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**SENATE BILL 5658**

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

**By** Senators Stanford, Das, Hunt, Rivers, Saldaña, and C. Wilson

AN ACT Relating to the recyclability of products and packaging; amending RCW 70A.245.010, 70A.245.020, and 70A.245.030; adding a new chapter to Title 70A RCW; and prescribing penalties.

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

NEW SECTION. **Sec.**  The legislature finds and declares that it is the public policy of the state that claims related to the recyclability of a product or packaging be truthful in practice and accurate. Consumers deserve accurate and useful information related to how to properly handle the end of life of a product or packaging.

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

(1)(a) "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.

(b) "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.

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

NEW SECTION. **Sec.**  (1) A person may not offer for sale, sell, distribute, or import into the state any product or packaging for which a deceptive or misleading claim about the recyclability of the product or packaging is made.

(2) 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 the product or packaging 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 5 of this act and is of a material type and form that routinely becomes feedstock used in the production of new products or packaging.

(a) This section does not apply to either of the following:

(i) Any product or packaging that is manufactured up to 18 months after the date the department publishes the first material characterization study required under section 4 of this act, or before January 1, 2025, whichever is later; or

(ii) Any product or packaging manufactured up to 18 months after the date the department updates the material characterization study under section 4 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 5 of this act before the publication of the updated study.

(b) For a product or packaging that is not considered to be recyclable in the state under section 5 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 5 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.

(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.

(c) For the purposes of this subsection, "consumable product" means a commodity that is intended to be used and not disposed of.

(3) For the purposes of this section, none of the following constitutes a deceptive or misleading claim about the recyclability of the product or packaging under this section:

(a) A person 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.

(b) A consumer good that is required by any federal or Washington state law or regulation to display a chasing arrows symbol.

(c) Directing a consumer to compost or properly dispose of a consumer good through an organics recycling program.

(d) A resin identification code placed inside a solid equilateral triangle.

NEW SECTION. **Sec.**  (1) By January 1, 2025, 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 5 of this act and are of material types and forms that routinely become feedstock used in the production of new products or packaging.

(a) To get a representative sample of recycling programs in the state, 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) Identify what material types and forms are actively recovered, and not considered contaminants, by included operations or facilities; and

(ii) 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 every five years, with the first update being issued by the department in 2028.

(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.**  (1)(a) A product or packaging is considered recyclable in the state if, based on information published by the department under section 4 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 APR 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, 2031, 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, 2031, 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, 2024, 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 4 of this act may 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) A city, county, or the state may impose civil liability in the amount of $500 for the first violation of this chapter, $1,000 for the second violation, and $2,000 for the third and any subsequent violation.

(2) By January 1, 2026, the department shall implement an enforcement program to investigate and identify violations of this chapter.

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

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

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

(a) Water and flavored water;

(b) Beer or other malt beverages;

(c) Wine;

(d) Distilled spirits;

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

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

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

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

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

(i) Plastic trash bags;

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

(iii) Beverages that use plastic beverage containers;

(iv) Products that use plastic tubs;

(v) Products that use thermoform plastic containers; and

(vi) Single-use plastic cups.

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

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

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

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

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

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

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

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

(b) Household cleaning products;

(c) Liquid soap;

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

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

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

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

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

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

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

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

(c) Bladders or pouches that contain wine; ((~~or~~))

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

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

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

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

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

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

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

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

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

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

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

(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.

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

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

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

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

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

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

(b) "Producer" does not include:

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

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

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

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

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

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

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

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

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

(22)(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.

(23)(a) "Single-use plastic cup" means a nonsealed, beverage serving cup comprised solely of one or multiple plastic resins.

(b) "Single-use plastic cup" does not include:

(i) Commercially or home compostable cups;

(ii) Plastic lined fiber cups, also known as composite cups;

(iii) Household cleaning and personal care products;

(iv) Plastic tubs;

(v) 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;

(vi) Plastic cups 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; and

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

(24)(a) "Thermoform plastic container" means a clear or colored plastic container, such as a clamshell, lid, tray, egg carton, 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) Hinged plastic containers, commonly known as "clamshells" or "blister packaging";

(ii) Two-piece unhinged containers;

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

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

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

(i) Household cleaning and 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, nonprescription and prescription drugs, or dietary supplements as defined in RCW 82.08.0293;

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

(viii) Thermoform plastic containers accompanying a durable good when the durable good model, and the associated packaging, was designed prior to January 1, 2025.

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

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

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

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

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

(c) Beginning January 1, 2026, producers that offer for sale, sell, or distribute in or into Washington products contained in plastic tubs or thermoform plastic containers must meet minimum postconsumer recycled content as required under subsection (7) of this section.

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

(e) Beginning January 1, 2029, producers that offer for sale, sell, or distribute in or into Washington single-use plastic cups must meet minimum postconsumer recycled content as required under subsection (8) of this section.

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

(ii) A producer that offers for sale, sells, or distributes in or into Washington single-use plastic cups or products in plastic tubs or thermoform plastic containers must register with the department individually or through a third-party representative registering on behalf of a group of producers on or before April 1, 2023.

(b) The registration information submitted to the department under this section must include a list of the producers of covered products and the brand names of the covered products represented in the registration submittal. Beginning April 1, 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, 2027, for plastic tubs and thermoform plastic containers, April 1, 2029, for wine in 187 milliliter plastic beverage containers and dairy milk, and April 1, 2030, for single-use plastic cups, 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), including rule making, in the next fiscal year for each category of covered products;

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

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

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

(v) Send notice to producers or their third-party representatives of fee amounts due consistent with either the general order issued under (a)(iii) of this subsection or rules adopted under (a)(iv) of this subsection.

(b) The department must:

(i) Apply any remaining annual payment funds from the current year to the annual payment for the coming year, if the collected annual payment exceeds the department's costs for a given year; and

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

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

(ii) Producers of single-use plastic cups or products in plastic tubs or thermoform plastic containers, or their third-party representative must submit a fee payment as determined by the department under (a) of this subsection by April 1, 2023, and every 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 producer of a product in a plastic tub or thermoform plastic container must meet the following annual minimum postconsumer recycled content percentage on average for the total quantity of plastic tubs or thermoform plastic containers, by weight, that are sold, offered for sale, or distributed in or into Washington by the producer effective:

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

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

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

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

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

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

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

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

(ii) Recycling rates;

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

(iv) The capacity of recycling or processing infrastructure;

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

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

(c) Under (a) of this subsection:

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

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

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

(d) A producer or the manufacturing industry for a covered product may appeal a decision by the department to adjust postconsumer recycled content percentages under (a) of this subsection or to temporarily exclude covered products from minimum postconsumer recycled content requirements under subsection ((~~(8)~~)) (10) of this section to the pollution control hearings board within 30 days of the department's determination.

((~~(8)~~)) (10) The department must temporarily exclude from minimum postconsumer recycled content requirements for the upcoming year any types of covered products in plastic containers for which a producer annually demonstrates to the department by December 31st of a given year that the 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)~~)) (9)(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)~~)) (11) A producer that does not achieve the postconsumer recycled content requirements established under this section is subject to penalties established in RCW 70A.245.040.

((~~(10)~~)) (12)(a) A city, town, county, or municipal corporation may not implement local recycled content requirements for a covered product that is subject to minimum postconsumer recycled content requirements established in this section.

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

((~~(11)~~)) (13) The department may enter into contracts for the services required to implement this chapter and related duties of the department.

((~~(12)~~)) (14) In-state distributors, wholesalers, and retailers in possession of covered products manufactured before the date that postconsumer recycled content requirements become effective may exhaust their existing stock through sales to the public.

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

(1)(a) Except as provided in (b) ((~~and~~)), (c), (d), and (e) of this subsection, beginning April 1, 2024, each producer of covered products, individually or through a third party representing a group of producers, must provide an annual report to the department that includes the amount in pounds of virgin plastic and the amount in pounds of postconsumer recycled content by resin type used for each category of covered products that are sold, offered for sale, or distributed in or into Washington state, including the total postconsumer recycled content resins as a percentage of total weight. The report must be submitted in a format and manner prescribed by the department. A manufacturer may submit national data allocated on a per capita basis for Washington to approximate the information required in this subsection if the producer or third-party representative demonstrates to the department that state level data are not available or feasible to generate.

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

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

(d) The requirements of (a) of this subsection apply to plastic tubs and thermoform plastic containers beginning April 1, 2027.

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

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

(2) A producer that submits information or records to the department under this chapter may request that the information or records be made available only for the confidential use of the department, the director, or the appropriate division of the department. The director of the department must give consideration to the request and if this action is not detrimental to the public interest and is otherwise in accordance with the policies and purposes of chapter 43.21A RCW, the director must grant the request for the information to remain confidential as authorized in RCW 43.21A.160.

NEW SECTION. **Sec.**  Sections 1 through 6 of this act constitute a new chapter in Title 70A RCW.

**--- END ---**