**2049-S2 AMH DYEM H3181.1 - NOT FOR FLOOR USE**

**2SHB 2049** - H AMD **996**

By Representative Dye

Strike everything after the enacting clause and insert the following:

**"PART 1**

**INTENT**

NEW SECTION. **Sec.**  INTENT. (1) The legislature finds that:

(a) Washington has been a leader in recycling policy, reaching the goal of 50 percent recycling set by the legislature in RCW 70A.205.005. The legislature further finds that, since meeting the state's goal to achieve a 50 percent recycling rate, global market conditions have caused the recycling rate to fall below 50 percent.

(b) 88 percent of Washington residents living in single-family homes and 77 percent living in multifamily residences have access to curbside recycling services through a robust regulatory structure that ensures equal access to services at affordable rates.

(c) The investments in infrastructure by Washington companies has led to the development of materials sorting and processing superior to most other states.

(d) Contamination in the recycling stream is a major impediment to higher recovery rates.

(e) Washington should maintain the successful public-private partnership between state, local government, and solid waste and recycling service providers. The legislature does not intend to diminish or displace the primary role of the utilities and transportation commission and local governments in regulating or contracting directly with service providers for the curbside collection of residential recyclables. Local governments maintain their existing authority to collect, contract for collection with solid waste and recycling service providers, or defer to solid waste collection services regulated by the utilities and transportation commission.

(2) Therefore, it is the intent of the legislature to implement proven strategies to address these challenges, including:

(a) A robust needs assessment unique to Washington state to determine costs and investments necessary to achieve a 60 percent overall recycling rate for packaging; and

(b) The expansion of the successful recycled content requirements to ensure more materials are manufactured with postconsumer material.

**PART 2**

**NEEDS ASSESSMENT**

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

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

(2) "Contaminant" means a material set out for curbside recycling collection that is not on the list of materials accepted for recycling collection by a recycling collection program.

(3) "Contamination" means the presence of one or more contaminants in a recycling collection or commodity stream in an amount or concentration that negatively impacts the value of the material or negatively impacts a processor's ability to sort that material.

(4) "Covered product" means packaging and paper products sold or supplied to consumers for personal, noncommercial use and disposed of through residential curbside or drop-off site collection systems.

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

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

(7) "Material category" means a group of covered products that have similar properties such as chemical composition, shape, or other characteristics.

(8) "Overburdened community" means an overburdened community identified and prioritized by the department under RCW 70A.02.050(1)(a).

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

(i) Used to protect, contain, transport, or serve an item;

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

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

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

(v) Supplied to or purchased by consumers expressly for the purpose of facilitating food or beverage consumption that is ordinarily discarded by consumers 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 durable product on an ongoing basis, and that can be expected to be usable for that purpose for a period of at least five years;

(ii) For purposes of this chapter only, materials used to package pesticide products regulated by the federal insecticide, fungicide, and rodenticide act, 7 U.S.C. Sec. 136 et seq., that are in direct contact with the regulated product. This exemption does not include products regulated by the United States food and drug administration;

(iii) Liquefied petroleum gas containers that are designed to be refilled and reused;

(iv)(A) Packaging for drugs that are used for animal medicines including parasiticide products for animals; and

(B) Packaging for products intended for animals that are regulated as animal drugs, biologics, parasiticides, medical devices, or diagnostics used to treat, or administered to, animals under the federal food, drug, and cosmetic act, 21 U.S.C. Sec. 301 et seq., the federal insecticide, fungicide, and rodenticide act, 7 U.S.C. Sec. 136 et seq., or the federal virus-serum-toxin act, 21 U.S.C. Sec. 151 et seq., as amended;

(v) Packaging for products that are regulated as a medical device, dietary supplement, or drug by the United States food and drug administration under the federal food, drug, and cosmetic act, 21 U.S.C. Sec. 321 et seq. or products that are regulated as a biologic or vaccine by the federal food and drug administration under the public health service act, 42 U.S.C. Sec. 201 et seq.;

(vi) Packaging related to containers of architectural paint that has been collected by a stewardship organization under the program established in chapter 70A.515 RCW;

(vii) Packaging used to contain hazardous or flammable products classified by the 2012 federal occupational safety and health administration hazard communication standard (29 C.F.R. 1910.1200);

(viii) Packaging products used by entities or individuals covered under North American industry classification system codes 1151, 3253, 42491, or 44424;

(ix) Packaging for perishable food that may spoil or otherwise become unfit for human consumption because of its nature or type of physical condition including, but not limited to, fresh and processed meats, poultry, seafood, dairy products, eggs in the shells, and fresh fruit and vegetables.

(10) "Paper product" means paper sold or supplied including flyers, brochures, booklets, catalogs, magazines, and all other paper materials except for: (a) Bound books; (b) conservation grade and archival grade paper; (c) newspapers; (d) paper designed for use in building construction; and (e) paper products that, by any common and foreseeable use, could reasonably be anticipated to become unsafe or unsanitary to handle.

(11)(a) "Producer" means the following person responsible for compliance with covered product registration and reporting 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 with 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) A person is the "producer" of a covered product sold, offered for sale, or distributed in or into this state, as defined in (a)(i) through (iii) of this subsection, except where another person has mutually signed an agreement with a producer as defined in (a)(i) through (iii) of this subsection that contractually assigns responsibility to the person as the producer, and the person has joined a registered producer responsibility organization as the responsible producer for that covered product under this chapter.

(c) "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 covered products each year; or

(B) That has a global gross revenue of less than $5,000,000 for the most recent fiscal year of the organization. The department shall calculate an adjusted rate to maintain the small business exemption by the rate of inflation. The adjusted rate must be calculated to the nearest cent using the consumer price index for urban wage earners. Each adjusted rate calculated under this subsection takes effect on the following January 1st.

(12) "Vulnerable population" has the same meaning as in RCW 70A.02.010.

NEW SECTION. **Sec.**  ACTIVITIES TO SUPPORT FUTURE INCREASES IN RECOVERY RATES AND RATES STUDY. (1) To inform the future development of strategies to increase recovery rates consistent with the goals established in subsection (2) of this section, the department must:

(a) Identify a statewide list of materials suitable for curbside collection services and a statewide list of materials suitable for drop-off collection, consistent with section 203 of this act, to be completed by October 1, 2025; and

(b) Complete a statewide needs assessment that must use the recycling rates from the department's *December 2023 Washington Recycling, Reuse, and Source Reduction Target Study and Community Input Process*, and be carried out by a third-party consultant selected by the department, consistent with section 204 of this act, and completed by October 1, 2026.

(2) For purposes of implementing this chapter, the department must, where appropriate, use and rely on the department's *December 2023 Washington Recycling, Reuse, and Source Reduction Target Study and Community Input Process*.

NEW SECTION. **Sec.**  CURBSIDE AND DROP-OFF RECYCLABLE MATERIALS COLLECTION LISTS FOR NEEDS ASSESSMENT. (1) By October 1, 2025, the department must develop and publish a:

(a) List of recyclable materials suitable for curbside collection from residents in single-family and multifamily residences; and

(b) Separate list of materials suitable for residential drop-off collection.

(2) The initial list of materials suitable for curbside collection developed and published under this section must include the following materials:

(a) Newspaper;

(b) Paperboard and chipboard;

(c) Loose paper;

(d) Corrugated cardboard;

(e) Magazines;

(f) Envelopes;

(g) Aluminum cans;

(h) Tin or steel cans;

(i) High density polyethylene plastic containers; and

(j) Polyethylene terephthalate containers.

(3) The initial list of materials suitable for drop-off residential collection must include the following materials:

(a) Glass; and

(b) Flexible plastic.

(4) In addition to the materials identified under subsections (2) and (3) of this section, the department may identify additional materials for inclusion on a list or remove materials from inclusion on a list based on consultation with the advisory committee established in section 205 of this act, and after considering the following factors:

(a) The stability, maturity, accessibility, and viability of responsible end markets;

(b) Economic factors;

(c) Environmental factors from a life-cycle perspective;

(d) The material's compatibility with existing recycling infrastructure;

(e) The amount of the material available;

(f) The ability for waste generators to easily identify and properly prepare the material;

(g) The practicalities of sorting and storing the material;

(h) Contamination;

(i) Environmental health and safety considerations; and

(j) The anticipated yield loss for the material during the recycling process.

NEW SECTION. **Sec.**  STATEWIDE NEEDS ASSESSMENT. (1) The statewide needs assessment 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, each jurisdiction planning under chapter 70A.205 RCW, and the advisory committee established in section 205 of this act; and

(b) Stakeholders, jurisdictions planning under chapter 70A.205 RCW, and the advisory committee must have the opportunity to review and comment on the draft statewide needs assessment at least 90 days prior to its completion. The advisory committee must have the opportunity to review drafts of the needs assessment and accompanying data used in the needs assessment.

(2) The statewide needs assessment must be:

(a) Informed by the findings and recommendations of the 2023 performance rates study identified in section 202 of this act and rates and other comments suggested by stakeholders and the advisory committee;

(b) Limited to covered products collected from residents in single-family and multifamily residences included on the list developed and published by the department in section 203 of this act;

(c) Completed only after individual consultation with each jurisdiction planning under chapter 70A.205 RCW; and

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

(3) The statewide needs assessment must:

(a) For each jurisdiction planning under chapter 70A.205 RCW, evaluate the capacity, costs, gaps, and needs for the following factors necessary to achieve performance rate recommendations identified under section 202 of this act:

(i) Evaluate what services related to the requirements of this chapter are currently being delivered in each county and city planning under chapter 70A.205 RCW and what the costs are for those existing services;

(A) Availability and types of recycling services for covered products for residents in single-family and multifamily residences, including whether current services are considered residential or commercial and whether any gaps, costs, or needs are specific to either commercial or residential customer service;

(B) The current methods and infrastructure for serving residents, including curbside recycling service areas and material drop-off locations;

(C) Any densely populated areas within each jurisdiction in which curbside recycling services for covered products identified by the department on the list developed and published under section 203 of this act are not available or are only partially available;

(D) Any areas within each jurisdiction where curbside garbage collection services are offered to residents in single-family and multifamily residences but curbside recycling services are not offered;

(ii) Evaluate what new or expanded services and infrastructure are needed in each county and city planning under chapter 70A.205 RCW to meet the target performance rates and what the anticipated costs are for those additional services and infrastructure;

(iii) Education and outreach activities, which may include digital mediums on packaging;

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

(v) Necessary capital investments to existing reuse and recycling infrastructure, and how to maximize the use of existing infrastructure;

(b) Compile information related to actual costs 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) Estimate the total costs of investments necessary to reach target rates, within each jurisdiction, as well as ongoing program costs related to labor, equipment, and maintenance. Cost factors and variables to be considered in the estimates 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)(i) 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 section 202 of this act;

(ii) Identify methods to consider greenhouse gas emissions and other environmental outcomes associated with potential expansions of curbside recycling services to rural or sparsely populated areas;

(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 existing recycling system can be improved 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) Improving access to 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 negatively disproportionately impact any community and in particular overburdened communities and vulnerable populations, including new fees, costs, or deposits;

(D) Improving 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;

(g) Compile information from available data sources on the presence of toxic substances in covered products and their potential negative 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; and

(h) Conduct voluntary interviews with service providers of curbside recycling services or recycling processing services within a jurisdiction on costs for additional infrastructure, vehicles, staff, equipment, and other investments to achieve performance rates developed under section 202 of this act.

NEW SECTION. **Sec.**  ADVISORY COMMITTEE. (1) An advisory committee is established.

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

(a) Four representatives of local governments representing geographic areas across the state, including two representatives of counties and two representatives of cities, each with one representative of urban communities and one representative of rural communities;

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

(c) One representative of special purpose districts involved in activities related to the end-of-life management of solid waste;

(d) Two representatives of community-based organizations whose mission is to serve the interests of overburdened communities and vulnerable populations;

(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;

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

(j) One representative of a retail establishment.

(3) Advisory committee members must be appointed by the director of the department by September 1, 2025. 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; and

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

(4)(a) The terms of initial appointments must be staggered to two-year 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) The advisory committee shall meet at least once every three months at times and places specified by the department. The advisory committee may also meet at other times and places, including virtually, specified by the department or by a call of a majority of the committee members, as necessary, to carry out the duties of the advisory committee.

(6)(a) The department shall provide staff support and facilitation as necessary for the advisory committee to carry out its duties.

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

(7) The duties of the advisory committee include the following:

(a) Advise and make recommendations to the department on the lists developed and published by the department under section 203 of this act;

(b) Advise and make recommendations to the department on the scope of the statewide needs assessment under section 204 of this act; and

(c) Review and comment on draft statewide needs assessments prior to their completion.

(8) Advisory committee 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.

**PART 3**

**ESTABLISHING POSTCONSUMER RECYCLED CONTENT**

**REQUIREMENTS**

NEW SECTION. **Sec.**  A new section is added to chapter 70A.245 RCW to read as follows:

POSTCONSUMER RECYCLED CONTENT FOR POLYPROPYLENE TUBS.

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

(a) Products manufactured between January 1, 2030, through December 31, 2034: No less than 10 percent postconsumer recycled content plastic by weight; and

(b) Products manufactured on and after January 1, 2035: No less than 30 percent postconsumer recycled content plastic by weight.

(2) For polypropylene tubs in direct contact with food or edible products:

(a) Products manufactured between January 1, 2034, through December 31, 2038: No less than 10 percent postconsumer recycled content plastic by weight; and

(b) Products manufactured on and after January 1, 2039: No less than 30 percent postconsumer recycled content plastic by weight.

(3) The department may extend these dates by five years for all producers if the department determines inadequate availability of recycled material or a substantial disruption in the supply of the recycled material.

(a) A manufacturer may pay a $1,000 waiver fee, unless exempt, and apply to the department for a waiver from the postconsumer recycled content requirements established pursuant to this act. De minimis producers that apply for a waiver under this subsection are not subject to a fee.

(b) The department may grant a waiver pursuant to this section if the manufacturer demonstrates, and the department finds, in writing, that any of the following are applicable:

(i) The manufacturer 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;

(ii) It is not technically feasible for the manufacturer to achieve the postconsumer recycled content requirements; or

(iii) The manufacturer cannot comply with the postconsumer recycled content requirements due to inadequate availability of recycled material or a substantial disruption in the supply of recycled material.

NEW SECTION. **Sec.**  A new section is added to chapter 70A.245 RCW to read as follows:

POSTCONSUMER RECYCLED CONTENT FOR SINGLE-USE PLASTIC CUPS.

A producer of single-use plastic cups made of polyethylene terephthalate, polypropylene, or polystyrene 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) Products manufactured between January 1, 2031, through December 31, 2032: No less than 15 percent postconsumer recycled content plastic by weight; and

(b) Products manufactured on and after January 1, 2033: No less than 25 percent postconsumer recycled content plastic by weight.

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

(a) Products manufactured between January 1, 2033, through December 31, 2034: No less than 20 percent postconsumer recycled content plastic by weight; and

(b) Products manufactured on and after January 1, 2035: No less than 30 percent postconsumer recycled content plastic by weight.

NEW SECTION. **Sec.**  A new section is added to chapter 70A.245 RCW to read as follows:

POSTCONSUMER RECYCLED CONTENT FOR POLYETHYLENE TEREPHTHALATE THERMOFORM PLASTIC CONTAINERS.

A producer of a polyethylene terephthalate thermoform plastic container must meet the following annual minimum postconsumer recycled content percentage on average for the total quantity of polyethylene terephthalate 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) Products manufactured between January 1, 2030, through December 31, 2034: No less than 10 percent postconsumer recycled content plastic by weight; and

(b) Products manufactured on and after January 1, 2035: No less than 30 percent postconsumer recycled content plastic by weight.

(2) For packaging for consumable goods in direct contact with food or edible products:

(a) Products manufactured between January 1, 2034, through December 31, 2038: No less than 10 percent postconsumer recycled content plastic by weight; and

(b) Products manufactured on and after January 1, 2039: No less than 30 percent postconsumer recycled content plastic by weight.

(3)(a) Except as provided in (b) of this subsection, for packaging used for durable goods: On and after January 1, 2033, 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.

(4) The department may extend these dates by five years for all producers if the department determines inadequate availability of recycled material or a substantial disruption in the supply of the recycled material.

(a) A manufacturer may pay a $1,000 waiver fee, unless exempt, and apply to the department for a waiver from the postconsumer recycled content requirements established pursuant to this act. De minimis producers that apply for a waiver under this subsection are not subject to a fee.

(b) The department may grant a waiver pursuant to this section if the manufacturer demonstrates, and the department finds, in writing, that any of the following are applicable:

(i) The manufacturer 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;

(ii) It is not technically feasible for the manufacturer to achieve the postconsumer recycled content requirements; or

(iii) The manufacturer cannot comply with the postconsumer recycled content requirements due to inadequate availability of recycled material or a substantial disruption in the supply of recycled material.

NEW SECTION. **Sec.**  A new section is added to chapter 70A.245 RCW to read as follows:

DEPARTMENT'S DUTIES AND LIMITATIONS.

(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.).

(3) The department may not impose any requirement including, but not limited to, a postconsumer recycled content requirement, on medical devices, drugs, or dietary supplements as defined at 21 U.S.C. Sec. 321 et seq.

**PART 4**

**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 nutrition to meet nutritional needs due to special dietary needs directly related to cancer, chronic kidney disease, diabetes, malnutrition, and failure to thrive, as those terms are defined by the international classification of diseases, 10th revision, or other medical conditions as determined by the department.

(c) For any multimaterial beverage container qualifying under this act, postconsumer recycled content requirements only apply to the weight of the plastic components of the container, not overall container weight.

(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) Plastic tubs;

(v) Thermoform plastic polyethylene terephthalate containers; and

(vi) Single-use polypropylene, polyethylene terephthalate, or polystyrene 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 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. A franchisee is not a licensee unless a franchisee meets the requirements of a licensee under this subsection.

(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;

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

(iv) Liners, 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 lid.

(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~~)) with 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) A person is the "producer" of a covered product sold, offered for sale, or distributed in or into this state, as defined in (a)(i) through (iii) of this subsection, except where another person has mutually signed an agreement with a producer as defined in (a)(i) through (iii) of this subsection that contractually assigns responsibility to the person as the producer, and the person has joined a registered producer responsibility organization as the responsible producer for that covered product under this chapter.

(c) "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~~)) 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~~))

(iv) De minimis producers that have global gross revenue of less than $5,000,000 for the most recent fiscal year of the organization. The department shall calculate an adjusted rate to maintain the small business exemption by the rate of inflation. The adjusted rate must be calculated to the nearest cent using the consumer price index. Each adjusted rate calculated under this subsection takes effect on the following January 1st.

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

(24) "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.

(25)(a) "Polyethylene terephthalate 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 polyethylene terephthalate 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) "Polyethylene terephthalate thermoform plastic container" does not include:

(i) Household cleaning products or personal care products;

(ii) Polypropylene 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 polyethylene terephthalate 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) Plastic containers for perishable food that may spoil or otherwise become unfit for human consumption because of its nature or type of physical condition including, but not limited to, fresh and processed meats, poultry, seafood, dairy products, eggs in the shells, and fresh fruit and vegetables;

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

(ix) Polyethylene terephthalate thermoform plastic containers accompanying a durable good when the durable good model, and the associated packaging, was designed prior to January 1, 2028.

(26)(a) "Polypropylene 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 polypropylene; and

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

(b) "Polypropylene 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) Polyethylene terephthalate thermoform plastic containers;

(iv) Single-use plastic cups made of polypropylene, polyethylene terephthalate, or polystyrene;

(v) Plastic tubs for perishable food that may spoil or otherwise become unfit for human consumption because of its nature or type of physical condition including, but not limited to, fresh and processed meats, poultry, seafood, dairy products, eggs in the shells, and fresh fruit and vegetables; and

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

(27)(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.

**PART 5**

**MISCELLANEOUS**

NEW SECTION. **Sec.**  Sections 201 through 205 of this act constitute a new chapter in Title 70A RCW.

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

Correct the title.

EFFECT: Strikes the underlying bill addressing extended producer responsibility and postconsumer recycled content requirements for packaging and paper products, and:

(1) Directs the department of ecology (ecology) to identify a statewide list of materials suitable for curbside collection services and a statewide list of materials suitable for drop-off collection.

(a) Requires the list of materials suitable for curbside collection services to initially include specified types of paper, metal cans, and PET and HDPE plastic containers.

(b) Requires the list of materials suitable for drop-off collection to include glass and flexible plastic.

(c) Provides a process for ecology to identify additional materials or remove materials from a list, based on stakeholder consultation and consideration of specified factors.

(2) Directs ecology to complete a statewide needs assessment, relying on the results of a 2023 recycling performance rates study produced pursuant to an operating budget proviso to ecology.

(a) Requires the needs assessment to be developed following a specified process that includes stakeholder consultation, and to evaluate capacity, costs, gaps, and needs of each city or county undertaking local solid waste planning in order to achieve the recycling rates from the 2023 recycling performance rates study.

(b) Requires the statewide needs assessment to evaluate existing services currently being delivered, the availability and types of recycling services, current methods and infrastructure for serving residents, new or expanded services and infrastructure needed in each solid waste planning jurisdiction, certain information related to costs of services and infrastructure, and other specified factors.

(3) Establishes an advisory committee comprised of representatives of specified governments, businesses, and organizations, and given duties to advise ecology on the development of curbside collection and drop-off lists and the statewide needs assessment.

(4) Establishes postconsumer recycled content requirements for certain plastic products, including new requirements for polypropylene tubs and polypropylene tubs in direct contact with food or edible products, for PET, polypropylene, and polystyrene single-use plastic cups, and for PET thermoform plastic containers.

(a) Establishes a five-year ecology waiver process for producers of polypropylene tubs and PET thermoform plastic containers.

(b) Requires ecology to ensure that rules consider the federal rules and guidelines and prohibits ecology from imposing requirements in direct conflict with a federal law or regulation.

(5) Amends existing postconsumer recycled content requirements, including by making plastic beverage container caps and lids subject to recycled content requirements, making plastic household cleaning containers and personal care product containers subject to recycled content requirements regardless of whether its neck or mouth is narrower than the base, and excluding certain liners, corks, closures, labels, and other items attached to household cleaning product and personal care product containers from postconsumer recycled content requirements.

(6) Authorizes producers to mutually sign an agreement to contractually assign responsibility for compliance with postconsumer recycled content requirements to another party.

(7) Amends the threshold for revenue generation by de minimis producers exempt from postconsumer recycled content requirements.