the program:

(i) Levels of greenhouse gas emissions and criteria air pollutants for which the United States environmental protection agency has established national ambient air quality standards;

(ii) Fuel prices; and

(iii) Total employment in categories of industries generating credits or deficits. The categories of industries assessed must include but are not limited to electric utilities, oil refineries, and other industries involved in the production of high carbon fuels, industries involved in the delivery and sale of high carbon fuels, biofuel refineries, and industries involved in the delivery and sale of low carbon fuels;

(b) An evaluation of the information calculated and provided by the department under RCW 70A.535.090(1);

(c) A summary of the estimated total statewide costs and benefits attributable to the clean fuels program, including state agency administrative costs and regulated entity compliance costs. For purposes of calculating the benefits of the program, the summary may rely, in part, on a constant value of the social costs attributable to greenhouse gas emissions, as identified in contemporary internationally accepted estimates of such global social cost. This summary must include an estimate of the total statewide costs of the program per ton of greenhouse gas emissions reductions achieved by the clean fuels program;

(d) An evaluation of the impacts of the program on low-income households; and

(e) The outcomes of proposals to site biofuel facilities through the energy facility site evaluation council review process that is allowed by *RCW 80.50.060(2).

(2) This section expires June 30, 2030. [2021 c 317 s 15.]

***Reviser's note:** RCW 80.50.060 was amended by 2022 c 183 s 6, deleting subsection (2).

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

RCW 70A.535.150 Alternative jet fuel. (1) By no later than December 31, 2023, the department must allow one or more carbon intensity pathways for alternative jet fuel.

(2) The department must allow biomethane to be claimed as the feedstock for renewable diesel and alternative jet fuel consistent with that allowable for compressed natural gas, liquefied natural gas, liquefied compressed natural gas, or hydrogen production. The department must include in the report required by RCW 70A.535.090(1) information that includes the amount, generation date, and geographic origin of renewable thermal certificates representing the biomethane environmental attributes claimed by each reporting entity for the fuels described in this subsection.

(3) The department must notify the department of revenue within 30 days when one or more facilities capable of producing a cumulative production capacity of at least 20,000,000 gallons of alternative jet fuel each year are operating in this state. [2023 c 232 s 3.]

Effective date—2023 c 232 ss 1-7: See note following RCW 70A.535.010.

Automatic expiration date exemption—2023 c 232: See note following RCW 82.04.287.

Intent—2023 c 232: See note following RCW 70A.535.010.

RCW 70A.535.160 Clean fuels transportation investment account.

The clean fuels transportation investment account is created in the state treasury. All receipts to the state from clean fuel credits generated under this chapter from transportation investments funded in an omnibus transportation appropriations act, including those listed under RCW 70A.535.050(3), must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may only be used for activities and projects that reduce greenhouse gas emissions and decarbonize the transportation sector. [2024 c 168 s 7; 2023 c 431 s 14.]

Effective dates—2024 c 168 ss 4-13: See note following RCW 41.05.155.

Intent—2023 c 431: See note following RCW 46.17.015.

RCW 70A.535.170 Clean fuels credit account. The clean fuels credit account is created in the state treasury. All receipts from clean fuel credits generated under this chapter by state agency activities not funded through an appropriation in an omnibus transportation appropriations act must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for state agencies to complete investments to reduce state agency transportation-related emissions including, but not limited to, electric vehicle infrastructure, electric vehicles, electric vessels, and electric boats. [2024 c 168 s 6.]

Effective dates—2024 c 168 ss 4-13: See note following RCW 41.05.155.