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**SUBSTITUTE SENATE BILL 5697**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Senate Environment, Energy & Technology (originally sponsored by Senators Das, Rolfes, Kuderer, Lovelett, Lovick, Nguyen, Pedersen, Saldaña, and Stanford)

AN ACT Relating to renewing Washington's recycling system and reducing waste; amending RCW 70A.245.010, 70A.245.020, 70A.245.030, 70A.205.005, 70A.205.010, 70A.205.045, 81.77.030, 81.77.040, 81.77.160, and 81.77.185; reenacting and amending RCW 43.21B.110 and 43.21B.300; 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.**  FINDINGS—INTENT. (1) The legislature finds that Washington's statewide waste recovery rate, which seeks to preserve public health, safety, and welfare, and conserve energy and natural resources, has been on a declining trend since 2011 and that Washington is not on track to meet the statewide goal of 50 percent waste recovery established in 1989.

(2) The legislature finds that packaging designs and materials have changed and the way Washington's residents use, consume, and manage materials when no longer wanted has also changed significantly in recent years. These shifts have created unintended consequences, such as the deterioration of natural systems regionally and worldwide, as well as increased levels of pollution and greenhouse gas emissions that contribute to global climate change, and reductions in human well-being, especially for the most vulnerable populations.

(3) The legislature finds that convenient and environmentally sound extended producer responsibility programs that include collecting, transporting, reusing, and recycling, or the proper end-of-life management of unwanted products help protect Washington's environment and the health of state residents. Unwanted products should be managed in a manner where a priority is placed on prevention, waste reduction, source reduction, reuse, and recycling over energy recovery and landfill disposal.

(4) The legislature finds that many residents, particularly those who live in rural areas and in multifamily residences, do not have access to convenient or affordable curbside recycling, and must rely on taking recyclables to drop box locations, and that extended producer responsibility programs could make curbside recycling available and affordable for most people in the state.

(5) The legislature also finds that the department of ecology was directed, through an independent consultant, to study how plastic packaging is managed in the state, assess various policy options, and that the study recommendations included establishing an extended producer responsibility policy for all consumer packaging and paper products with a framework that makes producers responsible for achieving specific management and environmental outcomes for the packaging and paper products they supply into Washington state.

(6) In addition, the legislature finds extended producer responsibility policies designed to cover all material types collected through the state's existing recycling system offers the potential for greater economies of scale and operational efficiencies than could be achieved under a policy applied only to a subset of materials collected through that system.

(7) It is the intent of the legislature that extended producer responsibility programs, including targets, are implemented by and for producers of consumer packaging and paper products in a manner that involves producers from design concept to end-of-life management, and incentivizes innovation and research to minimize environmental impacts of the packaging and paper products.

(8) It is also intended that these programs be responsibly managed, so that covered products are handled from the point of collection through the final destination in a way that benefits the environment and minimizes risks to public health and worker health and safety.

(9) Finally, it is further the intent of the legislature that, through design and innovation, industry shall reduce the use of consumer packaging and paper products, increase the use of postconsumer recycled content and make all packaging reusable, recyclable, or compostable. The legislature intends that the policy of the state is to ensure that by 2040 an overall recycling and reuse rate of 90 percent is achieved for consumer packaging and paper products.

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

(1) "Aluminum" means a covered product made of the chemical element aluminum that forms a silvery white to dull gray, nonmagnetic metal.

(2) "Brand" means a name, symbol, word, or mark that identifies a product and attributes the product and its components, including packaging, to the brand owner of the product as the producer.

(3) "Brand owner" means a person who owns or licenses a brand or who otherwise has rights to market a product under the brand, whether or not the brand trademark is registered.

(4) "Compostable" means a covered product that is capable of undergoing aerobic biological decomposition in a system meeting the requirements of chapter 70A.205 RCW, that results in the material being broken down primarily into carbon dioxide, water, inorganic compounds, and biomass.

(5) "Consumer" means a person who purchases or receives a covered product and is the intended end user or recipient of the covered product for personal use.

(6) "Contamination" means:

(a) The presence of materials in a given collected material stream that are not on the list of materials designated for collection in that material stream; or

(b) The presence of materials in a given recycled material delivered as a feedstock or commodity that are not specified or accepted as a component of the feedstock or commodity.

(7) "Covered product" means packaging and paper products sold or supplied to consumers.

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

(9) "Designated for collection" means the covered products that are included in the material categories listed in a producer responsibility organization's plan to be collected for reuse or recycling.

(10) "Final disposition" means the point at which a covered product:

(a) Becomes a reused material;

(b) Becomes a recycled material; or

(c) Is delivered to a disposal facility.

(11) "Flexible plastic" means any covered product made of polymers that is flexible in form, including films and multilayer laminates.

(12) "Glass" means a covered product made of soda lime glass.

(13) "Government agency" means any:

(a) County, city, town, or other local government agency, including any municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency;

(b) State office, department, division, bureau, board, commission, or other state agency;

(c) Federally recognized Indian tribe whose traditional lands and territories include parts of Washington; or

(d) Federal office, department, division, bureau, board, commission, or other federal agency.

(14) "Material category" means a group of covered products defined by the producer responsibility organization that have similar properties such as chemical composition, shape, or other characteristics including, but not limited to:

(a) Plastic beverage containers;

(b) Rigid plastic (excluding plastic beverage containers);

(c) Flexible plastic;

(d) Paper;

(e) Aluminum;

(f) Steel; and

(g) Glass.

(15)(a) "Packaging" means a material, substance, or object that is:

(i) Used to protect, contain, transport, or serve a product;

(ii) Sold or supplied to consumers expressly for the purpose of protecting, containing, transporting, or serving products;

(iii) Attached to a product or its container for the purpose of marketing or communicating information about the product;

(iv) Supplied at the point of sale to facilitate the delivery of the product; or

(v) Supplied to or purchased by consumers expressly for the purpose of facilitating food or beverage consumption that is ordinarily disposed of after a single use or short-term use, whether or not it could be reused.

(b) "Packaging" does not include:

(i) Materials intended to be used for the long-term storage or protection of a durable product, that is intended to transport, protect, or store the product on an ongoing basis and that can be expected to be usable for that purpose for a period of at least five years; and

(ii) Materials regulated by the federal insecticide, fungicide, and rodenticide act, 7 U.S.C. Sec. 136 et seq.

(16) "Paper" means a covered product made of paper fiber, regardless of its cellulosic fiber source, which may include, but is not limited to: Wood, wheat, rice, cotton, bananas, eucalyptus, bamboo, hemp, and sugar cane or bagasse.

(17) "Paper product" means paper sold and supplied including, but not limited to, flyers, brochures, booklets, catalogs, newspapers, magazines, copy paper, printing paper, and all other paper materials except for: (a) Bound books; and (b) paper products that, by their use, could become unsafe or unsanitary to handle.

(18) "Plan" means description of the approach and activities developed by a producer responsibility organization to fulfill the requirements and to carry out the responsibilities of producers under this chapter.

(19) "Postconsumer recycled content" means the content of a covered product made of recycled materials derived specifically from recycled material generated by households or by commercial, industrial, and institutional facilities in their role as end users of a product that can no longer be used for its intended purpose. "Postconsumer recycled content" includes returns of material from the distribution chain.

(20)(a) "Producer" means the following person responsible for compliance with requirements under this chapter for a covered product sold, offered for sale, or distributed in or into this state:

(i) For items sold in packaging at a physical retail location in this state:

(A) If the item is sold in packaging under the manufacturer's own brand or is sold in packaging that lacks identification of a brand, the producer of the packaging is the person that manufactures the packaged item;

(B) If the item is manufactured by a person other than the brand owner, the producer of the packaging is the person that is the licensee of a brand or trademark under which a packaged item 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; or

(C) If there is no person described in (a)(i)(A) or (B) of this subsection within the United States, the producer of the packaging is the person who imports the packaged item into the United States for use in a commercial enterprise that sells, offers for sale, or distributes the item in this state.

(ii) For items sold or distributed in packaging in or into this state via remote sale or distribution:

(A) The producer of packaging used to directly protect or contain the item is the same as the producer for purposes of (a)(i) of this subsection.

(B) The producer of packaging used to ship the item to a consumer is the person that packages and ships the item to the consumer.

(iii) For all other packaging that is a covered product, the producer of the packaging is the person that first distributes the packaged item in or into this state.

(iv) For paper products that are magazines, newspapers, catalogs, telephone directories, or similar publications, the producer is the publisher.

(v) For paper products not described in (a)(iv) of this subsection, the producer is:

(A) The person that manufactures the paper product under the manufacturer's own brand;

(B) If the paper product is manufactured by a person other than the brand owner, the producer of the paper product is the person that is the owner or licensee of a brand or trademark under which the paper product 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; or

(C) If there is no person described in (a)(v)(A) or (B) of this subsection within the United States, the producer of the paper product is the person that imports the paper product into the United States for use in a commercial enterprise that sells, offers for sale, or distributes the item in this state.

(b) "Producer" does not include:

(i) Government agencies, municipalities, or other political subdivisions of the state;

(ii) Registered 501(c)(3) charitable organizations and 501(c)(4) social welfare organizations; or

(iii) De minimis producers that annually sell, offer for sale, distribute, or import in or into the country for sale in Washington:

(A) Less than one ton of a single category of covered products each year; or

(B) A single category of a covered product that in aggregate generates less than $1,000,000 each year in revenue.

(21) "Producer responsibility organization" means:

(a) A nonprofit organization that qualifies for a tax exemption under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code and is designated by a producer or group of producers to develop and carry out the activities required of producers by this chapter;

(b) Until January 15, 2025, an organization that has applied for a tax exemption under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code and is designated by a producer or group of producers to develop and carry out the activities required of producers by this chapter; or

(c) An organization as defined by the department.

(22) "Program" means the activities conducted to implement an approved producer responsibility organization plan.

(23)(a) "Public place" is an indoor or outdoor location open to and generally used by the public and to which the public is permitted to have unrestricted access including, but not limited to, streets, sidewalks, plazas, town squares, public parks, beaches, forests, or other public land open for recreation or other uses, and transportation facilities such as bus and train stations, airports, and ferry terminals.

(b) "Public place" does not include a retail establishment or industrial, commercial, or privately owned property.

(24) "Recyclable" means a covered product that is regularly collected, separated, and reprocessed into a recycled material, and that does not contain harmful chemical, physical, biological, or radiological substances that will pose a threat to human health or the environment for its intended or likely manner of use.

(25)(a) "Recycled material" means material derived from covered products that is reprocessed into products or delivered as feedstocks or commodities for use in the production of new products whether for the original or another purpose.

(b) "Recycled material" does not include energy recovery and the reprocessing of materials that are to be used as fuels or landfill cover.

(26) "Responsible management" means the handling, tracking, and disposition of covered products from the point of collection through the final destination of the collected material in a way that benefits the environment and minimizes risks to public health and worker health and safety.

(27) "Retail establishment" includes any person, corporation, partnership, business, facility, vendor, organization, or individual that sells or provides merchandise, goods, or materials directly to a customer.

(28) "Reusable" means a covered product that is sufficiently durable for multiple rotations of its original or similar purpose or function in a system of reuse, and that does not contain harmful chemical, physical, biological, or radiological substances that will pose a threat to human health or the environment for its intended or likely manner of use.

(29) "Reused material" means material that is collected after use and reused for its original or similar purpose or function.

(30) "Rigid plastic" means any covered product made of polymers that is rigid or semirigid in form, including foams.

(31) "Socially just management" means practices that:

(a) Provide equitable access to and benefits from services, regardless of race, income, socioeconomic status, health, and other population vulnerability or sensitivity characteristics;

(b) Prevent or, if not preventable, reduce environmental harms or risks; and

(c) Prevent or, if not preventable, mitigate impacts to overburdened communities or vulnerable populations as defined in RCW 70A.02.010.

(32) "Steel" means any covered product made of a ferrous metal substance.

NEW SECTION. **Sec.**  PRODUCER RESPONSIBILITY ORGANIZATION DUTIES. (1)(a) Beginning January 15, 2023, each producer that offers for sale, sells, or distributes in or into Washington covered products must join a producer responsibility organization that is registered with the department. Producers that have not joined a producer responsibility organization may not sell or supply covered products in or into Washington.

(b) A producer is not required to join a producer responsibility organization for any covered product if another person has joined a producer responsibility organization and registered as the producer responsible for that covered product under this chapter.

(2) A producer responsibility organization that meets the definition under section 2(21) (a) or (b) of this act may not include on its board of directors, or otherwise be governed by, representatives or affiliates of any public or private entities that submit bids to perform work for the producer responsibility organization or that contract with the producer responsibility organization.

(3) By January 15, 2023, and each January 15th thereafter, producer responsibility organizations must register with the department and submit with their registration the following:

(a)(i) A list of all their member producers and their brands of covered products, and members of the board of directors;

(ii) If there are changes to the list of member producers and brands or members of the board of directors by the end of a given quarter, a producer responsibility organization must submit an updated list to the department within 30 days of the end of that quarter;

(b) Until a producer responsibility organization begins to submit annual reports, as specified under section 18 of this act, the following data for the prior calendar year: The weight, by material category, of covered products supplied into the state to consumers, accompanied by a description of how the producer responsibility organization has distinguished and apportioned the quantities of packaging and paper products sold or supplied to consumers, which are considered covered products under this chapter, from quantities of packaging and paper products sold or supplied for other uses that are not considered covered products under this chapter. A producer responsibility organization may rely on member reporting for this description;

(c) A producer responsibility organization may submit national data allocated on a per capita basis for Washington to approximate the information required in this subsection if state-level data is not available or feasible to generate.

(4) By June 30, 2023, and every June 30th thereafter, every registered producer responsibility organization must submit an annual payment for the following fiscal year, as determined by the department in section 4 of this act, to fund the:

(a) Costs to implement, administer, and enforce this chapter, including rule making;

(b) Statewide needs assessment established in section 5 of this act; and

(c) Support and facilitation of the renew advisory council created in section 20 of this act.

(5) Beginning July 1, 2025, or within six months of the first adoption of rules relating to this chapter, whichever is later, every registered producer responsibility organization must submit a plan to the department for approval consistent with the requirements of this chapter.

(a) A producer responsibility organization registered with the department as of January 15, 2025, must:

(i) Implement its plan as approved by the department by July 1, 2026, or within six months of plan approval, whichever is later; and

(ii) Submit an annual report for the prior calendar year to the department consistent with section 18 of this act by July 1, 2027, and each July 1st thereafter.

(b) A producer responsibility organization registering with the department after January 15, 2025, must:

(i) Submit the list of producers, brands, board members, data, and department payment as required in subsections (3) and (4) of this section;

(ii) Submit a plan to the department for approval, informed by a stakeholder consultation process and consistent with the requirements of this chapter, within one year of registration;

(iii) Implement its plan as approved by the department within six months of approval; and

(iv) Submit an annual report for the prior calendar year to the department consistent with section 18 of this act by July 1st, beginning the first year after plan implementation.

(6) A producer responsibility organization that submits information or records to the department under this chapter may request that the information or records be made available only for the confidential use of the department, the director, 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.

(7) Any funds directly collected by the producer responsibility organization for the purposes of this chapter may not be used for costs associated with litigation against the state.

NEW SECTION. **Sec.**  DEPARTMENT'S DUTIES. (1) The department must implement, administer, and enforce this chapter.

(2)(a) By April 1, 2023, and every April 1st thereafter, the department must:

(i) Identify the annual costs to implement, administer, and enforce this chapter, including rule making, in the next fiscal year;

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

(A) Statewide needs assessment established in section 5 of this act;

(B) Reuse and recycling rate targets study established in section 9 of this act; and

(C) Support and facilitation of the renew advisory council created in section 20 of this act;

(iii) Until rules are adopted under (a)(iv) of this subsection, issue a general order to all registered producer responsibility organizations. The department must equitably determine fee amounts for producer responsibility organizations;

(iv) By 2025, adopt rules to equitably determine annual fee payments by producer responsibility organizations. Once these rules are adopted, the general order issued under (a)(iii) of this subsection is no longer effective; and

(v) Send notice to producer responsibility organizations of fee amounts due consistent with either the general order issued under (a)(iii) of this subsection or rules adopted under (a)(iv) 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) The department must review proposed reuse and recycling rate targets to be achieved by the ninth calendar year from the effective date of this section submitted by producer responsibility organizations as required in section 9 of this act. The department must:

(a) Make proposed reuse and recycling rate targets available for public review and comment for at least 30 days;

(b) Review proposed reuse and recycling rate targets within 90 days of receipt of a complete submission;

(c) Make a determination as to whether or not to approve proposed reuse and recycling rate targets and notify the producer responsibility organization of the:

(i) Determination of approval if the submission meets the requirements of this chapter, taking into consideration comments received under (a) of this subsection; or

(ii) Reasons for not approving a submission of proposed targets. The producer responsibility organization must submit new or revised proposed targets within 30 days after receipt of the letter of disapproval.

(4)(a) The department must review new, updated, and revised plans submitted by producer responsibility organizations as required in section 19 of this act. The department must:

(i) Make new, updated, and revised plans available for public review and comment for at least 30 days;

(ii) Review new, updated, and revised producer responsibility 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 producer responsibility 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. The producer responsibility organization must submit a new or revised plan within 60 days after receipt of the letter of disapproval.

(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.

(5) The department must review annual reports submitted by producer responsibility organizations as required in section 18 of this act. The department must:

(a) Make annual reports available for public review and comment for at least 30 days;

(b) Review 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 18 of this act and notify the producer responsibility organization of the:

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

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

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

(6) The department may adopt rules as necessary to implement, administer, and enforce this chapter including, but not limited to:

(a) Establishing the requirements an organization other than a nonprofit organization that qualifies for a tax exemption under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code must meet to submit a plan and implement a program as a producer responsibility organization;

(b) Establishing an equitable formula for determining each producer responsibility organization's share of the annual payment necessary to cover the costs identified under subsection (2)(a)(ii) of this section;

(c) Establishing additional plan content in addition to the requirements established under section 7 of this act, as necessary to fulfill the intent of this chapter;

(d) Establishing elements to be included as annual reporting requirements, in section 18 of this act, necessary to determine the program's compliance with the requirements of this chapter including, but not limited to, any reused or reusable covered products determined to be necessary to be reported by number of units;

(e) Establishing third-party audit and verification requirements; or

(f) Establishing processes for new, updated, and revised plan approvals as required in section 19 of this act.

(7)(a) Beginning January 1, 2028, and no more frequently than every five years, the department may by rule require producer responsibility organizations to fund activities to make convenient collection services available for recycling of covered products designated for collection from additional locations or entities determined to be significant sources of covered product waste including, but not limited to, public places and official gatherings.

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

(a) Lists each registered producer responsibility organization along with its member producers and their covered products that are included under the producer responsibility organization's plan; and

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

(9) The department must conduct the statewide needs assessment established under section 5 of this act.

(10) The department must conduct the reuse and recycling rate targets study established under section 9 of this act.

(11)(a) The department must establish the renew advisory council under section 20 of this act.

(b) The department may select an impartial, third-party facilitator to convene and provide administrative support to the renew advisory council.

(c) The department must solicit comments and recommendations from the renew advisory council on program implementation activities.

(d) The department must respond to the council's written comments and recommendations within 60 days of receipt.

(12)(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) Any person who incurs a penalty under this section may appeal the penalty to the pollution control hearings board established in chapter 43.21B RCW.

(c) Penalties levied under this subsection must be deposited in the responsible packaging management account created in section 28 of this act.

NEW SECTION. **Sec.**  STATEWIDE NEEDS ASSESSMENT. (1) The department must conduct a statewide needs assessment, to be completed within two years of the effective date of this section, subject to the following requirements:

(a) The final scope of the statewide needs assessment must be determined based on comments and recommendations from the renew advisory council established in section 20 of this act, from the utilities and transportation commission, and from any producer responsibility organization that is registered with the department by January 15, 2023; and

(b) The utilities and transportation commission, renew advisory council, and registered producer responsibility organizations must have the opportunity to review and comment on a draft statewide needs assessment prior to its completion.

(2) The statewide needs assessment must be:

(a) Carried out by a third-party consultant selected by the department;

(b) Funded through payments collected from producer responsibility organizations;

(c) Informed by the findings and recommendations of the reuse and recycling rate targets study established in section 9 of this act and the targets submitted by producer responsibility organizations and approved by the department; and

(d) Accepted from the selected consultant as complete by the department.

(3) The statewide needs assessment must:

(a) Evaluate the capacity, costs, gaps, and needs for the following factors:

(i) Availability and types of recycling services for covered products relative to the convenience standards specified in section 11 of this act and to additional potential service methods recommended by producer responsibility organizations during the study scoping process;

(ii) Education and outreach activities relative to the standards specified in section 17 of this act;

(iii) Availability and performance of collection, transport, and processing capacity and infrastructure relative to the management standards specified in section 8 of this act and the approved reuse and recycling rate targets submitted by producer responsibility organizations, including consideration of material quality and contamination;

(iv) Necessary capital investments to existing reuse and recycling infrastructure; and

(v) Infrastructure or other factors necessary to enable reuse of covered products or the recycling of covered products not currently recycled in the residential recycling system;

(b) Compile information related to actual costs incurred by government agencies for curbside collection services, drop-off collection services, and other information relevant to the funding requirements for producer responsibility organizations in accordance with section 10 of this act, including costs for various service methods recommended by producer responsibility organizations during the study scoping process;

(c) Identify cost factors and other variables to be considered in the development of base cost formulas for establishing per unit reimbursement rates to government agencies for curbside collection services delivered in accordance with this chapter. Cost factors and variables to be considered in the base cost formulas include:

(i) Population size and density of a local jurisdiction;

(ii) Types of households serviced and collection method used;

(iii) Distance from a local jurisdiction to the nearest recycling facility;

(iv) Whether a jurisdiction pays for transportation and sorting of collected materials and whether it receives a commodity value from processed materials;

(v) Geographic location or other variables contributing to regional differences in costs;

(vi) Cost increases over time; and

(vii) Any other factors as determined to be necessary by the department, with input from the producer responsibility organization, the renew advisory council, and the utilities and transportation commission;

(d) Identify cost factors and other variables to be considered in the development of reimbursement rates to government agencies for any services other than curbside collection that may be included in producer responsibility organization plans to be carried out by government agencies;

(e) Identify issues to be considered in the development of a service agreement template outlining terms and conditions for reimbursement to government agencies for services delivered in accordance with the requirements of this chapter;

(f) Compile relevant information to be considered in the development of criteria to determine whether a covered product is recyclable, reusable, or compostable, such as whether covered product materials: Are or may be collected, separated, and processed in sufficient quantity and quality into a marketable feedstock that can be used in the production of new products; or are designed in a way that is problematic for reuse, recycling, or composting;

(g) Evaluate how the state's recycling system can be managed in a socially just manner for the purpose of informing how a producer responsibility organization implementing a plan can support this objective as it relates to activities required under this chapter. The assessment should:

(i) Include meaningful consultation with overburdened communities and vulnerable populations;

(ii) Determine conditions and make recommendations, including, at minimum:

(A) An evaluation of recycling processing facility worker conditions, wages, and benefits;

(B) The availability of opportunities in the recycling system for women and minority individuals;

(C) The sufficiency of local government requirements related to multifamily recycling services and their implementation;

(D) Identification of activities that disproportionately impact any community and in particular overburdened communities and vulnerable populations as defined in RCW 70A.02.010;

(E) The sufficiency of recycling education and outreach programs relative to desired socially just management outcomes; and

(F) Recommendations for improving socially just management practices and outcomes in the state's recycling system, including considerations for how a producer responsibility organization implementing a plan can support this objective as it relates to activities required under this chapter;

(h) Evaluate the extent to which covered products contribute to litter and marine debris for the purpose of informing how a producer responsibility organization implementing a plan can support litter and marine debris prevention as it relates to activities required under this chapter. The assessment should draw on available data, assess gaps, and identify strategies for improving prevention and cleanup of litter and marine debris from covered products;

(i) Compile information from available data sources on the presence of toxic substances in covered products and their potential impacts on reuse, recycling, and composting systems. The information compiled is intended to inform the development of ecomodulation factors by a producer responsibility organization that incentivize the reduction of toxic substances that have potentially negative impacts when covered products are managed through reuse, recycling, and composting systems.

(4)(a) At the request and agreement of the renew advisory council, the utilities and transportation commission, and registered producer responsibility organizations, the department may update the statewide needs assessment to inform the development of producer responsibility organization plans, including updates to base cost formulas to be used for establishing reimbursement rates to government agencies for services delivered in accordance with the requirements of this chapter.

(b) The scope of a needs assessment update may be adjusted to modify or omit study elements described under subsection (3) of this section, subject to agreement from the renew advisory council, the utilities and transportation commission, and any producer responsibility organization by January 15th of the year in which the statewide needs assessment update is to be conducted.

NEW SECTION. **Sec.**  PLAN PARTICIPATION OBLIGATION—STAKEHOLDER CONSULTATION FOR PLAN. (1) Each producer of covered products must participate in, implement, and fund a producer responsibility organization plan approved by the department in accordance with the funding requirements established in section 10 of this act.

(2) A producer responsibility organization must develop and maintain a public website with enhanced language access informing the public of plan implementation details, including collection services and locations for each type of covered product, and a current list of all member producers and brands of covered products participating in the plan.

(3) Prior to submitting a new, updated, or revised plan to the department, a producer responsibility organization must conduct a consultation process to directly and actively involve stakeholders in development of key plan elements established in section 7 of this act. The consultation process must solicit and respond to input and recommendations from the renew advisory council established in section 20 of this act, the utilities and transportation commission, and other stakeholders. The consultation process required in advance of the submission of a plan to the department is in addition to the department-led public comment process specified in section 4(4) of this act. At a minimum, the consultation process must include:

(a) Quarterly meetings with the renew advisory council throughout the plan development process to discuss and review key plan elements;

(b) Consultation on the base cost formulas to be used for calculating per unit reimbursement rates to government agencies for curbside collection services;

(c) Consultation on the reimbursement rates to be used for any services other than curbside collection that may be included in producer responsibility organization plans to be carried out by government agencies;

(d) Consultation on the service agreement template and any other forms, contracts, or documents outlining the terms and conditions for reimbursement to government agencies for services delivered in accordance with the requirements of this chapter;

(e) Prudency review by the utilities and transportation commission of base cost formulas proposed to be used for calculating reimbursement rates for government agencies, as described in section 13 of this act. For the purposes of this chapter, a prudency review must include the following:

(i) Before base cost formulas are submitted to the department as part of a producer responsibility organization plan, the utilities and transportation commission must conduct a prudency review;

(ii) Within 45 days after receiving base cost formulas from a producer responsibility organization, the utilities and transportation commission must have reviewed the formulas and shall advise the producer responsibility organization and the renew advisory council on the prudency of the reimbursement rates to be paid by a producer responsibility organization to government agencies for costs incurred in delivery of services in accordance with the requirements of this chapter;

(f) Opportunities for all stakeholders, including the renew advisory council, the utilities and transportation commission, and members of the public to provide comment on the plan for no less than 30 days prior to its submission to the department;

(g) Presentations in various formats and languages as necessary for soliciting meaningful input on the plan and receiving comments including workshops, surveys, webinars, and one-on-one meetings; and

(h) Documentation of all comments received from the renew advisory council and other stakeholders, and summary of responses provided by the producer responsibility organization for purposes of a stakeholder consultation report to be included with the submission of a plan to the department. The stakeholder consultation report must also describe each forum in which comments or input was received and how it was addressed in the plan.

NEW SECTION. **Sec.**  PLAN CONTENTS—OVERVIEW. (1) A producer responsibility organization must submit a plan to the department describing the approach and activities to fulfill the requirements of this chapter.

(2) All plans and plan updates must contain the following information:

(a) Identification of the governing board members of the producer responsibility organization;

(b) A list and explanation of the covered products supplied or sold in or into Washington by each member producer and their brands of covered products participating in the plan;

(c) The collection and structure of the fees owed by producers to be used to implement the plan, including a description of the ecomodulation of fees consistent with section 10 of this act;

(d) How the producer responsibility organization will encourage and incentivize waste prevention and reduction;

(e) How the producer responsibility organization will encourage and incentivize redesign of covered products to be reusable, recyclable, or compostable;

(f) How the producer responsibility organization will use and interact with recycling programs and infrastructure that predate the implementation of the plan;

(g) How the producer responsibility organization will fund reuse and recycling infrastructure and market development in Washington state as described in section 16 of this act;

(h) How the program will maximize the efficiency of the system of collecting and managing covered products through reuse and recycling;

(i)(i) A list of covered products designated for collection as required under section 11 of this act;

(ii) The list must identify the covered products designated for collection from residents statewide:

(A) Through curbside collection or, where curbside garbage service is not available, through permanent collection facilities;

(B) Through alternate collection; and

(C) Through public place collection;

(iii) If the list includes any covered product that is not recyclable as defined in section 2 of this act, the plan must provide a justification for its inclusion on the list and describe activities to be undertaken to meet the definition within a reasonable time frame;

(j) Activities to be undertaken to make convenient collection services available for covered products in accordance with the convenience standards established under section 11 of this act including, at minimum, the following information:

(i) The jurisdictions where curbside collection services are available, including the following service details:

(A) Service provider information, including whether the service provider is a government agency, a private service provider under contract with a government agency, or a private service provider regulated by the utilities and transportation commission; and

(B) Service frequency, schedule, collection methods, types of covered products included, and other pertinent service details, including whether any changes are anticipated as part of plan implementation;

(ii) The locations of permanent collection facilities and types of covered products to be collected at each location, including whether any changes are anticipated as part of plan implementation;

(iii) The types of alternate collection used other than permanent collection facilities, including detailed descriptions of the collection methods, any physical infrastructure used, covered products included, and whether any changes are anticipated as part of plan implementation; and

(iv) The locations of public place collection services, covered products included, and whether any changes are anticipated as part of plan implementation;

(k) Proposed reuse and recycling rate targets for covered products reported as supplied, as described in section 9 of this act, including a description of the basis and reasoning for the targets proposed;

(l) Activities to be undertaken to meet the proposed reuse and recycling rate targets;

(m) Activities to be undertaken to implement the education and outreach component as required under section 17 of this act;

(n) Activities to facilitate recycling of covered products back into covered products and encourage development of circular economic activity in the state and region. The producer responsibility organization shall provide a description of how the producers would propose to structure agreements to purchase recycled materials from material recovery facilities or other processing facilities to support producers priority access to commodities, based on fair market pricing for commodities of comparable quality and considering long-term contracts and other purchase arrangements;

(o) Activities to be undertaken to minimize the amount and cost of residuals from the collection and processing of covered materials designated for collection. These include residuals from materials recovery facilities or similar facilities producing specification-grade commodities for sale, but do not include residuals from further processing of end market-ready material;

(p) A description of how plan implementation will maintain responsible management practices for covered products through to final disposition;

(q)(i) A description of the base cost formulas to be used to calculate per unit reimbursement rates for curbside collection services with similar attributes that are delivered by government agencies in accordance with the requirements of this chapter, whether such services are provided directly or through a contracted service provider. If a plan includes more than one base cost formula for curbside collection services, the producer responsibility organization must make clear the conditions under which each formula will be applied;

(ii) A description of the reimbursement rates to be used for any services other than curbside collection included in the plan that are to be carried out by government agencies;

(iii) The producer responsibility organization must describe:

(A) How the per unit reimbursement rates cover all obligations associated with curbside collection services specified in this chapter and any other services included in the plan that are to be delivered by government agencies;

(B) How reimbursements will be distributed;

(C) Any terms or conditions covered in the service agreements with government agencies for receiving reimbursements, including any service standards and reporting requirements; and

(D) How the producer responsibility organization will work with government agencies and other stakeholders to achieve successful implementation of the services for which the producer responsibility organization provides reimbursement;

(iv) The producer responsibility organization must provide a template of the service agreement and any other forms, contracts, or other documents for use in distribution of reimbursements to government agencies and other stakeholders;

(r) A description of the service standards for residential curbside collection services provided in areas regulated by the utilities and transportation commission under the provisions of chapter 81.77 RCW;

(s) Activities to be undertaken to reduce contamination from covered products at compost or other organics processing facilities and similar facilities, including through decontamination equipment improvements and conducting packaging contamination composition studies;

(t) A stakeholder consultation report, as described in section 6(3)(h) of this act;

(u) A description of the dispute resolution process, including the process timeline, to be used, as needed, by the producer responsibility organization to resolve any disputes involving reimbursement of government agencies as established in sections 10 and 12 of this act;

(v) A description of how the producer responsibility organization will coordinate with other producer responsibility organizations in the state, if more than one producer responsibility organization is registered with the department as of the date of a plan's submission; and

(w) Any other information to be included in the plan as required by the department by rule.

NEW SECTION. **Sec.**  COLLECTION AND MANAGEMENT. (1) Covered products must be managed in a manner consistent with the state's solid waste management hierarchy established in RCW 70A.205.005.

(2) Covered products collected by the program must be responsibly managed at facilities operating with human health and environmental protection standards that are broadly equivalent to or better than those required in the United States and other countries that are members of the organization for economic cooperation and development.

(3) Producer responsibility organizations implementing a plan must include measures to:

(a) Track, verify, and publicly report that the responsible management of covered products collected by the program is maintained through to the final disposition of the covered products;

(b) Promote and facilitate reuse of covered products designed to be reused;

(c) Meet the necessary quality standards for recycled materials so that covered products collected by the program may be used to manufacture new products;

(d)(i) Document the locations of all material recovery facilities and other processing facilities used to meet the requirements of this chapter, whether within Washington, elsewhere in North America, or outside of North America; and

(ii) Describe whether the processing facilities were preexisting, planned, or under construction as of plan approval.

(4)(a) Prior to program use of any advanced technology for conversion of postuse plastic polymers for the purpose of producing recycled material to be counted toward reuse and recycling performance targets, the producer responsibility organization must provide the department with a third-party assessment prepared to examine the impact of the advanced technology on the following:

(i) Air and water pollution and release or creation of any hazardous pollutants; and

(ii) The greenhouse gas emissions resulting from products and processes of the advanced technology facility, taking into account the full life cycle including final use of products.

(b) The results of the assessment under (a) of this subsection must, whenever reported and communicated, provide full disclosure of geographical, temporal, and technological boundaries that have been selected for the assessment.

(c) The person preparing the assessment under (a) of this subsection may not be interested, directly or indirectly, in the ownership or operation of the advanced recycling facility.

(5)(a) Material recovery facilities and other processing facilities receiving covered products from government agencies or private service providers collected through activities undertaken in accordance with this chapter must measure and report annually, in a form and format approved by the department, on the following parameters associated with covered products received and processed to both the department and each producer responsibility organization for which they provide a service:

(i) Tons received, by jurisdiction and service provider;

(ii) Inbound material quality and contamination;

(iii) Outbound material quality and contamination;

(iv) Outbound material tons and end markets, including whether they are domestic, export to organization for economic cooperation and development countries, or export to facilities in other countries that meet organization for economic cooperation and development operating standards;

(v) Management of contaminants and residue to avoid impacts on other waste streams or facilities;

(vi) Residuals, including residue rate, composition, and disposal location;

(vii) Emission of pollutants to air and water, or other activities that impact public health or the environment, including any reporting required under existing permits where applicable; and

(viii) Labor metrics including, but not limited to, wages, unions, and workforce demographics.

(b) All data reported to the department by material recovery facilities and other processing facilities under this subsection must be verified by an independent third party.

(c) A material recovery facility or other processing facility that submits information or records to the department under this chapter may request that the information or records be made available only for the confidential use of the department, the director, 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.

(d) The requirements of (a) and (b) of this subsection do not apply to any facility operated by a scrap metal business as defined in RCW 19.290.010 that holds a current scrap metal license unless the covered products handled by such a business were received directly from collection services for which a producer responsibility organization has provided reimbursement.

(6) To facilitate recycling of covered products back into covered products and encourage development of circular economic activity in the state and region, material recovery facilities and other processing facilities handling materials under the program shall prioritize agreements with and on behalf of producers or producer responsibility organizations regarding long-term contracts and other purchase agreements based on fair market pricing for commodities of comparable quality.

NEW SECTION. **Sec.**  REUSE AND RECYCLING RATE TARGETS. (1) To inform the development of initial reuse and recycling rate targets to be proposed by producer responsibility organizations, the department must conduct a reuse and recycling rate targets study, to be completed within one year of the effective date of this section.

(a) The reuse and recycling rate targets study must be:

(i) Carried out by a third-party consultant selected by the department; and

(ii) Funded through payments collected from producer responsibility organizations.

(b) The reuse and recycling rate targets study must:

(i) Assess the reuse and recycling rates currently being achieved in the state for covered products, by material category, based on recently published studies, publicly available data sources, and data provided by producer responsibility organizations as required under section 3(3) of this act and calculated using the calculation methodology established in subsections (4) and (5) of this section;

(ii) Review the reuse and recycling rate targets set and achieved in jurisdictions with producer responsibility organization for packaging or similar programs and evaluate whether those rates are applicable in the state;

(iii) Recommend reuse and recycling rate targets, including a target for the overall combined reuse and recycling rate of covered products, and a separate target specifically for a minimum reuse rate, which is also to be counted within the overall combined reuse and recycling rate target, to be achieved for covered products statewide by the ninth calendar year from the effective date of this section, with consideration of feasibility of achieving recommended targets based on current rates achieved in the state, rates achieved in other jurisdictions with similar programs, and additional relevant data.

(c) The renew advisory council and any producer responsibility organization that is registered with the department by January 15, 2023, must have the opportunity to review and comment on a draft reuse and recycling rate targets study prior to its completion.

(d) Beginning January 1, 2028, and no more frequently than every five years, the department may update the reuse and recycling rate targets study to inform the development of reuse and recycling rate targets to be proposed by producer responsibility organizations in their plans.

(2) By September 1, 2023, any registered producer responsibility organization must submit to the department proposed reuse and recycling rate targets for covered products reported by the producer responsibility organization as supplied into the state to be achieved by the ninth calendar year from the effective date of this section. In proposing targets, the producer responsibility organization must:

(a) Consider the targets recommended in the reuse and recycling rate targets study;

(b) Propose, at minimum, a target for the overall combined reuse and recycling rate of covered products, and a separate target specifically for a minimum reuse rate, which is also to be counted within the overall combined reuse and recycling rate target;

(c) Provide a justification for the targets proposed, if they are different from those recommended in the reuse and recycling rate targets study; and

(d) Adhere to the reuse and recycling rate calculation methodology established in subsections (4) and (5) of this section.

(3) Any producer responsibility organization plan submitted to the department must include targets for covered products reported by the producer responsibility organization as supplied into the state, to be achieved by the end of the plan implementation period, taking into account the findings of the reuse and recycling rate targets study, statewide needs assessment, and additional relevant data.

(a) At minimum, the plan must include:

(i) A target overall combined reuse and recycling rate of covered products;

(ii) A separate target minimum reuse rate of covered products, which is also to be counted within the overall combined reuse and recycling rate target; and

(iii) A target combined reuse and recycling rate for each material category of covered products reported by the producer responsibility organization as supplied into the state.

(b) Proposed targets must demonstrate continuous improvement in reuse and recycling rates of covered products over time.

(c) Proposed targets must adhere to the reuse and recycling rate calculation methodology established in subsections (4) and (5) of this section.

(d) Any plan submitted to the department prior to the ninth calendar year from the effective date of this section must also include reuse and recycling rate targets to be achieved by the ninth calendar year from the effective date of this section. If the targets differ from those previously approved by the department as required under subsection (2) of this section, the producer responsibility organization must provide a justification for the proposed adjustment.

(4) For the purposes of this chapter, the amount of recycled material must be measured at the following calculation point for each material category of covered products included in the plan:

(a) Rigid plastic material that:

(i) Is delivered to a facility for flaking, pelletization, extrusion, molding, or advanced technology for conversion of postuse plastic polymers for use in the production of new products whether for the original or another purpose; or

(ii) Is compostable and is delivered to an industrial composting facility under an agreement with that facility;

(b) Flexible plastic material that:

(i) Is delivered to a facility for flaking, pelletization, extrusion, molding, or advanced technology for conversion of postuse plastic polymers for use in the production of new products whether for the original or another purpose; or

(ii) Is compostable and is delivered to an industrial composting facility under an agreement with that facility;

(c) Paper material that:

(i) Is delivered to a pulping operation or other facility for use in the production of new products whether for the original or another purpose; or

(ii) Is compostable and is delivered to an industrial composting facility under an agreement with that facility;

(d) Aluminum material that is delivered to a metal smelter or furnace or other facility for use in the production of new products whether for the original or another purpose;

(e) Steel material that is delivered to a metal smelter or furnace or other facility for use in the production of new products whether for the original or another purpose;

(f) Glass material that is delivered to a glass furnace or other facility for the production of glass containers and products;

(g) For materials that are not included in the material categories listed in (a) through (f) of this subsection, the calculation point must be proposed and described by the producer responsibility organization in its plan and annual report and is subject to approval by the department in order to be included in the reuse and recycling rate calculation.

(5) For the purposes of this chapter, a combined reuse and recycling rate must be calculated as the sum of the amount of reused material and recycled material managed by the program in a given year, divided by the amount of covered products supplied into the state in the same year, expressed as a percentage, where:

(a) Covered products supplied into the state in a given year is the amount calculated in accordance with section 18(2)(b) of this act;

(b) Reused material is the amount of covered product managed by the program in the same year that was sold or supplied for reuse for their original or similar purpose or function; and

(c) Recycled material is the amount produced from covered products managed by the program in the same year measured in accordance with subsection (3) of this section.

NEW SECTION. **Sec.**  FUNDING REQUIREMENTS. (1) A producer responsibility organization implementing a plan must fully fund all activities required under this chapter.

(2) A nonreimbursable point-of-sale fee may not be charged to consumers to recoup the costs of meeting producer obligations under this chapter.

(3)(a) A producer responsibility organization must develop a fee system to collect fees from participating producers to cover the costs of plan implementation.

(b) A producer responsibility organization shall allow producers of covered products that are newspapers or magazines to satisfy their obligations under this section by providing advertisement or publication in their newspapers, magazines, or on their websites in lieu of program fees as long as the value of the advertisement is equivalent to the estimated cost of managing the covered products that are newspapers or magazines, which are to be determined as described in subsection (4) of this section. The producer responsibility organization may consider the in-state reach of the advertising when determining the value of the advertising.

(4) The fee system must be based on the estimated cost of managing the material categories of covered products or a similar approach proposed by the producer responsibility organization including, but not limited to, consideration of the following factors:

(a) The total annual amount of covered products sold or supplied into the state, by material category, whether or not the material is currently recyclable or designated for collection for recycling;

(b) The material characteristics and the costs associated with the management of each material category; and

(c) The commodity value of each material category as a recycled material.

(5)(a) The fee system must use ecomodulation factors to incentivize the use of packaging design attributes that reduce the environmental impacts of covered products, such as to:

(i) Encourage designs intended to facilitate reuse and recycling;

(ii) Encourage the use of recycled content;

(iii) Discourage the use of problematic materials that increase system costs of managing covered products; and

(iv) Encourage other design attributes that reduce the environmental impacts of covered products including, but not limited to, the potential to create litter.

(b) Any system of program fees owed by producers that includes discounted fees or favorable treatment of covered products deemed to be reusable must establish a basis for determining that products, in practice, are typically reused a minimum number of times.

(c) Fees collected under this fee system must be used exclusively for plan implementation and other activities required under this chapter.

(6) If more than one producer responsibility organization is registered within the state, each producer responsibility organization must coordinate with other producer responsibility organizations to provide reimbursement and ensure that government agencies and service providers are reimbursed for recycling services as required under this chapter, and to ensure that covered products are not reported as supplied or managed by more than one producer responsibility organization.

NEW SECTION. **Sec.**  CONVENIENCE STANDARDS. (1) In every jurisdiction in which covered products are sold or supplied to consumers, a producer responsibility organization must fund activities to make convenient collection services available for the full list of covered products designated for collection in the plan. Convenient collection services must be available to residents as follows:

(a) Curbside collection must be provided to residents in single-family and multifamily residences wherever curbside garbage collection services are provided to these entities, except for covered products designated for alternate collection;

(b)(i) In jurisdictions without curbside garbage collection, and in all areas for covered products designated for alternate collection, free and equitable access to permanent collection facilities must be provided that are located, at minimum, at:

(A) Each solid waste transfer, processing, disposal site or other drop-off location, or a location of equal convenience, as it existed prior to the effective date of this section; and

(B) Additional drop-off locations or collection events in communities that are not covered by a collection location described in (b)(i)(A) of this subsection. The producer responsibility organization, in consultation with the department, the relevant government agency, and the local community, must determine a reasonable number and location of additional drop-off locations or frequency and location of collection events to be held in underserved areas. The producer responsibility organization must give special consideration for providing opportunities to island and geographically isolated populations.

(ii) A retail establishment may choose to serve as a drop-off location or as the site of a collection event through mutual agreement with a producer responsibility organization, but nothing in this chapter requires a retailer to serve as a drop-off location or site of a collection event.

(c) Under initial plan implementation, collection must be provided in public places:

(i) Where government agencies provided and managed recycling collection receptacles prior to the effective date of this section. The number and location of receptacles may be adjusted to optimize collection based on mutual agreement between the producer responsibility organization and the government agency providing the service; and

(ii) At additional locations as determined by the producer responsibility organization, based on the recommendations of the statewide needs assessment in section 5 of this act and stakeholder consultation in section 6 of this act. Collection in additional locations is subject to mutual agreement by the producer responsibility organization and the government agency or other entity responsible for the public place.

(2) In any jurisdiction where collection of source separated recyclable materials from residences is provided by a city or town under the authority of RCW 35.21.120, by a county under the authority of RCW 36.58.040, or by a company that holds an applicable certificate under the authority of chapter 81.77 RCW, a producer responsibility organization must meet its curbside collection service obligation through the existing curbside collection service as described in section 12 of this act.

(3)(a) A producer responsibility organization must, in its plan, establish a statewide list of covered products designated for collection.

(b) If more than one producer responsibility organization is registered with the state, each producer responsibility organization must coordinate with other producer responsibility organizations to establish the statewide list of covered products designated for collection.

(4) Every producer responsibility organization must identify in its plan and on its website, in appropriate languages, each area where curbside and alternative collection services for covered products are available, the location of each permanent collection opportunity for covered products, the types and locations of alternate collection methods used, and the locations of public place collection services for covered products.

NEW SECTION. **Sec.**  GOVERNMENT AGENCIES—AUTHORITY TO COLLECT COVERED PRODUCTS. (1) The provisions of this chapter do not:

(a) Obligate a county, city, or town that utilizes its contract authority under RCW 35.21.120 or 36.58.040 for collection of source separated recyclable materials from residents or a city or town that undertakes collection of source separated recyclable materials from residents to participate in a plan implemented by a producer responsibility organization;

(b) Restrict the authority of a city under RCW 35.21.120, 35.21.130, and 35.21.152; or

(c) Restrict the authority of a county under RCW 36.58.040.

(2)(a) A city, town, county, or other government agency may enter into contractual agreements with producer responsibility organizations for the purposes of reimbursement of costs of services provided in accordance with the requirements of this chapter.

(b) The producer responsibility organization must reimburse the government agency for services delivered in accordance with the requirements of this chapter as described in section 13 of this act.

(c) A government agency is not restricted from including additional materials in curbside collection that are not part of the statewide list of covered products designated for collection, but the producer responsibility organization is not obligated to reimburse costs associated with the additional services.

(3) Where a city or town chooses not to exercise its authority under chapter 35.21 RCW, or a county chooses not to exercise its authority under chapter 36.58 RCW, curbside collection of covered products designated for collection as source separated recyclable materials from residences in areas regulated by the utilities and transportation commission under the provisions of chapter 81.77 RCW must be provided by a company that holds an applicable certificate issued by the utilities and transportation commission.

(4) Cities and counties are not obligated to provide resident education but may carry out or contract for resident education and outreach consistent with producer responsibility organization plan provisions under section 17 of this act and be reimbursed for the costs of these initiatives as described in section 13 of this act.

(5) A city, town, or county may not enact an ordinance requiring producers of covered products to provide additional residential recycling services for covered products unless producers are not required to fully fund the requirements of this chapter.

NEW SECTION. **Sec.**  COST REIMBURSEMENT FOR SERVICES PROVIDED BY GOVERNMENT AGENCIES. (1) A producer responsibility organization with covered products designated for curbside collection under its plan must provide reimbursement to a government agency that chooses to seek reimbursement for costs incurred in delivering curbside collection services, whether these services are provided directly or through a contracted service provider. Reimbursable costs include, as applicable, any administrative, public education, collection, transportation, and sorting or processing costs incurred in delivering curbside collection services in accordance with the requirements of this chapter. Reimbursements for curbside collection services must be calculated using base cost formulas established in the producer responsibility organization plan approved by the department.

(2) If a producer responsibility organization elects to use the services of a government agency for any other services included in the producer responsibility organization plan, it must provide reimbursement to the government agency. Reimbursement for any services other than curbside collection services may be calculated using reimbursement rates established for additional services in the producer responsibility organization plan approved by the department.

(3) Reimbursement rates may be adjusted in response to contract cost escalators, commodity pricing adjustments, new program costs, or other uncontrollable costs as agreed upon by the renew advisory council, the producer responsibility organization, the utilities and transportation commission, and approved by the department.

NEW SECTION. **Sec.**  COST REIMBURSEMENT FOR SERVICES REGULATED BY THE UTILITIES AND TRANSPORTATION COMMISSION. In areas where collection of source separated recyclable materials from residences is regulated by the utilities and transportation commission under chapter 81.77 RCW, a producer responsibility organization must provide reimbursement to the company granted a certificate to provide the service in accordance with the rates approved by the commission, including all associated taxes and fees that would be otherwise charged to residential customers directly or indirectly for recycling service, provided that the service:

(1) Is offered to residents in single-family and multifamily residences wherever curbside garbage collection services are offered;

(2) Includes collection of all covered products designated for curbside collection;

(3) Aligns with any other service standards established by the producer responsibility organization plan under section 7 of this act; and

(4) Is provided in a manner consistent with the requirements of this chapter.

NEW SECTION. **Sec.**  SERVICE PROVIDER AGREEMENTS. (1) Service agreements between producer responsibility organizations and government agencies under this chapter are limited in scope to authorizing the reimbursement of costs according to the reimbursement rates determined according to section 13 this act, and any other services included in a producer responsibility organization plan that are to be carried out by a government agency, and upon verification that the services provided meet the terms and conditions established under the producer responsibility organization plan approved by the department.

(2) Except for curbside collection services provided in accordance with sections 11 and 12 of this act, a producer responsibility organization that enters into contractual agreements with service providers to carry out producer responsibilities under this act must:

(a) Use open, competitive, and fair procurement practices;

(b) Provide opportunities for women, minority, or veteran-owned businesses, small businesses, and independent operators to participate as service providers;

(c) Require that all contracted service providers:

(i) Meet minimum operating standards, including the requirements of this chapter and chapter 70A.205 RCW;

(ii) Meet high labor standards, including family-level wages, providing benefits including health care and retirement plans or contributions, and demonstrate procurement from and contracts with women, minority, or veteran-owned businesses; and

(iii) Provide fair opportunities regardless of ethnicity, race, gender, age, disability, religion, sexual orientation, or national origin; and

(d) Require that contracted service providers maintain records and provide the producer responsibility organization with verifiable chain of custody documentation, reporting parameters for material recovery facilities and other processing facilities under section 8 of this act, and other documentation necessary to evaluate the performance relative to the requirements of this chapter. The producer responsibility organization must submit the records and documentation required under this subsection to the department, upon request by the department.

NEW SECTION. **Sec.**  INFRASTRUCTURE INVESTMENTS. (1) Each producer responsibility organization must fund and support investments in reuse and recycling infrastructure and market development in Washington state as needed to achieve the convenience standards specified in section 11 of this act, the management standards specified in section 8 of this act, the reuse and recycling rate targets set in producer responsibility organization plans as described in section 9 of this act, or to address infrastructure gaps, including investments needed to enable reuse of covered products or the recycling of covered products not currently recycled in the residential recycling system, as identified through the statewide needs assessment under section 5 of this act and through the consultation process under section 6 of this act. This may include, but is not limited to:

(a) Installing or upgrading equipment to improve sorting of covered products or mitigating the impacts of covered products to other commodities at existing sorting and processing facilities; and

(b) Capital expenditures for new technology, equipment, and facilities.

(2) Infrastructure investments must be detailed in the annual report submitted to the department. If a producer responsibility organization did not invest in preexisting reuse and recycling infrastructure within Washington state, the annual report must include a statement of the reasons why no such investment was made.

NEW SECTION. **Sec.**  EDUCATION AND OUTREACH. (1) Each plan implemented by a producer responsibility organization under this chapter must include an education and outreach component that effectively reaches diverse residents, is accessible, is clear, and supports the achievement of the reuse and recycling rate targets set in producer responsibility organization plans as described in section 9 of this act. The education and outreach component must, at minimum:

(a) Develop and provide outreach and educational materials, resources, and campaigns about the program to be used by retailers, collectors, government agencies, and nonprofit organizations. The materials, resources, and campaigns developed under this section must address, at minimum, information about:

(i) Proper end-of-life management of covered products;

(ii) Where and how to recycle covered products designated for collection; and

(iii) How to prevent contamination;

(b) Coordinate and fund the distribution of statewide promotional campaigns developed under this section through media channels that may include, but need not be limited to, print publications, radio, television, the internet, and online streaming services;

(c) Use consistent and easy to understand messaging and education statewide, with the aim of reducing resident confusion regarding the recyclability and end-of-life management options available for different covered products;

(d) Be conceptually, linguistically, and culturally accurate for the communities served and tailored to effectively reach the state's diverse populations, including through meaningful consultation with overburdened communities and vulnerable populations as defined in RCW 70A.02.010;

(e) Establish a process for answering customer questions and resolving customer concerns; and

(f) Evaluate the effectiveness of education and outreach efforts for the purposes of making progress toward performance requirements established in this chapter.

(2) A producer responsibility organization must coordinate with government agencies that choose to participate in carrying out resident education and outreach in accordance with the approach specified in the producer responsibility organization's plan.

NEW SECTION. **Sec.**  ANNUAL REPORTING ON ACTIVITIES. (1) Beginning July 1, 2027, and each July 1st thereafter, each producer responsibility organization must submit an annual report to the department for the preceding calendar year of plan implementation.

(2) Each annual report must include the following information:

(a) Identification of the governing board members of the producer responsibility organization;

(b) The quantity of covered products supplied, including:

(i) A list and explanation of the covered products supplied or sold in or into Washington to consumers by each member producer and their brands of covered products participating in the program;

(ii) A list of covered products supplied that are designated for collection under the plan approved by the department;

(iii) The weight and, where applicable and determined by the department to be necessary, number of units, by material category, of covered products supplied into the state to consumers for personal use, to be used for the purposes of calculating the reuse and recycling rate targets set in producer responsibility organization plans as described in section 9 of this act;

(iv)(A) A description of how the producer responsibility organization has distinguished and apportioned the quantities of packaging and paper products sold or supplied to consumers for personal use, which are considered covered products under this chapter, from quantities of packaging and paper products sold or supplied for other uses that are not considered covered products under this chapter;

(B) A producer responsibility organization may rely on member reporting for this description; and

(v) The quantity of covered products supplied that were designed to be reusable, recyclable, or compostable in accordance with criteria established by the department, reported separately for each of these categories by material, weight, and, where applicable and determined by the department to be necessary, number of units;

(c) The quantity of material managed and methods of management by the program, including:

(i) The weight, by material category, of all material managed by the program, including covered products and other materials;

(ii) The weight, by material category, of reused material managed by the program, measured as defined in section 9 of this act, and, where applicable and determined by the department to be necessary, the number of units;

(iii) The weight, by material category, of recycled material managed by the program, measured as defined in section 9 of this act;

(iv) The weight, by material category, of material managed by the program sent for energy recovery;

(v) The weight, by material category, of material managed by the program sent for landfill disposal; and

(vi) The weight, by material category, of material managed by the program for other methods of management not listed in (c)(ii) through (v) of this subsection, accompanied by a description of each other method used;

(d) The final destinations of recycled material managed by the program, including:

(i) Names and locations of end users or reprocessors that received recycled material managed by the program, by material category; and

(ii) Descriptions of the forms of recycled material managed by the program that were sold or supplied to the end users or reprocessors;

(e) The reuse and recycling rates achieved by the program, for each material category of covered product supplied and for all covered products supplied into the state, calculated in accordance with the requirements in section 9 (4) and (5) of this act;

(f) A description of the levels and types of physical contamination in the materials collected and managed by the program;

(g) Activities undertaken to meet the convenience standards for collection of covered products as established under section 11 of this act, including:

(i) A list of jurisdictions and service providers where curbside collection services for covered products are provided, accompanied by a brief description of services provided, locations and operating hours of permanent collection facilities, types and locations of alternate collection methods used, and locations of public place collection services; and

(ii) Collection service accessibility and convenience metrics, including population coverage, the geographic distribution of collection, and the distance of collection locations to state residents;

(h) A description of the investments made in reuse and recycling infrastructure and market development in Washington state, including:

(i) The amount spent expressed as a percentage of the program's total annual expenditures;

(ii) The locations of all material recovery facilities and other processing facilities used to meet the requirements of this chapter, whether within Washington, elsewhere in North America, or outside of North America;

(iii) Whether the facilities were preexisting, planned, or under construction as of plan approval; and

(iv) The reasons, if any, the producer responsibility organization has used alternatives to preexisting local collection and processing facilities to meet the requirements under this chapter;

(i) A detailed description of education and outreach activities undertaken and a summary of the evaluation of education and outreach effectiveness;

(j) A description of actions taken by member producers to:

(i) Prevent and reduce waste and reduce the life-cycle environmental impacts of covered products supplied or sold in or into Washington; and

(ii) Design covered products to be reusable, recyclable, or compostable;

(k) A description of any other activities undertaken in accordance with those listed to be undertaken in the plan;

(l) An assessment of the greenhouse gas emissions associated with program operations, including both direct emissions and indirect emissions with all activities, and including the avoided emissions from source reduction, reuse, and recycling of covered products into new products and materials;

(m) A summary of renew advisory council, established in section 20 of this act, engagement and input as well as comments received from additional stakeholders and community members;

(n) The total cost of implementing the plan approved by the department, as determined by an independent financial audit and performed by an independent auditor, including:

(i) Information regarding the independently audited financial statements detailing all payments received and issued by the producer responsibility organization covered by the plan approved by the department;

(ii) A copy of the independent audit; and

(iii) A detailed description of how the program compensates government agencies, private collection and transportation service providers, sorting and processing facilities, and other approved entities for services under this act; and

(o) Any other information required by the department, as adopted by rule.

(3)(a) Prior to the submission of the annual report, all nonfinancial data and information that is material to the department's review of the program's compliance with the requirements of this chapter must be annually audited.

(b) Annual independent auditing and verification must:

(i) Include documentation of the reuse and recycling rate calculations;

(ii) Encompass the management of materials from the point of collection through processing and sale of recycled materials; and

(iii) Determine whether all facilities involved in the collection, processing, and final disposition of collected covered products are operating in accordance with the requirements of this chapter and responsible management of covered products.

NEW SECTION. **Sec.**  PLAN APPROVAL, UPDATES, AND REVISIONS. (1)(a) A producer responsibility organization must submit a plan to the department that addresses five calendar years of operation. A plan is valid for no more than five years.

(i) Within three years of implementation of its initial plan, a producer responsibility organization must submit an updated plan for the following five calendar years to address changes in the operations and activities of the program.

(ii) For all subsequent plans submitted after the initial plan, a producer responsibility organization must submit, one year prior to the expiration of the plan, an updated plan for the following five calendar years of operation to address changes in the operations and activities of the program.

(b) If the reuse and recycling rate targets set in producer responsibility organization plans as described in section 9 of this act have not been met as of the time of plan update, an independent evaluation must be conducted of the producer responsibility organization's efforts to implement the plan approved by the department. The evaluation must provide information for the producer responsibility organization to use to target and improve reuse and recycling rate performance.

(c) A producer responsibility organization must carry out the consultation process established in section 6 of this act prior to the submission of each plan and plan update.

(2)(a) A producer responsibility organization may choose to revise its plan if significant changes have occurred.

(b) The department may require a producer responsibility organization to revise its plan more frequently than every five years if:

(i) The program and activities to implement the plan fail to achieve the reuse and recycling rate targets set in producer responsibility organization plans as described in section 9 of this act or otherwise fail to achieve significant requirements under this chapter; or

(ii) There are significant changes to the regulatory or economic environment in which plan activities are being carried out.

NEW SECTION. **Sec.**  RENEW ADVISORY COUNCIL. (1) The renew advisory council is established.

(2) The council consists of members appointed by the department as follows:

(a) Four representatives of local governments representing geographic areas across the state, including urban and rural communities;

(b) One representative of tribes or tribal or indigenous services organizations;

(c) One representative of special purpose districts;

(d) Two representatives of community-based organizations representing the interests of overburdened communities and vulnerable populations as defined in RCW 70A.02.010;

(e) Two representatives of environmental nonprofit organizations;

(f) One owner or operator of a small business that is not eligible for representation under (g), (h), or (i) of this subsection;

(g) Six representatives of the recycling industry, including local governments' service providers, solid waste collection companies or associations, material recovery facilities or other processing facilities;

(h) Four representatives of producers of covered products or producer trade associations representing different types of covered products. A member appointed to the council under this subsection may not be a representative or a member of the board of directors of a producer responsibility organization registered with the department under section 3 of this act; and

(i) Two representatives of packaging suppliers that are not producers as defined under this act representing different material categories.

(3) Renew advisory councilmembers must be appointed by the director of the department by January 1, 2023. In appointing members, the department shall:

(a) Appoint members that, to the greatest extent practicable, represent diversity in race, ethnicity, age, and gender, urban and rural areas, and different regions of the state;

(b) Consider recommendations for appointments from relevant represented groups or associations and from individuals interested in participating on the council.

(4)(a) The terms of initial appointments must be staggered to two and three-year appointments, with subsequent terms of three years. Members are eligible for reappointment.

(b) If there is a vacancy for any reason, the department shall make an appointment to become effective immediately for the unexpired term.

(5)(a) The council shall elect one of its members to serve as chairperson and another to serve as vice chairperson, for the terms and with the duties and powers necessary for the performance of the functions of such offices as the council determines. The chairperson and vice chairperson may not both be members appointed under the same subsection of subsection (2)(a) through (i) of this section.

(b) The council may adopt bylaws and a charter for the operation of its business for the purposes of this chapter.

(6) The council shall meet at least once every three months for the first three years, at times and places specified by the chairperson. The council may also meet at other times and places specified by the call of the chairperson or of a majority of the councilmembers, as necessary, to carry out the duties of the council.

(7)(a) The department shall provide staff support and facilitation as necessary for the council to carry out the duties of the council.

(b) The department may select an impartial, third-party facilitator to convene and provide administrative support to the council.

(8) The duties of the council include the following:

(a) Advise and make recommendations to the department on the scope of the statewide needs assessment;

(b) Review and comment on a draft reuse and recycling rate targets study and on a draft statewide needs assessment prior to their completion;

(c) Advise and make recommendations to any registered producer responsibility organization during stakeholder consultation on plans as required under section 6 of this act;

(d) Review and comment on all new, updated, and revised plans submitted by producer responsibility organizations to the department, including making recommendations to the department on plan approvals, as part of the public comment period as established under section 4 of this act;

(e) Advise and make recommendations to any registered producer responsibility organization on annual reports prior to submission as established in section 18 of this act;

(f) Review and comment on all annual reports submitted by producer responsibility organizations to the department, including making recommendations to the department regarding the need for any plan amendments or other recommendations regarding program activities; and

(g) Provide input, review, and comment on rule making developed by the department under section 4 of this act.

(9) Renew advisory council members that are representatives of tribes or tribal and indigenous services organizations or community-based and environmental nonprofit organizations must, if requested, be compensated and reimbursed in accordance with RCW 43.03.050, 43.03.060, and 43.03.220.

(10) The department must include costs related to the renew advisory council in the estimate of annual costs as established in section 4 of this act, including costs for:

(a) Department resources, including staff time;

(b) A third-party facilitator; and

(c) Expenses related to member participation as established in subsection (9) of this section.

**Sec.**  RCW 70A.245.010 and 2021 c 313 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Beverage" means beverages identified in (a) through (f) of this subsection, intended for human or animal consumption, and in a quantity more than or equal to two fluid ounces and less than or equal to one gallon:

(a) Water and flavored water;

(b) Beer or other malt beverages;

(c) Wine;

(d) Distilled spirits;

(e) Mineral water, soda water, and similar carbonated soft drinks; and

(f) Any beverage other than those specified in (a) through (e) of this subsection, except infant formula as defined in 21 U.S.C. Sec. 321(z), medical food as defined in 21 U.S.C. Sec. 360ee(b)(3), or fortified oral nutritional supplements used for persons who require supplemental or sole source nutritional needs due to special dietary needs directly related to cancer, chronic kidney disease, diabetes, or other medical conditions as determined by the department.

(2) "Beverage manufacturing industry" means an association that represents beverage producers.

(3) "Condiment packaging" means packaging used to deliver single-serving condiments to customers. Condiment packaging includes, but is not limited to, single-serving packaging for ketchup, mustard, relish, mayonnaise, hot sauce, coffee creamer, salad dressing, jelly, jam, and soy sauce.

(4)(a) "Covered product" means an item in one of the following categories subject to minimum postconsumer recycled content requirements:

(i) Plastic trash bags;

(ii) Household cleaning and personal care products that use plastic household cleaning and personal care product containers; ((~~and~~))

(iii) Beverages that use plastic beverage containers;

(iv) Polypropylene tubs used for food products;

(v) PET thermoform plastic containers; and

(vi) Single-use plastic cups.

(b) "Covered product" does not include any type of container or bag for which the state is preempted from regulating content of the container material or bag material under federal law.

(5) "Dairy milk" means a beverage that designates milk as the predominant (first) ingredient in the ingredient list on the container's label.

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

(7) "Expanded polystyrene" means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene).

(8) "Food service business" means a business selling or providing food for consumption on or off the premises, and includes full-service restaurants, fast food restaurants, cafes, delicatessens, coffee shops, grocery stores, vending trucks or carts, home delivery services, delivery services provided through an online application, and business or institutional cafeterias.

(9) "Food service product" means a product intended for one-time use and used for food or drink offered for sale or use. Food service products include, but are not limited to, containers, plates, bowls, cups, lids, beverage containers, meat trays, deli rounds, utensils, sachets, straws, condiment packaging, clamshells and other hinged or lidded containers, wrap, and portion cups.

(10) "Household cleaning and personal care product" means any of the following:

(a) Laundry detergents, softeners, and stain removers;

(b) Household cleaning products;

(c) Liquid soap;

(d) Shampoo, conditioner, styling sprays and gels, and other hair care products; or

(e) Lotion, moisturizer, facial toner, and other skin care products.

(11) "Household cleaning and personal care product manufacturing industry" means an association that represents companies that manufacture household cleaning and personal care products.

(12) "Licensee" means a manufacturer or entity who licenses a brand and manufactures a covered product under that brand.

(13) "Oral nutritional supplement" means a manufactured liquid, powder capable of being reconstituted, or solid product that contains a combination of carbohydrates, proteins, fats, fiber, vitamins, and minerals intended to supplement a portion of a patient's nutrition intake.

(14) "Plastic beverage container" means a bottle or other rigid container that is capable of maintaining its shape when empty, comprised solely of one or multiple plastic resins designed to contain a beverage. Plastic beverage container does not include:

(a) Refillable beverage containers, such as containers that are sufficiently durable for multiple rotations of their original or similar purpose and are intended to function in a system of reuse;

(b) Rigid plastic containers or plastic bottles that are or are used for medical devices, medical products that are required to be sterile, nonprescription and prescription drugs, or dietary supplements as defined in RCW 82.08.0293;

(c) Bladders or pouches that contain wine; or

(d) Liners, caps, corks, closures, labels, and other items added externally or internally but otherwise separate from the structure of the bottle or container.

(15)(a) "Plastic household cleaning and personal care product container" means a bottle, jug, or other rigid container with a neck or mouth narrower than the base, and:

(i) A minimum capacity of eight fluid ounces or its equivalent volume;

(ii) A maximum capacity of five fluid gallons or its equivalent volume;

(iii) That is capable of maintaining its shape when empty;

(iv) Comprised solely of one or multiple plastic resins; and

(v) Containing a household cleaning or personal care product.

(b) "Plastic household cleaning and personal care product container" does not include:

(i) Refillable household cleaning and personal care product containers, such as containers that are sufficiently durable for multiple rotations of their original or similar purpose and are intended to function in a system of reuse; and

(ii) Rigid plastic containers or plastic bottles that are medical devices, medical products that are required to be sterile, and nonprescription and prescription drugs, dietary supplements as defined in RCW 82.08.0293, and packaging used for those products.

(16) "Plastic trash bag" means a bag that is made of noncompostable plastic, is at least 0.70 mils thick, and is designed and manufactured for use as a container to hold, store, or transport materials to be discarded or recycled, and includes, but is not limited to, a garbage bag, recycling bag, lawn or leaf bag, can liner bag, kitchen bag, or compactor bag. "Plastic trash bag" does not include any compostable bags meeting the requirements of chapter 70A.455 RCW.

(17) "Plastic trash bag manufacturing industry" means an association that represents companies that manufacture plastic trash bags.

(18) "Postconsumer recycled content" means the content of a covered product made of recycled materials derived specifically from recycled material generated by households or by commercial, industrial, and institutional facilities in their role as end users of a product that can no longer be used for its intended purpose. "Postconsumer recycled content" includes returns of material from the distribution chain.

(19)(a) "Producer" means the following person responsible for compliance with minimum postconsumer recycled content requirements under this chapter for a covered product sold, offered for sale, or distributed in or into this state:

(i) If the covered product is sold under the manufacturer's own brand or lacks identification of a brand, the producer is the person who manufactures the covered product;

(ii) If the covered product is manufactured by a person other than the brand owner, the producer is the person who is the licensee of a brand or trademark under which a covered product is sold, offered for sale, or distributed in or into this state, whether or not the trademark is registered in this state, unless the manufacturer or brand owner of the covered product has agreed to accept responsibility under this chapter; or

(iii) If there is no person described in (a)(i) and (ii) of this subsection over whom the state can constitutionally exercise jurisdiction, the producer is the person who imports or distributes the covered product in or into the state.

(b) "Producer" does not include:

(i) Government agencies, municipalities, or other political subdivisions of the state;

(ii) Registered 501(c)(3) charitable organizations and 501(c)(4) social welfare organizations; or

(iii) De minimis producers that annually sell, offer for sale, distribute, or import in or into the country for sale in Washington:

(A) Less than one ton of a single category of plastic beverage containers, plastic household cleaning and personal care containers, ((~~or~~)) plastic trash bags, polypropylene tubs used for food products, PET thermoform plastic containers, or single-use plastic cups each year; or

(B) A single category of a covered product that in aggregate generates less than $1,000,000 each year in revenue.

(20)(a) "Retail establishment" means any person, corporation, partnership, business, facility, vendor, organization, or individual that sells or provides merchandise, goods, or materials directly to a customer.

(b) "Retail establishment" includes, but is not limited to, food service businesses, grocery stores, department stores, hardware stores, home delivery services, pharmacies, liquor stores, restaurants, catering trucks, convenience stores, or other retail stores or vendors, including temporary stores or vendors at farmers markets, street fairs, and festivals.

(21)(a) "Utensil" means a product designed to be used by a consumer to facilitate the consumption of food or beverages, including knives, forks, spoons, cocktail picks, chopsticks, splash sticks, and stirrers.

(b) "Utensil" does not include plates, bowls, cups, and other products used to contain food or beverages.

(22) "Durable good" means a product that provides utility over an extended period of time.

(23)(a) "Polyethylene terephthalate (PET) thermoform plastic container" means a clear or colored plastic container, such as a clamshell, lid, tray, egg carton, trifold, or similar rigid, nonbottle packaging, formed from sheets of extruded PET resin and used to package items for consumers, including:

(i) Branded and prepackaged containers that have been filled with products and sealed prior to receipt by the retail establishment, such as fresh produce, baked goods, nuts, toys, electronics, and tools;

(ii) Containers that may be filled at the point-of-sale at a retail establishment; and

(iii) Unfilled containers that are sold directly.

(b) "Polyethylene terephthalate (PET) thermoform plastic container" does not include:

(i) Single-use plastic cups;

(ii) Refillable containers, such as containers that are sufficiently durable for multiple rotations of their original or similar purpose and are intended to function in a system of reuse;

(iii) Rigid plastic containers that are or are used for medical devices, medical products that are required to be sterile, nonprescription and prescription drugs, or dietary supplements as defined in RCW 82.08.0293;

(iv) A refillable thermoform plastic container that ordinarily would be returned to the manufacturer to be refilled and resold;

(v) A lid or seal of a different material type from plastic; or

(vi) PET thermoform containers accompanying a durable good where that durable good model was designed prior to the effective date of this section.

(24) "Polypropylene tub" means tubs with wide-mouth containers that have a snap-on lid capable of multiple closures or are sealed with a tamper-proof film, and have a maximum capacity or volume of 50 ounces volumetric fill, including:

(a) Branded and prepackaged containers that have been filled with products and sealed prior to receipt by the retail establishment;

(b) Containers that may be filled at the point-of-sale at a retail establishment; and

(c) Unfilled containers that are sold directly.

(25) "Single-use plastic cup" means all nonsealed and sealed at point-of-sale, beverage serving cups, except commercially or home compostable cups, expanded polystyrene, or plastic-lined fiber cups (i.e., composite cups).

**Sec.**  RCW 70A.245.020 and 2021 c 313 s 3 are each amended to read as follows:

(1)(a) Beginning January 1, 2023, producers that offer for sale, sell, or distribute in or into Washington:

(i) Beverages other than wine in 187 milliliter plastic beverage containers and dairy milk in plastic beverage containers must meet minimum postconsumer recycled content requirements established under subsection (4) of this section; and

(ii) Plastic trash bags must meet minimum postconsumer recycled content requirements established under subsection (6) of this section.

(b) Beginning January 1, 2025, producers that offer for sale, sell, or distribute in or into Washington household cleaning and personal care products in plastic household cleaning and personal care product containers must meet minimum postconsumer recycled content as required under subsection (5) of this section.

(c) Beginning January 1, 2026, producers that offer for sale, sell, or distribute in or into Washington polypropylene tubs used for food products must meet minimum postconsumer recycled content requirements established under subsection (7) of this section.

(d) Beginning January 1, 2028, producers that offer for sale, sell, or distribute in or into Washington wine in 187 milliliter plastic beverage containers or dairy milk in plastic beverage containers must meet minimum postconsumer recycled content as required under subsection (4) of this section.

(e) Beginning January 1, 2029, producers that offer for sale, sell, or distribute in or into Washington single-use plastic cups must meet minimum postconsumer recycled content requirements established under subsection (9) of this section.

(f) Beginning January 1, 2031, producers that offer for sale, sell, or distribute in or into Washington PET thermoform plastic containers except those containing durable goods must meet minimum postconsumer recycled content requirements established under subsection (8) of this section.

(g) Beginning January 1, 2036, producers that offer for sale, sell, or distribute in or into Washington durable goods in PET thermoform plastic containers must meet minimum postconsumer recycled content requirements established under subsection (8) of this section.

(2)(a) ((~~On~~)) (i) Except as provided in (a)(ii) of this subsection, on or before April 1, 2022, and January 31, 2023, and annually thereafter, a producer that offers for sale, sells, or distributes in or into Washington covered products must register with the department individually or through a third-party representative registering on behalf of a group of producers.

(ii) A producer that offers for sale, sells, or distributes in or into Washington single-use plastic cups or polypropylene tubs used for food products or PET thermoform plastic containers must register with the department individually or through a third-party representative registering on behalf of a group of producers on or before January 31, 2023.

(b) The registration information submitted to the department under this section must include a list of the producers of covered products and the brand names of the covered products represented in the registration submittal. Beginning ((~~April 1~~)) January 31, 2024, for plastic trash bags and plastic beverage containers other than wine in 187 milliliter plastic beverage containers and dairy milk in plastic beverage containers, ((~~April 1~~)) January 31, 2026, for plastic household and personal care product containers, ((~~and April 1~~)) January 31, 2027, for polypropylene tubs used for food products, January 31, 2029, for wine in 187 milliliter plastic beverage containers and dairy milk, January 31, 2030, for single-use plastic cups, January 31, 2032, for PET thermoform plastic containers except those used for durable goods, and January 31, 2037, for PET thermoform plastic containers used for durable goods, a producer may submit registration information at the same time as the information submitted through the annual reporting required under RCW 70A.245.030.

(3)(a) By January 31, 2022, ((~~and every January 31st thereafter~~)) for covered products defined in RCW 70A.245.010(4)(a) (i), (ii), and (iii), by March 1, 2023, for all covered products defined in RCW 70A.245.010(4)(a), and every March 1st thereafter, the department must:

(i) Prepare an annual workload analysis for public comment that identifies the annual costs it expects to incur to implement, administer, and enforce this section and RCW 70A.245.030 through 70A.245.060 and 70A.245.090 (1), (2), and (4), including rule making, in the next fiscal year for each category of covered products;

(ii) Determine a total annual fee payment by producers or their third-party representatives for each category of covered products that is adequate to cover, but not exceed, the workload identified in (a)(i) of this subsection;

(iii) Until rules are adopted under (a)(iv) of this subsection, issue a general order to all entities falling within the definition of producer. The department must equitably determine fee amounts for an individual producer or third-party representatives within each category of covered product;

(iv) By 2024, adopt rules to equitably determine annual fee payments by producers or their third-party representatives within each category of covered product. Once such rules are adopted, the general order issued under (a)(iii) of this subsection is no longer effective; and

(v) Send notice to producers or their third-party representatives of fee amounts due consistent with either the general order issued under (a)(iii) of this subsection or rules adopted under (a)(iv) 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 year, if the collected annual payment exceeds the department's costs for a given year; and

(ii) Increase annual payments for the coming year to cover the department's costs, if the collected annual payment was less than the department's costs for a given year.

(c) ((~~By~~)) (i) Except as provided in (c)(ii) of this subsection, by April 1, 2022, and every ((~~April~~)) May 1st thereafter, producers or their third-party representative must submit a fee payment as determined by the department under (a) of this subsection.

(ii) Producers of single-use plastic cups, polypropylene tubs used for food products, or PET thermoform plastic containers, or their third-party representative, must submit a fee payment as determined by the department under (a) of this subsection by May 1, 2023, and every May 1st thereafter.

(4) A producer of a beverage in a plastic beverage container must meet the following annual minimum postconsumer recycled content percentage on average for the total quantity of plastic beverage containers, by weight, that are sold, offered for sale, or distributed in or into Washington by the producer effective:

(a) For beverages except wine in 187 milliliter plastic beverage containers and dairy milk:

(i) January 1, 2023, through December 31, 2025: No less than 15 percent postconsumer recycled content plastic by weight;

(ii) January 1, 2026, through December 31, 2030: No less than 25 percent postconsumer recycled content plastic by weight; and

(iii) On and after January 1, 2031: No less than 50 percent postconsumer recycled content plastic by weight.

(b) For wine in 187 milliliter plastic beverage containers and dairy milk:

(i) January 1, 2028, through December 31, 2030: No less than 15 percent postconsumer recycled content plastic by weight;

(ii) January 1, 2031, through December 31, 2035: No less than 25 percent postconsumer recycled content plastic by weight; and

(iii) On and after January 1, 2036: No less than 50 percent postconsumer recycled content plastic by weight.

(5) A producer of household cleaning and personal care products in plastic containers must meet the following annual minimum postconsumer recycled content percentage on average for the total quantity of plastic containers, by weight, that are sold, offered for sale, or distributed in or into Washington by the producer effective:

(a) January 1, 2025, through December 31, 2027: No less than 15 percent postconsumer recycled content plastic by weight;

(b) January 1, 2028, through December 31, 2030: No less than 25 percent postconsumer recycled content plastic by weight; and

(c) On and after January 1, 2031: No less than 50 percent postconsumer recycled content plastic by weight.

(6) A producer of plastic trash bags must meet the following annual minimum postconsumer recycled content percentage on average for the total quantity of plastic trash bags, by weight, that are sold, offered for sale, or distributed in or into Washington by the producer effective:

(a) January 1, 2023, through December 31, 2024: No less than 10 percent postconsumer recycled content plastic by weight;

(b) January 1, 2025, through December 31, 2026: No less than 15 percent postconsumer recycled content plastic by weight; and

(c) On and after January 1, 2027: No less than 20 percent postconsumer recycled content plastic by weight.

(7) A producer of a polypropylene tub must meet the following annual minimum postconsumer recycled content percentage on average for the total quantity of polypropylene tubs used for food products, by weight, that are sold, offered for sale, or distributed in or into Washington by the producer effective:

(a) January 1, 2026, through December 31, 2030: No less than 10 percent postconsumer recycled content plastic by weight; and

(b) On and after January 1, 2031: No less than 30 percent postconsumer recycled content plastic by weight.

(8) A producer of a PET thermoform plastic container must meet the following annual minimum postconsumer recycled content percentage on average for the total quantity of PET thermoform plastic containers, by weight, that are sold, offered for sale, or distributed in or into Washington by the producer effective:

(a) For packaging for consumable goods:

(i) January 1, 2031, through December 31, 2035: No less than 10 percent postconsumer recycled content plastic by weight; and

(ii) On and after January 1, 2036: No less than 30 percent postconsumer recycled content plastic by weight;

(b)(i) Except as provided in (b)(ii) of this subsection, for packaging used for durable goods: On and after January 1, 2036, no less than 30 percent postconsumer recycled content plastic by weight;

(ii) Packaging designed to accompany a durable good where that durable good model is designed prior to the effective date of the requirement in (b)(i) of this subsection is exempt.

(9) A producer of single-use plastic cups must meet the following annual minimum postconsumer recycled content percentage on average for the total quantity of single-use plastic cups, by weight, that are sold, offered for sale, or distributed in or into Washington by the producer effective:

(a) For polypropylene single-use plastic cups:

(i) January 1, 2029, through December 31, 2030: No less than 15 percent postconsumer recycled content plastic by weight; and

(ii) On and after January 1, 2031: No less than 25 percent postconsumer recycled content plastic by weight;

(b) For polyethylene terephthalate (PET) and polystyrene single-use plastic cups:

(i) January 1, 2029, through December 31, 2030: No less than 20 percent postconsumer recycled content plastic by weight; and

(ii) On and after January 1, 2031: No less than 30 percent postconsumer recycled content plastic by weight.

(10)(a) Beginning January 1, 2024, or when rule making is complete, whichever is sooner, the department may, on an annual basis on January 1st, review and determine for the following year whether to adjust the minimum postconsumer recycled content percentage required for a type of container or product or category of covered products pursuant to subsection (4), (5), ((~~or~~)) (6), (7), (8), or (9) of this section. The department's review may be initiated by the department or at the petition of a producer or a covered product manufacturing industry not more than once annually. When submitting a petition, producers or a producer manufacturing industry must provide necessary information that will allow the department to make a determination under (b) of this subsection.

(b) In making a determination pursuant to this subsection, the department must consider, at a minimum, all of the following factors:

(i) Changes in market conditions, including supply and demand for postconsumer recycled content plastics, collection rates, and bale availability both domestically and globally;

(ii) Recycling rates;

(iii) The availability of recycled plastic suitable to meet the minimum postconsumer recycled content requirements pursuant to subsection (4), (5), ((~~or~~)) (6), (7), (8), or (9) of this section, including the availability of high quality recycled plastic, and food-grade recycled plastic from recycling programs;

(iv) The capacity of recycling or processing infrastructure;

(v) The technical feasibility of achieving the minimum postconsumer recycled content requirements in covered products that are regulated under 21 C.F.R., chapter I, subchapter G, 7 U.S.C. Sec. 136, 15 U.S.C. Sec. 1471-1477, 49 C.F.R. Sec. 178.33b, 49 C.F.R. Sec. 173, 40 C.F.R. Sec. 152.10, 15 U.S.C. Sec. 1261-1278, 49 U.S.C. 5101 et seq., 49 C.F.R. Sec. 178.509, 49 C.F.R. Sec. 179.522, 49 C.F.R. Sec. 178.600-609, and other federal laws; and

(vi) The progress made by producers in achieving the goals of this section.

(c) Under (a) of this subsection:

(i) The department may not adjust the minimum postconsumer recycled content requirements above the minimum postconsumer recycled content percentages for the year under review required pursuant to subsection (4), (5), ((~~or~~)) (6), (7), (8), or (9) of this section.

(ii) For plastic household cleaning and personal care product containers, the department may not adjust the minimum postconsumer recycled content requirements above the minimum postconsumer recycled content percentages for the year under review required pursuant to subsection (5) of this section or below a minimum of 10 percent.

(iii) For plastic trash bags, the department may not adjust the minimum postconsumer recycled content requirements above the minimum postconsumer recycled content percentages for the year under review required pursuant to subsection (6) of this section or below the minimum percentage required in subsection (6)(a) of this section.

(d) A producer or the manufacturing industry for a covered product may appeal a decision by the department to adjust postconsumer recycled content percentages under (a) of this subsection or to temporarily exclude covered products from minimum postconsumer recycled content requirements under subsection ((~~(8)~~)) (11) of this section to the pollution control hearings board within 30 days of the department's determination.

((~~(8)~~)) (11)(a) The department must temporarily exclude from minimum postconsumer recycled content requirements for the upcoming year any types of covered products in plastic containers for which a producer annually demonstrates to the department by December 31st of a given year that ((~~the~~)):

(i) The producer cannot achieve the postconsumer recycled content requirements and remain in compliance with applicable rules and regulations adopted by the United States food and drug administration, or any other state or federal law, rule, or regulation; or

(ii) The achievement of postconsumer recycled content requirements in the container material is not ((~~technically~~)) technologically feasible ((~~in order to comply with health or safety requirements of federal law, including the federal laws specified in subsection (7)(b)(v) of this section~~)).

(b) A producer must continue to register and report consistent with the requirements of this chapter for covered products temporarily excluded from minimum postconsumer recycled content requirements under this subsection.

((~~(9)~~)) (12) A producer that does not achieve the postconsumer recycled content requirements established under this section is subject to penalties established in RCW 70A.245.040.

((~~(10)~~)) (13)(a) A city, town, county, or municipal corporation may not implement local recycled content requirements for a covered product that is subject to minimum postconsumer recycled content requirements established in this section.

(b) A city, town, county, or municipal corporation may establish local purchasing requirements that include recycled content standards that exceed the minimum recycled content requirements established by this chapter for plastic household cleaning and personal care product containers or plastic trash bags purchased by a city, town, or municipal corporation, or its contractor.

((~~(11)~~)) (14) The department may enter into contracts for the services required to implement this chapter and related duties of the department.

((~~(12)~~)) (15) In-state distributors, wholesalers, and retailers in possession of covered products manufactured before the date that postconsumer recycled content requirements become effective may exhaust their existing stock through sales to the public.

**Sec.**  RCW 70A.245.030 and 2021 c 313 s 4 are each amended to read as follows:

(1)(a) Except as provided in (b) ((~~and~~)), (c), (d), (e), or (f) of this subsection, beginning April 1, 2024, each producer of covered products, individually or through a third party representing a group of producers, must provide an annual report to the department that includes the amount in pounds of virgin plastic and the amount in pounds of postconsumer recycled content by resin type used for each category of covered products that are sold, offered for sale, or distributed in or into Washington state, including the total postconsumer recycled content resins as a percentage of total weight.

(i) The report must be submitted in a format and manner prescribed by the department.

(ii) The department may determine that producers of one or more categories of covered products must demonstrate compliance with the postconsumer recycled content requirements established in this section by providing validation documents issued by an established third-party certification entity acceptable to the department, directly or through their third-party representatives, to the department.

(iii) A manufacturer may submit national data allocated on a per capita basis for Washington to approximate the information required in this subsection if the producer or third-party representative demonstrates to the department that state level data are not available or feasible to generate.

(b) The requirements of (a) of this subsection apply to household cleaning and personal care products in plastic containers beginning April 1, 2026.

(c) The requirements of (a) of this subsection apply to polypropylene tubs used for food products beginning April 1, 2027.

(d) The requirements of (a) of this subsection apply to wine in 187 milliliter plastic beverage containers and dairy milk in plastic beverage containers beginning April 1, 2029.

((~~(d)~~)) (e) The requirements of (a) of this subsection apply to single-use plastic cups beginning April 1, 2030.

(f) The requirements of (a) of this subsection apply to PET thermoform plastic containers except for those used for durable goods beginning April 1, 2032.

(g) The requirements of (a) of this subsection apply to PET thermoform plastic containers used for durable goods beginning April 1, 2037.

(h) The department must post the information reported under this subsection on its website, except as provided in subsection (2) of this section.

(2) A producer that submits information or records to the department under this chapter may request that the information or records be made available only for the confidential use of the department, the director, 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.**  TRUTH IN LABELING. (1) Beginning January 1, 2026, a producer may not offer for sale, sell, or distribute in or into Washington, including by means of remote sale, any covered product that makes a deceptive or misleading claim about its recyclability.

(a) A covered product that displays a chasing arrows symbol, a chasing arrows symbol surrounding a resin identification code, or any other symbol or statement indicating that it is recyclable is deemed to be deceptive or misleading unless it is designated for collection in a producer responsibility organization plan approved by the department as described in section 7 of this act;

(b) A label is not considered a misleading or deceptive claim of recyclability if it:

(i) Is required by another state or by a federal law or agency at the time that the claim is made;

(ii) Is part of a widely adopted and standardized third-party labeling system; or

(iii) Uses a chasing arrows symbol in combination with a clearly visible line placed at a 45 degree angle over the chasing arrows symbol to convey that an item is not recyclable.

(2) At such time as an enforceable federal statutory or regulatory standard is implemented for labeling packaging related to recyclability, within 180 days the department shall review criteria under this chapter with federal standards or requirements and may adopt the federal criteria in lieu of the requirements of this section.

(3) Beginning July 1, 2022, a city, town, or county may not enact an ordinance restricting the distribution or sale of covered products due to displaying a chasing arrows symbol, a chasing arrows symbol surrounding a resin identification code, or any other symbol or statement indicating that it is recyclable if the covered product is, at the time that the claim is made:

(a) Designated for collection in a producer responsibility organization plan approved by the department as described in section 7 of this act;

(b) Required to display the symbol or statement by another state or by a federal law or agency;

(c) Part of a widely adopted and standardized third-party labeling system; or

(d) Using a chasing arrows symbol in combination with a clearly visible line placed at a 45 degree angle over the chasing arrows symbol to convey that an item is not recyclable.

NEW SECTION. **Sec.**  ROLL CARTS. (1) Beginning January 1, 2023, a manufacturer or person may only sell, offer for sale, or distribute for use in Washington plastic collection bins made from at least 25 percent postconsumer recycled content, including at least 10 percent derived from curbside recycling programs. However, a person providing solid waste collection services may distribute for use in Washington any plastic collection bins that were in use or in its inventory in Washington state prior to January 1, 2023, until the end of such bins' useful life.

(2) A person with an existing municipal contract for plastic collection bins that was in place prior to August 1, 2022, is exempt from this section until the expiration or renewal date of the contract. A new or renewed contract whose terms take effect after August 1, 2022, must be consistent with the requirements of this section. Exempt persons are encouraged to meet the requirements of this section as collection bins are replaced under existing contracts.

(3) Manufacturers of plastic collection bins, including persons that sell, offer for sale, distribute, or provide collection bins in Washington must provide written evidence or certification, upon request, to the department or any municipality, retailer, stewardship organization, solid waste collection company, or other purchaser of collection bins showing that their collection bins meet the requirements of this section.

(4) For the purposes of this section, "plastic collection bins" include plastic bins, cans, carts, toters, roll carts, or other receptacles used to collect recyclables, compostable materials, or garbage used by solid waste collection services.

NEW SECTION. **Sec.**  PACKAGING REGISTRATION CLEARINGHOUSE—PRODUCER REGISTRATION. (1) The department is authorized to participate in the development and ongoing operation of a regional or multistate clearinghouse for the purpose of facilitating the implementation of state laws and rules on packaging and paper products including, but not limited to, requirements established under this chapter and in chapters 70A.222, 70A.230, 70A.245, 70A.340, and 70A.350 RCW and other relevant laws.

(2) The department may direct producers to register and submit any required data, annual reports, fees, and annual payments, and any additional information or documentation to a clearinghouse in lieu of the department.

NEW SECTION. **Sec.**  OTHER ASSISTANCE PROGRAMS. Nothing in this chapter impacts an entity's eligibility for any state or local incentive or assistance program to which they are otherwise eligible.

NEW SECTION. **Sec.**  ACCOUNT. The responsible packaging management account is created in the custody of the state treasury. All receipts received by the department under this chapter must be deposited in the account. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Expenditures from the account may be used by the department only for implementing, administering, and enforcing the requirements of this chapter.

**Sec.**  RCW 43.21B.110 and 2021 c 316 s 41 and 2021 c 313 s 16 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.65.200, section 4 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, section 4 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.

(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 2021 c 316 s 42 and 2021 c 313 s 17 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.65.200, section 4 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 thirty 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 thirty days after the date of receipt by the person penalized of the notice imposing the penalty or thirty 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) Thirty days after receipt of the notice imposing the penalty;

(b) Thirty 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) Thirty 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 thirty 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 thirty 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, 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, and chapter 70A.--- RCW (the new chapter created in section 41 of this act), which shall be credited to the responsible packaging management account created by section 28 of this act.

**Sec.**  RCW 70A.205.005 and 2002 c 299 s 3 are each amended to read as follows:

The legislature finds:

(1) Continuing technological changes in methods of manufacture, packaging, and marketing of consumer products, together with the economic and population growth of this state, the rising affluence of its citizens, and its expanding industrial activity have created new and ever-mounting problems involving disposal of garbage, refuse, and solid waste materials resulting from domestic, agricultural, and industrial activities.

(2) Traditional methods of disposing of solid wastes in this state are no longer adequate to meet the ever-increasing problem. Improper methods and practices of handling and disposal of solid wastes pollute our land, air and water resources, blight our countryside, adversely affect land values, and damage the overall quality of our environment.

(3) Considerations of natural resource limitations, energy shortages, economics and the environment make necessary the development and implementation of solid waste recovery and/or recycling plans and programs.

(4) Waste reduction must become a fundamental strategy of solid waste management. It is therefore necessary to change manufacturing and purchasing practices and waste generation behaviors to reduce the amount of waste that becomes a governmental responsibility.

(5) Source separation of waste must become a fundamental strategy of solid waste management. Collection and handling strategies should have, as an ultimate goal, the source separation of all materials with resource value or environmental hazard.

(6)(a) It should be the goal of every person and business to minimize their production of wastes and to separate recyclable or hazardous materials from mixed waste.

(b) It is the responsibility of state, county, and city governments to provide for a waste management infrastructure to fully implement waste reduction and source separation strategies and to process and dispose of remaining wastes in a manner that is environmentally safe and economically sound. It is further the responsibility of state, county, and city governments to monitor the cost-effectiveness and environmental safety of combusting separated waste, processing mixed municipal solid waste, and recycling programs.

(c) It is the responsibility of county and city governments to assume primary responsibility for solid waste management and to develop and implement aggressive and effective waste reduction and source separation strategies.

(d) It is the responsibility of state government to ensure that local governments are providing adequate source reduction and separation opportunities and incentives to all, including persons in both rural and urban areas, and nonresidential waste generators such as commercial, industrial, and institutional entities, recognizing the need to provide flexibility to accommodate differing population densities, distances to and availability of recycling markets, and collection and disposal costs in each community; and to provide county and city governments with adequate technical resources to accomplish this responsibility.

(e) It is the responsibility of producers to help provide for the responsible management of their products.

(7) Environmental and economic considerations in solving the state's solid waste management problems requires strong consideration by local governments of regional solutions and intergovernmental cooperation.

(8) The following priorities for the collection, handling, and management of solid waste are necessary and should be followed in descending order as applicable:

(a) Waste reduction;

(b) Recycling, with source separation of recyclable materials as the preferred method;

(c) Energy recovery, incineration, or landfill of separated waste;

(d) Energy recovery, incineration, or landfill of mixed municipal solid wastes.

(9) It is the state's goal to achieve a fifty percent recycling rate by 2007.

(10) It is the state's goal that programs be established to eliminate residential or commercial yard debris in landfills by 2012 in those areas where alternatives to disposal are readily available and effective.

(11) Steps should be taken to make recycling at least as affordable and convenient to the ratepayer as mixed waste disposal.

(12) It is necessary to compile and maintain adequate data on the types and quantities of solid waste that are being generated and to monitor how the various types of solid waste are being managed.

(13) Vehicle batteries should be recycled and the disposal of vehicle batteries into landfills or incinerators should be discontinued.

(14) Excessive and nonrecyclable packaging of products should be avoided.

(15) Comprehensive education should be conducted throughout the state so that people are informed of the need to reduce, source separate, and recycle solid waste.

(16) All governmental entities in the state should set an example by implementing aggressive waste reduction and recycling programs at their workplaces and by purchasing products that are made from recycled materials and are recyclable.

(17) To ensure the safe and efficient operations of solid waste disposal facilities, it is necessary for operators and regulators of landfills and incinerators to receive training and certification.

(18) It is necessary to provide adequate funding to all levels of government so that successful waste reduction and recycling programs can be implemented.

(19) The development of stable and expanding markets for recyclable materials is critical to the long-term success of the state's recycling goals. Market development must be encouraged on a state, regional, and national basis to maximize its effectiveness. The state shall assume primary responsibility for the development of a multifaceted market development program to carry out the purposes of chapter 431, Laws of 1989.

(20) There is an imperative need to anticipate, plan for, and accomplish effective storage, control, recovery, and recycling of discarded tires and other problem wastes with the subsequent conservation of resources and energy.

**Sec.**  RCW 70A.205.010 and 2005 c 394 s 2 are each amended to read as follows:

The purpose of this chapter is to establish a comprehensive statewide program for solid waste handling, and solid waste recovery and/or recycling which will prevent land, air, and water pollution and conserve the natural, economic, and energy resources of this state. To this end it is the purpose of this chapter:

(1) To assign primary responsibility for adequate solid waste handling to local government, reserving to the state, however, those functions necessary to assure effective programs throughout the state, and sharing with producers responsibility for the management of their covered products;

(2) To provide for adequate planning for solid waste handling by local government;

(3) To provide for the adoption and enforcement of basic minimum performance standards for solid waste handling, including that all sites where recyclable materials are generated and transported from shall provide a separate container for solid waste;

(4) To encourage the development and operation of waste recycling facilities needed to accomplish the management priority of waste recycling, to promote consistency in the requirements for such facilities throughout the state, and to ensure that recyclable materials diverted from the waste stream for recycling are routed to facilities in which recycling occurs;

(5) To provide technical and financial assistance to local governments in the planning, development, and conduct of solid waste handling programs;

(6) To encourage storage, proper disposal, and recycling of discarded vehicle tires and to stimulate private recycling programs throughout the state; and

(7) To encourage the development and operation of waste recycling facilities and activities needed to accomplish the management priority of waste recycling and to promote consistency in the permitting requirements for such facilities and activities throughout the state.

It is the intent of the legislature that local governments be encouraged to use the expertise of private industry and to contract with private industry to the fullest extent possible to carry out solid waste recovery and/or recycling programs.

**Sec.**  RCW 70A.205.045 and 2020 c 20 s 1163 are each amended to read as follows:

Each county and city comprehensive solid waste management plan shall include the following:

(1) A detailed inventory and description of all existing solid waste handling facilities including an inventory of any deficiencies in meeting current solid waste handling needs.

(2) The estimated long-range needs for solid waste handling facilities projected twenty years into the future.

(3) A program for the orderly development of solid waste handling facilities in a manner consistent with the plans for the entire county which shall:

(a) Meet the minimum functional standards for solid waste handling adopted by the department and all laws and regulations relating to air and water pollution, fire prevention, flood control, and protection of public health;

(b) Take into account the comprehensive land use plan of each jurisdiction;

(c) Contain a six year construction and capital acquisition program for solid waste handling facilities; and

(d) Contain a plan for financing both capital costs and operational expenditures of the proposed solid waste management system.

(4) A program for surveillance and control.

(5) A current inventory and description of solid waste collection needs and operations within each respective jurisdiction which shall include:

(a) Any franchise for solid waste collection granted by the utilities and transportation commission in the respective jurisdictions including the name of the holder of the franchise and the address of his or her place of business and the area covered by the franchise;

(b) Any city solid waste operation within the county and the boundaries of such operation;

(c) The population density of each area serviced by a city operation or by a franchised operation within the respective jurisdictions;

(d) The projected solid waste collection needs for the respective jurisdictions for the next six years.

(6) A comprehensive waste reduction and recycling element that, in accordance with the priorities established in RCW 70A.205.005, provides programs that (a) reduce the amount of waste generated, (b) provide incentives and mechanisms for source separation, and (c) establish recycling opportunities for the source separated waste.

(7) The waste reduction and recycling element shall include the following:

(a) Waste reduction strategies, which may include strategies to reduce wasted food and food waste that are designed to achieve the goals established in RCW 70A.205.715(1) and that are consistent with the plan developed in RCW 70A.205.715(3);

(b) Source separation strategies, including:

(i) Programs for the collection of source separated materials from residences ((~~in urban and rural areas~~)), including programs that are the responsibility of producer responsibility organizations in chapter 70A.--- RCW (the new chapter created in section 41 of this act). ((~~In urban areas, these~~)) These programs shall include collection of source separated recyclable materials from single and multiple-family residences, unless the department approves an alternative program, according to the criteria in the planning guidelines. Such criteria shall include: Anticipated recovery rates and levels of public participation, availability of environmentally sound disposal capacity, access to markets for recyclable materials, unreasonable cost impacts on the ratepayer over the six-year planning period, utilization of environmentally sound waste reduction and recycling technologies, and other factors as appropriate. ((~~In rural areas, these~~)) These programs shall also include but not be limited to drop-off boxes, buy-back centers, or a combination of both, at each solid waste transfer, processing, or disposal site, or at locations convenient to the residents of the county. The drop-off boxes and buy-back centers may be owned or operated by public, nonprofit, or private persons. Comprehensive solid waste management plans that are newly developed, updated, or amended after July 1, 2026, may incorporate by reference the plans of producer responsibility organizations established in the jurisdiction under chapter 70A.--- RCW (the new chapter created in section 41 of this act) to fulfill this requirement;

(ii) Programs to monitor the collection of source separated waste at nonresidential sites where there is sufficient density to sustain a program;

(iii) Programs to collect yard waste and food waste, if the county or city submitting the plan finds that there are adequate markets or capacity for composted yard waste and food waste within or near the service area to consume the majority of the material collected; and

(iv) Programs to educate and promote the concepts of waste reduction and recycling;

(c) Recycling strategies, including a description of markets for recyclables, a review of waste generation trends, a description of waste composition, a discussion and description of existing programs and any additional programs needed to assist public and private sector recycling, and an implementation schedule for the designation of specific materials to be collected for recycling, and for the provision of recycling collection services;

(d) Other information the county or city submitting the plan determines is necessary.

(8) An assessment of the plan's impact on the costs of solid waste collection. The assessment shall be prepared in conformance with guidelines established by the utilities and transportation commission. The commission shall cooperate with the Washington state association of counties and the association of Washington cities in establishing such guidelines.

(9) A review of potential areas that meet the criteria as outlined in RCW 70A.205.110.

(10) A contamination reduction and outreach plan. The contamination reduction and outreach plan must address reducing contamination in recycling. Except for counties with a population of twenty-five thousand or fewer, by July 1, 2021, a contamination reduction and outreach plan must be included in each solid waste management plan by a plan amendment or included when revising or updating a solid waste management plan developed under this chapter. Jurisdictions may adopt the state's contamination reduction and outreach plan as developed under RCW 70A.205.070 or participate in a producer responsibility organization's plan in lieu of creating their own plan. In comprehensive solid waste management plans that are newly developed, updated, or amended after July 1, 2026, a jurisdiction must reference the plans of producer responsibility organizations established in the jurisdiction under chapter 70A.--- RCW (the new chapter created in section 41 of this act). A recycling contamination reduction and outreach plan must include the following:

(a) A list of actions for reducing contamination in recycling programs for single-family and multiple-family residences, commercial locations, and drop boxes depending on the jurisdictions system components;

(b) A list of key contaminants identified by the jurisdiction or identified by the department;

(c) A discussion of problem contaminants and the contaminants' impact on the collection system;

(d) An analysis of the costs and other impacts associated with contaminants to the recycling system; and

(e) An implementation schedule and details of how outreach is to be conducted. Contamination reduction education methods may include sharing community-wide messaging through newsletters, articles, mailers, social media, websites, or community events, informing recycling drop box customers about contamination, and improving signage.

**Sec.**  RCW 81.77.030 and 2020 c 20 s 1467 are each amended to read as follows:

(1) The commission shall supervise and regulate every solid waste collection company in this state((~~,~~

~~(1)~~)):

(a) By fixing and altering its rates, charges, classifications, rules and regulations;

((~~(2)~~)) (b) By regulating the accounts, service, and safety of operations;

((~~(3)~~)) (c) By requiring the filing of annual and other reports and data;

((~~(4)~~)) (d) By supervising and regulating such persons or companies in all other matters affecting the relationship between them and the public which they serve;

((~~(5)~~)) (e) By requiring compliance with local solid waste management plans and related implementation ordinances;

((~~(6)~~)) (f) By reviewing producer responsibility organization reimbursement of regulated service providers;

(g) By requiring certificate holders under this chapter ((~~81.77 RCW~~)) to use rate structures and billing systems consistent with the solid waste management priorities set forth under RCW 70A.205.005 and the minimum levels of solid waste collection and recycling services pursuant to local comprehensive solid waste management plans and with implementation of services designated by a producer responsibility organization in an approved plan to meet the requirements of chapter 70A.--- RCW (the new chapter created in section 41 of this act). The commission may order consolidated billing and provide for reasonable and necessary expenses to be paid to the administering company if more than one certificate is granted in an area.

(2) The commission, on complaint made on its own motion or by an aggrieved party, at any time, after providing the holder of any certificate with notice and an opportunity for a hearing at which it shall be proven that the holder has willfully violated or refused to observe any of the commission's orders, rules, or regulations, or has failed to operate as a solid waste collection company for a period of at least one year preceding the filing of the complaint, may suspend, revoke, alter, or amend any certificate issued under the provisions of this chapter.

**Sec.**  RCW 81.77.040 and 2020 c 20 s 1468 are each amended to read as follows:

A solid waste collection company shall not operate for the hauling of solid waste for compensation without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation. Operating for the hauling of solid waste for compensation includes advertising, soliciting, offering, or entering into an agreement to provide that service. To operate a solid waste collection company in the unincorporated areas of a county, the company must comply with the solid waste management plan prepared under chapter 70A.205 RCW in the company's franchise area and, if applicable, the service standards established in an approved producer responsibility organization plan to meet the requirements of chapter 70A.--- RCW (the new chapter created in section 41 of this act).

Issuance of the certificate of necessity must be determined on, but not limited to, the following factors: The present service and the cost thereof for the contemplated area to be served; an estimate of the cost of the facilities to be utilized in the plant for solid waste collection and disposal, set out in an affidavit or declaration; a statement of the assets on hand of the person, firm, association, or corporation that will be expended on the purported plant for solid waste collection and disposal, set out in an affidavit or declaration; a statement of prior experience, if any, in such field by the petitioner, set out in an affidavit or declaration; and sentiment in the community contemplated to be served as to the necessity for such a service.

When an applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, the commission may, after notice and an opportunity for a hearing, issue the certificate only if the existing solid waste collection company or companies serving the territory will not provide service to the satisfaction of the commission or if the existing solid waste collection company does not object.

In all other cases, the commission may, with or without hearing, issue certificates, or for good cause shown refuse to issue them, or issue them for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted such terms and conditions as, in its judgment, the public convenience and necessity may require.

Any right, privilege, certificate held, owned, or obtained by a solid waste collection company may be sold, assigned, leased, transferred, or inherited as other property, only if authorized by the commission.

For purposes of issuing certificates under this chapter, the commission may adopt categories of solid wastes as follows: Garbage, refuse, recyclable materials, and demolition debris. A certificate may be issued for one or more categories of solid waste. Certificates issued on or before July 23, 1989, shall not be expanded or restricted by operation of this chapter.

**Sec.**  RCW 81.77.160 and 1997 c 434 s 1 are each amended to read as follows:

(1) The commission, in fixing and altering collection rates charged by every solid waste collection company under this section, shall include in the base for the collection rates:

(a) All charges for the disposal of solid waste at the facility or facilities designated by a local jurisdiction under a local comprehensive solid waste management plan or ordinance; and

(b) All known and measurable costs related to implementation of the approved county or city comprehensive solid waste management plan or to implementation of services designated by a producer responsibility organization in an approved plan to meet the requirements of chapter 70A.--- RCW (the new chapter created in section 41 of this act).

(2) If a solid waste collection company files a tariff to recover the costs specified under this section, and the commission suspends the tariff, the portion of the tariff covering costs specified in this section shall be placed in effect by the commission at the request of the company on an interim basis as of the originally filed effective date, subject to refund, pending the commission's final order. The commission may adopt rules to implement this section.

(3) This section applies to a solid waste collection company that has an affiliated interest under chapter 81.16 RCW with a facility, if the total cost of disposal, including waste transfer, transport, and disposal charges, at the facility is equal to or lower than any other reasonable and currently available option.

**Sec.**  RCW 81.77.185 and 2010 c 154 s 3 are each amended to read as follows:

(1) The commission shall allow solid waste collection companies collecting recyclable materials other than covered products collected under an approved plan in chapter 70A.--- RCW (the new chapter created in section 41 of this act) to retain up to fifty percent of the revenue paid to the companies for the material if the companies submit a plan to the commission that is certified by the appropriate local government authority as being consistent with the local government solid waste plan and that demonstrates how the revenues will be used to increase recycling. The remaining revenue shall be passed to residential customers.

(2) By December 2, 2005, the commission shall provide a report to the legislature that evaluates:

(a) The effectiveness of revenue sharing as an incentive to increase recycling in the state; and

(b) The effect of revenue sharing on costs to customers.

NEW SECTION. **Sec.**  APPLICATION OF CHAPTER—COLLECTION AND TRANSPORTATION OF RECYCLABLE MATERIALS BY RECYCLING COMPANIES OR NONPROFIT ENTITIES—REUSE OR RECLAMATION. (1) Nothing in this chapter prevents a recycling company or nonprofit entity from collecting and transporting recyclable materials from a buy-back center, drop box, or from a commercial or industrial generator of recyclable materials that does not include materials generated from single and multiple-family residences upon agreement with a solid waste collection company.

(2) Nothing in this chapter may be construed as prohibiting a commercial or industrial generator of commercial recyclable materials that does not contain materials generated from single or multiple-family residences from selling, conveying, or arranging for transportation of the material to a recycler for reuse or reclamation.

NEW SECTION. **Sec.**  AUTHORITY OF UTILITIES AND TRANSPORTATION COMMISSION. Nothing in this chapter changes or limits the authority of the Washington utilities and transportation commission to regulate collection of solid waste, including curbside collection of residential recyclable materials, in accordance with chapter 81.77 RCW.

NEW SECTION. **Sec.**  SEVERABILITY CLAUSE. 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.

NEW SECTION. **Sec.**  CODIFICATION DIRECTIVE. Sections 1 through 20, 24 through 28, 38, and 39 of this act constitute a new chapter in Title 70A RCW.

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