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**SECOND SUBSTITUTE HOUSE BILL 2401**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Duerr, Doglio, Berry, Fitzgibbon, Ramel, and Pollet)

AN ACT Relating to 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; reenacting and amending RCW 43.21B.110 and 43.21B.300; adding a new section to chapter 82.04 RCW; adding a new chapter to Title 70A RCW; and prescribing penalties.

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

NEW SECTION. **Sec.**  INTENT. (1) The legislature finds that hydrofluorocarbons are climate pollutants that pose significant threats to our environment. Although hydrofluorocarbons currently represent a small portion of the state's greenhouse gas emissions, emissions of hydrofluorocarbons have been rapidly increasing in the United States and worldwide, and they are hundreds to thousands of times more potent at trapping heat than carbon dioxide. Preventing the release of hydrofluorocarbons is among the highest global impact measures to address the climate crisis.

(2) In 2019 and 2021, the legislature took significant steps towards reducing greenhouse gas emissions from hydrofluorocarbons by transitioning to the use of less damaging hydrofluorocarbons or other suitable substitutes in several new end-uses including their largest end-uses where they are used as refrigerants as well instituting a statewide refrigerant management program. However, significant sources of hydrofluorocarbons and refrigerant emissions in Washington remain unaddressed because vast quantities of refrigerants are contained inside the installed base of heating and cooling equipment beyond those covered by the statewide refrigerant management program. There is a dire need for improving life-cycle refrigerant management to prevent those refrigerants from being emitted into the atmosphere.

(3) On a national and global scale, the United States has begun implementing a phasedown of hydrofluorocarbons. The United States has ratified the global Kigali amendment to the Montreal protocol, an international agreement to phase down the production and consumption of hydrofluorocarbons by 85 percent by 2036. Domestically, in 2020, the United States congress enacted the American innovation and manufacturing act which closely matches the Kigali amendment's phase-down schedule. Any state actions that complement the phasedown by reducing demand of newly produced hydrofluorocarbons will help actualize the vast climate benefits expected from the American innovation and manufacturing act and the Kigali amendment.

(4) As in any circular economy, an important lever for reducing demand for new or virgin material is to maximize the recovery, recycling, reclaiming, and reuse of existing material. The same principle can be successfully applied to refrigerants. However, the current state regulatory environment notably lacks a mechanism to ensure that refrigerants and greenhouse gases are recovered, reclaimed, and put back into the economy for reuse. Recognizing the benefits of minimizing refrigerant releases and maximizing reclamation, the United States environmental protection agency has recently proposed rules to require the use of reclaimed refrigerants in various sectors, including commercial and industrial refrigeration as well as air conditioners and heat pumps. Due to those pending federal regulations requiring the use of reclaimed refrigerants, it is in the state's interest to incentivize a refrigerant recovery, reclamation, and recycling program to ensure an adequate supply of refrigerant chemicals exists for Washington users as the transition to chemicals with lower climate-polluting risks takes place.

(5) Implementation of extended producer responsibility schemes in Washington and other leading states, including a bounty to be paid to service technicians and others for recovered gas, will incentivize a greater supply of used fluorinated refrigerants removed from equipment, which can then be reclaimed and reused. Increasing the supply of reclaimed refrigerants available to fulfill the demand for refrigerants in existing and new equipment will support smooth implementation of federal regulations under the American innovation and manufacturing act. It will also increase the supply of refrigerants for ramping new heat pump adoption to decarbonize the building stock. Overall, greater reclamation of hydrofluorocarbons will not only prevent direct greenhouse gas emissions but also support the state's building electrification and heat pump adoption goals.

(6) Once the need for reclaimed refrigerants has passed in the future, the most polluting refrigerant chemicals should be safely destroyed.

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

(1)(a) "Bulk" means a covered refrigerant of any amount that is in a container for the transportation or storage of that substance such as cylinders, drums, ISO tanks, and small cans.

(b) A covered refrigerant that must first be transferred from a container to another container, vessel, or piece of equipment in order to realize its intended use is a bulk substance.

(c) A covered refrigerant contained in a manufactured product such as an appliance, an aerosol can, or a foam is not a bulk substance.

(2) "Covered refrigerant" means any fluorinated regulated refrigerant or substitute, as those terms are defined in chapter 70A.60 RCW, that are used for heat transfer purposes to provide a cooling or heating effect.

(3) "Department" means the Washington state department of ecology.

(4)(a) "Destruction" means the expiration of a covered refrigerant to the destruction and removal efficiency actually achieved.

(b) Technologies used for destruction of covered refrigerants should be limited to the federally approved list of destruction technologies maintained under 40 C.F.R. Sec. 84.2 as it existed as of January 1, 2024.

(5) "Distributor" or "wholesaler" means any person or entity engaged in the distribution, wholesale sale, sale, or other commercial furnishing of any covered refrigerant or precharged equipment, except for service technicians transferring refrigerant to end-user consumers as part of a service call.

(6) "Nonproducer participant" means an entity that is not a producer but is a part of the supply chain of covered refrigerants. "Nonproducer participants" includes, but is not limited to, refrigerant distributors, wholesalers, reclaimers, and service technicians.

(7)(a) "Precharged equipment" means any appliance or refrigeration, air conditioning, or heat pump equipment or other equipment containing a quantity of covered refrigerant already added or charged into the equipment or appliance prior to installation in the field.

(b) "Precharged equipment" does not include equipment that does not contain any covered refrigerant already added or charged into the equipment prior to installation in the field, or that solely contains refrigerants other than covered refrigerants.

(8)(a) "Producer" includes:

(i) With respect to covered refrigerants, the person or entity who is the first point of sale for covered refrigerants that are sold, offered for sale, distributed, or otherwise entered into commerce in or into Washington;

(ii) With respect to precharged equipment:

(A) If the precharged equipment is sold under the brand of the precharged equipment manufacturer, the producer is the person that manufactures the precharged equipment;

(B) If the precharged equipment is sold under a retail brand or under a brand owned by a person other than the manufacturer, the producer is the brand owner;

(C) If there is no person to which (a)(ii)(A) or (B) of this subsection applies, the producer is the person that is the licensee of a brand or trademark under which the precharged equipment is used in a commercial enterprise, sold, offered for sale, or distributed in or into this state, whether or not the trademark is registered in this state;

(D) If there is no person described in (a)(ii)(A) through (C) of this subsection within the United States, the producer is the person who is the importer of record for the precharged equipment into the United States for use in a commercial enterprise that sells, offers for sale, or distributes the precharged equipment in this state;

(E) If there is no person described in (a)(ii)(A) through (D) of this subsection with a commercial presence within the state, the producer is the person who first sells, offers for sale, or distributes the precharged equipment in or into this state.

(b) "Producer" does not include any person who only manufactures, sells, offers for sale, distributes, or imports into the state precharged equipment if the gas contained in the precharged equipment is supplied by a producer that has joined a registered refrigerant stewardship organization as the producer for that precharged equipment under this chapter. Such a producer of gas that is included in precharged equipment must provide written certification of that membership to both the producer of the precharged equipment and the refrigerant stewardship organization of which the gas producer is a member.

(9) "Reclaimer" means any person undertaking reclamation of covered refrigerants in compliance with federal requirements, including recordkeeping and reporting and all other requirements stipulated under 40 C.F.R. Sec. 84, as it existed as of January 1, 2024.

(10) "Reclamation" or "reclaim" means the reprocessing of a recovered covered refrigerant or substitute to recover usable products or regenerate the material, including to at least the purity specified in the air conditioning, heating, and refrigeration institute (AHRI) standard 700-2016 and verifying this purity using the analytical methodology prescribed in the standard, and meets the reclamation standard of containing no greater than 15 percent virgin or new material by weight.

(11) "Recovery" means the process by which a regulated refrigerant is:

(a) Removed, in any condition, from equipment in a manner consistent with 40 C.F.R. 82.158, as it existed as of January 1, 2024, or in a manner consistent with federal regulations updated after January 1, 2024, and subsequently adopted by the department by rule; and

(b) Stored in an external container, with or without testing or processing of the regulated refrigerant.

(12) "Recovery rate" means the proportion of the total amount of recovered covered refrigerant that is collected and subsequently undergoes reclamation or destruction as a fraction of the estimated total amount of covered refrigerant that is available for recovery from equipment in a given year, as calculated by the refrigerant stewardship organization and approved by the department.

(13) "Refrigerant stewardship organization" means a producer that directly implements a stewardship plan under this chapter or a nonprofit entity formed to implement a stewardship plan under this chapter, including the collection and management of covered refrigerants, and the disbursement of funds to incentivize enhanced refrigerant recovery, reclamation, and destruction.

(14) "Retail establishment" means a person who sells precharged equipment containing covered refrigerants in or into this state or offers or otherwise makes available covered precharged equipment to a customer, including other businesses, for use in this state.

(15) "Service technician" means any person certified by the United States environmental protection agency under section 608 or 609, as appropriate, of the federal clean air act, as it existed as of January 1, 2024, or the federal American innovation and manufacturing act of 2020, as it existed as of January 1, 2024.

NEW SECTION. **Sec.**  REQUIREMENT THAT PRODUCERS IMPLEMENT A PROGRAM. (1) Beginning January 1, 2025, any producer who sells, or otherwise enters into commerce, bulk covered refrigerants or precharged equipment containing a covered refrigerant into the state of Washington must register with the department through a refrigerant stewardship organization. Beginning January 1, 2025, each producer must participate in a refrigerant stewardship organization and appropriately fund the operations of the refrigerant stewardship organization.

(2) Beginning July 1, 2025, a producer that does not participate in a registered refrigerant stewardship organization is prohibited from selling bulk covered refrigerants or precharged equipment in or into Washington.

(3) By July 1, 2026, each entity that is not a producer but sells, resells, distributes, or otherwise enters into commerce bulk covered refrigerants after the first point of sale shall register with a refrigerant stewardship organization as a nonproducer participant in the refrigerant stewardship organization. A nonproducer participant may include, but is not limited to, refrigerant distributors, wholesalers, reclaimers, and service technicians. Nonproducer participants are not required to fund a refrigerant stewardship organization but may be recipients of financial incentives aimed at enhancing refrigerant recovery. Nonproducer participants must keep records and report information to a refrigerant stewardship organization in the manner necessary to enable the refrigerant stewardship organization to fulfill its reporting requirements to the department under section 10 of this act.

(4) Beginning January 1, 2028, producers, through a refrigerant stewardship organization, shall implement the plan approved by the department as outlined in section 4 of this act.

NEW SECTION. **Sec.**  STEWARDSHIP PLAN COMPONENTS. (1) By May 1, 2027, a refrigerant stewardship organization or organizations must submit a plan to the department for review and approval. Within 120 days of submission, the department must review and may approve a plan provided it contains and adequately addresses the following components:

(a) Includes contact information for each producer in the plan;

(b)(i) Identifies the brands and equipment models of each producer of precharged equipment containing covered refrigerants participating in the plan; and

(ii) Identifies the producers for each type of bulk covered refrigerant manufactured, imported, or distributed into the state;

(c) Proposes the implementation mechanisms through which the program expects to meet the requirements of the performance assessment established in section 5 of this act and describes the methods used to calculate whether the program is achieving its performance targets, including a specific description of the data sources and calculations to be relied upon in calculating a recovery rate for department approval;

(d) Includes a detailed and comprehensive list of promotion activities to be undertaken as part of the educational and outreach program required in section 7 of this act;

(e) Describes the mechanisms used for the collection and consolidation of recovered covered refrigerant, as well as transportation for subsequent reclamation or destruction of all recovered covered refrigerants collected by the program, consistent with section 6 of this act, including the financial incentives described in section 8 of this act that are to be paid to persons that furnish covered refrigerants recovered from equipment in the state;

(f) Identifies proposed brokers, transporters, processors, and facilities to be used by the program for the reclamation, destruction, and final disposition of covered refrigerants;

(g) Describes the financing methods to implement the plan, consistent with section 8 of this act, including how producer fees and fee modulation will incorporate incentives for the recovery and collection of covered refrigerants in a manner that prioritizes the reclamation and reuse of those covered refrigerants and minimizes their emissions;

(h) The performance targets established consistent with section 5 of this act;

(i) A description of safety procedures or best management practices that must be used by collection sites;

(j) An analysis of how the program will achieve the required convenience standards; and

(k) Additional information determined by the department to be necessary to ensure effective implementation of the requirements of this chapter by the refrigerant stewardship organization and effective oversight of refrigerant stewardship organization activities by the department.

(2) The department may:

(a) Amend the plan submitted for approval under subsection (1) of this section if necessary to render the plan in compliance with a significant requirement of this chapter; and

(b) Require a refrigerant stewardship organization to implement the amended plan.

(3) A refrigerant stewardship organization must submit an updated plan to the department for approval no less frequently than every five years. In addition, if required by the department, a refrigerant stewardship organization must submit a new plan to the department for approval:

(a) When there is a change to the method of financing plan implementation under section 8 of this act; and

(b) If there are significant changes to the methods of collection, transport, or end-of-life management under section 6 of this act that are not covered by the plan.

NEW SECTION. **Sec.**  PERFORMANCE MEASUREMENTS. (1) In plans submitted under section 4 of this act, a refrigerant stewardship organization shall set, and the department must review and may approve, reasonable binding interim annual performance targets in addition to and in advance of the 2032 recovery rate target.

(2) A refrigerant stewardship organization must propose and achieve an annual recovery rate of at least 70 percent in calendar year 2032 of implementation and every subsequent year.

(3) The department may adjust the target annual recovery rates and other performance targets in subsequent years beyond 2032 with the goal of optimizing refrigerant recovery and end-of-life management outcomes.

(4) The department may specify any additional reporting requirements required for the calculation of recovery rates and other performance targets consistent with this section that are above and beyond the reporting requirements listed in section 10 of this act.

(5) By October 1st of each year following the submission of an annual report under section 10 of this act, and based on the data reported to the department by refrigerant stewardship organizations as outlined in section 10 of this act, the department shall publish an annual report assessing the performance of refrigerant stewardship organizations. The annual report must include an evaluation of the recovery rates and other performance targets achieved by the program and any recommendations for continued improvement in the quantities of covered refrigerants collected, reclaimed, or destroyed.

NEW SECTION. **Sec.**  COLLECTION AND MANAGEMENT. (1) A refrigerant stewardship organization must provide for the collection of all covered refrigerants recovered by any person from within the state of Washington. A collection site may not charge a collection fee at the time when covered refrigerants are returned to the collection site and a financial incentive must be paid to a service technician who recovers the covered refrigerant, consistent with section 8 of this act.

(2) At a minimum, a refrigerant stewardship organization must provide statewide opportunities for the collection of bulk covered refrigerant through:

(a) At least one permanent collection site in each county unless granted an infeasibility waiver from this requirement by the department; and

(b) Existing commercial sites operated by distributors and wholesalers of covered refrigerants who participate in a refrigerant stewardship organization. Distributors and wholesalers must offer such sites as program collection sites for recovered bulk covered refrigerants.

(3) Other entities including, but not limited to, the following may serve as collection sites:

(a) A retail establishment that sells precharged equipment containing covered refrigerants may elect to serve as a collection site; and

(b) Local governments or nonprofit organizations that operate household hazardous waste facilities or other solid waste facilities may elect for these facilities to serve as collection sites under the program.

(4) A refrigerant stewardship organization and any person hired by the refrigerant stewardship organization to carry out services related to refrigerant recovery, transport, collection, or reclamation must manage covered refrigerants in a manner consistent with best practices consistent with federal refrigerant management regulations under sections 608 and 609 of the clean air act (40 C.F.R. Part 82) and WAC 173-443-205, as they existed as of January 1, 2024, or as updated by the department by rule after that date in order to maintain consistency with updated federal regulations, that minimize the release into the environment and in compliance with all applicable state rules and federal regulations.

(5) A refrigerant stewardship organization may suspend or terminate a collection site that does not adhere to the collection site criteria in the approved plan or that poses an immediate health or safety concern. A refrigerant stewardship organization must notify the department upon suspending or terminating a collection site.

NEW SECTION. **Sec.**  EDUCATION AND OUTREACH. (1) A refrigerant stewardship organization must carry out promotional activities in support of plan implementation including, but not limited to:

(a) The development and maintenance of a website;

(b) The development and placement of graphic advertisements for use on social media or other relevant media platforms;

(c) The development of promotional materials about the program to be used by the refrigerant stewardship organization, government agencies, and nonprofit organizations, businesses, and others;

(d) Educational promotional materials targeted towards service technicians made available at each collection site used by the refrigerant stewardship organization; and

(e) Educational materials to be used at the point of sale for precharged equipment.

(2) During the first year of program implementation and every five years thereafter, a refrigerant stewardship organization must carry out a survey of the program's nonproducer participants awareness to determine the effectiveness of the requirements of the program and awareness of the program established under this chapter. A refrigerant stewardship organization must share the results of the awareness surveys with the department, who may choose to make the information public.

(3) If multiple refrigerant stewardship organizations are implementing plans approved by the department, the refrigerant stewardship organizations must coordinate in carrying out their education and outreach responsibilities under this section and must include in their annual reports to the department a summary of their coordinated education and outreach efforts.

NEW SECTION. **Sec.**  FINANCIAL REQUIREMENTS. (1) A refrigerant stewardship organization must ensure adequate funding is available to fully implement its stewardship plan, including the implementation of aspects of the plan addressing:

(a) The collection, transport, and processing of recovered covered refrigerants;

(b) Education and outreach;

(c) Annual reporting to the department;

(d) The payments of a financial incentive to persons that furnish recovered covered refrigerants to the program for collection;

(e) The payments for services rendered by distributors, wholesalers, or any persons providing collection sites for recovered covered refrigerants; and

(f) The payment of administrative fees to the department.

(2)(a) A refrigerant stewardship organization 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. Except as provided in (f) of this subsection, a refrigerant stewardship organization's system of charges must utilize a standard per-mass unit assessment applied based on the volume of covered refrigerants introduced into Washington.

(b) The system of charges must apply equally regardless of whether that refrigerant is contained in precharged equipment or manufactured, imported, distributed, or sold directly onto the market as bulk covered refrigerants. For precharged equipment, the system of charges may rely on reasonable estimations of refrigerant volumes contained in the precharged equipment.

(c) To allow a refrigerant stewardship organization to establish an equitable and reasonable system of charges for producers of precharged equipment and bulk covered refrigerants, and to allow the refrigerant stewardship organization to calculate recovery rates for purposes of section 5 of this act, a refrigerant stewardship organization may require a producer to provide product specifications and product sale and distribution volumes in or into Washington for precharged equipment and bulk covered refrigerants.

(d) In 2028, an initial rate of at least $7.00 per pound of covered refrigerant must be used to calculate the charges due from producers in the first year of the program.

(e) In subsequent years, the charges due from producers may be adjusted as follows:

(i) A refrigerant stewardship organization may propose an adjustment to the department to adjust the rate based on the performance assessment described in section 5 of this act, and the department may review and make a determination whether to approve the adjustment; or

(ii) The department may of its own volition adjust the rate based on the performance assessment described in section 5 of this act.

(f) Applicable no earlier than in calendar year 2031 of program operations, and using the process specified in (e) of this subsection, a refrigerant stewardship organization's system of charges may utilize an assessment that is weighted based on the global warming potential of each covered refrigerant, with a proportionally higher fee being assessed for gases with comparatively higher global warming potential.

(3) The system of charges must use ecomodulated fees to encourage the use of design attributes that reduce the environmental impacts of covered refrigerants. Examples of ecomodulated fees include, but are not limited to:

(a) Encouraging designs or business models intended to facilitate recovery, reclamation, and reuse of refrigerants;

(b) Encouraging the use of reclaimed refrigerants; and

(c) Encouraging a sliding scale of fees based upon refrigerant global warming potential.

(4) A refrigerant stewardship organization is responsible for all costs of recovered covered refrigerant collection, transportation, processing, education, administration, and agency reimbursement in accordance with best environmental management practices.

(5) A refrigerant stewardship organization is not authorized to reduce or cease collection, education and outreach, or other activities implemented under an approved plan based on the achievement of program performance targets or achieving a level of programmatic efficacy that is higher than that required in section 5 of this act.

(6)(a) To encourage persons to manage recovered covered refrigerants through the program and to ensure that the program targets established in section 5 of this act are achieved, a refrigerant stewardship organization must propose in its plan, and carry out in its program, the payment of a financial incentive for each mass unit, such as pound of covered refrigerant, that a person furnishes to the program for management. This financial incentive is not required to be consistent with the amount specified in subsection (2) of this section. A refrigerant stewardship organization must demonstrate to the department that the amount of the financial incentive for each unit of covered refrigerant will be sufficient to incentivize the use of the program by service technicians or other persons with unwanted recovered covered refrigerant, to discourage illegal dumping or venting of refrigerants or other pollutants, and must be in addition to any other incentive payments offered for the same covered refrigerants or precharged equipment through utility rebate, energy efficiency, or other programs.

(b) The financial incentives offered through the program may vary as appropriate to ensure the achievement of the performance targets established in section 5 of this act in an efficient manner. In developing the financial incentives, a refrigerant stewardship organization may consider any combination of the following:

(i) The volume of recovered covered refrigerant furnished by a person;

(ii) The type and purity of recovered covered refrigerant; and

(iii) Whether the recovered covered refrigerant has been collected and furnished to the program in a manner that minimizes the costs and environmental impacts of managing that refrigerant and whether it has been collected and furnished in a manner that facilitates the reuse of the refrigerant rather than its destruction, where appropriate.

(c) If the department determines that a refrigerant stewardship organization has not met a performance target established in section 5 of this act, the department may require the refrigerant stewardship organization to increase the value of the financial incentive established under this subsection.

(7) A refrigerant stewardship organization must reimburse demonstrable costs incurred at a collection site as a result of a serving as a collection site for the program including, but not limited to, associated labor costs, transportation costs, and other costs associated with safety, accessibility, and operation of the collection site.

(8)(a) It is the intent of the legislature to not incentivize refrigerant destruction under this chapter in the initial years of program implementation.

(b) As federal programs under the American innovation in manufacturing act, including those in 40 C.F.R. Part 84, and similar state programs phase down the use of hydrofluorocarbon refrigerants, the department may evaluate the benefits of incentivizing destruction, and on or after January 1, 2035, the department may by rule set an incentive for destruction of covered refrigerants that may not be used for any carbon credits or other greenhouse gas offset credits, including under chapter 70A.65 RCW.

(9) If more than one refrigerant stewardship organization is registered within the state, each refrigerant stewardship organization must coordinate with other refrigerant stewardship organizations to provide reimbursement, to ensure that covered refrigerants are not reported as supplied or managed by more than one refrigerant stewardship organization, and to ensure that one or more of the registered refrigerant stewardship organizations do not inequitably subsidize the operations of other registered refrigerant stewardship organizations through the overpayment of financial incentives to service technicians and other persons relative to that refrigerant stewardship organization or refrigerant stewardship organization's share of covered refrigerants that it is responsible for in the state.

NEW SECTION. **Sec.**  ROLE OF RETAIL ESTABLISHMENTS SELLING PRECHARGED EQUIPMENT. (1) Beginning July 1, 2028, retail establishments may not sell, offer for sale, otherwise make available for sale, install, or otherwise furnish to customers precharged equipment containing a covered refrigerant unless the producer responsible for the precharged equipment participates in a refrigerant stewardship organization.

(2) A retail establishment is in compliance with the requirements of subsection (1) of this section and is not subject to penalties as long as the website made available by the department under section 12 of this act lists, as of the date the precharged equipment is made available for retail sale, the producer responsible for the brand and appliance model of the precharged appliance, sold by the retail establishment as being a participant in an approved plan or the implementer of an approved plan.

(3) A retail establishment that sells precharged equipment containing covered refrigerant is not required to make retail locations available to serve as collection sites or services for a program operated by a refrigerant stewardship organization. However, a retail establishment that agrees to make a retail location available to serve as a collection site or otherwise offers refrigerant recovery services for a program must comply with the requirements for collection sites and service providers, consistent with section 6 of this act.

(4) A retail establishment selling or offering precharged equipment containing covered refrigerant for sale in Washington must provide information to customers, provided to the retail establishment by each refrigerant stewardship organization, regarding available end-of-life management options for covered refrigerants collected by the refrigerant stewardship organization. The information that a refrigerant stewardship organization must make available to retail establishments and refrigerant service providers must include, but is not limited to, in-store signage, written materials, and other promotional materials that retail establishments and refrigerant service providers must use to inform customers of the available end-of-life management options for covered refrigerants collected by the refrigerant stewardship organization. All materials developed by a refrigerant stewardship organization under this subsection must:

(a) Inform customers regarding the climate impacts of refrigerants;

(b) Encourage customers to choose a service technician participating in the program and encourage customers to confirm with their service technician that the customer's refrigerants will be reclaimed; and

(c) Identify the prohibitions under federal law and chapters 70A.15 and 70A.60 RCW on the willful release of refrigerants.

(5) Retail establishments, refrigerant service providers, producers, or refrigerant stewardship organizations may not charge a point-of-sale fee to consumers to cover the administrative or operational costs of the refrigerant stewardship organization or the program.

NEW SECTION. **Sec.**  REPORTING AND RECORDKEEPING REQUIREMENTS FOR THE REFRIGERANT STEWARDSHIP ORGANIZATION, PRODUCERS, AND PARTICIPANTS. (1) By June 1, 2029, and each June 1st thereafter, a refrigerant stewardship organization must submit an annual report to the department covering the preceding calendar year of program implementation. The report must include:

(a) An independent financial audit of a program implemented by the refrigerant stewardship organization, including a breakdown of the program's expenses, such as collection, storage, transportation, and other operational activities in support of the program;

(b) A summary financial statement documenting the financing of the refrigerant stewardship organization program and an analysis of program costs and expenditures, including an analysis of the program's expenses, such as collection, storage, transportation, and other activities in support of the program;

(c) On an annual basis, key quantitative data regarding program operations, including:

(i) The quantity of each type of covered refrigerant, whether in bulk or contained inside precharged equipment, sold into the state of Washington by each producer;

(ii) The quantity of each type of recovered covered refrigerant and the management outcomes of those recovered covered refrigerants as to reclamation, destruction, or transportation for those purposes, or any maintained stocks; and

(iii) A calculation of the recovery rate and other performance targets established under section 5 of this act, including the sources of data relied upon in the recovery rate calculation;

(d) For each facility used as a collection site, the name and address of the facility with links to appropriate websites where there are existing websites associated with a location;

(e) A summary of the activities carried out at the collection sites;

(f) A summary of the education and outreach activities supporting plan implementation, including a summary of coordinated education and outreach efforts with refrigerant stewardship organizations if multiple refrigerant stewardship organizations have formed, and the results of awareness surveys;

(g) Any changes to:

(i) The list of producers participating, including producers of precharged equipment;

(ii) Collection infrastructure, including the list of collection sites;

(iii) Recovery rates and progress towards performance targets; and

(iv) The program necessary to continue progress towards performance targets; and

(h) Any other information about program operations required to be included in the annual report in rules adopted by the department.

(2) On March 1st, June 1st, September 1st, and December 1st of each year in which a refrigerant stewardship organization implements a program, a refrigerant stewardship organization must submit to the department an updated list of participating producers of covered refrigerants and precharged equipment, and the brands and models for precharged equipment, to be posted on the department's website.

(3) The nonproducer participants in a refrigerant stewardship organization, such as distributors and wholesalers of bulk covered refrigerants or precharged equipment, are required to keep records of information needed by the refrigerant stewardship organization to fulfill the refrigerant stewardship organization's reporting requirements listed in this section and to aid the performance assessment requirements listed in section 5 of this act. Nonproducer participants must report information to a refrigerant stewardship organization in a form and manner prescribed by the refrigerant stewardship organization, and consistent with the following:

(a) By March 31st of each year a refrigerant stewardship organization implements a program, distributors and wholesalers must report to each refrigerant stewardship organization quantities and types of covered refrigerants sold to them by each producer participating in that refrigerant stewardship organization and subsequently resold by them for use in the state of Washington, and not neighboring states, in the prior year;

(b) Distributors and wholesalers must keep the same records outlined in (a) of this subsection for a period of five years;

(c) Distributors and wholesalers must require attestation from any service technician or other individual returning recovered covered refrigerant that the refrigerant came from the state of Washington. At minimum, the attestation must include quantities and types of refrigerants recovered at each location inside of Washington, as well as the address of the recovery;

(d) The department may require a refrigerant stewardship organization to submit any of the records listed in (a) through (c) of this subsection at any time.

NEW SECTION. **Sec.**  PROTECTION OF CONFIDENTIAL AND BUSINESS SENSITIVE INFORMATION. A refrigerant stewardship organization may request that the information or records be made available only for the confidential use of the department, the director of the department, or the appropriate division of the department. The director of the department must give consideration to the request and if this action is not detrimental to the public interest and is otherwise in accordance with the policies and purposes of chapter 43.21A RCW, the director must grant the request for the information to remain confidential as authorized in RCW 43.21A.160.

NEW SECTION. **Sec.**  ROLES AND RESPONSIBILITIES OF DEPARTMENT OF ECOLOGY SECTION. (1) The department must implement, administer, and enforce this chapter. By December 31, 2026, the department shall adopt rules as necessary to implement, administer, and enforce this chapter. If, after January 1, 2024, the United States environmental protection agency updates the federal standards referenced in section 2 of this act, including the provisions referenced in the definitions of "reclaimer," "service technician," "recovery," and "destruction" in section 2 of this act, the department must notify the appropriate committees of the legislature and recommend appropriate changes to the definitions in section 2 of this act in order to maintain consistency with federal law.

(2)(a) By April 1, 2027, and every April 1st thereafter, the department must:

(i) Identify the projected annual costs to implement, administer, and enforce this chapter;

(ii) Determine a total annual fee payment to be paid by each refrigerant stewardship organization that is adequate to cover, but not exceed, the costs identified in (a)(i) of this subsection;

(iii) By December 31, 2026, adopt rules to equitably determine the annual fee payment by a refrigerant stewardship organization; and

(iv) Send notice to a refrigerant stewardship organization of fee amounts due consistent with rules adopted under (a)(iii) of this subsection.

(b) The department must:

(i) Apply any remaining annual payment funds from the current year to the annual payment for the coming fiscal year, if the collected annual payment exceeds the costs identified under (a)(ii) of this subsection for a given year; and

(ii) Increase annual payments for the coming fiscal year to cover the costs identified under (a)(ii) of this subsection, if the collected annual payment was less than the amount required to cover those costs for a given year.

(3)(a) The department must review new, updated, and revised plans submitted by a refrigerant stewardship organization. The department must:

(i) Make new, updated, and revised plans available for public review and comment for at least 30 days prior to the department's approval decision;

(ii) Review new, updated, and revised refrigerant stewardship organization plans within 120 days of receipt of a complete plan;

(iii) Make a determination as to whether or not to approve a plan, plan update, or plan revision and notify the refrigerant stewardship organization of the:

(A) Determination of approval if a plan provides for a program that meets the requirements of this chapter, taking into consideration comments received under (a)(i) of this subsection; or

(B) Reasons for not approving a plan. A refrigerant stewardship organization must submit a new or revised plan within 60 days after receipt of the letter of disapproval. In the event that a new or revised plan submitted by a refrigerant stewardship organization does not sufficiently meet the requirements of this chapter, including any deficiencies identified in the initial letter of disapproval, the department may:

(I) Use the enforcement powers specified in section 13 of this act; or

(II) Amend the contents of the insufficient new or revised plan in a manner that ensures that the plan meets the requirements of this chapter and the department may require the refrigerant stewardship organization to implement the plan as amended by the department.

(b) The approval of a plan by the department does not relieve producers participating in the plan from responsibility for fulfilling the requirements of this chapter.

(4) The department must review annual reports submitted by a refrigerant stewardship organization as required in section 10 of this act. The department must:

(a) Make annual reports available for public review and comment for at least 30 days upon the receipt of the annual report by the department;

(b) Review the annual report within 120 days of receipt of a complete annual report;

(c) Make a determination as to whether or not an annual report meets the requirements of section 10 of this act and notify a refrigerant stewardship organization of the:

(i) Determination of approval of the annual report; or

(ii) Reasons for not approving the annual report. The refrigerant stewardship organization must submit a revised annual report within 60 days after receipt of the letter of disapproval;

(d) Notify a refrigerant stewardship organization if the annual report demonstrates that the program and activities to implement the plan fail to achieve the performance targets approved by the department or otherwise fail to achieve significant requirements under this chapter.

(5) Consistent with section 6 of this act, the department may grant an infeasibility waiver temporarily exempting, for the duration of a plan, a refrigerant stewardship organization from the requirement to provide a permanent collection site in each county. The department may only grant an exemption if the refrigerant stewardship organization demonstrates that no refrigerant distributor, wholesaler, or service provider exists to service a collection site, no local government or retail establishment has voluntarily elected to serve as a collection site, and that access to collection services by persons in possession of recovered covered refrigerants will not be substantially affected by the lack of a permanent collection site in a low population density county. The refrigerant stewardship organization, if granted an infeasibility waiver under this section must, at minimum, hold at least two collection events each year in any counties covered by the infeasibility waiver.

(6) The department must maintain a public website that:

(a) Lists details of each refrigerant stewardship organization along with its member producers, participants, and the covered refrigerants and brands and models precharged equipment that are included under the refrigerant stewardship organization's plan; and

(b) Makes available each plan and annual report received by the department under this chapter.

(7) If multiple refrigerant stewardship organizations form to implement plans, and if requested by the refrigerant stewardship organizations, the department may serve as a coordinating body or oversee coordination of refrigerant stewardship organization plans.

NEW SECTION. **Sec.**  PENALTIES. (1)(a) The department may administratively impose a civil penalty of up to $1,000 per violation per day on any person who violates this chapter and up to $10,000 per violation per day for the second and each subsequent violation.

(b) Prior to imposing penalties under this subsection, the department must provide a person with a written warning for the first violation by the person of the requirements of this chapter. The written warning must inform the person that the person must participate in an approved plan or otherwise come into compliance with the requirements of this chapter within 30 days of the notice. A person that violates a provision of this chapter after the initial written warning may be assessed a penalty as provided in this subsection.

(2) Upon the department notifying a refrigerant stewardship organization that it has not met a significant requirement of this chapter, the department may, in addition to assessing the penalties provided in subsection (1) of this section, take any combination of the following actions:

(a)(i) Issue corrective action orders to a producer or a refrigerant stewardship organization;

(ii) Issue orders to a refrigerant stewardship organization to provide for the continued implementation of the program in the absence of an approved plan;

(b) Revoke the refrigerant stewardship organization's plan approval and require the refrigerant stewardship organization to implement its contingency plan;

(c) Require a refrigerant stewardship organization to revise or resubmit a plan within a specified time frame; or

(d) Require additional reporting related to compliance with the significant requirement of this chapter that was not met.

(3) Prior to taking the actions described in subsection (2)(b) of this section, the department must provide a refrigerant stewardship organization with an opportunity to respond to or rebut the written finding upon which the action is predicated.

(4) Any person who incurs a penalty under subsection (1) of this section or an order under subsection (2) of this section may appeal the penalty or order to the pollution control hearings board established in chapter 43.21B RCW.

(5) Penalties levied under this section must be deposited in the model toxics control operating account created in RCW 70A.305.180.

NEW SECTION. **Sec.**  ANTITRUST PROTECTIONS. Producers and a refrigerant stewardship organization, acting on behalf of producers that prepare, submit, and implement a refrigerant stewardship organization plan pursuant to this chapter and who are thereby subject to regulation by the department, are hereby granted immunity from state laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade and commerce, for the limited purpose of planning, reporting, and operating the stewardship program, including:

(1) The creation, implementation, or management of the refrigerant stewardship organization and any plan regardless of whether it is submitted, denied, or approved;

(2) The cost and structure of a refrigerant stewardship organization plan; and

(3) The types or quantities of covered refrigerants being recycled or otherwise managed pursuant to this chapter.

NEW SECTION. **Sec.**  RESPONSIBLE REFRIGERANT DISPOSAL ACCOUNT. The responsible refrigerant disposal account is created in the custody of the state treasurer. All receipts from section 12 of this act must be deposited into the account. Expenditures from the account may be used only for administering, implementing, and enforcing the requirements of this chapter. Moneys in the account may not be diverted for any purpose or activity other than those specified in this section. Only the director of ecology or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. **Sec.**  PROHIBITION ON THE USES OF FUNDS. A refrigerant stewardship organization may not use funds collected for purposes of implementing a plan required under this chapter associated with:

(1) The payment of an administrative penalty levied;

(2) Administrative appeals of orders or penalties;

(3) Litigation between the refrigerant stewardship organization and the state;

(4) Compensation of a person whose position is primarily representing the refrigerant stewardship organization relative to the passage, defeat, approval, or modification of legislation that is being considered by a government entity; or

(5) Paid advertisements related to encouraging the passage, defeat, approval, or modification of legislation that is being considered during an upcoming or current legislative session or was considered during the previous legislative session.

NEW SECTION. **Sec.**  LIMITATION OF CHAPTER. Nothing in this chapter changes or limits the applicability of the requirements of chapter 70A.15, 70A.60, or 70A.300 RCW to covered refrigerants.

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

BUSINESS AND OCCUPATION TAX EXEMPTION.

(1) This chapter does not apply to the receipts of a refrigerant stewardship organization formed under chapter 70A.--- RCW (the new chapter created in section 21 of this act) from charges to participating producers under a stewardship plan as provided in section 8 of this act.

(2) This section is not subject to the requirements of RCW 82.32.805 and 82.32.808 and is not subject to an expiration date.

(3) The definitions in section 2 of this act apply throughout this section unless the context clearly requires otherwise.

**Sec.**  RCW 43.21B.110 and 2023 c 455 s 5, 2023 c 434 s 20, 2023 c 344 s 5, and 2023 c 135 s 6 are each reenacted and amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, the air pollution control boards or authorities as established pursuant to chapter 70A.15 RCW, local health departments, the department of natural resources, the department of fish and wildlife, the parks and recreation commission, and authorized public entities described in chapter 79.100 RCW:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070, 70A.515.060, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080, 70A.245.130, 70A.245.140, 70A.65.200, 70A.455.090, 70A.550.030, 70A.555.110, 70A.560.020, section 13 of this act, 76.09.170, 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070, 70A.245.020, 70A.65.200, 70A.555.110, 70A.560.020, section 13 of this act, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

(c) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70A.205.260.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70A.205 RCW.

(e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70A.226.090.

(f) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70A.205.145.

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

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

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

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

(k) Decisions of the department of fish and wildlife to issue, deny, condition, or modify a hydraulic project approval permit under chapter 77.55 RCW, to issue a stop work order, to issue a notice to comply, to issue a civil penalty, or to issue a notice of intent to disapprove applications.

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

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

(n) Decisions of the department of ecology that are appealable under RCW 70A.245.020 to set recycled minimum postconsumer content for covered products or to temporarily exclude types of covered products in plastic containers from minimum postconsumer recycled content requirements.

(o) Orders by the department of ecology under RCW 70A.455.080.

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

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

(b) Hearings conducted by the department pursuant to RCW 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100, 70A.15.3110, and 90.44.180.

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

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

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

**Sec.**  RCW 43.21B.300 and 2023 c 455 s 6, 2023 c 434 s 21, and 2023 c 135 s 7 are each reenacted and amended to read as follows:

(1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160, 70A.205.280, 70A.300.090, 70A.20.050, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080, 70A.245.130, 70A.245.140, 70A.65.200, 70A.455.090, 70A.555.110, 70A.560.020, section 13 of this act, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102 and chapter 70A.355 RCW shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the department or the local air authority, describing the violation with reasonable particularity. For penalties issued by local air authorities, within 30 days after the notice is received, the person incurring the penalty may apply in writing to the authority for the remission or mitigation of the penalty. Upon receipt of the application, the authority may remit or mitigate the penalty upon whatever terms the authority in its discretion deems proper. The authority may ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper and shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(2) Any penalty imposed under this section may be appealed to the pollution control hearings board in accordance with this chapter if the appeal is filed with the hearings board and served on the department or authority 30 days after the date of receipt by the person penalized of the notice imposing the penalty or 30 days after the date of receipt of the notice of disposition by a local air authority of the application for relief from penalty.

(3) A penalty shall become due and payable on the later of:

(a) 30 days after receipt of the notice imposing the penalty;

(b) 30 days after receipt of the notice of disposition by a local air authority on application for relief from penalty, if such an application is made; or

(c) 30 days after receipt of the notice of decision of the hearings board if the penalty is appealed.

(4) If the amount of any penalty is not paid to the department within 30 days after it becomes due and payable, the attorney general, upon request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county, or of any county in which the violator does business, to recover the penalty. If the amount of the penalty is not paid to the authority within 30 days after it becomes due and payable, the authority may bring an action to recover the penalty in the superior court of the county of the authority's main office or of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(5) All penalties recovered shall be paid into the state treasury and credited to the general fund except those penalties imposed pursuant to RCW 18.104.155, which shall be credited to the reclamation account as provided in RCW 18.104.155(7), RCW 70A.15.3160, the disposition of which shall be governed by that provision, RCW 70A.245.040 and 70A.245.050, which shall be credited to the recycling enhancement account created in RCW 70A.245.100, RCW 70A.300.090, 70A.555.110, ((~~and~~)) 70A.560.020, and section 13 of this act, which shall be credited to the model toxics control operating account created in RCW 70A.305.180, RCW 70A.65.200, which shall be credited to the climate investment account created in RCW 70A.65.250, RCW 90.56.330, which shall be credited to the coastal protection fund created by RCW 90.48.390, and RCW 70A.355.070, which shall be credited to the underground storage tank account created by RCW 70A.355.090.

NEW SECTION. **Sec.**  Sections 1 through 17 of this act constitute a new chapter in Title 70A RCW.

NEW SECTION. **Sec.**  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.

**--- END ---**