**1131-S2 AMH FEYJ H1616.2 - NOT FOR FLOOR USE**

**2SHB 1131** - H AMD **339**

By Representative Fey

**NOT CONSIDERED 01/02/2024**

Strike everything after the enacting clause and insert the following:

**"PART 1**

**TRUTH IN LABELING, RATES STUDY, AND NEEDS ASSESSMENT**

NEW SECTION. **Sec.**  TRUTH IN LABELING. (1) Beginning January 1, 2027, 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 product or packaging 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 or otherwise directing the consumer to recycle the product or packaging, is deemed to be a deceptive or misleading claim under this section unless the product or packaging is considered recyclable in the state under section 103 of this act and is of a material type and form that routinely becomes feedstock used in the production of new products or packaging or is exempt under (b) of this subsection.

(b) (a) of this subsection does not apply to products or packaging:

(i) For which a symbol or statement described in (a) of this subsection is required by another state or by a federal law or agency in the United States at the time that the claim is made;

(ii) For which a symbol or statement described in (a) of this subsection is part of a widely adopted and standardized third-party labeling system;

(iii) For which a chasing arrows symbol is used 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;

(iv) Manufactured up to 18 months after the date the department publishes the first material characterization study required under section 102 of this act, or before January 1, 2027, whichever is later; or

(v) Any product or packaging manufactured up to 18 months after the date the department updates the material characterization study under section 102 of this act, if the product or packaging satisfied or, for a new product or packaging, would have satisfied, the requirements to be considered recyclable in the state under section 103 of this act before the publication of the updated study.

(c) For a product or packaging that is not considered to be recyclable in the state under section 103 of this act, all the following apply:

(i) Displaying a chasing arrows symbol or any other statement indicating the product is recyclable directly on the product is deemed to be deceptive or misleading under this section;

(ii) If a product or packaging has multiple material types, a chasing arrows symbol or statement indicating recyclability may be displayed on the external packaging that is considered to be recyclable in the state under section 103 of this act if the chasing arrows symbol or statement makes clear in the same or greater font, font size, or symbol size which other components of the product or packaging are not recyclable; and

(iii) Displaying a chasing arrows symbol or any other statement indicating recyclability on packaging containing a consumable product shall, for purposes of this section, be deemed to refer only to the packaging.

(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. Upon completing its review, the department may adopt the federal criteria in lieu of the requirements of this section.

(3) As of the effective date of this section, 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) Required to display the symbol or statement by another state or by a federal law or agency;

(b) Part of a widely adopted and standardized third-party labeling system:

(i) For which a symbol or statement described in subsection (1) (a) of this section is in compliance with the federal trade commission green guides; or

(ii) For which a symbol or statement described in subsection (1)(a) of this section incorporates by reference the ASTM standards for coding resin; or

(c) 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.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a)(i) "Chasing arrows symbol" means an equilateral triangle, formed by three arrows curved at their midpoints, depicting a clockwise path, with a short gap separating the apex of each arrow from the base of the adjacent arrow.

(ii) "Chasing arrows symbol" also includes variants of that symbol that are likely to be interpreted by a consumer as an implication of recyclability including, but not limited to, one or more arrows arranged in a circular pattern or around a globe.

(b) "Consumable product" means a commodity that is intended to be used and not disposed of.

(c) "Packaging" is to be broadly construed and includes secondary and tertiary packaging and may be comprised of any material type.

NEW SECTION. **Sec.**  MATERIAL CHARACTERIZATION STUDY. (1) By January 1, 2026, the department shall produce a material characterization study to provide information to the public sufficient for evaluating whether a product or packaging is recyclable in the state according to the criteria set forth in section 103 of this act and are of material types and forms that routinely become feedstock used in the production of new products or packaging.

(a) The department shall conduct and publish on its website a characterization study of material types and forms that are collected, sorted, sold, or transferred by facilities that process recyclable materials from curbside recycling programs and other solid waste facilities deemed appropriate by the department for inclusion in the study.

(b) The material characterization study must:

(i) Use data from statistically valid and representative samples of materials collected from curbside recycling programs in the state analyzed using industry standard methodologies;

(ii) Identify what material types and forms are actively sorted for recycling, and not considered contaminants, by included operations or facilities;

(iii) Identify what material types and forms are not sorted for recycling, and are considered contaminants, by included operations or facilities; and

(iv) Identify how the material collected or processed by the operations and facilities was collected.

(2) The department shall update the material characterization study required under this section no less often than every five years, with the first update being issued by the department in 2029.

(3) For each material characterization study conducted under this section, the department shall publish on its website the preliminary findings of the study and conduct a public meeting to present the preliminary findings and receive public comments. The public meeting must occur at least 30 days after the department publishes the preliminary findings. After receiving and considering public comments, and within 90 days of the public meeting, the department shall finalize and publish on its website the findings of the study.

(4) The department may publish additional information that was not available at the time of the most recent periodic material characterization study regarding the appropriate characterization of material types and forms.

NEW SECTION. **Sec.**  RECYCLABILITY DETERMINATIONS. (1)(a) A product or packaging is considered recyclable in the state if, based on information published by the department under section 102 of this act, the product or packaging is of a material type and form that meets both of the following requirements:

(i) The material type and form is collected for recycling by recycling programs for jurisdictions that collectively encompass at least 60 percent of the population of the state; and

(ii) The material type and form are sorted into defined streams for recycling processes by large volume transfer or processing facilities, as provided in chapter 70A.205 RCW, that process materials and collectively serve at least 60 percent of recycling programs statewide, with the defined streams sent to and reclaimed at a reclaiming facility consistent with the requirements of chapter 70A.205 RCW.

(b) The department may adopt rules modifying the requirement to encompass transfer or processing facilities other than large volume transfer or processing facilities as the department deems appropriate for achieving the purposes of this section.

(2) A product or packaging is not considered recyclable in the state unless the product or packaging meets all the following criteria, as applicable:

(a) For plastic packaging, the plastic packaging is designed to not include any components, inks, adhesives, or labels that prevent the recyclability of the packaging according to the association of plastic recyclers design guide published by the association of plastic recyclers; and

(b) For plastic products and nonplastic products and packaging, the product or packaging is designed to ensure recyclability and does not include any components, inks, adhesives, or labels that prevent the recyclability of the product or packaging.

(3) A product or packaging is recyclable in the state if the product or packaging has a demonstrated recycling rate of at least 75 percent, meaning that not less than 75 percent of the product or packaging sorted and aggregated in the state is reprocessed into new products or packaging.

(4) Before January 1, 2032, a product or packaging not collected under a curbside collection program is recyclable in the state if the noncurbside collection program recovers at least 60 percent of the product or packaging in the program and the material has sufficient commercial value to be marketed for recycling and be transported at the end of its useful life to a transfer, processing, or recycling facility to be sorted and aggregated into defined streams by material type and form.

(5) After January 1, 2032, a product or packaging not collected under a curbside collection program is recyclable in the state if the noncurbside collection program recovers at least 75 percent of the product or packaging in the program and the material has sufficient commercial value to be marketed for recycling and be transported at the end of its useful life to a transfer, processing, or recycling facility to be sorted and aggregated into defined streams by material type and form.

(6) A product or packaging is recyclable in the state if the product or packaging is part of, and in compliance with, a program established under state or federal law on or after January 1, 2025, governing the recyclability or disposal of that product or packaging if the director of the department determines that the product or packaging will not increase contamination of curbside recycling or deceive consumers as to the recyclability of the product or packaging.

(7) The information published by the department under section 102 of this act does not limit the discretion of a local government under existing law to decide whether, and to what extent, a material type or form is accepted by a local recycling program.

NEW SECTION. **Sec.**  (1) To inform the future development of strategies to increase recovery rates, the department must conduct a performance rates study and a statewide needs assessment that must be carried out by a third-party consultant selected by the department.

(2)(a) The performance rates study must be completed by September 1, 2024, and must:

(i) Use the recycling rates from the study submitted to the legislature pursuant to section 302(59), chapter 297, Laws of 2022;

(ii) Review the performance rates set and achieved in other jurisdictions and evaluate whether those rates are applicable in the state;

(iii) Recommend performance rates, including:

(A) A rate for the overall combined reuse and recycling of covered products;

(B) A separate specific minimum reuse rate, that must be counted within the overall combined reuse and recycling rate;

(C) A source reduction rate to be achieved solely by eliminating plastic components; and

(D) Performance rates for specific material categories of covered products including, but not limited to, beverage containers, mixed paper, plastic packaging, glass, and cardboard.

(b) Recommendations under (a) of this subsection must consider the feasibility of achieving recommended rates based on current rates achieved as well as current infrastructure in the state, rates achieved in other jurisdictions, and additional relevant data. The recommended performance rates must be designed to be achieved for covered products statewide by 2032.

(c) Stakeholders must have the opportunity to review and comment on a draft performance rates study at least 30 days prior to its completion.

(3) The statewide needs assessment must be completed by July 1, 2025, and must be consistent with the following requirements:

(a) The final scope of the statewide needs assessment must be determined after considering comments and recommendations from stakeholders; and

(b) Stakeholders must have the opportunity to review and comment on the draft statewide needs assessment at least 30 days prior to its completion.

(4) The statewide needs assessment must be:

(a) Informed by the findings and recommendations of the performance rates study established in this section and rates and other comments suggested by stakeholders; and

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

(5) The statewide needs assessment must:

(a) Evaluate the capacity, costs, gaps, and needs for the following factors necessary to achieve performance rate recommendations developed under subsection (1) of this section:

(i) Availability and types of recycling services for covered products;

(ii) Education and outreach activities;

(iii) Availability and performance of collection, transport, and processing capacity and infrastructure, including consideration of material quality and contamination;

(iv) Availability and performance of collection, transport, and processing capacity and infrastructure to manage compostable covered products, including consideration of the material quality and contamination;

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

(vi) 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 entities for curbside collection services, drop-off collection services, and other information relevant to the funding requirements to achieve performance rates, including costs for various service methods recommended by stakeholders 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 funding needs for government entities for curbside collection services needed to achieve performance rates developed under subsection (1) of this section. 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 stakeholders;

(d) Identify cost factors and other variables to be considered in the development of funding estimates for government entities for any services other than curbside collection to be carried out by government entities that may be needed to achieve performance rates developed under subsection (1) of this section;

(e) Compile relevant information to be considered in the development of criteria by the department to determine whether a covered product is recyclable, reusable, or compostable through Washington's curbside recycling collection system. The relevant information to be compiled may include whether covered product materials are:

(i) 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

(ii) Designed in a way that is problematic for reuse, recycling, or composting;

(f) Evaluate how the state's recycling system can be managed in a socially just manner as it relates to activities required under this chapter. The assessment must:

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

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

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

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

(C) Identification of activities that disproportionately impact any community and in particular overburdened communities and vulnerable populations;

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

(E) Recommendations for improving socially just management practices and outcomes in the state's recycling system; and

(F) Evaluate the extent to which covered products contribute to litter and marine debris. 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; and

(g) 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 that incentivize the reduction of toxic substances that have potentially negative impacts when covered products are managed through reuse, recycling, and composting systems.

**PART 2**

**ESTABLISHING POSTCONSUMER RECYCLED CONTENT**

**REQUIREMENTS**

NEW SECTION. **Sec.**  DE MINIMIS PRODUCERS. (1) For purposes of determining whether a producer is a de minimis producer, the weight and revenue definitional thresholds must be calculated at the level of the entity associated with the covered product.

(2) The exemptions under this chapter for de minimis producers do not apply to an entity that has agreed to accept responsibility for compliance with the requirements of this chapter for a covered product on the behalf of another producer.

(3)(a) De minimis producers are not required to meet annual registration, reporting, postconsumer recycled content, or fee requirements of covered products under this chapter.

(b) De minimis producers must annually notify the department, in a form and manner specified by the department, to demonstrate that the producer is a de minimis producer.

(4) The department may require that a producer submit information necessary to verify whether a producer qualifies for de minimis status, including:

(a) Annual global gross revenue dollar amount less than or equal to $5,000,000;

(b) Annual total resin weight less than or equal to one ton; and

(c) Any additional information requested by the department.

NEW SECTION. **Sec.**  POSTCONSUMER RECYCLED CONTENT REQUIREMENTS FOR PLASTIC BEVERAGE CONTAINERS. 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:

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

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

(b) January 1, 2026, 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;

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

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

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

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

NEW SECTION. **Sec.**  POSTCONSUMER RECYCLED CONTENT REQUIREMENTS FOR HOUSEHOLD CLEANING PRODUCTS AND PERSONAL CARE PRODUCTS. A producer of household cleaning products in plastic containers or a producer of 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:

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

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

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

NEW SECTION. **Sec.**  POSTCONSUMER RECYCLED CONTENT FOR PLASTIC TRASH BAGS. 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:

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

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

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

NEW SECTION. **Sec.**  POSTCONSUMER RECYCLED CONTENT FOR PLASTIC TUBS USED FOR FOOD PRODUCTS. A producer of plastic tubs used for food products must meet the following annual minimum postconsumer recycled content percentage on average for the total quantity of plastic tubs used for food products, by weight, that are sold, offered for sale, or distributed in or into Washington by the producer effective:

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

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

NEW SECTION. **Sec.**  POSTCONSUMER RECYCLED CONTENT FOR SINGLE-USE PLASTIC CUPS. 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:

(1) For polypropylene single-use plastic cups:

(a) January 1, 2031, through December 31, 2035: No less than 15 percent postconsumer recycled content plastic by weight; and

(b) On and after January 1, 2036: No less than 25 percent postconsumer recycled content plastic by weight;

(2) For polyethylene terephthalate, polystyrene, and other types of single-use plastic cups:

(a) January 1, 2031, through December 31, 2035: No less than 20 percent postconsumer recycled content plastic by weight; and

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

NEW SECTION. **Sec.**  POSTCONSUMER RECYCLED CONTENT FOR THERMOFORM PLASTIC CONTAINERS. A producer of a thermoform plastic container must meet the following annual minimum postconsumer recycled content percentage on average for the total quantity of thermoform plastic containers, by weight, that are sold, offered for sale, or distributed in or into Washington by the producer effective:

(1) For packaging for consumable goods:

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

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

(2)(a) Except as provided in (b) 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;

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

NEW SECTION. **Sec.**  (1) The department must ensure that any rules adopted pursuant to this chapter consider guidelines, and do not conflict with regulations, issued by the United States food and drug administration and the United States department of agriculture, and consider requirements imposed by other Washington state agencies including, but not limited to, the department of agriculture.

(2) The department may not impose any requirement including, but not limited to, a postconsumer recycled content requirement, in direct conflict with a federal law or regulation or the requirements necessary to comply with a federal law or regulation including, but not limited to: (a) Laws or regulations covering tamper-evident packaging pursuant to 21 C.F.R. Sec. 211.132; (b) laws or regulations covering child-resistant packaging pursuant to 16 C.F.R. Sec. 1700.1, et seq.; (c) regulations, rules, or guidelines issued by the United States department of agriculture or the United States food and drug administration related to packaging agricultural commodities; and (d) requirements for microbial contamination, structural integrity, or safety of packaging where no viable recyclable or compostable packaging that can meet the requirements exists, pursuant to: (i) The federal food, drug, and cosmetic act (21 U.S.C. Sec. 301, et seq.); (ii) 21 U.S.C. Sec. 2101, et seq.; (iii) The federal food and drug administration food safety modernization act (21 U.S.C. Sec. 2201, et seq.); (iv) the federal poultry products inspection act (21 U.S.C. Sec. 451, et seq.); (v) the federal meat inspection act (21 U.S.C. Sec. 601, et seq.); or (vi) the federal egg products inspection act (21 U.S.C. Sec. 1031, et seq.).

**PART 3**

**AMENDMENTS TO EXISTING POSTCONSUMER RECYCLED**

**CONTENT REQUIREMENTS**

**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)(a) "Beverage" means ((~~beverages identified in (a) through (f) of this subsection,~~)) liquid products 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)~~)) (i) Water and flavored water;

((~~(b)~~)) (ii) Beer or other malt beverages;

((~~(c)~~)) (iii) Wine;

((~~(d)~~)) (iv) Distilled spirits;

((~~(e)~~)) (v) 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~~)) (vi) Dairy milk; and

(vii) Any other beverage identified by the department by rule.

(b) Beverage does not include 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~~)) products that use plastic household cleaning product containers;

(iii) Personal care products that use personal care product containers;

(iv) Beverages that use plastic beverage containers;

(v) Plastic tubs used for food products;

(vi) Thermoform plastic containers; and

(vii) 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" means products labeled, marketed, or otherwise indicating that the purpose of the product is to clean, freshen, or remove unwanted substances, such as dirt, stains, and other impurities from objects, interior or exterior structures, vehicles, possessions, and environments associated with a household. These items include:

(a) Liquid soaps, laundry soaps, detergents, softeners, surface polishes, and stain removers;

(b) Textile cleaners, carpet and pet cleaners, and treatments; or

(c) Other products used to clean or freshen areas associated with a household.

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

(12) "Licensee" means a manufacturer of a covered product 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)(a) "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" includes a container's cap or lid, beginning January 1, 2025.

(b) Plastic beverage container does not include:

((~~(a)~~)) (i) 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)~~)) (ii) 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)~~)) (iii) Bladders or pouches that contain wine; or

((~~(d)~~)) (iv) Liners, caps, corks, closures, labels, and other items added externally or internally but otherwise separate from the structure of the bottle or container, other than a cap or lids; and

(c) Other products subject to minimum postconsumer recycled content requirements.

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

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

(ii) ((~~A~~)) With 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~~)) product container or personal care product container" does not include:

(i) Refillable household cleaning ((~~and~~)) product containers or 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; or

(iii) Other covered products subject to minimum postconsumer recycled content requirements.

(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. "Plastic trash bag" does not include any reusable plastic carryout bag meeting the requirements of RCW 70A.530.020(6)(b).

(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; or

(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 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) "Brand" means a name, symbol, word, logo, 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.

(23) "De minimis producer" means an entity that annually sells, offers for sale, distributes, or imports:

(a) In or into the country for sale in Washington state less than one ton of covered products; or

(b) A global gross revenue of less than $5,000,000 for the most recent fiscal year of the organization.

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

(25) "Entity" means an individual and any form of business enterprise. For purposes of calculating the de minimis producer thresholds under this chapter, a producer entity includes all legal entities that are affiliated by common ownership of 50 percent or greater, including parents, subsidiaries, and commonly owned affiliates.

(26) "Household" means all of the people who occupy a residential property regardless of their relationship to one another.

(27) "Personal care product" means a product intended or marketed for use to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance including:

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

(b) Lotion, moisturizer, facial toner, and other skin care products;

(c) Liquid soap and other body care products; or

(d) Other products used to maintain, improve, or enhance personal care or appearance.

(28)(a) "Plastic tub" means a wide mouth, rigid container used to package consumable or durable goods that reach consumers, with a maximum capacity of 50 ounces, that is:

(i) Capable of maintaining its shape when empty;

(ii) Comprised solely of one or multiple plastic resins and designed to contain a product; and

(iii) Sealed with tamper-proof film or a detachable lid capable of multiple openings and closures.

(b) "Plastic tub" does not include:

(i) Household cleaning and personal care products;

(ii) 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;

(iii) Thermoform plastic containers;

(iv) Single-use plastic cups; and

(v) Other covered products subject to minimum postconsumer recycled content requirements.

(29)(a) "Single-use plastic cup" means all beverage cups that are nonsealed or sealed at point-of-sale.

(b) Single-use plastic cups do not include: (i) Commercially or home compostable cups; (ii) expanded polystyrene cups; (iii) composite plastic-lined fiber cups; or (iv) other covered products subject to minimum postconsumer recycled content requirements.

(30)(a) "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 plastic resin and used to package consumable or durable goods that reach 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;

(iii) Unfilled containers that are sold directly;

(iv) Hinged plastic containers, commonly known as "clamshells" or "blister packaging";

(v) Two-piece unhinged containers;

(vi) One-piece containers without lids, such as trays; and

(vii) Trifold or tent containers with one or more hinges and a flat bottom.

(b) "Thermoform plastic container" does not include:

(i) Household cleaning products or personal care products;

(ii) Plastic tubs;

(iii) 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;

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

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

(vi) Plastic containers that are or are used for medical devices, medical products that are required to be sterile, prescription drugs, or dietary supplements as defined in RCW 82.08.0293;

(vii) Other covered products subject to minimum postconsumer recycled content requirements under this chapter; and

(viii) Thermoform plastic containers accompanying a durable good when the durable good model, and the associated packaging, was designed prior to January 1, 2028.

**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 202 of this act; and

(ii) Plastic trash bags must meet minimum postconsumer recycled content requirements established under ((~~subsection (6) of this~~)) section 204 of this act.

(b) Beginning January 1, 2025, producers that offer for sale, sell, or distribute in or into Washington household cleaning ((~~and~~)) products or personal care products in plastic household cleaning product containers and personal care product containers must meet minimum postconsumer recycled content as required under ((~~subsection (5) of this~~)) section 203 of this act.

(c) 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 202 of this act.

(d) Beginning January 1, 2026, producers that offer for sale, sell, or distribute in or into Washington plastic tubs used for food products must meet minimum postconsumer recycled content requirements established under section 205 of this act.

(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 section 206 of this act.

(f) Beginning January 1, 2031, producers that offer for sale, sell, or distribute in or into Washington thermoform plastic containers except those containing durable goods must meet minimum postconsumer recycled content requirements established under section 207 of this act.

(g) Beginning January 1, 2036, producers that offer for sale, sell, or distribute in or into Washington durable goods in thermoform plastic containers must meet minimum postconsumer recycled content requirements established under section 207 of this act.

(2)(a) On or before April 1, 2022, 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. A producer of products newly added to the list of covered products under this act must register with the department individually or through a third-party representative registering on behalf of a group of producers on or before April 1, 2024.

(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, 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, 2026, for plastic household and personal care product containers, and April 1, 2029, for wine in 187 milliliter plastic beverage containers and dairy milk~~)) in the year in which an annual report must be submitted by a producer under RCW 70A.245.030, 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, 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)~~)) the requirements related to postconsumer recycled content under this chapter, 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 April 1, 2022, and every April 1st thereafter, producers or their third-party representative must submit a fee payment as determined by the department under (a) of this subsection. Producers of products newly included as covered products by this act must submit a fee payment as determined by the department under (a) of this subsection by April 1, 2024, and each April 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) ((~~Beginning January 1, 2024, or when rule making is complete, whichever is sooner, the department may, on an annual basis on January 1st,~~)) By October 31st of each year, the department may 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) of this section~~)) this chapter. 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. Petitions for review and adjustment must be made to the department in the annual report submitted under RCW 70A.245.030 by June 30th of the year prior to the year in which the adjustment would apply. 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) of this section~~)) this chapter, 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 postconsumer recycled content goals of this ((~~section~~)) chapter.

(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) of this section~~)) sections 202 through 207 of this act.

(ii) For plastic household cleaning product containers 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 203 of this act 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 204 of this act or below the minimum percentage required in ((~~subsection (6)(a) of this~~)) section 204(1) of this act.

(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)~~)) (5) of this section to the pollution control hearings board within 30 days of the department's determination.

((~~(8)~~)) (5) 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~~)) June 1st of a given year that the achievement of postconsumer recycled content requirements in the container material is not technically feasible in order to comply with health or safety requirements of federal law, including the federal laws specified in subsection ((~~(7)~~)) (4)(b)(v) of this section. 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)~~)) (6)(a) A producer or group of producers may evaluate the postconsumer recycled content requirements in sections 202 (1)(c) and (2)(c), 203(3), 204(2), 205 (1) and (2), and 206 (1)(b) and (2)(a) of this act and assess the market conditions, postconsumer recycled content availability, and technological feasibility of these requirements, no later than six months prior to the dates identified in those sections. The producer or group of producers may request an extension of these requirements and must present data, from the evaluation performed under this subsection, to the department. The department may grant the extension of the implementation of one or more of these requirements for up to one year.

(b) The department shall review the extension request from the producer or group of producers within 30 days of the request and approve, partially approve, deny, or request additional information to evaluate the extension request.

(c) The department may renew an approved extension annually, upon request of a producer or group of producers, and submission of data demonstrating that the conditions justifying the current extension remain in place.

(d) If an extension is granted, the department may report to the legislature any potential need to revise these requirements, prior to the expiration of a one-year extension period.

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

((~~(10)~~)) (8)(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 product containers and personal care product containers or plastic trash bags purchased by a city, town, or municipal corporation, or its contractor.

((~~(11)~~)) (9) The department may enter into contracts for the services required to implement this chapter and related duties of the department.

((~~(12)~~)) (10) 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)~~)) through (f) of this subsection, beginning ((~~April 1~~)) June 30, 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. The report must be submitted in a format and manner prescribed by the department. A ((~~manufacturer~~)) producer 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 report required in (a) of this subsection must include a certificate of compliance or similar proof of certification conducted by a nationally recognized, independent third party that has achieved ISO/IEC 17065 accreditation, as it existed as of January 1, 2023, or a similar certification identified by the department. The proof of certification must include all of the following:

(i) The names, locations, and contact information of all sources of postconsumer recycled content material and suppliers of postconsumer recycled content material;

(ii) The quantity and dates of postconsumer recycled content material purchases by the producer; and

(iii) How postconsumer recycled content material was obtained.

(c) The requirements of (a) of this subsection apply to household cleaning products in plastic containers and personal care products in plastic containers beginning ((~~April 1~~)) June 30, 2026.

((~~(c)~~)) (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~~)) June 30, 2026.

((~~(d)~~)) (e) The requirements of (a) of this subsection apply to plastic tubs used for food products beginning June 30, 2027.

(f) The requirements of (a) of this subsection apply to thermoform plastic containers beginning June 30, 2027.

(g) The requirements of (a) of this subsection apply to single-use plastic cups beginning June 30, 2030.

(h) The requirements of (a) of this subsection apply to plastic nursery pots and trays beginning June 30, 2027.

(i) 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.

(3) The department must review and may approve reports submitted under this section. The department must:

(a) Make reports submitted under this section, including petitions for exclusions or rate adjustments under this chapter, available for public review and comment for at least 30 days upon the receipt of the annual report by the department;

(b) Make a determination as to whether or not an annual report meets the requirements of this section and notify the producer of the:

(i) Determination of approval of the report; or

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

(4) The department must post approved annual reports submitted by each producer under this section on its website. The department must also post on its website all resin suppliers meeting postconsumer recycled content certification requirements.

**Sec.**  RCW 70A.245.040 and 2021 c 313 s 5 are each amended to read as follows:

(1)(a) A producer that does not meet the minimum postconsumer recycled content requirements pursuant to ((~~RCW 70A.245.020~~)) this chapter is subject to a penalty pursuant to this section. Beginning June 1st of the year following the first year that minimum postconsumer recycled product content requirements apply to a category of covered product, the penalty must be calculated consistent with subsection (2) of this section unless a penalty reduction or corrective action plan has been approved pursuant to subsection (3) of this section.

(b) A producer that is assessed a penalty pursuant to this section may pay the penalty to the department in one payment, in quarterly installments, or arrange an alternative payment schedule subject to the approval of the department, not to exceed a 12-month payment schedule unless the department determines an extension is needed due to unforeseen circumstances, such as a public health emergency, state of emergency, or natural disaster.

(2) Beginning ((~~June~~)) October 1st of the year following the first year that minimum postconsumer recycled product content requirements apply to a category of covered product, and annually thereafter, the department shall determine the penalty for the previous calendar year based on the postconsumer recycled content requirement of the previous calendar year. The department shall calculate the amount of the penalty based upon the amounts in pounds in the aggregate of virgin plastic, postconsumer recycled content plastic, and any other plastic per category used by the producer to produce covered products sold or offered for sale in or into Washington state, in accordance with the following:

(a)(i) The annual penalty amount assessed to a producer must equal the product of both of the following: The total pounds of plastic used per category multiplied by the relevant minimum postconsumer recycled plastic target percentage, less the pounds of total plastic multiplied by the percent of postconsumer recycled plastic used; multiplied by 20 cents.

(ii) Example: [(Total pounds of plastic used x minimum postconsumer recycled plastic target percentage) – (Total pounds of plastic used x postconsumer recycled plastic percentage used)] x 20 cents.

(b) For the purposes of (a) of this subsection, both of the following apply:

(i) The total pounds of plastic used must equal the sum of the amount of virgin plastic, postconsumer recycled content plastic, and any other plastic used by the producer, as reported pursuant to RCW 70A.245.030.

(ii) If the product calculated pursuant to (a) of this subsection is equal to or less than zero, the department may not assess a penalty.

(3)(a)(i) The department shall consider granting a reduction of penalties assessed pursuant to this section for the purpose of meeting the minimum postconsumer recycled content requirements required pursuant to RCW 70A.245.020.

(ii) In determining whether to grant the reduction pursuant to (a)(i) of this subsection, the department shall consider, at a minimum, all of the following factors:

(A) Anomalous market conditions;

(B) Disruption in, or lack of supply of, recycled plastics; and

(C) Other factors that have prevented a producer from meeting the requirements.

(b) In lieu of or in addition to assessing a penalty under this section, the department may require a producer to submit a corrective action plan detailing how the producer plans to come into compliance with ((~~RCW 70A.245.020~~)) the minimum postconsumer recycled content requirements of this chapter.

(4) For the purposes of determining compliance with the postconsumer recycled content requirements of this chapter, the department may consider the date of manufacture of a covered product or the container of a covered product.

(5) A producer shall pay the penalty assessed pursuant to this section, as applicable, based on the information reported to the department as required under RCW 70A.245.030 in the form and manner prescribed by the department.

(6) A producer may appeal the penalty assessed under this section to the pollution control hearings board within 30 days of assessment.

(7) Penalties collected under this section must be deposited in the recycling enhancement account created in RCW 70A.245.100.

**Sec.**  RCW 70A.245.060 and 2021 c 313 s 7 are each amended to read as follows:

(1) Beginning January 1, 2023, producers shall label each package containing plastic trash bags sold, offered for sale, or distributed in or into Washington with:

(a) The name of the producer and the city, state, and country where the producer is located, which may be designated as the location of the producer's corporate headquarters and, beginning January 1, 2025, with the percentage of postconsumer recycled content that the plastic trash bag contains in accordance with 16 C.F.R. Part 260, as it existed as of the effective date of this section; or

(b) A uniform resource locator or quick response code to an internet website that contains the information required pursuant to (a) of this subsection.

(2)(a) The provisions of subsection (1) of this section do not apply to a plastic bag that is designed and manufactured to hold, store, or transport dangerous waste or biomedical waste.

(b) For the purposes of this subsection:

(i) "Biomedical waste" means any waste defined as that term under RCW 70A.228.010; and

(ii) "Dangerous waste" means any waste defined as dangerous wastes under RCW 70A.300.010.

**Sec.**  RCW 70A.245.090 and 2021 c 313 s 12 are each amended to read as follows:

(1) The department may conduct audits and investigations for the purpose of ensuring compliance with ((~~RCW 70A.245.020 and 70A.245.040~~)) the postconsumer recycled content requirements of this chapter based on the information reported under RCW 70A.245.030.

(2) The department shall annually publish a list of registered producers of covered products subject to minimum postconsumer recycled content requirements and associated brand names, their compliance status, and other information the department deems appropriate on the department's website.

(3) To assist regulated parties with the requirements specified under RCW 70A.245.070 and 70A.245.080, the department:

(a) Must prepare and post on its website information regarding the prohibitions on the sale and distribution of expanded polystyrene products as specified under RCW 70A.245.070 and restrictions on the provision of optional serviceware under RCW 70A.245.080;

(b) For education and outreach to help implement RCW 70A.245.070 and 70A.245.080, may develop culturally appropriate and translated educational materials and resources for the state's diverse ethnic populations from existing materials used by local jurisdictions and other states.

(4) The department may adopt rules as necessary to administer, implement, and enforce this chapter.

**Sec.**  RCW 70A.245.110 and 2021 c 313 s 14 are each amended to read as follows:

The recycled content account is created in the custody of the state treasurer. All receipts received by the department under RCW 70A.245.020 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 RCW 70A.245.020 through 70A.245.060 and 70A.245.090 (1), (2), and (4)~~)) the provisions of this chapter related to minimum postconsumer recycled content of products.

**Sec.**  RCW 70A.245.120 and 2021 c 313 s 15 are each amended to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose prior to January 1, 2028, the department shall contract with a research university or an independent third-party consultant to study the plastic resin markets for all of the following:

(a) Analyzing market conditions and opportunities in the state's recycling industry for meeting the minimum postconsumer recycled content requirements for covered products pursuant to ((~~RCW 70A.245.020 and 70A.245.030~~)) this chapter; and

(b) Determining the data needs and tracking opportunities to increase the transparency and support of a more effective, fact-based public understanding of the recycling industry.

(2) If funding is provided pursuant to subsection (1) of this section and the department undertakes the study, the study must be completed by May 1, 2029.

(3) This section expires July 1, 2029.

**PART 4**

**MISCELLANEOUS PROVISIONS**

NEW SECTION. **Sec.**  Sections 101 through 104 and 201 through 208 of this act are each added to chapter 70A.245 RCW.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

Correct the title.

EFFECT: Strikes producer responsibility organization and distributor responsibility organization participation requirements, eliminates postconsumer recycled content requirements for plastic plant pots and trays and collection bins, and eliminates the option for the department of ecology to use a clearinghouse for packaging registration and reporting requirements. Retains provisions related to: (1) The truth-in-labeling of recyclability claims, which are newly based on recyclability determinations made after a waste characterization study is to be carried out; (2) postconsumer recycled content requirements applicable to plastic tubs, plastic cups, and thermoform plastic containers, with new limitations on postconsumer recycled content requirements applying in instances of overlap with specified federal laws; and (3) providing for a performance rates study and needs assessment to be carried out by a third-party consultant selected by the department of ecology. Provides for the performance rates study and needs assessments to be carried out in a manner similar to the rates study and needs assessment contained in the underlying bill, except that the striking amendment removes references to producer responsibility programs in other states and removes references to eliminated components of the underlying bill.