H-1024.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SUBSTITUTE HOUSE BILL 1131**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 68th Legislature 2023 Regular Session**

**By** House Environment & Energy (originally sponsored by Representatives Berry, Doglio, Reed, Fitzgibbon, Taylor, Pollet, Ryu, Ortiz-Self, Ramel, Callan, Macri, Simmons, Chopp, Lekanoff, Duerr, Wylie, Stonier, and Kloba)

AN ACT Relating to improving Washington's solid waste management outcomes; amending RCW 70A.245.010, 70A.245.020, 70A.245.030, 70A.245.040, 70A.245.090, 70A.245.100, 70A.245.120, 70A.245.060, 70A.205.005, 70A.205.010, 70A.205.045, 81.77.030, 81.77.040, 81.77.160, 81.77.185, 43.21B.110, and 43.21B.300; adding a new section to chapter 70A.222 RCW; adding a new section to chapter 70A.350 RCW; adding a new section to chapter 70A.245 RCW; adding a new section to chapter 70A.230 RCW; adding a new section to chapter 70A.340 RCW; adding a new section to chapter 70A.455 RCW; adding a new section to chapter 69.50 RCW; adding new chapters to Title 70A RCW; creating a new section; repealing RCW 70A.245.110; prescribing penalties; and providing an expiration date.

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

**Part One**

**Providing for Producer Responsibility in the Management of Packaging and Paper Products**

NEW SECTION. **Sec.**  FINDINGS—INTENT. (1) The legislature finds that, as of 2023, Washington's statewide waste recovery rate, which seeks to preserve public health, safety, and welfare, and conserve energy and natural resources, has been on a declining trend since 2011 and that Washington is not meeting the statewide goal of 50 percent recycling established in 1989.

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

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

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

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

(6) In addition, the legislature finds extended producer responsibility policies designed to cover all consumer packaging and paper materials offer the potential for greater economies of scale and operational efficiencies than could be achieved under a policy applied only to a subset of materials.

(7) It is the intent of the legislature to require that extended producer responsibility programs, including the achievement of recycling rates, are implemented by and for producers of consumer packaging and paper products in a manner that involves producers in material management from design concept to end-of-life. These programs incentivize innovation and research to develop more efficient recycling technologies and minimize environmental impacts of the packaging and paper products.

(8) It is also intended that these programs be responsibly managed, so that covered products are handled and accounted for from the point of collection through the final destination in a way that benefits the environment and minimizes risks to public health and worker health and safety. It is intended that these programs build and expand on the existing waste and recycling system's infrastructure and reliance on the role of local governments and the utilities and transportation commission in solid waste management.

(9) It is also the intent of the legislature that producers increase the use of postconsumer recycled content in their products, to achieve the goals in RCW 70A.520.010(2), in order to create strong markets for recycled materials and achieve environmental benefits.

(10) It is the intent of the legislature that, through design and innovation, producers will reduce the use and climate impact of consumer packaging and paper products, increase the use of postconsumer recycled content, and make all packaging reusable, recyclable, or compostable.

(11) Finally, it is the intent of the legislature that 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.

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

(1) "Advisory council" means the advisory council created in section 120 of this act.

(2) "Alternative recycling process" means a recycling process that occurs other than through purely mechanical means.

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

(4) "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.

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

(6) "Compostable" means a product that is capable of undergoing aerobic biological decomposition in a composting system, that results in the material being broken down primarily into carbon dioxide, water, inorganic compounds, and biomass, and is in compliance with the requirements for a product labeled as compostable under chapter 70A.455 RCW.

(7) "Composting system" means a system meeting the requirements of chapter 70A.205 RCW applicable to facilities that treat solid waste for composting.

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

(9) "Contamination" means:

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

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

(10) "Covered product" means packaging and paper products sold or supplied to consumers for personal, noncommercial use.

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

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

(13) "Eliminate" or "elimination," with respect to source reduction, means the removal of a plastic component from a covered material.

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

(a) Becomes a reused material;

(b) Becomes a recycled material; or

(c) Is delivered to a disposal site, as defined in RCW 70A.205.015.

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

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

(17) "Government entity" means any:

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

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

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

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

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

(a) Plastic beverage containers;

(b) Rigid plastic, excluding plastic beverage containers;

(c) Flexible plastic;

(d) Paper;

(e) Aluminum;

(f) Steel; and

(g) Glass.

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

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

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

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

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

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

(v) Supplied to or purchased by consumers expressly for the purpose of facilitating food or beverage consumption that is ordinarily 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 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) Products excluded temporarily under section 128 of this act;

(iv) Qualifying beverage containers and container labels and closures, but not secondary or ancillary packaging, subject to the requirements of chapter 70A.--- RCW (the new chapter created in section 603 of this act), upon the receipt by the department of a written notice under section 303 of this act regarding the designation of a distributor responsibility organization to implement a deposit return system under chapter 70A.--- RCW (the new chapter created in section 603 of this act);

(v) Liquified petroleum gas containers that are designed to be refilled and reused;

(vi) Packaging material that is in direct contact with a product that is regulated as animal biologics, including vaccines, bacterins, antisera, diagnostic kits, and other products of biological origin under the federal virus-serum-toxin act, 21 U.S.C. Sec. 151 et seq., as amended; and

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

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

(22) "Paper product" means paper sold or supplied including, but not limited to, flyers, brochures, booklets, catalogs, magazines, copy paper, printing paper, 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.

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

(24) "Postconsumer recycled content" has the same meaning as defined in section 201 of this act.

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

(i) For products sold in or with packaging at a physical retail location in this state:

(A) If the product is sold in or with packaging under the brand of the product manufacturer or is sold in packaging that lacks identification of a brand, the producer of the packaging is the person that manufactures the product;

(B) If the product is sold under a retail brand, the producer is the retail brand owner;

(C) If the product is manufactured by a person other than the brand owner, the producer of the packaging is the person that is the licensee of a brand or trademark under which a packaged item is used in a commercial enterprise, sold, offered for sale, or distributed in or into this state, whether or not the trademark is registered in this state; or

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

(ii) For products sold or distributed in packaging in or into this state via e-commerce, remote sale, or distribution:

(A) For packaging used to directly protect or contain the product, the producer of packaging is the same as the producer for purposes of (a)(i) of this subsection; and

(B) For packaging used to ship the product to a consumer, the producer of the packaging is the person that packages and ships the product to the consumer.

(iii) For packaging that is a covered product and is not included in (a)(i) and (ii) of this subsection, the producer of the packaging is the person that first distributes the packaged product in or into this state.

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

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

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

(B) If the paper product is manufactured by a person other than the brand owner, the producer of the paper product is the person that is the owner or licensee of a brand or trademark under which the paper product is used in a commercial enterprise, sold, offered for sale, or distributed in or into this state, whether or not the trademark is registered in this state; or

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

(vi) A person who would be considered a "producer" of a covered product sold, offered for sale, or distributed in or into this state, as defined in (a)(i) through (v) of this subsection, can designate another responsible producer for that covered product if another person agrees to accept responsibility and has registered as the producer responsible for that covered product under this chapter.

(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:

(A) In Washington state less than one ton of covered products; and

(B) That have a global gross revenue of less than $5,000,000 for the most recent fiscal year of the organization.

(26) "Producer responsibility organization" means:

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

(b) Until January 15, 2026, an organization that has applied for a tax exemption under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code and is designated by a producer or group of producers to develop and carry out the activities required of producers under this chapter;

(c) A producer that registers with the department as a producer responsibility organization; or

(d) An organization as defined by rule by the department consistent with section 104(6) of this act.

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

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

(b) "Public place" does not include a retail establishment or industrial, commercial, or privately owned property that is not required to be accessible to the public.

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

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

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

(31) "Responsible end market" means a materials market in which the recycling of materials and the disposal of contaminants is conducted in a way that:

(a) Minimizes impacts to the environment; and

(b) Minimizes risks to public health and worker health and safety.

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

(33) "Responsible producer" means a producer that is not a de minimis producer.

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

(35) "Reusable" means:

(a) For packaging that is reused or refilled by a producer, the packaging satisfies all of the following:

(i) Explicitly designed and marketed to be utilized multiple times for the same product, or for another purposeful packaging use in a supply chain;

(ii) Designed for durability to function properly in its original condition for multiple cycles of reuse or refill;

(iii) Supported by adequate infrastructure to ensure the packaging can be conveniently and safely reused or refilled for multiple cycles; and

(iv) Repeatedly recovered, inspected, and reissued into the supply chain for reuse or refill for multiple cycles.

(b) For packaging that is reused or refilled by a consumer, the packaging satisfies all of the following:

(i) Explicitly designed and marketed to be utilized multiple times for the same product;

(ii) Designed for durability to function properly in its original condition for utilization in multiple cycles of reuse or refill; and

(iii) Supported by adequate and convenient availability of services or infrastructure to ensure the packaging can be conveniently and safely reused or refilled by the consumer multiple times.

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

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

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

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

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

(c) Prevent or, if not preventable, minimize and mitigate impacts to overburdened communities or vulnerable populations identified by the department.

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

(40) "Vulnerable populations" has the same meaning as defined in RCW 70A.02.010.

NEW SECTION. **Sec.**  PRODUCER RESPONSIBILITY ORGANIZATION DUTIES. (1)(a) Beginning July 15, 2024, each producer that offers for sale, sells, or distributes in or into Washington a covered product must join a producer responsibility organization that is registered with the department or register with the department as a producer responsibility organization. A producer that has not joined a producer responsibility organization may not sell or supply covered products in or into Washington.

(b) Until the conclusion of the initial plan implementation period as provided under section 108 of this act, the department must only accept the registration of a single producer responsibility organization, other than any producers that register individually as a producer responsibility organization. Until the conclusion of the initial plan implementation period, producers of covered products must either join the producer responsibility organization or register individually as a producer responsibility organization for purposes of compliance under this section. If applications for more than one producer responsibility organization are submitted to the department by July 15, 2024, not counting applications submitted by individual producers, the department must determine which proposed producer responsibility organization can most effectively implement this chapter.

(c) If more than one producer responsibility organization is registered with the department, the producer responsibility organizations must submit a coordination plan to the department for approval. If requested by the producer responsibility organizations, the department may serve as a coordinating body or oversee coordination of producer responsibility organization plans. The requirements of this subsection apply to the initial plan period consisting of a single producer responsibility organization and any producers registering individually, and subsequent plan periods where multiple producer responsibility organizations and individual producers may register with the department.

(d) A person who would be determined to be the producer of a covered product, based on the definition of "producer" as defined in section 102 of this act, is not required to join a producer responsibility organization for that covered product if another person has joined a producer responsibility organization and registered as the producer responsible for that covered product under this chapter.

(2) A producer responsibility organization that meets the definition under section 102 of this act that implements or proposes to implement a plan under this chapter may not include on its board of directors, or otherwise be governed by, representatives or affiliates of any public or private entities that submit bids to perform work for the producer responsibility organization or that contract with the producer responsibility organization.

(3) By July 15, 2024, and each July 15th thereafter, each producer, through a submission by a producer responsibility organization, must register with the department. A registration submission by a producer responsibility organization must include the following:

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

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

(b) Until a producer responsibility organization begins to submit annual reports, as specified under section 119 or 209 of this act, the following data for the prior calendar year:

(i) The weight, by material category, of covered products supplied into the state to consumers;

(ii) A description of how the producer responsibility organization has distinguished and apportioned the quantities of packaging and paper products sold or supplied to consumers that are considered covered products under this chapter, from quantities of packaging and paper products sold or supplied for other uses that are not considered covered products under this chapter. A producer responsibility organization may rely on member reporting for this description. The weight of any covered products that are reusable or compostable must each be reported separately from the weight of other types of covered products; and

(iii) A list of all member producers and their brands of postconsumer recycled content products required to meet the postconsumer recycled content requirements of chapter 70A.--- RCW (the new chapter created in section 602 of this act).

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

(4) By June 30, 2025, and every June 30th thereafter, every registered producer responsibility organization must submit an annual payment to the department for the preceding fiscal year, as determined by the department in section 104 of this act, to fund the:

(a) Costs to implement, administer, and enforce this chapter and chapter 70A.--- RCW (the new chapter created in section 602 of this act), including rule making;

(b) Statewide needs assessment established in section 105 of this act; and

(c) Support and facilitation of the advisory council created in section 120 of this act.

(5) Within six months of the first adoption of rules relating to this chapter, every registered producer responsibility organization must submit a plan meeting the requirements of section 107 of this act to the department for approval consistent with the requirements of this chapter.

(a) A producer responsibility organization registered with the department as of July 15, 2026, must:

(i) Implement its plan as approved by the department by January 1, 2028, or within six months of plan approval, whichever is later;

(ii) Submit the annual postconsumer recycled content report to the department in April for the prior calendar year required in section 209 of this act; and

(iii) Submit an annual report for the prior calendar year to the department consistent with section 119 of this act by July 1, 2029, and each July 1st thereafter.

(b) A producer responsibility organization registering for the first time with the department after July 15, 2026, must:

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

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

(iii) Submit a new or revised plan within 60 days after receipt of a letter of disapproval from the department, if applicable;

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

(v) Submit the annual postconsumer recycled content report for the prior calendar year required in section 209 of this act; and

(vi) Submit an annual report for the prior calendar year to the department consistent with section 119 of this act by July 1st, beginning the first year after plan implementation.

(6) A producer responsibility organization must respond, in writing, to the advisory council's written comments and recommendations within 60 days of receipt.

NEW SECTION. **Sec.**  DEPARTMENT'S DUTIES. (1) The department must implement, administer, and enforce this chapter. The department's implementation, administration, and enforcement duties under this chapter, including the requirements of this section, are supplemented by the provisions of chapter 70A.--- RCW (the new chapter created in section 602 of this act).

(2)(a) By April 1, 2025, and every April 1st thereafter, the department must:

(i) Prepare a workload analysis that identifies the projected annual costs to implement, administer, and enforce this chapter and chapter 70A.--- RCW (the new chapter created in section 602 of this act), including rule making, in the next fiscal year;

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

(A) Performance rates study and the statewide needs assessment established in section 105 of this act; and

(B) Support and facilitation of the advisory council created in section 120 of this act;

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

(iv) By 2026, adopt rules to equitably determine annual fee payments by producer responsibility organizations. Once these rules are adopted, the general order issued under (a)(iii) of this subsection is no longer effective; and

(v) Send notice to producer responsibility organizations of fee amounts due consistent with either the general order issued under (a)(iii) of this subsection or rules adopted under (a)(iv) of this subsection.

(b) The department must:

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

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

(3) The department must review the performance rates proposed by producer responsibility organizations as required in section 111 of this act and which must be achieved by the ninth calendar year from the effective date of this section. The department must:

(a) Upon receipt from the producer responsibility organization, make proposed performance rates available for public review and comment for at least 30 days;

(b) Review proposed performance rates within 90 days of receipt of a complete submission;

(c) Make a determination as to whether or not to approve proposed performance rates and notify the producer responsibility organization of the:

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

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

(4)(a) The department must review new, updated, and revised plans submitted by producer responsibility organizations as required in section 108 of this act. The department must:

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

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

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

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

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

(I) Use the enforcement powers specified in section 123 of this act; or

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

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

(5) The department must review annual reports submitted by producer responsibility organizations as required in section 119 of this act and under chapter 70A.--- RCW (the new chapter created in section 602 of this act). The department must:

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

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

(c) Make a determination as to whether or not an annual report meets the requirements of section 119 of this act and notify the producer responsibility organization of the:

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

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

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

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

(7) Except where otherwise provided in this chapter, the department shall seek to adopt rules that are harmonized with the regulatory standards, exemptions, reporting obligations, and other compliance requirements of other states that:

(a) Have adopted producer responsibility programs similar to the program established in this chapter; and

(b)(i) Are home to producers that supply, or have the potential to supply, significant quantities of covered products to Washington markets; or

(ii) To which Washington supplies, or has the potential to supply, significant quantities of covered products.

(8) The department may by rule require producer responsibility organizations to fund activities to make convenient collection services available for recycling of covered products designated for collection from locations or entities determined to be significant sources of covered product waste and that are additional to those locations identified under section 113 of this act. These locations or entities may include, but are not limited to, public places and official gatherings at which a local government provides solid waste services. These locations or entities may not include retail establishments. Rules adopted under this subsection apply to producer responsibility organizations no earlier than January 1, 2029, and may be updated no more frequently than every five years.

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

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

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

NEW SECTION. **Sec.**  RATE STUDY AND STATEWIDE NEEDS ASSESSMENT. (1) To inform the implementation of the program, the department must conduct a performance rates study and a statewide needs assessment that must be:

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

(b) Funded through payments or reimbursements collected from producer responsibility organizations.

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

(i) Use the recycling rates from the department's *January 2023 Washington Consumer Packaging and Paper Study: Recycling Rate Assessment and Recommendations*;

(ii) Use relevant information and recommendations from the department's 2020 plastic packaging study reports, including:

(A) *Plastic Packaging in Washington: Assessing Use, Disposal, and Management*;

(B) *Recycled Content Use in Washington: Assessing Demand, Barriers, and Opportunities*;

(C) *Successful Plastic Packaging Management Programs and Innovations: Washington Plastic Packaging Management Study*;

(D) *Recommendations for Managing Plastic Packaging Waste in Washington*; and

(E) *Evaluation, Assessment, and Recommendations for the Responsible Management of Plastic Packaging in Washington*;

(iii) Review the performance rates set and achieved in jurisdictions with producer responsibility programs for packaging or similar programs and evaluate whether those rates are applicable in the state;

(iv) Recommend performance rates, including:

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

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

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

(D) If a distributor responsibility organization under chapter 70A.--- RCW (the new chapter created in section 603 of this act) has notified the department of its intent to implement a deposit return system at least six months prior to the date of the completion of a new or updated performance rates study under this section, alternate rates as described under (a)(iv) (A) through (C) of this subsection that exclude qualifying beverage containers that are to be managed under the deposit return system.

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

(c) The advisory council and any producer responsibility organization that is registered with the department by July 15, 2024, must have the opportunity to review and comment on a draft performance rates study prior to its completion.

(d) No more frequently than every five years, the department may update the performance rates study required under this section, consistent with subsection (1) of this section.

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

(a) The final scope of the statewide needs assessment must be determined after considering comments and recommendations from the advisory council established in section 120 of this act, from the utilities and transportation commission, and from any producer responsibility organization that is registered with the department by July 15, 2024; and

(b) The utilities and transportation commission, the advisory council created in section 120 of this act, and registered producer responsibility organizations must have the opportunity to review and comment on the draft statewide needs assessment prior to its completion.

(4) The statewide needs assessment must be:

(a) Informed by the findings and recommendations of the performance rates study established in this section and the rates submitted by producer responsibility organizations and approved by the department under section 111 of this act; and

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

(5) The statewide needs assessment must:

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

(i) Availability and types of recycling services for covered products relative to the convenience standards specified in section 113 of this act and to additional potential service methods recommended by producer responsibility organizations during the study scoping process;

(ii) Education and outreach activities relative to the standards specified in section 118 of this act;

(iii) Availability and performance of collection, transport, and processing capacity and infrastructure relative to the management standards specified in section 110 of this act and the approved performance rates submitted by producer responsibility organizations, including consideration of material quality and contamination;

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

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

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

(b) Compile information related to actual costs incurred by government entities, including entities of sparsely populated, remote areas and dense urban areas, for curbside collection services, drop-off collection services, and other information relevant to the funding requirements for producer responsibility organizations in accordance with section 112 of this act, including costs for various service methods recommended by producer responsibility organizations during the study scoping process;

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

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

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

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

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

(v) Geographic location or other variables contributing to regional differences in costs, including sparsely populated, remote areas and dense urban areas;

(vi) Cost increases over time; and

(vii) Any other factors, recycled commodity material revenue, as determined to be necessary by the department, with input from producer responsibility organizations, the advisory council, and the utilities and transportation commission;

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

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

(f) 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. The department may adopt rules establishing criteria for the determination of whether a covered product is recyclable, reusable, or compostable. 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;

(g) Evaluate how the state's recycling system can be managed in a socially just manner for the purpose of informing how each producer responsibility organization implementing a plan can support this objective 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) An evaluation of recycling processing facility worker conditions, wages, and benefits;

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

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

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

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

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

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

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

(6)(a) In consultation with the advisory council, the utilities and transportation commission, and registered producer responsibility organizations, the department may update the statewide needs assessment to inform the development of producer responsibility organization plans, including updates to base cost formulas to be used for establishing reimbursement rates to government entities for services delivered in accordance with the requirements of this chapter. Any updates must include an evaluation of public place recycling needs prior to the department considering a requirement, by rule, for public place recycling funding activities under section 104(8) of this act.

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

(c) The scope of a needs assessment update may include an analysis of the plastic resin market including:

(i) Analyzing market conditions and opportunities in the state's recycling industry for meeting the minimum postconsumer recycled content requirements for covered products identified in chapter 70A.--- RCW (the new chapter created in section 602 of this act); and

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

(d) A needs assessment performed prior to January 1, 2029, that includes an analysis of the plastic resin market as described in (c) of this subsection is sufficient to satisfy the requirements of RCW 70A.245.060.

NEW SECTION. **Sec.**  PLAN PARTICIPATION OBLIGATION—STAKEHOLDER CONSULTATION FOR PLAN. (1) Each producer of covered products must participate in, implement, and fund a producer responsibility organization plan approved by the department, consistent with the timelines established in sections 103 and 108 of this act, and in accordance with the funding requirements established in section 112 of this act.

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

(3) Prior to submitting a new, updated, or revised plan to the department, a producer responsibility organization must conduct a consultation process to directly and actively involve stakeholders in development of key plan elements established in section 107 of this act. The producer responsibility organization, through the consultation process, must solicit and respond to input and recommendations from the advisory council established in section 120 of this act, the utilities and transportation commission, and other stakeholders. The consultation process required in advance of the submission of a plan to the department is in addition to the department-led public comment process specified in section 104(4) of this act. At a minimum, the consultation process must include:

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

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

NEW SECTION. **Sec.**  PLAN CONTENTS—OVERVIEW. All plans and plan updates must contain the following information:

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

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

(3) A description of the structure of the fees owed by producers to be used to implement the plan, including the eco-modulation of fees consistent with section 112 of this act;

(4) How the producer responsibility organization will encourage and incentivize waste prevention and reduction of consumer packaging and paper products and their associated climate impacts;

(5) How the producer responsibility organization will encourage and incentivize redesign of covered products to be reusable, recyclable, or compostable. Nothing in this chapter requires any individual producer to redesign covered products to reduce waste or to be reusable, recyclable, or compostable, or requires any individual covered product to be reusable, recyclable, or compostable;

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

(7) How the producer responsibility organization will fund reuse and recycling infrastructure and market development in Washington state as described in section 117 of this act;

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

(9)(a) A list of covered products designated for collection statewide as required under section 113 of this act;

(b) The list required in (a) of this subsection must identify the covered products designated for collection from residents statewide:

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

(ii) Through alternate collection; and

(iii) Through public place collection;

(c) If the list required in (a) of this subsection includes any covered product that is not recyclable as defined in section 102 of this act, the plan must provide a justification for its inclusion on the list and describe activities to be undertaken to allow the covered product to meet the definition of recyclable within a reasonable time frame;

(10)(a) A list and description of any covered products that are compostable and the collection systems and processing infrastructure and other activities that will be used to ensure responsible management of compostable covered products;

(b) A list and description of covered product reuse and refill collection systems and processing infrastructure;

(11) Activities to be undertaken to make convenient collection services available for covered products in accordance with the convenience standards established under section 113 of this act including, at minimum, the following information:

(a) The jurisdictions where curbside collection services are available or are anticipated to be available upon the implementation of a plan, including the following service details:

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

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

(b) The locations of permanent collection facilities, the planned hours in which free and equitable access will be provided, and the types of covered products to be collected at each location, including whether any changes are anticipated as part of plan implementation;

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

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

(12) Proposed performance rates for covered products reported as supplied, as described in section 111 of this act, including a description of the basis and reasoning for the rates proposed;

(13) Activities to be undertaken to meet the performance rates;

(14) Activities to be undertaken to implement the education and outreach component as required under section 118 of this act;

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

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

(17) Activities to be undertaken to develop or support responsible end markets for covered products;

(18) A description of how plan implementation will maintain responsible management practices for covered products through to final disposition and ensure that any covered products collected for recycling will be delivered to a responsible end market as reported by material recovery facilities under section 110(5) of this act;

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

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

(c) A description of:

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

(ii) How reimbursements will be distributed;

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

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

(d) A template of the service agreement and any other forms, contracts, or other documents for use in distribution of reimbursements to government entities and other stakeholders;

(e) A description of how the producer responsibility organization will implement the program in a manner consistent with the requirements of section 115 of this act;

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

(21) Activities to be undertaken to reduce contamination from covered products at compost or other organic material management facilities as defined in RCW 70A.205.015, including through decontamination equipment improvements and conducting packaging contamination composition studies;

(22) A stakeholder consultation report, as described in section 106(3)(b) of this act;

(23) A description of a third-party process to resolve disputes for determining and paying the reasonable costs that arise between a producer responsibility organization and a government entity or a recycling service provider;

(24) A description of how the producer responsibility organization will coordinate with other producer responsibility organizations and any distributor responsibility organizations formed under chapter 70A.--- RCW (the new chapter created in section 603 of this act) in the state, in specific terms if more than one producer responsibility organization or distributor responsibility organization is registered with the department as of the date of a plan's submission, and in general terms addressing coordination priorities to ensure the smooth implementation of this chapter in the event an additional plan or plans become registered with the department during the period of plan implementation;

(25) A list of the material categories if distinguished or additional to the material categories identified in section 102(18) (a) through (g) of this act;

(26) The contingency plan described in section 109 of this act; and

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

NEW SECTION. **Sec.**  PLAN APPROVAL, UPDATES, AND REVISIONS. (1)(a) The initial plan due to be submitted under section 103(5) of this act, and updated plans, may address no more than five calendar years.

(b) A producer responsibility organization must submit to the department, one year prior to the expiration of any plan, an updated plan for the following five calendar years of operation to address changes in the operations and activities of the program. Updated plans must be designed to begin from the date on which the existing plan is expected to cease to be in effect.

(c) If the performance rates set in a producer responsibility organization plan as described in section 111 of this act have not been met as of the time of plan update, the producer responsibility organization must arrange for an independent evaluation to be conducted of the producer responsibility organization's efforts to implement the plan approved by the department. The evaluation must provide information for the producer responsibility organization to use to target and improve program outcomes relative to the proposed and approved performance rates.

(d) A producer responsibility organization must carry out the consultation process established in section 106 of this act prior to the submission of each plan and plan update. The consultation process established in section 106 of this act is not required to be carried out by a producer responsibility organization that is submitting a revised plan:

(i) In response to an order from the department; or

(ii) Subsequent to a letter disapproving of a plan submission by the producer responsibility organization and for which the original plan submitted by the producer responsibility organization had been subject to the consultation process required in section 106 of this act.

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

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

(i) The program and activities to implement the plan fail to achieve the performance rates set in producer responsibility organization plans as described in section 111 of this act or otherwise fail to achieve significant requirements under this chapter;

(ii) Additional producer responsibility organizations register with the department or receive approval from the department to begin implementing a plan; or

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

NEW SECTION. **Sec.**  CONTINGENCY PLAN. (1) A producer responsibility organization must submit to the department a comprehensive contingency plan demonstrating how the activities in the plan will continue to be carried out by some other entity, if needed, such as an escrow company:

(a) Until such time as a new plan is submitted and approved by the department;

(b) Upon the expiration of an approved plan;

(c) In the event that the producer responsibility organization has been notified by the department that they must transfer implementation responsibility for the program to a different producer responsibility organization;

(d) In the event that the producer responsibility organization notifies the department that it will cease to implement an approved plan; or

(e) In any other event that the producer responsibility organization can no longer carry out plan implementation.

(2) The contingency plan required in this section must be submitted to the department as a component of the producer responsibility organization's initial plan submitted to the department under section 103(5) of this act. The department may require a producer responsibility organization to update the contingency plan required under this section coincident with any plan update under section 108 of this act.

(3) The department must follow the same process and timelines for reviewing and approving the contingency plan as it follows for reviewing and approving the producer responsibility organization's program plan under section 108 of this act.

NEW SECTION. **Sec.**  COLLECTION AND MANAGEMENT. (1) Producer responsibility organizations, government entities, and service providers implementing the program must manage covered products in a manner consistent with the state's solid waste management hierarchy established in RCW 70A.205.005.

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

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

(a) Track, verify, and publicly report that the responsible management of covered products collected by the program is maintained and that recycled materials are delivered to a responsible end market;

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

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

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

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

(4)(a) Prior to program use of any alternative recycling process for conversion of postuse plastic polymers for the purpose of producing recycled material to be counted toward performance rates under this chapter, the producer responsibility organization must seek the department's approval and submit a third-party assessment of the process's environmental impacts, as described under this subsection. In order for an alternative recycling process to be approved, the department must determine, after considering public comment and input from the advisory council, that the alternative recycling process produces similar or lesser impacts than those produced in recycling that uses purely mechanical means for each of the following environmental impacts:

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

(ii) Energy efficiency and greenhouse gas emissions;

(iii) Generation of hazardous waste;

(iv) Environmental impacts on overburdened communities and vulnerable populations;

(v) Water usage including, but not limited to, impacts to local water resources and sewage infrastructure; and

(vi) Other environmental impacts as determined by the department by rule.

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

(c) The person preparing the assessment under (a) of this subsection may not be interested, directly or indirectly, in the ownership or operation of any recycling facility proposed to conduct the alternative recycling process under assessment.

(5)(a) Material recovery facilities and other processing facilities receiving covered products from government entities or private service providers collected through activities undertaken in accordance with this chapter must measure and report annually to the department by commodity type and material category, in a form and format approved by the department, on the following parameters associated with covered products and qualifying beverage containers subject to the provisions of chapter 70A.--- RCW (the new chapter created in section 603 of this act) received and processed:

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

(ii) Inbound material quality and contamination;

(iii) Outbound material quality and contamination;

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

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

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

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

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

(b) All data reported to the department by material recovery facilities and other processing facilities under this subsection must be verified by an independent third party and shared with each producer responsibility organization for which the material recovery facility provides a service.

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

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

NEW SECTION. **Sec.**  PERFORMANCE RATES. (1) By January 1, 2025, any registered producer responsibility organization must submit to the department proposed performance rates for covered products reported by the producer responsibility organization as supplied into the state to be achieved by the ninth calendar year from the effective date of this section. In proposing rates, the producer responsibility organization must:

(a) Consider the rates recommended in the performance rates study;

(b) Propose, at minimum:

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

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

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

(c) Provide a justification for the rates proposed, if they are different from those recommended in the performance rates study; and

(d) Adhere to the performance rate calculation methodology established in subsections (3), (4), and (5) of this section.

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

(a) At minimum, the plan must include:

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

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

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

(iv) A source reduction rate to be achieved solely by eliminating plastic components.

(b) Proposed rates must demonstrate continuous improvement in performance rates of covered products over time.

(c) Proposed rates must adhere to the performance rate calculation methodology established in subsections (3), (4), and (5) of this section.

(d) Any plan submitted to the department prior to the ninth calendar year from the effective date of this section must also include performance rates to be achieved by the ninth calendar year from the effective date of this section. If the rates differ from those previously approved by the department as required under subsection (1) of this section, the producer responsibility organization must provide a justification for the proposed adjustment.

(3) For the purposes of this chapter, the department must adopt rules for measuring the performance rates of each material category of covered products included in a producer responsibility organization plan.

(4) To be included in a performance rate calculation for purposes of this chapter, recycled materials must be transferred to a responsible end market.

(5) For purposes of calculations of reuse and elimination under this section, a producer responsibility organization must include both the weight and number of units.

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

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

(3)(a) A producer responsibility organization must develop a system to collect fees from participating producers to cover the costs of plan implementation. To minimize the administrative and reporting costs of the producers and the organization, the fee system must include:

(i) A de minimis level in which no fees are charged by the producer responsibility organization, determined by weight of covered products sold into the state;

(ii) Additional charges applied specifically to producers of postconsumer recycled content products covered by the requirements of chapter 70A.--- RCW (the new chapter created in section 602 of this act), in an amount roughly equivalent to fully cover the producer responsibility organization's costs of implementing its duties under chapter 70A.--- RCW (the new chapter created in section 602 of this act), including funding the oversight of the department; and

(iii) An optional flat rate for producers below a certain size.

(b) A producer responsibility organization shall allow producers of covered products that are magazines to satisfy their obligations under this section by providing advertisement or publication supporting the education and outreach activities required under section 118 of this act in their magazines, or on their websites in lieu of program fees as long as the value of the advertisement is equivalent to the estimated cost of managing the covered products that are magazines, which are to be determined as described in subsection (4) of this section. The producer responsibility organization may consider the in-state reach of the advertising when determining the value of the advertising.

(4) A producer responsibility organization must base the system of fees assessed to producers upon the estimated cost of managing the material categories of covered products, while seeking to avoid a material category that subsidizes any other material category. In establishing a system of fees, a producer responsibility organization must consider the following factors:

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

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

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

(5)(a) The fee system must use eco-modulation factors to incentivize the use of packaging design attributes that reduce the environmental impacts of covered products. Examples of activities that a fee system may include to satisfy the requirement to use eco-modulation factors include, but are not limited to:

(i) Encourage designs that facilitate and improve infrastructure and systems for reuse, recycling, and home and industrial composting, and that achieve reuse, recycling, and home and industrial composting;

(ii) Encourage the use of postconsumer recycled content;

(iii) Encourage designs that reduce the amount of packaging material used;

(iv) Discourage the use of problematic or difficult to recycle materials that increase system costs of managing covered products; and

(v) Encourage other design attributes that reduce the environmental impacts of covered products.

(b) Any system of program fees under this section that includes discounted fees or favorable treatment of covered products deemed to be reusable must establish a basis for determining that products, in practice, are designed and supported by adequate infrastructure to ensure they are reused multiple times as part of a system of reuse.

(c) Fees collected under this fee system must be used exclusively for plan implementation and other activities required under this chapter and chapter 70A.--- RCW (the new chapter created in section 602 of this act).

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

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

(a) Curbside collection must be provided to residents in single-family and multifamily residences wherever curbside garbage collection services are provided to these entities, except in areas where a county has adopted an ordinance after the effective date of this section that designates that covered products must be collected exclusively through alternate collection, and except for covered products designated for alternate collection under a producer responsibility organization plan.

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

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

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

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

(c) For the duration of the initial plan implementation term, collection must be provided in public places:

(i) Any location where government entities provided and managed recycling collection receptacles as of July 1, 2023. The number and location of receptacles may be adjusted to optimize collection based on mutual agreement between the producer responsibility organization and the government entity providing the service; and

(ii) At additional locations as determined by the producer responsibility organization, after considering the recommendations of the statewide needs assessment in section 105 of this act and stakeholder consultation in section 106 of this act. Collection in additional locations is subject to mutual agreement by the producer responsibility organization and the government entity or other entity responsible for the public place.

(2) In any jurisdiction where collection of source separated recyclable materials from residences is provided by a city or town under the authority of RCW 35.21.120, by a county under the authority of RCW 36.58.040, or by a company that holds an applicable certificate under the authority of chapter 81.77 RCW, a producer responsibility organization must meet its curbside collection service obligation through the curbside collection service in the jurisdiction as described in section 114 of this act.

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

(b) If more than one producer responsibility organization is registered with the department, each producer responsibility organization must coordinate with other producer responsibility organizations to establish and annually update in a coordinated submission to the department the statewide list of covered products designated for collection.

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

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

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

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

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

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

(b) A producer responsibility organization must reimburse the government entity for services delivered in accordance with the requirements of this chapter as described in section 115 of this act.

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

(3) Consistent with RCW 81.77.020, where a city or town chooses not to exercise its authority under chapter 35.21 RCW, or a county chooses not to exercise its authority under chapter 36.58 RCW, curbside collection of covered products designated for collection as source separated recyclable materials from residences in areas regulated by the utilities and transportation commission under the provisions of chapter 81.77 RCW must be provided by a company that holds an applicable certificate issued by the utilities and transportation commission.

(4) A county may, by ordinance, direct that covered products designated for collection by a producer responsibility organization plan be collected exclusively through alternate collection in areas regulated by the utilities and transportation commission under the provisions of chapter 81.77 RCW if the area was designated as rural in the county solid waste management plan and no curbside recycling collection service was offered within those areas as of the effective date of this section.

(5) Government entities are not obligated to provide resident education and outreach under this chapter but may carry out or contract for resident education and outreach consistent with producer responsibility organization plan provisions under section 118 of this act and be reimbursed for the costs of education and outreach performed by the government entity as described in section 115 of this act.

(6) A city, town, or county may not enact an ordinance requiring producers of covered products to provide residential recycling services for covered products that are additional to the requirements of this chapter unless producers are not required to fully fund the requirements of this chapter under section 112 of this act.

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

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

(3) Any government entity that receives reimbursement for costs incurred in delivering curbside collection services must report or publish reimbursed costs to its residents annually and as part of each rate increase notification required under RCW 35.21.157.

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

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

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

(3) Aligns with service standards for curbside collection established by the producer responsibility organization plan under section 107 of this act; and

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

NEW SECTION. **Sec.**  INFRASTRUCTURE INVESTMENTS. (1) Each producer responsibility organization must fund and support investments in infrastructure and market development in Washington state as needed to achieve the convenience standards specified in section 113 of this act, the management standards specified in section 110 of this act, the performance rates set in producer responsibility organization plans as described in section 111 of this act, or to address infrastructure gaps, as identified through the statewide needs assessment under section 105 of this act and through the consultation process under section 106 of this act. Investments in infrastructure and market development may include, but are not limited to, those needed to enable reuse of covered products or the recycling or composting of covered products not currently recycled or composted in the residential recycling system, such as:

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

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

(2) Investments must be detailed in the annual report submitted to the department in the manner specified in section 119 of this act. In meeting the requirements of this section, a producer responsibility organization must prioritize investments in preexisting infrastructure within Washington state. If a producer responsibility organization did not invest in preexisting infrastructure within Washington state, the annual report must include a statement of the reasons why no such investment was made.

NEW SECTION. **Sec.**  EDUCATION AND OUTREACH. (1) Each plan implemented by a producer responsibility organization under this chapter must include education and outreach activities that effectively reach diverse residents, are accessible, are clear, and support the achievement of the performance rates set in producer responsibility organization plans as described in section 111 of this act. To implement the education and outreach activities described in the plan, a producer responsibility organization must, at minimum:

(a) Develop and provide outreach and educational materials, resources, and campaigns about the program to be used by retail establishments, collectors, government entities, and nonprofit organizations. The materials, resources, and campaigns developed under this section must encourage participation in recycling collection and reuse and refill systems and must achieve:

(i) Education and engagement with residents on recycling, reuse, and refill behaviors;

(ii) Outreach to obtain consistently high levels of public participation in and use of collection services and reuse and refill systems, including where and how to recycle covered products designated for collection, or return or refill reusable covered products; and

(iii) Education and engagement to reduce the rate of inbound contamination or unwanted materials;

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

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

(d) Be conceptually, linguistically, and culturally accurate for the communities served and tailored to effectively reach the state's diverse populations, including through meaningful consultation with overburdened communities and vulnerable populations;

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

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

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

(b) All producer responsibility organizations implementing a plan approved by the department must collaborate to present a consistent statewide program to ensure that all state residents can easily identify, understand, and access services provided by any approved producer responsibility organization. The department may require producer responsibility organizations to coordinate and use consistent signage and consistent messaging in education and outreach activities under this section.

NEW SECTION. **Sec.**  ANNUAL REPORTING ON ACTIVITIES. (1) Beginning July 1, 2028, and each July 1st thereafter, each producer responsibility organization must submit an annual report to the department for the preceding calendar year of plan implementation. Each annual report must include data, descriptions, and other information sufficient to allow the department to determine whether a producer responsibility organization has fulfilled its obligations under this chapter during the preceding calendar year, including actions identified by the producer responsibility organization to be undertaken as part of the plan submitted under section 107 of this act, and actions to implement the requirements and other provisions of this chapter including, but not limited to, sections 110 through 118 of this act.

(2) In addition to the data, descriptions, and information specified in subsection (1) of this section, each annual report must include the following:

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

(b) The final destinations of recycled material managed by the program as reported by material recovery facilities under section 110(5) of this act, including:

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

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

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

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

(ii) A copy of the independent audit; and

(iii) A detailed description of how the program compensates government entities, private collection and transportation service providers, sorting and processing facilities, and other approved entities for services under chapters 70A.--- (the new chapter created in section 601 of this act), 70A.--- (the new chapter created in section 602 of this act), and 70A.--- RCW (the new chapter created in section 603 of this act).

(3)(a) Prior to the submission of the annual report, all nonfinancial data and information that is material to the department's review of the program's compliance with the requirements of this chapter must be audited annually by a third party that is a nationally recognized, independent laboratory or certification body that has received ISO/IEC 17065 accreditation as it existed as of January 1, 2023, or a similar accreditation as determined by the department.

(b) Annual independent auditing and verification must:

(i) Include documentation of the performance rate calculations; and

(ii) Encompass the management of materials from the point of collection through processing and sale of recycled materials to responsible end markets.

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

(2) The advisory council 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) Three representatives of producers of covered products or producer trade associations representing different types of covered products. A member appointed to the council under this subsection may not be a representative or a member of the board of directors of a producer responsibility organization registered with the department under section 103 of this act;

(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 councilmembers must be appointed by the director of the department by January 1, 2024. In appointing members, the department shall:

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

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

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

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

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

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

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

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

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

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

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

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

(c) Advise and make recommendations to any registered producer responsibility organization during stakeholder consultation on plans as required under section 106 of this act;

(d) Review and comment on all new and updated plans submitted by producer responsibility organizations to the department, including making recommendations to the department on plan approvals, as part of the public comment period as established under section 104 of this act;

(e) Advise and make recommendations to any registered producer responsibility organization on annual reports prior to submission as established in section 119 of this act;

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

(g) Provide input, review, and comment on rule making developed by the department under this chapter.

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

(10) The department must include costs related to the advisory council in the estimate of annual costs as established in sections 104 and 307 of this act, including costs for:

(a) Department resources, including staff time;

(b) A third-party facilitator, including related costs; and

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

NEW SECTION. **Sec.**  CONFIDENTIAL INFORMATION SUBMISSION. A producer responsibility organization, material recovery facility, or other processing facility that submits information or records to the department under this chapter may request that the information or records be made available only for the confidential use of the department, the director of the department, or the appropriate division of the department. The director of the department must give consideration to the request and if this action is not detrimental to the public interest and is otherwise in accordance with the policies and purposes of chapter 43.21A RCW, the director must grant the request for the information to remain confidential as authorized in RCW 43.21A.160.

NEW SECTION. **Sec.**  PROHIBITION ON THE USES OF FUNDS BY PRODUCER RESPONSIBILITY ORGANIZATIONS. (1) A producer responsibility organization may not use funds collected for purposes of implementing a plan required under this chapter for costs associated with:

(a) The payment of an administrative penalty levied under this chapter;

(b) Administrative appeals of orders or penalties issued under this chapter;

(c) Litigation between the producer responsibility organization and the state;

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

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

(2) Nothing in this section limits the authority of a producer responsibility organization to collect funds, such as through a special assessment, for purposes other than implementing a plan required under this chapter, such as for the purposes identified in subsection (1)(a) through (e) of this section.

NEW SECTION. **Sec.**  ENFORCEMENT AUTHORITY. (1)(a) The department may administratively impose a civil penalty of up to $1,000 per violation per day on any person who violates this chapter or on any producer responsibility organization that violates the postconsumer recycled content provisions applicable to producer responsibility organizations under chapter 70A.--- RCW (the new chapter created in section 602 of this act) and up to $10,000 per violation per day for the second and each subsequent violation.

(b) For producers out of compliance with the requirements of this chapter, the department shall provide written notification and offer information to producers in violation of this section. For the purposes of this section, written notification serves as notice of the violation. The department must issue at least one notice of violation by certified mail prior to assessing a penalty and the department may only impose a penalty on a producer that has not met the requirements of this chapter 60 days following the date the written notification of the violation was sent.

(2) Upon the department notifying a producer responsibility organization that it has not met a significant requirement of this chapter or chapter 70A.--- RCW (the new chapter created in section 602 of this act), the department may, in addition to assessing the penalties provided in subsection (1) of this section, take any combination of the following actions:

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

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

(b) Revoke the producer responsibility organization's plan approval and require the producer responsibility organization to implement its contingency plan under section 109 of this act;

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

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

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

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

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

NEW SECTION. **Sec.**  TRUTH IN LABELING. (1) Beginning January 1, 2027, a producer may not offer for sale, sell, or distribute in or into Washington, including by means of remote sale, any covered product under this chapter, certified product under chapter 70A.245 RCW, or qualifying beverage container under chapter 70A.--- RCW (the new chapter created in section 603 of this act) that makes a deceptive or misleading claim about its recyclability.

(a) A covered product, certified product, or qualifying beverage container that displays a chasing arrows symbol, a chasing arrows symbol surrounding a resin identification code, or any other symbol or statement indicating that it is recyclable is deemed to be deceptive or misleading unless it is designated for collection in a producer responsibility organization plan approved by the department as described in section 107 of this act or is a qualifying beverage container in a deposit return system under chapter 70A.--- RCW (the new chapter created in section 603 of this act).

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

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

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

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

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

(3) Beginning August 1, 2023, a city, town, or county may not enforce an ordinance restricting the distribution or sale of covered products, certified products, or qualifying beverage containers due to displaying a chasing arrows symbol, a chasing arrows symbol surrounding a resin identification code, or any other symbol or statement indicating that it is recyclable if the covered product is, at the time that the claim is made:

(a) Designated for collection in a producer responsibility organization plan approved by the department as described in section 107 of this act;

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

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

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

NEW SECTION. **Sec.**  PACKAGING REGISTRATION CLEARINGHOUSE—PRODUCER REGISTRATION. (1) The department is authorized to participate in the development and ongoing operation of a regional or multistate clearinghouse for the purpose of facilitating the implementation of state laws and rules on packaging and paper products including, but not limited to, requirements established under this chapter and in chapter 69.50 RCW pertaining to packaging of cannabis products, and chapters 70A.222, 70A.230, 70A.245, 70A.340, 70A.350, 70A.455, 70A.--- (the new chapter created in section 602 of this act), and 70A.--- RCW (the new chapter created in section 603 of this act) and other relevant laws.

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

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

NEW SECTION. **Sec.**  ACCOUNT. The responsible packaging management account is created in the custody of the state treasury. All receipts received by the department under this chapter and chapter 70A.--- RCW (the new chapter created in section 602 of this act) must be deposited in the account. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Expenditures from the account may be used by the department only for implementing, administering, and enforcing the requirements of this chapter and chapter 70A.--- RCW (the new chapter created in section 602 of this act).

NEW SECTION. **Sec.**  PETITION FOR THE EXCLUSION OF CERTAIN PRODUCTS. (1) Prior to the submission of a new or updated plan under section 107 of this act, the department may review and determine for the duration of the upcoming plan's period of applicability whether to temporarily exclude for reasons of public health and safety from the requirements of this chapter, except as provided in subsection (5) of this section, packaging used to contain the following categories of products, subcategories of the following categories of products, or individual products that are:

(a) Regulated as a drug, medical device, or dietary supplement by the federal food and drug administration under the federal food, drug, and cosmetic act, 21 U.S.C. Sec. 301 et seq., as amended or any federal regulation promulgated under the act, or any equipment and materials used to manufacture such products; and

(b) Other products subject to requirements under federal laws that make their inclusion in the requirements of this chapter infeasible or inadvisable.

(2) The department's review may be initiated by the department or upon a petition by a producer, group of producers, or producer responsibility organization. The department may specify the date by which a petition must be filed under subsection (1) of this section in order to be considered timely for purposes of an upcoming plan implementation period.

(3) In making a determination to temporarily exclude a category of products, subcategory of products, or individual product pursuant to subsection (1) of this section, the department must consider, at a minimum, all of the following factors:

(a) The technical feasibility of including the category of product, subcategory of product, or individual product in the program created by this chapter, and in recycling the packaging of the product or products; and

(b) The progress made by producers of products, categories of products, or subcategories of products in achieving the goals of this chapter, including by reducing the amount of packaging used with the products, increasing the recycled content of the product packaging, and increasing the ability of the products' packaging to be reused or recycled if appropriate.

(4) The petition process established in this section is distinct from the processes pertaining to adjustments and exclusions to postconsumer recycled content requirements in section 210 of this act. A product that is temporarily excluded under this section remains subject to postconsumer recycled content requirements established in chapter 70A.--- RCW (the new chapter created in section 602 of this act) unless a petition is separately granted by the department for a product under section 210 of this act.

(5) The producer of a product that is temporarily excluded from the requirements of this chapter under this section must report, directly to the department in a form and manner prescribed by the department, the information related to the temporarily excluded product that is required to be reported to the department by producer responsibility organizations under sections 103 and 119 of this act.

**Part Two**

**Postconsumer Recycled Content Requirements**

NEW SECTION. **Sec.**  DEFINITIONS. The definitions in this section and section 102 of this act apply throughout this chapter unless the context clearly requires otherwise.

(1)(a) "Beverage" means 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, including:

(i) Water and flavored water;

(ii) Beer or other malt beverages;

(iii) Wine;

(iv) Distilled spirits;

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

(vi) Dairy milk; and

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

(b) "Beverage" does not include infant formula as defined in 21 U.S.C. Sec. 321(z), medical food as defined in 21 U.S.C. Sec. 360ee(b)(3), or fortified oral nutritional supplements used for persons who require supplemental or sole source nutritional needs due to special dietary needs directly related to cancer, chronic kidney disease, diabetes, or other medical conditions as determined by the department.

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

(3) "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.

(4) "Dairy milk" means a beverage made exclusively or principally from lacteal secretions obtained from one or more milk-producing animals. Dairy milk includes, but is not limited to:

(a) Whole milk, low-fat milk, skim milk, cream, half-and-half, or condensed milk; or

(b) Cultured or acidified milk, kefir, or eggnog.

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

(a) In or into the country for sale in Washington state less than one ton of PCRC products specified in subsection (18)(a)(i) through (vi) of this section; and

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

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

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

(8) "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.

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

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

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

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

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

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

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

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

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

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

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

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

(14)(a) "Plastic beverage container" means a bottle or other rigid container that is solely made of plastic material and is capable of maintaining its shape when empty, comprised of one or multiple plastic resins designed to contain a beverage. "Plastic beverage container" includes a container's cap or lid.

(b) "Plastic beverage container" does not include:

(i) Reusable 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;

(ii) Rigid plastic containers or plastic bottles that are or are used for medical devices, medical products that are required to be sterile, drugs, or dietary supplements as defined in RCW 82.08.0293 that do not contain a "nutrition facts" label required under federal law;

(iii) Bladders or pouches that contain a beverage;

(iv) Paper-based beverage containers; or

(v) 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 lid or cap.

(15)(a) "Plastic household cleaning and personal care product container" means a bottle, jug, tub, tube, or other rigid container with:

(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) Reusable 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;

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

(iii) 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.

(16)(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 PCRC requirements.

(17)(a)(i) "Postconsumer recycled content" or "PCRC" means the certified plastic resin incorporated into plastic packaging for a PCRC product and derived specifically from recycled material generated by households or by commercial or institutional facilities in their role as end users of packaged products that can no longer be used for their intended purpose.

(ii) "PCRC" includes returns of material from the distribution chain.

(b) "PCRC" does not include plastic from preconsumer or industrial plastic manufacturing sources.

(18)(a) "Postconsumer recycled content product" or "PCRC product" means an item in one of the following categories subject to minimum PCRC requirements under this chapter:

(i) Household cleaning products that use plastic household cleaning product containers;

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

(iii) Beverages that use plastic beverage containers;

(iv) Plastic tubs for food products;

(v) Thermoform plastic containers; and

(vi) Single-use plastic cups.

(b) "PCRC product" does not include any type of container or bag for which the state is preempted from regulating content of the container material under federal law or any items subject to the postconsumer recycling content requirements of chapter 70A.245 RCW.

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

(i) If the product is sold in or with packaging under the brand of the product manufacturer or is sold in packaging that lacks identification of a brand, the producer of the packaging is the person that manufactures the product;

(ii) If the product is sold under a retail brand, the producer is the retail brand owner;

(iii) If the product is manufactured by a person other than the brand owner, the producer of the packaging is the person that is the licensee of a brand or trademark under which a packaged item is used in a commercial enterprise, sold, offered for sale, or distributed in or into this state, whether or not the trademark is registered in this state;

(iv) If there is no person described in (a)(i), (ii), or (iii) of this subsection within the United States, the producer is the person who imports the product into the United States for use in a commercial enterprise that sells, offers for sale, or distributes the product in this state; or

(v) A person who would be considered a "producer" of a PCRC product sold, offered for sale, or distributed in or into this state, as defined in (a)(i) through (iv) of this subsection, can designate another responsible producer for that PCRC product if another person agrees to accept responsibility and has registered as the producer responsible for that PCRC product under this chapter.

(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:

(A) In Washington state less than one ton of PCRC products; and

(B) That have a global gross revenue of less than $5,000,000 for the most recent fiscal year of the organization.

(20) "Producer responsibility organization" has the same meaning as defined in section 102 of this act.

(21) "Responsible producer" means a producer that is not a de minimis producer.

(22)(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 as defined in RCW 70A.245.010, 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.

(23)(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; or

(iii) Composite plastic-lined fiber cups.

(24)(a) "Thermoform plastic container" means a clear or colored plastic container, such as a clamshell, lid, tray, egg carton, trifold, or similar rigid, nonbottle packaging, formed from sheets of extruded plastic resin and used to package consumable or durable goods that reach consumers, including:

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

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

(iii) Unfilled containers that are sold directly.

(b) "Thermoform plastic container" includes:

(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.

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

(i) Household cleaning products or personal care products;

(ii) Plastic tubs;

(iii) Reusable containers;

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

(v) A reusable 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) Commercially or home compostable containers;

(viii) Other PCRC products; and

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

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

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

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

(b) De minimis producers must annually notify the producer responsibility organization in which the producer participates to demonstrate that they are de minimis producers.

(4) The producer responsibility organization must submit to the department information necessary to verify whether a producer qualifies for the de minimis status, including:

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

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

(c) Any additional information requested by the department.

NEW SECTION. **Sec.**  PCRC REQUIREMENTS FOR PCRC PRODUCTS. (1)(a) By January 1, 2025, and each January 1st thereafter, a producer responsibility organization under chapter 70A.--- RCW (the new chapter created in section 601 of this act) that represents producers who offers for sale, sells, or distributes in or into Washington PCRC products must register with the department on behalf of each producer registered with the producer responsibility organization with sale or distribution of PCRC products in or into Washington. A producer must continue to register and report to the department under the methods established in chapter 70A.245 RCW until a producer responsibility organization registers with the department under chapter 70A.--- RCW (the new chapter created in section 601 of this act).

(b) The registration information submitted under (a) of this subsection must include a list of the producers of PCRC products and the associated brand names of the PCRC products represented in the registration submittal.

(2) Producers that offer for sale, sell, or distribute in or into Washington the following products must meet the minimum postconsumer recycled content requirements:

(a) Beginning January 1, 2024, producers of beverages other than wine in 187 milliliter plastic beverage containers and dairy milk in plastic beverage containers must meet minimum PCRC requirements established under section 204 of this act.

(b) Beginning January 1, 2025, producers of household cleaning products or personal care products in plastic household cleaning product containers or plastic personal care product containers must meet minimum PCRC requirements as required under section 205 of this act.

(c) Beginning January 1, 2026, producers of plastic tubs used for food products must meet minimum PCRC requirements established under section 206 of this act.

(d) Beginning January 1, 2028, producers of wine in 187 milliliter plastic beverage containers or dairy milk in plastic beverage containers must meet minimum PCRC requirements established under section 204 of this act.

(e) Beginning January 1, 2029, producers of single-use plastic cups must meet minimum PCRC requirements established under section 207 of this act.

(f) Beginning January 1, 2031, producers of thermoform plastic containers, except those containing durable goods, must meet minimum PCRC requirements established under section 208 of this act.

(g) Beginning January 1, 2036, producers of durable goods in thermoform plastic containers must meet minimum PCRC requirements established under section 208 of this act.

(3)(a) In addition to the registration information submitted under subsection (1) of this section, each producer of a PCRC product must annually report PCRC to the producer responsibility organization with which it is registered, beginning on the following dates:

(i) No later than 30 days after the registration of a producer with a producer responsibility organization under subsection (1)(a) of this section, for plastic beverage containers other than plastic dairy milk containers and 187 milliliter plastic wine containers;

(ii) February 1, 2026, for plastic household cleaning product containers and plastic personal care product containers;

(iii) February 1, 2027, for plastic tubs used for food products;

(iv) February 1, 2029, for plastic dairy milk containers and 187 milliliter plastic wine containers;

(v) February 1, 2030, for single-use plastic cups;

(vi) February 1, 2032, for thermoform plastic containers except those containing durable goods; and

(vii) February 1, 2037, for thermoform plastic containers containing durable goods.

(b) Producer PCRC annual reports to the producer responsibility organization must include:

(i) The amount in pounds of virgin plastic and the amount in pounds of PCRC by resin type used within a single PCRC product category sold, offered for sale, or distributed in or into Washington;

(ii) The total PCRC resin as a percentage of the total weight of plastic reported for a single PCRC product category, or other metrics approved by the department; and

(iii) Any additional information adopted by rule by the department.

NEW SECTION. **Sec.**  PCRC REQUIREMENTS FOR PLASTIC BEVERAGE CONTAINERS. A producer of a beverage in a plastic beverage container must meet the following annual minimum PCRC percentage on average for the total quantity of plastic beverage containers, by weight, that are sold, offered for sale, or distributed in or into Washington by the producer effective:

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

(a) January 1, 2024, through December 31, 2025: No less than 15 percent PCRC plastic by weight;

(b) January 1, 2026, through December 31, 2030: No less than 25 percent PCRC plastic by weight; and

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

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

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

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

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

NEW SECTION. **Sec.**  PCRC REQUIREMENTS FOR HOUSEHOLD CLEANING PRODUCTS AND PERSONAL CARE PRODUCTS. A producer of household cleaning products in plastic containers or a producer of personal care products in plastic containers must meet the following annual minimum PCRC percentage on average for the total quantity of plastic containers, by weight, that are sold, offered for sale, or distributed in or into Washington by the producer effective:

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

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

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

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

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

(2) On and after January 1, 2031: No less than 30 percent PCRC plastic by weight.

NEW SECTION. **Sec.**  PCRC REQUIREMENTS FOR SINGLE-USE PLASTIC CUPS. A producer of single-use plastic cups must meet the following annual minimum PCRC percentage on average for the total quantity of single-use plastic cups, by weight, that are sold, offered for sale, or distributed in or into Washington by the producer effective:

(1) For polypropylene single-use plastic cups:

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

(b) On and after January 1, 2031: No less than 25 percent PCRC plastic by weight.

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

(a) January 1, 2029, through December 31, 2030: No less than 20 percent PCRC plastic by weight; and

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

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

(1) For packaging for consumable goods:

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

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

(2)(a) Except as provided in (b) of this subsection, for packaging used for durable goods: On and after January 1, 2036, no less than 30 percent PCRC plastic by weight.

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

NEW SECTION. **Sec.**  PCRC REPORTING BY PRODUCER RESPONSIBILITY ORGANIZATIONS. (1) A producer responsibility organization reporting to the department under this chapter must pay fees as specified in chapter 70A.--- RCW (the new chapter created in section 601 of this act).

(2) Beginning April 1, 2025, and each April 1st thereafter, a producer responsibility organization must annually report to the department for each producer of PCRC products for which it receives reports from producers under section 203 of this act:

(a) The amount in pounds of virgin plastic resin;

(b) The amount in pounds of PCRC by resin type used for each category of covered products that are sold, offered for sale, or distributed in or into Washington;

(c) The total PCRC resins as a percentage of total weight;

(d) Any other information necessary to fulfill the intent of this chapter, as required by rule adopted by the department.

(3)(a) The report must be submitted in a format and manner prescribed by the department. A producer may submit national or regional data allocated on a per capita basis for Washington to approximate the information required in this section if the producer or third-party representative demonstrates to the department that state level data are not available or feasible to generate.

(b) A producer must maintain a certificate of compliance, conducted by a third-party certification entity, stating that the covered product is in compliance with postconsumer recycled content requirements under this chapter. A third-party certification entity must be an independent, accredited (ISO/IEC 17065) certifying body. A producer shall maintain a certificate of compliance within a year by the dates on which the postconsumer recycled content requirements take effect for the producer's PCRC products.

(c) If compliance with minimum recycled content requirements is achieved through an adjustment made pursuant to section 210 of this act, the certificate must state the specific basis upon which the exemption is claimed.

(d) The certificate of compliance must be kept on file by the producer for three years from the date of the last sale or distribution by the producer.

(e) A producer must furnish a certificate of compliance to the department upon request within 60 days.

(f) Requests from a member of the public for any certificate of compliance must be made in writing to the department and must be specific as to the PCRC product information requested. The department must respond to requests from a member of the public under this subsection within 90 days.

(g) If manufacturers are required under any other state statute, including chapter 70A.222 RCW, to provide a certificate of compliance, one certificate may be developed containing all required information.

(h) If the producer of the PCRC product reformulates or creates a new PCRC product, the producer shall develop an amended or new certificate of compliance for the reformulated or new PCRC product.

(4)(a) A producer responsibility organization may, as part of the annual report submitted to the department under this section, or as a separate submission in advance of the effective dates in sections 205 through 208 of this act, petition for an exclusion or adjustment under section 210 of this act covering the upcoming calendar year to the minimum PCRC requirements on behalf of producers registered with the producer responsibility organization.

(b) When submitting a petition for a PCRC rate adjustment, the producer responsibility organization must provide necessary information that will allow the department to make a determination based on the factors listed in section 210(2) of this act.

(c) When submitting a petition for a PCRC rate temporary exclusion, the producer responsibility organization must provide necessary information that will allow the department to make a determination based on the factors listed in section 210(4) of this act.

(5) The department must review and determine whether to approve PCRC reports submitted by producer responsibility organizations. The department must:

(a) Make PCRC reports submitted under this section, including petitions for exclusions or rate adjustments under section 210 of this act, available for public review and comment for at least 30 days upon the receipt of the annual report by the department;

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

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

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

(6) The department must post approved PCRC annual reports submitted by each producer responsibility organization under this section on its website.

NEW SECTION. **Sec.**  ADJUSTMENTS AND TEMPORARY EXCLUSIONS TO PCRC RATES. (1) The department may review and determine for the following calendar year whether to adjust the minimum PCRC percentage required for a type of container or PCRC product or category of PCRC products under this chapter. The department's review may be initiated by the department or upon a petition by a producer responsibility organization in its annual report submitted to the department under section 209 of this act.

(2) In making a determination pursuant to subsection (1) of this section, the department must consider, at a minimum, all of the following factors:

(a) Changes in market conditions, including supply and demand for PCRC plastics, collection rates, and bale availability both domestically and globally;

(b) Recycling rates;

(c) The availability of recycled plastic suitable to meet the minimum PCRC requirements pursuant to subsection (3) or (4) of this section, including the availability of high quality recycled plastic, and food-grade recycled plastic from recycling programs;

(d) The capacity of recycling or processing infrastructure;

(e) The technical feasibility of achieving the minimum PCRC 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. Sec. 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

(f) The progress made by producers in achieving the goals of this chapter.

(3)(a) Under this section, the department may not adjust the minimum PCRC requirements above the minimum PCRC percentages under sections 204, 206, 207, and 208 of this act for the year under review.

(b) For plastic household cleaning product containers and plastic personal care product containers, the department may not adjust the minimum PCRC requirements above the minimum PCRC percentages for the year under review required pursuant to section 205 of this act or below a minimum of 10 percent.

(4)(a) The department must temporarily exclude from minimum PCRC requirements for the upcoming year any types of PCRC products in plastic containers for which a producer responsibility organization demonstrates to the department in its annual report under section 209 of this act that the:

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

(ii) Achievement of PCRC requirements in the container material is not technologically feasible.

(b) The producer responsibility organization must continue to provide producer registration data and report consistent with the requirements of this chapter for PCRC products temporarily excluded from minimum PCRC requirements under this subsection.

(5) A producer or producer responsibility organization may appeal a decision by the department to adjust PCRC percentages under this section or to temporarily exclude covered products from minimum PCRC requirements under subsection (4) of this section to the pollution control hearings board within 30 days of the department's determination.

NEW SECTION. **Sec.**  ADMINISTRATIVE ROLE AND ENFORCEMENT BY THE DEPARTMENT. (1)(a) A producer that does not pay fees, register, report, or achieve the PCRC requirements established under this chapter is subject to the penalties provided in this section.

(b) A producer responsibility organization that does meet the registration, fee payment, or reporting requirements under this chapter is subject to the provisions provided in section 123 of this act.

(2)(a) A producer assessed a penalty pursuant to this chapter must remit the penalty to the producer responsibility organization with which it is registered. A producer responsibility organization must submit aggregated penalty payments comprised of the remitted penalty payments from all producers owing penalties under this chapter that are members of the producer responsibility organization. The producer responsibility organization's aggregated payment may be a single annual payment, paid in quarterly installments, or on an alternative payment schedule arranged subject to the approval of the department. The department may not approve an alternative payment schedule that exceeds a 12-month time frame unless the department determines that an extension is needed due to unforeseen circumstances, such as a public health emergency, state of emergency, or natural disaster.

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

(i)(A) Based on data provided in the annual report submitted under section 209 of this act by a producer responsibility organization, the annual penalty amount assessed to a producer must equal the product of both of the following: The total pounds of plastic used per category multiplied by the relevant minimum PCRC plastic target percentage, less the pounds of total plastic multiplied by the percent of PCRC plastic used; multiplied by 20 cents.

(B) Example: [(Total pounds of plastic used x minimum PCRC plastic target percentage) – (Total pounds of plastic used x PCRC plastic percentage used)] x 20 cents.

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

(A) The total pounds of plastic used must equal the sum of the amount of virgin plastic, PCRC plastic, and any other plastic used by the producer, as reported pursuant to section 209 of this act;

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

(3)(a) Upon request by a producer responsibility organization, the department must consider granting a reduction of penalties assessed under this section for a producer's failure to achieve PCRC requirements established in this chapter. Penalty reduction requests under this subsection must be submitted to the department by August 1st of each year. A producer responsibility organization's request to the department must contain sufficient information described in (b) of this subsection to allow the department to determine whether to grant the request.

(b) In determining whether to grant a penalty reduction, the department must consider, at minimum, all of the following factors:

(i) Anomalous market conditions;

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

(iii) Other factors that have prevented a producer from meeting the minimum PCRC requirements of this chapter.

(c) In lieu of or in addition to assessing a penalty under this section, the department may require a producer responsibility organization to submit on behalf of a producer or group of producers a corrective action plan detailing how the producer or producers plan to come into compliance with this chapter.

(4) For purposes of determining compliance with the PCRC requirements of this chapter, the department may consider information provided by the producer responsibility organization regarding the date of manufacture of a PCRC product or the container of a PCRC product.

(5)(a) A producer or a producer responsibility organization may appeal penalties assessed and orders issued under this chapter to the pollution control hearings board within 30 days of penalty assessment or order issuance.

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

(6)(a) A city, town, county, or municipal corporation may not implement local recycled content requirements for a PCRC product that is subject to minimum PCRC requirements established in this chapter.

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

(7) In-state distributors, wholesalers, and retail establishments in possession of PCRC products manufactured before the date that PCRC requirements become effective may exhaust their existing stock through sales to the public.

NEW SECTION. **Sec.**  RULE-MAKING AUTHORITY. The department may adopt rules as necessary to implement, administer, and enforce 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.~~

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

((~~(7)~~)) (3) "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)~~)) (4) "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)~~)) (5) "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)~~)) (6) "Licensee" means a manufacturer of a certified PCRC product or entity who licenses a brand and manufactures a ((~~covered product~~)) certified PCRC product under that brand.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(16)~~)) (7) "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~~)) (8) "Certified PCRC product manufacturing industry" means an association that represents companies that manufacture ((~~plastic trash bags~~)) a certified PCRC product.

((~~(18)~~)) (9) "Postconsumer recycled content" means the content of a ((~~covered product~~)) certified PCRC 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)~~)) (10)(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~~)) certified product sold, offered for sale, or distributed in or into this state:

(i) If the product is sold in or with packaging under the brand of the product manufacturer or is sold in packaging that lacks identification of a brand, the producer of the packaging is the person that manufactures the product;

(ii) If the product is sold under a retail brand, the producer is the retail brand owner;

(iii) If the product is manufactured by a person other than the brand owner, the producer of the packaging is the person that is the licensee of a brand or trademark under which a packaged item is used in a commercial enterprise, sold, offered for sale, or distributed in or into this state, whether or not the trademark is registered in this state;

(iv) If there is no person described in (a)(i), (ii), or (iii) of this subsection within the United States, the producer is the person who imports the product into the United States for use in a commercial enterprise that sells, offers for sale, or distributes the product in this state; or

(v) A person who would be considered a "producer" of a certified product sold, offered for sale, or distributed in or into this state, as defined in (a) (i) through (iv) of this subsection, can designate another responsible producer for that certified product if another person agrees to accept responsibility and has registered as the producer responsible for that certified product under this chapter.

(b) "Producer" does not include:

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

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

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

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

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

((~~(20)~~)) (11)(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)~~)) (12)(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.

(13) "Certified postconsumer recycled content product" or "certified PCRC product" means:

(a) Plastic household cleaning products or personal care products, as defined in section 201 of this act, that are 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, and that are excluded from the requirements of chapters 70A.--- (the new chapter created in section 601 of this act) and 70A.--- RCW (the new chapter created in section 602 of this act);

(b) Plastic trash bags; and

(c) Plastic plant pots and trays.

(14) "Plant pot or tray" means a single-use or durable container, material transport tray, or water collection tray used to grow, contain, cultivate, display, or transport plants or soil.

**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, 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.~~

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

~~(b) The registration information submitted to the department under this section must include a list of the producers of covered products and the brand names of the covered products represented in the registration submittal. Beginning April 1, 2024, for plastic trash bags and plastic beverage containers other than wine in 187 milliliter plastic beverage containers and dairy milk in plastic beverage containers, April 1, 2026, for plastic household and personal care product containers, and April 1, 2029, for wine in 187 milliliter plastic beverage containers and dairy milk, 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 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.~~

~~(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~~)) or plastic personal care products that are 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 and that are excluded from the requirements of chapters 70A.--- (the new chapter created in section 601 of this act) and 70A.--- RCW (the new chapter created in section 602 of this act) 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)~~)) (2) A producer of plastic trash bags must meet the following annual minimum postconsumer recycled content percentage on average for the total quantity of plastic trash bags, by weight, that are sold, offered for sale, or distributed in or into Washington by the producer effective:

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

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

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

((~~(7)(a) Beginning January 1, 2024, or when rule making is complete, whichever is sooner, the department may, on an annual basis on January 1st,~~)) (3) A producer of plastic plant pots or trays must meet the following annual minimum postconsumer recycled content percentage on average for the total quantity of covered products, by weight, that are sold, offered for sale, or distributed in or into Washington by the producer effective:

(a) January 1, 2026, through December 31, 2030: No less than 30 percent postconsumer recycled content plastic by weight;

(b) On and after January 1, 2031: No less than 80 percent postconsumer recycled content plastic by weight.

(4)(a) By October 31st of each year, the department may review and determine for the following year whether to adjust the minimum postconsumer recycled content percentage ((~~required for a type of container or product or category of covered products~~)) pursuant to subsection ((~~(4), (5), or (6)~~)) (1), (2), or (3) of this section. The department's review may be initiated by the department or at the petition of a producer or ((~~a covered product~~)) the certified PCRC product manufacturing industry not more than once annually. Petitions for review and adjustment must be made to the department by June 30th of the year prior to the year in which the adjustment would apply. When submitting a petition, producers or ((~~a producer~~)) the certified PCRC product 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)~~)) (1), (2), or (3) 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) 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)~~)) (1), (2), or (3) of this section or below the minimum percentage required in subsection ((~~(6)~~)) (1)(a), (2)(a), or (3)(a) of this section.

(d) A producer or the certified PCRC product 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) of this section~~)) to the pollution control hearings board within 30 days of the department's determination.

((~~(8)~~)) (5) The department must temporarily exclude from minimum postconsumer recycled content requirements for the upcoming year any types of covered products in plastic containers for which a producer annually demonstrates to the department by December 31st 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)(b)(v) of this section. A producer must continue to register and report consistent with the requirements of this chapter for covered products temporarily excluded from minimum postconsumer recycled content requirements under this subsection.

((~~(9)~~)) (6) A producer that does not achieve the postconsumer recycled content requirements established under this section or does not comply with the labeling requirements established in chapter 70A.245 RCW is subject to penalties established in RCW 70A.245.040.

((~~(10)~~)) (7)(a) A city, town, county, or municipal corporation may not implement local recycled content requirements for ((~~a covered product that is~~)) certified PCRC products that are 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~~)) certified PCRC products purchased by a city, town, or municipal corporation, or its contractor.

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

~~(12)~~)) (8) In-state distributors, wholesalers, and retailers in possession of ((~~covered products~~)) certified PCRC 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) 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 department must post the information reported under this subsection on its website, except as provided in subsection (2) of this section~~)) A plastic trash bag producer must maintain a certificate of compliance, conducted by a third-party certification entity, stating that a plastic trash bag is in compliance with the labeling requirements of RCW 70A.245.060 and the postconsumer recycled content requirements of RCW 70.245.020. A producer of other certified PCRC products must maintain a certificate of compliance stating that the certified PCRC product is in compliance with the postconsumer recycled content requirements of RCW 70A.245.020. A third-party certification entity must be an independent, accredited (ISO/IEC 17065) certifying body.

(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~~)) shall develop a compliance certificate by the dates on which the postconsumer recycled content requirements in RCW 70A.245.020 take effect for the producer's certified PCRC products.

(3) If compliance with minimum recycled content requirements is achieved through an adjustment made pursuant to RCW 70A.245.020(4), the certificate must state the specific basis upon which the exemption is claimed.

(4)(a) The certificate of compliance must be signed by an authorized official of the producer.

(b) The certificate of compliance must be kept on file by the producer for three years from the date of the last sale or distribution by the producer.

(c) A producer must furnish a certificate of compliance to the department upon request within 60 days.

(d) Requests from a member of the public for any certificate of compliance must be made in writing to the department and must be specific as to the certified PCRC product information requested. The department must respond to requests from a member of the public under this subsection within 90 days.

(e) If manufacturers are required under any other state statute, including chapter 70A.222 RCW, to provide a certificate of compliance, one certificate may be developed containing all required information.

(f) If the producer of the certified PCRC product reformulates or creates a new certified PCRC product, the producer shall develop an amended or new certificate of compliance for the reformulated or new certified PCRC product.

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

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

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

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

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

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

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

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

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

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

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

~~(A) Anomalous market conditions;~~

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

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

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

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

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

~~(6)~~)) (a) The department may assess a civil penalty to a producer in violation of the requirements of RCW 70A.245.020, 70A.245.030, or 70A.245.060 in the amount of up to $2,000 for the first violation of this chapter, up to $5,000 for the second violation of this chapter, and up to $10,000 for the third and any subsequent violation of RCW 70A.245.020, 70A.245.030, or 70A.245.060.

(b) A specific violation is deemed to have occurred upon the sale of noncompliant product by stock-keeping unit number or unique item number. The repeated sale of the same noncompliant product by stock-keeping unit number or unique item number is considered a single violation.

(2) In addition to the penalties authorized under subsection (1) of this section, the department may prohibit the sale of any certified PCRC products for which a manufacturer has failed to respond to a request by the department for a certificate of compliance within 60 days.

(3) For the purposes of determining compliance with the postconsumer recycled content requirements of this chapter, the department may consider the date of manufacture of a certified PCRC product.

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

((~~(7)~~)) (5) Penalties collected under this section must be deposited in the recycling enhancement account created in RCW 70A.245.100.

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

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

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

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

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

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

((~~(4)~~)) (2) The department may adopt rules as necessary to administer, implement, and enforce this chapter.

**Sec.**  RCW 70A.245.100 and 2021 c 313 s 13 are each amended to read as follows:

The recycling enhancement account is created in the custody of the state treasurer. All penalties collected by the department pursuant to RCW 70A.245.040 ((~~and~~)), 70A.245.050, and sections 123, 211, and 319 must be deposited in the account. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Expenditures from the account may be used by the department only for providing grants to local governments for the purpose of supporting local solid waste and financial assistance programs.

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

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

(a) Analyzing market conditions and opportunities in the state's recycling industry for meeting the minimum postconsumer recycled content requirements for ((~~covered products~~)) certified PCRC products pursuant to RCW 70A.245.020 and 70A.245.030 for products subject to minimum postconsumer recycled content requirements under chapter 70A.--- RCW (the new chapter created in section 601 of this act); and

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

(2) If funding is provided pursuant to subsection (1) of this section and the department undertakes the study, the study must be completed by May 1, 2029. The requirements of this section may be satisfied through a needs assessment as described in section 105(6) of this act.

(3) This section expires July 1, 2029.

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

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

(a) The name of the producer and the city, state, and country where the producer is located, which may be designated as the location of the producer's corporate headquarters, and, beginning January 1, 2025, the percentage of postconsumer recycled content that the plastic trash bag contains; or

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

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

(b) For the purposes of this subsection:

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

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

**Part Three**

**Reimbursable Deposit Program Standards (Beverage Container Deposit Program Provisions)**

NEW SECTION. **Sec.**  INTENT. (1) The legislature finds that the department of ecology was directed, through an independent consultant, to study how plastic packaging is managed in the state, to assess various policy options, and to provide recommendations to achieve certain goals, which included:

(a) Plastic packaging sold into the state is 100 percent recyclable, reusable, or compostable by January 1, 2025;

(b) Plastic packaging sold into the state incorporates at least 20 percent postconsumer recycled content by January 1, 2025; and

(c) Plastic packaging is reduced when possible and optimized to meet the need for it.

(2) The legislature also finds that the study recommendations included establishing an extended producer responsibility policy for all consumer packaging and paper with a framework that makes producers responsible for achieving specific management and environmental outcomes for the consumer packaging they supply into Washington state. In addition, the legislature finds that the study recommends that a deposit return system is an effective way for producers to meet outcomes required by an extended producer responsibility framework.

(3) The legislature further intends that packaging materials be recycled or reused through extended producer responsibility programs, including a deposit return system for qualifying beverage containers. It is the intent of the legislature that extended producer responsibility programs be implemented by and for producers of plastic packaging and other material types so that the design and management of their packaging is accomplished in a manner that ensures minimal environmental impact, involves producers from design concept to end-of-life management, and incentivizes innovation and industry stewardship to minimize environmental impacts.

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

(1) "Dealer" means a retail establishment, as that term is defined in section 102 of this act, that engages in the sale of beverages in qualifying beverage containers.

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

(3) "Deposit return system" means a beverage container redemption program that pays a per-unit refund value to consumers for qualifying beverage containers and collects and processes qualifying beverage containers as described in section 307 of this act.

(4) "Distributor" means every person or entity who engages in the sale of beverages in beverage containers to a dealer in this state, including any manufacturer or importer who engages in such sales, and dealers who self-distribute their own brands.

(5) "Distributor responsibility organization" means a cooperative association as defined in chapter 23.86 RCW, or an alternative structure as approved by the department, that is designated by a group of distributors representing the majority of beverages sold in qualifying beverage containers in the state, to develop and carry out the activities required of distributors by this chapter.

(6) "Qualifying beverage container" means beverage containers as described in section 307(2) of this act.

NEW SECTION. **Sec.**  RELATIONSHIP WITH CHAPTER 70A.--- RCW (THE NEW CHAPTER CREATED IN SECTION 601 OF THIS ACT). (1)(a) As an alternative to satisfying their compliance obligation under chapter 70A.--- RCW (the new chapter created in section 601 of this act) for qualifying beverage containers, a producer responsibility organization and the department may not consider qualifying beverage containers to be covered products for purposes of chapter 70A.--- RCW (the new chapter created in section 601 of this act) upon a distributor responsibility organization's establishment and operation of a deposit return system for the qualifying beverage containers described in section 307(2) of this act.

(b) A producer of qualifying beverage containers subject to the requirements of this chapter must satisfy postconsumer recycled content requirements established in chapter 70A.--- RCW (the new chapter created in section 602 of this act) through limited participation in a producer responsibility organization only for purposes of chapter 70A.--- RCW (the new chapter created in section 602 of this act).

(2) This chapter, relating to the establishment of a deposit return system, establishes requirements for the management of the containers described in section 307(2) of this act.

(3)(a) The requirements of sections 304 through 319 of this act do not apply to qualifying beverage containers unless and until a distributor responsibility organization, other than a single distributor independently complying with the requirements of a distributor responsibility organization in this chapter, is established and files a written notice with the department at, or prior to, the time of producer responsibility organization registration under chapter 70A.--- RCW (the new chapter created in section 601 of this act), that the distributor responsibility organization will establish and operate a deposit return system.

(b) Upon the receipt of the written notice by the department under (a) of this subsection, all qualifying beverage containers of all producers subject to the requirements of chapter 70A.--- RCW (the new chapter created in section 601 of this act) cease to be considered covered products for purposes of chapter 70A.--- RCW (the new chapter created in section 601 of this act) and are instead subject to the requirements of this chapter.

(c) Nothing in this section excludes packaging associated with qualifying beverage containers, other than the qualifying beverage container itself and any closures or labels, from the requirements of chapter 70A.--- RCW (the new chapter created in section 601 of this act).

(4) If a distributor responsibility organization, other than a single distributor independently fulfilling the requirements of a distributor responsibility organization, is approved by the department and operates a deposit return system as described in section 307 of this act, all qualifying beverage containers are included in the deposit return system and all requirements of this chapter apply to the distributors of qualifying beverage containers.

NEW SECTION. **Sec.**  DISTRIBUTOR RESPONSIBILITY ORGANIZATION DUTIES. (1) Beginning July 1, 2024, or four months after a distributor responsibility organization is approved by the department, whichever is later, each distributor that offers for sale, sells, or distributes in or into Washington beverages in qualifying beverage containers must join a distributor responsibility organization or independently carry out all duties and requirements of a distributor responsibility organization described in this chapter including, but not limited to, the following: (a) Providing a convenient bulk bag drop-off system as described in section 307(5) of this act that accepts all qualifying beverage containers in the same bag, and at no cost to consumers; (b) providing the same number, and geographic distribution, of drop-off locations as required of a distributor responsibility organization; (c) paying to consumers the refund value of qualifying beverage containers; (d) meeting the performance targets described in section 306 of this act; (e) paying all applicable performance penalties; and (f) fulfilling all reporting requirements in this chapter.

(2) To qualify as a distributor responsibility organization, other than an individual distributor independently fulfilling the duties required of a distributor responsibility organization, and be approved by the department as described in section 305 of this act, a distributor responsibility organization must demonstrate to the department's satisfaction that its initial membership represents the majority of beverages in qualifying beverage containers sold or made available for sale in the state. Distributors may not be initial members of more than one distributor responsibility organization registering with the department. Distributors that have not joined a distributor responsibility organization, or that do not independently fulfill the duties required of a distributor responsibility organization, may not sell or supply beverages in qualifying beverage containers after October 1, 2024, or 120 days after a distributor responsibility organization is approved by the department, whichever is later, in or into Washington. Any distributor that operates in violation of this requirement is subject to penalties and damages as described in sections 305 and 307 of this act.

(3) A distributor responsibility organization registering with the department must submit with its registration the following:

(a) A list of its member distributors and their brands of beverages in qualifying beverage containers; and

(b) The total gross sales volume of beverages in qualifying beverage containers distributed by its members in Washington during the preceding year, representing, to the satisfaction of the department, a majority of such sales in the state.

(4) Until a distributor responsibility organization begins to submit annual reports as specified in section 309 of this act, by January 15th of each year a distributor responsibility organization must submit the following data for the prior calendar year:

(a) A list of its member distributors and their brands of beverages in qualifying beverage containers; and

(b) The number of qualifying beverage containers sold or made available for sale in the state, by material category and size. A distributor responsibility organization may rely on member reporting for the reporting requirements in this section.

(5) By June 30th of the fiscal year of initial distributor responsibility organization registration and every June 30th thereafter, a distributor responsibility organization registered with the department must submit an annual payment to the department to fund the costs to implement, administer, and enforce this chapter, including rule making.

(6) Beginning July 1, 2026, or within 180 days of the first adoption of rules relating to this chapter, whichever is later, a distributor responsibility organization approved by the department as described in section 305 of this act must submit a plan to the department that meets the requirements of a deposit return system as specified in section 307 of this act.

(7) A distributor responsibility organization registered with the department must implement a deposit return system, as specified in section 307 of this act, by July 1, 2027, or within one year of first adoption of rules relating to this chapter, whichever is later.

(8) A distributor responsibility organization registered with the department may require deposits to be collected to offset the refund value up to 60 days prior to the start of the deposit return system.

(9) A distributor responsibility organization that submits information or records to the department under this chapter may request that the information or records be made available only for the confidential use of the department, the director, or the appropriate division of the department. The director of the department must give consideration to the request, and if the director determines that 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.

(10) A distributor responsibility organization may not distribute or otherwise disseminate funds from unclaimed refunds to members of the distributor cooperative, or alternative structure approved by the department, as a dividend, and shall report on this requirement annually in the manner described in section 309 of this act.

(11) A manufacturer distributor producing a de minimis quantity of beverages in qualifying beverage containers may alternatively comply with the requirements of this chapter by operating an independent refund program approved by the department, as described in section 312 of this act.

NEW SECTION. **Sec.**  DEPARTMENT DUTIES. (1) The department shall implement, administer, and enforce this chapter. The department may adopt rules to implement, administer, and enforce this chapter.

(2) By April 1st of each year after a distributor responsibility organization has notified the department of its intent to implement a deposit return system under section 303 of this act, the department must:

(a) Prepare a workload analysis that, as narrowly, efficiently, and cost-effectively as possible, identifies the annual costs to implement, administer, and enforce this chapter, including rule making, in the next fiscal year;

(b) Determine a total annual fee payment to be paid by a distributor responsibility organization to cover, but not exceed, the costs of implementing, administering, and enforcing this chapter identified through the workload analysis; and

(c) Send notice to a distributor responsibility organization of fee amounts due.

(3)(a) The department shall review new, updated, and revised registrations submitted by a distributor responsibility organization as required in section 304 of this act. The department shall not approve the registration of a distributor responsibility organization whose initial membership at the time of registration does not represent a majority of beverages in qualifying beverage containers sold or made available for sale in Washington the prior year. The department shall:

(i) Approve the registration of a distributor responsibility organization whose initial membership at the time of registration represents, to the department's satisfaction, a majority of beverages in qualifying beverage containers sold or made available for sale in Washington the prior year; and

(ii) Make a determination, when applicable, as to whether the distributor responsibility organization's plan, plan update, or plan revision meets the criteria established in section 307 of this act.

(b) The department shall notify the distributor responsibility organization of:

(i) The department's approval of a plan, if the plan provides for a program that meets the requirements of section 307 of this act; or

(ii) The department's disapproval of a plan, and its reasons for disapproval, if the department determines the plan does not meet the requirements of section 307 of this act.

(c) If a distributor responsibility organization's plan is not approved by the department, the distributor responsibility organization must submit a new or revised plan within 60 days after receipt of the department's letter of disapproval.

(4) The department shall receive the annual reports submitted by a distributor responsibility organization, or individual distributor independently complying with the requirements of this chapter, pursuant to section 309 of this act and:

(a) Ensure the reports contain the items required in sections 304 and 309 of this act; and

(b) Make public the annual reporting required of the distributor responsibility organization registered by the department, and any individual distributor independently complying with the requirements of this chapter, as described in sections 304 and 309 of this act.

(5)(a) In order to determine compliance with the provisions of section 306(2) of this act, the department may, within six months of the date that the department receives a report as described in section 309 of this act, review the records of a distributor responsibility organization specifically related to the accuracy of the redemption rate. The records specifically related to the accuracy of the redemption rate do not include financial details of a distributor responsibility organization.

(b) If in the course of a review described in (a) of this subsection the department determines that an audit of a distributor responsibility organization is necessary to verify the redemption rate, the department shall require the distributor responsibility organization to retain an independent audit firm to determine the accuracy of the redemption rate. The scope of the audit must be limited to records specifically related to the accuracy of the redemption rate. A distributor responsibility organization that is subject to review shall pay the costs of the audit. The audit must be limited to the records described in (a) of this subsection.

(6) In lieu of the payment described in section 304(5) of this act and subsection (2) of this section, after October 1, 2024, or 120 days after a distributor responsibility organization is approved by the department, whichever is later, a distributor independently carrying out the duties and requirements of a distributor responsibility organization described in this chapter shall pay a registration fee to the department equal to 10 cents per qualifying beverage container until such time as a distributor responsibility organization begins operating a deposit return system.

(7)(a) After July 1, 2027, or the date in which a distributor responsibility organization begins operating a deposit return system, whichever is later, and after notification of noncompliance from the department and a 60-day cure period, the department shall administratively impose a civil penalty to any distributor who fails to participate in a distributor responsibility organization as specified in section 304 of this act, or fails to otherwise comply with the requirements of this chapter by independently carrying out the duties of a distributor responsibility organization described in this chapter, which shall be at least 15 cents per qualifying beverage container sold or made available for sale by that distributor in the state, or $10,000, whichever is greater.

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

(c) Fees paid under subsection (6) of this section must be deposited into the deposit return organization program account created in section 318 of this act and used by the department to offset costs of implementing the requirements in this chapter. The department shall direct and store any excess funds to make available to the recycling revenue augmentation fund described in section 317 of this act.

(d) Penalties levied under this section must be deposited into the deposit return organization program account created in section 318 of this act and be used to support the duties of the department described in this section.

NEW SECTION. **Sec.**  REUSE AND RECYCLING PERFORMANCE REQUIREMENTS. (1) To meet the reuse and recycling performance requirements established in this section, a distributor responsibility organization must:

(a) Demonstrate that all qualifying beverage containers are designed to be reusable or recyclable by January 1, 2031, in accordance with criteria established by the department; and

(b) Calculate the reuse sales rate and the redemption rate of qualifying beverage containers and provide the verification to the department as part of the annual reporting requirements. The reuse sales rate is the number of units in reusable packaging sold in a year. For materials reclaimed under a deposit return system, the calculation point for the redemption rate is the number of qualifying beverage containers redeemed statewide by the distributor responsibility organization divided by the number of qualifying beverage containers sold in the state by members of the distributor responsibility organization.

(2) At a minimum, each plan must achieve the following performance requirements:

(a) By 2028, a minimum of 60 percent of all qualifying beverage containers supplied into the state are redeemed for reuse or recycling through the deposit return system;

(b) By 2031, a minimum of 80 percent of all qualifying beverage containers supplied into the state are redeemed for reuse or recycling through the deposit return system; and

(c) By December 31, 2031, sales of beverages in reusable packaging must reach at least one percent of all qualifying beverage containers.

NEW SECTION. **Sec.**  DEPOSIT RETURN SYSTEM. (1) The department shall make a determination of approval of a distributor responsibility organization's plan, or plan update, to operate a deposit return system for qualifying beverage containers based on the criteria in this section:

(a) The distributor responsibility organization's registration with the department meets the requirements described in sections 304 and 305 of this act;

(b) The distributor responsibility organization presents a plan that imposes a refund value of 10 cents for all qualifying beverage containers covered under the plan;

(c) The plan or plan update includes a method for paying the refund value and collecting qualifying beverage containers from consumers, including a plan to provide convenient bulk, bagged returns, and a plan to accept direct, sorted returns at its processing facilities for an additional refund value premium if the containers are returned by organizations certified as nonprofit organizations pursuant to section 501(c)(3) of the internal revenue code that are approved by the distributor responsibility organization and serve very low-income individuals who rely on regular container refunds through the deposit return system as a source of daily funds;

(d) Includes in the plan a process for annually reporting to the department regarding the names, locations, return volume, cost per container for each partnership, and other services provided through the partnerships described in (c) of this subsection; and

(e) Includes a description of how the distributor responsibility organization and the deposit return system will coordinate with other recycling systems and processes, including exploring the potential for colocating facilities as described in section 308 of this act, establishing policies to facilitate the redemption of materials from other recycling pathways as described in section 314 of this act, and providing clear communications about which products are included in the deposit return system as described in section 313 of this act.

(2) A deposit return system must include the following qualifying beverage containers:

(a) Except as provided in (b) of this subsection, any individual, separate, sealed glass, metal, or plastic bottle or can, except for a carton, foil pouch, drink box, or metal container that requires a tool to be opened, that contains any beverage intended for human consumption and in a quantity of greater than four ounces and less than or equal to one gallon.

(b) The requirements of this chapter do not apply to beverages with dairy milk as the first ingredient or infant formula.

(3) If a deposit return system is approved by the department, then for the duration of the plan, all qualifying beverage containers sold or offered for sale in the state of Washington:

(a) Must carry a 10 cent refund value;

(b) Must be registered at least annually with the distributor responsibility organization by the producer or distributor, including information on the brand, size, container material type or types, beverage type, bar code or stock keeping unit information, and total number of containers of each type, size, and brand sold in the state of Washington;

(c) Must be sold by a distributor, importer, or producer that is a member of the distributor responsibility organization submitting the deposit return system plan for qualifying beverage containers or an individual distributor independently carrying out the duties required of a distributor responsibility organization described in this chapter; and

(d) Must carry a clear and conspicuous marking indicating the refund value of the container in the state of Washington. This requirement may be satisfied through the abbreviation "WARV" or any other standard abbreviation approved by the department. A beverage container for wine may satisfy the requirement to indicate the refund value of the container through the use of a quick response code.

(4)(a) In lieu of any other penalties for not achieving the performance criteria in section 306 of this act, should the redemption rate performance requirements described in section 306 of this act not be met, the distributor responsibility organization shall annually calculate the number of containers representing the difference between the redemption rate of qualifying beverage containers and the redemption rate performance requirements described in section 306(2) (a) and (b) of this act, and pay a penalty that is equal to 10 cents times the number of containers representing the difference.

(b) At the sole discretion of the department, if the requirements in (a) of this subsection result in a penalty to be paid by the distributor responsibility organization, the department may alternatively identify priority areas for additional drop-off access to be provided, and the department and the distributor responsibility organization may agree to provide additional access accordingly. If agreement is not reached, the financial penalty in (a) of this subsection must be paid.

(c) There is no penalty assessed on the distributor responsibility organization related to the reuse performance requirements described in section 306 of this act.

(5) The distributor responsibility organization must, at its own cost, provide a convenient bulk drop-off option for bagged qualifying beverage containers at geographically dispersed locations in Washington that sell beverages in qualifying beverage containers, are located a convenient distance from a dealer, or are located at a publicly owned facility. The distributor responsibility organization may not charge customers for this drop-off service and must credit the cost of any required bag purchase back to the customer when the bag is processed. If drop-off bags are made of plastic film, bags must have a minimum 50 percent recycled content and the distributor responsibility organization must be able to demonstrate that waste film from bags is being recycled in the best commercially available manner.

(6) Upon launch of the deposit return system, the distributor responsibility organization shall provide at least 270 bag drop sites around the state, with at least one drop site located in each county, and at least one drop site located in each island community served by the Washington state ferries system, distributed by county proportional to the volume of qualifying beverage containers sold in each county. The distributor responsibility organization shall calculate a drop-off capacity formula that is equal to the ratio of drop-off locations to total sales of beverages in qualifying beverage containers represented by the initial deployment of 270 sites, and the number of beverages in qualifying beverage containers sold the year prior to the year the distributor responsibility organization begins operating a deposit return system in Washington. Within two years of the date in which the distributor responsibility organization begins operating a deposit return system, the distributor responsibility organization shall add an additional 10 drop-off locations. The locations of the additional 10 drop-off sites must be agreed upon by the distributor responsibility organization and the department, in consultation with the consumer convenience advisory council established in section 310 of this act, balancing the need for consumer convenience and access in rural counties, small cities, and underserved areas, and data regarding where beverages in qualifying beverage containers are sold. Five years after the distributor responsibility organization is required to provide 280 drop-off locations, and every five years after that, the distributor responsibility organization shall calculate an updated number of drop-off locations required using the drop-off capacity formula. If this calculation determines that the distributor responsibility organization needs to add additional drop-off sites to reach the number required by the capacity formula, the distributor responsibility organization shall provide the department with a list of proposed new locations, equal to the number determined by the drop-off capacity formula, based on input from the consumer convenience advisory council established in section 310 of this act, consideration of consumer convenience, and data regarding where beverage sales occur. The distributor responsibility organization shall make the new drop-off locations available within three years. Drop-off locations may be located at dealers, or any other retail establishment, publicly owned facility, or any other location convenient to consumers but nothing in this chapter may be interpreted to create a legal obligation on the part of dealers either to accept returned qualifying beverage containers or allow a drop-off location to be sited at a dealer. Local governments shall coordinate with the distributor responsibility organization to identify opportunities for the siting of necessary collection infrastructure including, where appropriate, on city and county properties, to help ensure convenient access across the state. All sites must be paid for in full by the distributor responsibility organization. The distributor responsibility organization may provide an alternative access plan for any county that has not reached the required number of drop-off locations and the department may approve an alternative access plan for that county if it deems the alternative access plan for that county to be similarly convenient to consumers as the proportional drop site requirement. The distributor responsibility organization shall pay for the cost of these facilities.

(7) Unless otherwise specified in a distributor responsibility organization's bylaws or in a contract between a distributor responsibility organization and an individual distributor arranging specifically for the collection of beverage containers sold for the purpose of consumption on premises, any manufacturer, distributor, or importer that fails to pay to a distributor responsibility organization the refund value of qualifying beverage containers included in this chapter is liable to the distributor responsibility organization for treble the unpaid refund value and treble the collection costs incurred by the distributor responsibility organization for any beverage containers that were sold without the refund value of the container being remitted to the distributor responsibility organization.

(8) The distributor responsibility organization is not required to accept or pay refunds for:

(a) Beverage containers visibly containing or contaminated by a substance other than water, residue of the original contents, or ordinary dust;

(b) Beverage containers that are crushed, broken, or damaged to the extent that the brand appearing on the container cannot be identified; or

(c) Any beverage container for which the distributor responsibility organization has reasonable grounds to believe was not purchased through the state's deposit return system or for which a refund has already been given.

(9) If the distributor responsibility organization uses automated industrial counting equipment to count containers returned in bulk and credit refund values to consumers, the distributor responsibility organization may use commercially viable methods of counting, and shall have a customer service system, which serves as the remedy to resolve complaints and discrepancies.

(10) The distributor responsibility organization may create reasonable terms and conditions for participation in the program.

(11) For the first five years in which a deposit return system is operated by a distributor responsibility organization in this state, a distributor responsibility organization shall remit $15,000,000 by December 31st of each year for the first five years in which it operates a deposit return system, to the department of commerce's recycling revenue augmentation fund created in section 317 of this act. If the first year of operations of a deposit return system begins after January 1st, the payment amount shall be prorated in accordance with the portion of the year in which the deposit return system is operating. These payments constitute the full financial obligation of the distributor responsibility organization to the recycling revenue augmentation fund created in section 317 of this act.

(12)(a) All retailers over 5,000 square feet and with qualifying beverage unit sales greater than 100,000 annually must install a self-serve kiosk, provided at no charge by the distributor responsibility organization, to facilitate the printing of redemption vouchers, pay the value of redemption vouchers to customers, and must sell bags for redemption at the price established by the distributor responsibility organization. The distributor responsibility organization shall reimburse dealers for the value of valid vouchers redeemed by customers. Dealers may additionally offer a voucher redemption option for funds to be used as store credit. There is no other cost or requirement for retailers associated with container redemption.

(b) Storage and drop-off containers sited for the purposes of fulfilling the requirements of this section are considered mobile containers regardless of whether they have wheels, have electrical power, or are affixed to the site.

(c) The distributor responsibility organization shall establish a geographically distributed network of processing facilities across the state for the purpose of counting, crediting, sorting, and compacting bagged container returns and facilitating the program for organizations certified as nonprofit organizations pursuant to section 501(c)(3) of the internal revenue code as described in subsection (1)(c) of this section.

NEW SECTION. **Sec.**  PARTICIPATION IN THE FEASIBILITY STUDY. In order to facilitate the potential for shared drop-off locations with other depots or return pathways provided by producer responsibility organizations, the distributor responsibility organization must participate in the feasibility study described in section 505 of this act. The distributor responsibility organization's participation in the feasibility study is limited to helping identify potential partnerships and shared drop-off locations between the distributor responsibility organization and producer responsibility organizations, and the distributor responsibility organization retains sole discretion to determine how to achieve the required number and geographic distribution of drop-off locations required of the distributor responsibility organization.

NEW SECTION. **Sec.**  ANNUAL REPORTING ON ACTIVITIES. (1) Beginning July 1, 2028, and each July 1st thereafter, a distributor responsibility organization must submit an annual report to the department for the preceding calendar year of plan implementation.

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

(a) A list of its member distributors and their brands of beverages in qualifying beverage containers;

(b) The number of qualifying beverage containers supplied into the state in aggregate, and by material categories of glass, metal, and plastic, by members of the distributor responsibility organization;

(c) The number of beverages in reusable containers that were sold;

(d) The number of qualifying beverage containers redeemed in aggregate, and by material categories of glass, metal, and plastic, through the deposit return system operated by the distributor responsibility organization;

(e) A list and explanation of the beverages in qualifying beverage containers supplied or sold in Washington by members of the distributor responsibility organization and brands of qualifying beverage containers participating in the deposit return system;

(f) The final destinations of recycled material managed by the program;

(g) The total budget for the distributor responsibility organization;

(h) Total value of unclaimed refunds used by the distributor responsibility organization to support operations; and

(i) The annual redemption rate and reuse sales rate.

(3) The reporting described in subsection (2)(b) of this section does not include containers that are sold to dealers or other entities outside of the state.

(4) A distributor responsibility organization may rely on member reporting for reporting requirements in this chapter.

(5) Included in its annual report, a distributor responsibility organization shall provide verification from a third-party financial auditing firm confirming the total budget for the distributor responsibility organization, the total value of unclaimed refunds, and a verification that funds represented by unclaimed refunds were not distributed to members of the cooperative as a dividend.

NEW SECTION. **Sec.**  CONSUMER CONVENIENCE ADVISORY COUNCIL. (1) In coordination with the department, the distributor responsibility organization shall establish the consumer convenience advisory council within six months following initial registration of a distributor responsibility organization.

(2) The consumer convenience advisory council must include the following members:

(a) A representative of the distributor responsibility organization charged with securing and making available drop-off locations;

(b) Two representatives of a grocery association, or individual grocers with more than 10 retail locations over 5,000 square feet in size in the state;

(c) Two representatives of a city association, or individual city government, with one representing a city with a population over 200,000 people;

(d) Two representatives of a county association, or individual county government, with one representing an urban county and one representing a rural county; and

(e) An environmental organization.

(3) Any additional representatives deemed by the distributor responsibility organization to provide important insight into assisting with the deployment of drop-off locations may be approved by the department.

(4) The consumer convenience advisory council shall work with the distributor responsibility organization to identify potential bag drop-off locations and achieve the consumer convenience required in section 307 of this act.

(5) The consumer convenience advisory council shall meet at least twice per year and more frequently at the request of the distributor responsibility organization.

NEW SECTION. **Sec.**  CONSUMER CONVENIENCE ASSESSMENT. (1) In the fifth full year in which a distributor responsibility organization operates a deposit return system in the state, the department, in partnership with the distributor responsibility organization, and in consultation with the consumer convenience advisory council established in section 310 of this act, shall conduct an assessment of consumer convenience, identifying any barriers to achieving the number of drop-off locations required by the consumer convenience requirements in section 306 of this act and any other potential barriers to consumer convenience or participation.

(2) If the required number of drop-off locations has not been achieved, or if the system's redemption rate is significantly lower than the redemption rate performance targets described in section 307 of this act, the department shall make policy recommendations regarding ways to increase consumer convenience and enhance performance.

NEW SECTION. **Sec.**  INDEPENDENT REFUND PROGRAM. (1) A distributor that is also a manufacturer may submit a plan to the department to operate an independent refund program for beverages in qualifying beverage containers produced by the manufacturer, and the department may approve the plan if it meets all of the following criteria:

(a) The manufacturer sells or distributes no more than 10,000 beverages in qualifying beverage containers per year in the state;

(b) The beverages are packaged in reusable qualifying beverage containers;

(c) The manufacturer offers a refund value for the containers that is greater than the refund value for containers redeemed by the distributor responsibility organization;

(d) The department determines that the plan includes return pathways and options that are convenient for consumers returning their brand of beverage containers covered by the plan for a refund; and

(e) The plan includes annual reporting requirements that, in the department's determination, are sufficient to measure the performance of the independent refund program.

(2) If the department approves an independent refund program plan as described in subsection (1) of this section, the distributor manufacturer operating a plan approved by the department is not subject to the requirements of distributors independently complying with the requirements in this chapter, as described in section 304(1) of this act and elsewhere in this chapter.

(3) Reusable containers sold through a program approved through this section count towards the reusable container performance requirements described in section 306 of this act.

(4) The department may revoke plan approval for a manufacturer distributor operating an independent refund program at any time if, in its sole discretion, the department determines that the program is not providing sufficient performance or not meeting the consumer convenience requirements submitted with its plan.

NEW SECTION. **Sec.**  EDUCATION AND OUTREACH ACTIVITIES. (1) Each plan implemented by a distributor responsibility organization under this chapter must include education and outreach activities that effectively reach diverse residents, are accessible, are clear, and support the achievement of the performance requirements described in section 306 of this act. To implement the education and outreach activities described in the plan, a distributor responsibility organization must, at minimum:

(a) Develop and provide outreach and educational materials, resources, and campaigns about the program to be used by the distributor responsibility organization, dealers, governmental entities, and nonprofit organizations. The materials, resources, and campaigns developed under this section to encourage participation in the deposit return system must, at minimum:

(i) Provide information to residents on recycling and reuse practices related to the deposit return system, including where and how to redeem qualifying beverage containers, and what happens to containers once they are returned; and

(ii) Education and engagement with users of the deposit return system to reduce the rate of inbound contamination or unwanted materials;

(b) Use media channels that may include, but are not limited to, print publications, radio, television, the internet, and online streaming services to promote the program statewide;

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

(d) Be conceptually, linguistically, and culturally accurate for the communities served and tailored to effectively reach the state's diverse populations, including through meaningful consultation with overburdened communities and vulnerable populations;

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

(f) Provide a map of each area where drop-off and other collection services for qualifying beverage containers are available on its website; and

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

(2) A distributor responsibility organization may coordinate with government entities that choose to participate in carrying out resident education and outreach regarding the deposit return system.

NEW SECTION. **Sec.**  PAYMENT OF REFUND VALUE FOR COLLECTION USING OTHER INFRASTRUCTURE. (1) The distributor responsibility organization must accept, and must pay the full refund value for, any qualifying beverage containers returned to the distributor responsibility organization by material recovery facilities, governmental entities, and other processing facilities if all of the following criteria are met:

(a) The qualifying beverage containers have been collected and separated in accordance with standards established by the distributor responsibility organization and are delivered directly to a distributor responsibility organization processing facility;

(b) In order to avoid redeeming containers not purchased in the state, the material recovery facilities, governmental entities, and other processing facilities may only handle or process materials from this state, or provide third-party auditing and verification sufficient to confirm that the containers being returned were recovered only from material originating in the state; and

(c) The containers are separated by material type, not contaminated with other materials, and are not crushed, broken, or otherwise substantially manipulated into a shape other than the shape of the container at the time of purchase.

(2) Nothing in this chapter requires a person, including a business, to use the infrastructure provided by a deposit return system created under this chapter or precludes the disposal for recycling of qualifying beverage containers via curbside recycling collection systems.

NEW SECTION. **Sec.**  CIVIL PENALTIES. (1) Upon notice of a significant violation of the deposit return system plan or performance requirements of this chapter, and after a cure period of at least 60 days, the department may assess a civil penalty of at least $200 per violation per day, but no more than $500 per violation per day.

(2) The department shall make its best efforts to work with the distributor responsibility organization to remedy issues without the use of penalties and make reasonable accommodations when the nature of the violation is significantly outside of the distributor responsibility organization's control.

(3) Notwithstanding the performance penalty described in section 307 of this act, a civil penalty may not be assessed based on the redemption rate or reuse sales rate performance requirements.

NEW SECTION. **Sec.**  RECYCLING REVENUE AUGMENTATION FUND. (1) The department of commerce shall administer the recycling revenue augmentation fund, created in section 317 of this act, which shall, for the first five years in which a distributor responsibility organization operates a deposit return system in the state:

(a) Collect funds from a distributor responsibility organization as described in section 307(11) of this act; and

(b) Beginning January 1st of the year following the year in which a distributor responsibility organization first operates a deposit return system in the state, and each January 1st for the following four years, accept requests annually from local governments, or operators of curbside or drop-off recycling programs in the state, or both, to receive funds from the recycling revenue augmentation fund to offset revenue losses from the previous year from scrap material being diverted to the deposit return system. These requests must include third-party audited financial data demonstrating any revenue losses from the value of scrap materials diverted from curbside or drop-off recycling programs by a deposit return system, less any decreased operating costs from not collecting, hauling, processing, or landfilling the material, less any new revenue provided through other provisions within this chapter that offsets revenue losses, and less any material weight losses represented by the operator serving fewer accounts. For local government and publicly operated curbside or drop-off recycling programs, the government entity's annual audit may satisfy the audited data requirement of this section if the department of commerce determines that it is sufficient to verify the claim. Each request must include the average total tons of glass, plastic, and metal for that applicant for the three years preceding the operation of a deposit return system in the state, compared to the total tons of glass, plastic, and metal material for the year for which funds are requested.

(2) The department of commerce shall:

(a) Evaluate all requests annually and determine the validity of the data submitted by each requester;

(b) Reject requests that do not include sufficient or sufficiently accurate data;

(c) Distribute funds to operators of curbside and drop-off recycling systems proportionally, based on valid requests and available revenue in the fund; and

(d) If the total amount of requests deemed valid by the department of commerce is less than the amount of funds available each year, less the department of commerce's program funding described in subsection (3) of this section, the department of commerce shall remit the remaining balance back to the distributor responsibility organization, with the exception of funds generated by section 305(7)(c) of this act, which shall remain in the recycling revenue augmentation fund to support future requests. If funds generated by section 305(7)(c) of this act remain in the recycling revenue augmentation fund upon the conclusion of the program, they shall be deposited into the deposit return organization program account created in section 318 of this act and shall be used to support the department of commerce's requirements in this chapter.

(3) The department of commerce may use funds provided for in section 307(11) of this act for each of the five years the program operates to cover costs associated with implementing and administering the recycling revenue augmentation fund.

NEW SECTION. **Sec.**  ACCOUNT FOR RECYCLING REVENUE AUGMENTATION FUND. The recycling revenue augmentation fund is created in the custody of the state treasurer. All receipts received by the department of commerce under section 316 of this act must be deposited in the account. Expenditures from the account may be used by the department of commerce only for implementing and administering the requirements of section 316 of this act. Only the director of the department of commerce or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

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

NEW SECTION. **Sec.**  CONTINGENCY. If a distributor responsibility organization ceases to exist and operate a deposit return system in Washington, other than for temporary disruptions due to unforeseen circumstances, as determined by the department, qualifying beverage containers become covered products under chapter 70A.--- RCW (the new chapter created in section 601 of this act).

**Part Four**

**Amendments to Solid Waste Management Laws**

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

The legislature finds:

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

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

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

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

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

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

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

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

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

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

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

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

(a) Waste reduction;

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

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

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

(9) It is the state's goal to achieve a ((~~fifty~~)) 50 percent recycling rate by 2007.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) To assign primary responsibility for adequate solid waste handling to local government, reserving to the state, however, those functions necessary to assure effective programs throughout the state, and sharing with producers' responsibility for the management of their covered products under chapter 70A.--- RCW (the new chapter created in section 601 of this act);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) A program for surveillance and control.

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

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

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

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

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

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

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

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

(b) Source separation strategies, including:

(i) Programs for the collection of source separated materials from residences ((~~in urban and rural areas. In urban areas, these~~)), including programs that are the responsibility of producer responsibility organizations in chapter 70A.--- RCW (the new chapter created in section 601 of this act) and distributor responsibility organizations in chapter 70A.--- RCW (the new chapter created in section 603 of this act). These programs shall include collection of source separated recyclable materials from single and multiple-family residences, unless the county has adopted an ordinance establishing that covered products designated for collection by a producer responsibility organization plan must be collected exclusively through alternate collection in areas regulated by the utilities and transportation commission under the provisions of chapter 81.77 RCW or the department approves an alternative program, according to the criteria in the planning guidelines. Such criteria shall include: Anticipated recovery rates and levels of public participation, availability of environmentally sound disposal capacity, access to markets for recyclable materials, unreasonable cost impacts on the ratepayer over the six-year planning period, utilization of environmentally sound waste reduction and recycling technologies, and other factors as appropriate. ((~~In rural areas, these~~)) These programs shall also include but not be limited to drop-off boxes, buy-back centers, or a combination of both, at each solid waste transfer, processing, or disposal site, or at locations convenient to the residents of the county. The drop-off boxes and buy-back centers may be owned or operated by public, nonprofit, or private persons. Comprehensive solid waste management plans that are newly developed, updated, or amended after July 1, 2026, may incorporate by reference the plans of producer responsibility organizations established in the jurisdiction under chapter 70A.--- RCW (the new chapter created in section 601 of this act) to fulfill this requirement in whole or in part;

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

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

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

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

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

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

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

(10) A contamination reduction and outreach plan. The contamination reduction and outreach plan must address reducing contamination in recycling. Except for counties with a population of twenty-five thousand or fewer, by July 1, 2021, a contamination reduction and outreach plan must be included in each solid waste management plan by a plan amendment or included when revising or updating a solid waste management plan developed under this chapter. Jurisdictions may adopt the state's contamination reduction and outreach plan as developed under RCW 70A.205.070 or participate in a producer responsibility organization's plan in lieu of creating their own plan. In comprehensive solid waste management plans that are newly developed, updated, or amended after July 1, 2027, a jurisdiction must reference the plans of producer responsibility organizations established in the jurisdiction under chapter 70A.--- RCW (the new chapter created in section 601 of this act) and any plans of distributor responsibility organizations under chapter 70A.--- RCW (the new chapter created in section 603 of this act). A recycling contamination reduction and outreach plan must include the following:

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

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

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

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

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

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

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

((~~(1)~~)) (a) By fixing and altering its rates, charges, classifications, rules and regulations;

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

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

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

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

((~~(6)~~)) (f) By reviewing producer responsibility organization reimbursement of regulated service providers consistent with the requirements of chapter 70A.--- RCW (the new chapter created in section 601 of this act);

(g) By requiring certificate holders under this chapter ((~~81.77 RCW~~)) to use rate structures and billing systems consistent with the solid waste management priorities set forth under RCW 70A.205.005 and the minimum levels of solid waste collection and recycling services pursuant to local comprehensive solid waste management plans and with implementation of curbside recycling collection services designated by a producer responsibility organization in an approved plan to meet the requirements of chapter 70A.--- RCW (the new chapter created in section 601 of this act). The commission may order consolidated billing and provide for reasonable and necessary expenses to be paid to the administering company if more than one certificate is granted in an area.

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

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

A solid waste collection company shall not operate for the hauling of solid waste for compensation without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation. Operating for the hauling of solid waste for compensation includes advertising, soliciting, offering, or entering into an agreement to provide that service. To operate a solid waste collection company in the unincorporated areas of a county, the company must comply with the solid waste management plan prepared under chapter 70A.205 RCW in the company's franchise area and, if applicable, the service standards for curbside recycling collection services established in an approved producer responsibility organization plan to meet the requirements of chapter 70A.--- RCW (the new chapter created in section 601 of this act).

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

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

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

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

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

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

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

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

(b) All known and measurable costs related to implementation of the approved county or city comprehensive solid waste management plan or to the implementation of curbside recycling collection services performed by a solid waste collection company and designated by a producer responsibility organization in an approved plan to meet the requirements of chapter 70A.--- RCW (the new chapter created in section 601 of this act).

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

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

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

(1) The commission shall allow solid waste collection companies collecting recyclable materials other than covered products collected under an approved plan in chapter 70A.--- RCW (the new chapter created in section 601 of this act) and qualifying beverage containers under an approved plan in chapter 70A.--- RCW (the new chapter created in section 603 of this act) to retain up to ((~~fifty~~)) 50 percent of the revenue paid to the companies for the material if the companies submit a plan to the commission that is certified by the appropriate local government authority as being consistent with the local government solid waste plan and that demonstrates how the revenues will be used to increase recycling. The remaining revenue shall be passed to residential customers.

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

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

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

NEW SECTION. **Sec.**  APPLICATION OF CHAPTER—COLLECTION AND TRANSPORTATION OF RECYCLABLE MATERIALS BY RECYCLING COMPANIES OR NONPROFIT ENTITIES—REUSE OR RECLAMATION. (1) Nothing in this chapter or chapter 70A.--- (the new chapter created in section 602 of this act) or 70A.--- RCW (the new chapter created in section 603 of this act) prevents a recycling company or nonprofit entity from collecting and transporting recyclable materials from a buy-back center, drop box, or from a commercial or industrial generator of recyclable materials that does not include materials generated from single and multiple-family residences upon agreement with a solid waste collection company.

(2) Nothing in this chapter or chapter 70A.--- (the new chapter created in section 602 of this act) or 70A.--- RCW (the new chapter created in section 603 of this act) may be construed as prohibiting a commercial or industrial generator of commercial recyclable materials that does not contain materials generated from single or multiple-family residences from selling, conveying, or arranging for transportation of the material to a recycler for reuse or reclamation.

NEW SECTION. **Sec.**  A new section is added to chapter 70A.222 RCW to read as follows:

The department of ecology may direct producers to register and submit any required data, annual reports, fees, and annual payments, and any additional information or documentation to the clearinghouse established in section 125 of this act in lieu of submission to the department.

NEW SECTION. **Sec.**  A new section is added to chapter 70A.350 RCW to read as follows:

The department may direct producers to register and submit any required data, annual reports, fees, and annual payments, and any additional information or documentation to the clearinghouse established in section 125 of this act in lieu of submission to the department.

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

The department may direct producers to register and submit any required data, annual reports, fees, and annual payments, and any additional information or documentation to the clearinghouse established in section 125 of this act in lieu of submission to the department.

NEW SECTION. **Sec.**  A new section is added to chapter 70A.230 RCW to read as follows:

The department may direct producers to register and submit any required data, annual reports, fees, and annual payments, and any additional information or documentation to the clearinghouse established in section 125 of this act in lieu of submission to the department.

NEW SECTION. **Sec.**  A new section is added to chapter 70A.340 RCW to read as follows:

The department may direct producers to register and submit any required data, annual reports, fees, and annual payments, and any additional information or documentation to the clearinghouse established in section 125 of this act in lieu of submission to the department.

NEW SECTION. **Sec.**  A new section is added to chapter 70A.455 RCW to read as follows:

The department may direct producers to register and submit any required data, annual reports, fees, and annual payments, and any additional information or documentation to the clearinghouse established in section 125 of this act in lieu of submission to the department.

NEW SECTION. **Sec.**  The department of ecology may direct distributors to register and submit any required data, annual reports, fees, and annual payments, and any additional information or documentation to the clearinghouse established in section 125 of this act in lieu of submission to the department.

**Part Five**

**Other Conforming Amendments and Miscellaneous Provisions**

**Sec.**  RCW 43.21B.110 and 2022 c 180 s 812 are each amended to read as follows:

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

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070, 70A.515.060, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080, 70A.65.200, 70A.455.090, sections 123, 211, and 319 of this act, 76.09.170, 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070, 70A.245.020, 70A.65.200, sections 123, 211, and 319 of this act, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

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

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

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

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

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

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

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

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

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

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

(n) Decisions of the department of ecology that are appealable under RCW 70A.245.020 or section 211 of this act to set recycled minimum postconsumer content for ((~~covered~~)) products or to temporarily exclude types of ((~~covered~~)) products in plastic containers from minimum postconsumer recycled content requirements.

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

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

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

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

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

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

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

**Sec.**  RCW 43.21B.300 and 2022 c 180 s 813 are each amended to read as follows:

(1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160, 70A.205.280, 70A.300.090, 70A.20.050, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080, 70A.65.200, 70A.455.090, sections 123, 211, and 319 of this act, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102 and chapter 70A.355 RCW shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the department or the local air authority, describing the violation with reasonable particularity. For penalties issued by local air authorities, within 30 days after the notice is received, the person incurring the penalty may apply in writing to the authority for the remission or mitigation of the penalty. Upon receipt of the application, the authority may remit or mitigate the penalty upon whatever terms the authority in its discretion deems proper. The authority may ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper and shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

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

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

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

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

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

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

(5) All penalties recovered shall be paid into the state treasury and credited to the general fund except those penalties imposed pursuant to RCW 18.104.155, which shall be credited to the reclamation account as provided in RCW 18.104.155(7), RCW 70A.15.3160, the disposition of which shall be governed by that provision, RCW 70A.245.040 ((~~and~~)), 70A.245.050, and section 211 of this act, which shall be credited to the recycling enhancement account created in RCW 70A.245.100, RCW 70A.300.090, which shall be credited to the model toxics control operating account created in RCW 70A.305.180, RCW 70A.65.200, which shall be credited to the climate investment account created in RCW 70A.65.250, RCW 90.56.330, which shall be credited to the coastal protection fund created by RCW 90.48.390, ((~~and~~)) RCW 70A.355.070, which shall be credited to the underground storage tank account created by RCW 70A.355.090, and chapter 70A.--- RCW (the new chapter created in section 601 of this act) and section 319 of this act, which shall be credited to the recycling enhancement account created in RCW 70A.245.100.

NEW SECTION. **Sec.**  A new section is added to chapter 69.50 RCW to read as follows:

LIQUOR AND CANNABIS BOARD PACKAGING REQUIREMENTS.

(1) By July 1, 2026, the board, in consultation with the department of ecology, must update the rules adopted under RCW 69.50.342 and 69.50.345 related to the nature, form, and capacity of containers used by licensees under this chapter, with a goal of:

(a) Reducing the use of plastic packaging in an amount that is at least commensurate with the source reduction rates for covered products proposed by a producer responsibility organization under section 111(1)(a)(iii) of this act; and

(b) Allowing for and encouraging the reuse of containers for cannabis, cannabis concentrates, useable cannabis, or cannabis-infused products.

(2) In addition to the source reduction and reuse to be achieved under subsection (1) of this section, the board may establish minimum postconsumer recycled content requirements for packaging of at least 25 percent postconsumer recycled content by weight through the year 2030, and at least 50 percent postconsumer recycled content plastic by weight beginning in the year 2031. If postconsumer recycled content requirements are established for packaging under this subsection, the board may require that producers of packaging report any required data, annual reports, fees, and annual payments, and any additional information or documentation to the board or to the department of ecology using the clearinghouse established in section 125 of this act.

(3) Rules adopted by the board under this section must:

(a) Not compromise public health, safety, or packaging integrity;

(b) Take into consideration the availability of recycled plastic suitable to meet any minimum postconsumer recycled content requirements established under this section; and

(c) Take into consideration the technical feasibility of source reduction, reuse, and postconsumer recycled content requirements.

NEW SECTION. **Sec.**  AUTHORITY OF UTILITIES AND TRANSPORTATION COMMISSION. Nothing in this chapter or chapter 70A.--- (the new chapter created in section 602 of this act) or 70A.--- RCW (the new chapter created in section 603 of this act) changes or limits the authority of the Washington utilities and transportation commission to regulate collection of solid waste, including curbside collection of residential recyclable materials, in accordance with chapter 81.77 RCW.

NEW SECTION. **Sec.**  FEASIBILITY STUDY. (1) By December 1, 2025, the department of ecology must complete and publish on its website the feasibility analysis described in this section.

(a) The purpose of the feasibility analysis is to:

(i) Identify options to improve the convenience experienced by consumers with unwanted products or packaging covered by state product stewardship, extended producer responsibility, and similar takeback programs, by harmonizing or establishing a system of common or centralized takeback centers or depots for consumers; and

(ii) Consider the viability, costs, and tradeoffs associated with each option that might lead to improved outcomes for consumers and improved end-of-life management outcomes for covered unwanted products.

(b) The department of ecology must deliver policy recommendations to the legislature by December 1, 2025.

(2) The department of ecology must consult with the department of health for purposes of considering the potential for integration of collection infrastructure under chapter 69.48 RCW with the collection infrastructure of other state programs.

(3) The feasibility analysis required under this section must:

(a) Be conducted by an independent third party selected by the department;

(b) Consider the following:

(i) Existing common collection infrastructure models used by other jurisdictions;

(ii) Existing voluntary and contractually established collection infrastructure currently used to collect unwanted products and packaging in Washington; and

(iii) Options to deploy curbside collection systems for the specialized collection of products;

(c) Include policy recommendations to the legislature to improve consumer convenience and improve environmental end-of-life management outcomes for any combination of products and packaging covered by extended producer responsibility programs, takeback programs, or product stewardship programs;

(i) The policy recommendations must consider:

(A) Beverage containers covered by the deposit return requirements of chapter 70A.--- RCW (the new chapter created in section 603 of this act);

(B) Covered products under chapter 70A.--- RCW (the new chapter created in section 601 of this act);

(C) Covered drugs under chapter 69.48 RCW;

(D) Covered electronic products under chapter 70A.500 RCW;

(E) Mercury-containing lights under chapter 70A.505 RCW;

(F) Photovoltaic modules under chapter 70A.510 RCW; and

(G) Architectural paint under chapter 70A.515 RCW.

(ii) Any policy recommendations for changes to the collection of products covered by programs identified in (c)(i) of this subsection should consider:

(A) Whether and how to amend convenience standards established under each program, including the types of curbside, drop off, event, and public and private infrastructure that serves as collection infrastructure; and

(B) Whether and how to specify that producers of products covered by programs recommended for inclusion in the creation of a common collection system be required to fund the establishment of the common collection infrastructure; and

(d) Include an opportunity for public input on the feasibility study and on any draft recommendations.

NEW SECTION. **Sec.**  LITTER TAX STUDY. (1) In consultation with producer responsibility organizations registered with the department of ecology under chapter 70A.--RCW (the new chapter created in section 601 of this act) and distributor responsibility organizations under chapter 70A.--- RCW (the new chapter created in section 603 of this act), the department of ecology and the department of revenue must study:

(a) The impacts of producer and distributor requirements under chapters 70A.--- (the new chapter created in section 601 of this act) and 70A.--- RCW (the new chapter created in section 603 of this act) on the litter rates of covered products and qualifying beverage containers under those chapters; and

(b) Possible improvements to the structure of the litter tax under chapter 82.19 RCW including, but not limited to, administration, compliance, and distribution of the tax and application of the tax to certain products, for achieving the purpose of chapter 82.19 RCW.

(2) By January 1, 2029, the department of ecology, in consultation with the department of revenue, must provide recommendations to the appropriate committees of the legislature on:

(a) Applicability of the litter tax to covered products and qualifying beverage containers, based on whether the purpose of the litter tax under chapter 82.19 RCW is being achieved for those products by the requirements of producers and distributors under chapters 70A.--- (the new chapter created in section 601 of this act) and 70A.--- RCW (the new chapter created in section 603 of this act); and

(b) Improvements to the structure of the litter tax for meeting the purposes of chapter 82.19 RCW.

(3) This section expires July 1, 2029.

NEW SECTION. **Sec.**  RCW 70A.245.110 (Recycled content account) and 2021 c 313 s 14 are each repealed, effective July 1, 2029.

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.

**Part Six**

**Codification Directives**

NEW SECTION. **Sec.**  Sections 101 through 128, 408, 504, and 506 of this act constitute a new chapter in Title 70A RCW.

NEW SECTION. **Sec.**  Sections 201 through 212 of this act constitute a new chapter in Title 70A RCW.

NEW SECTION. **Sec.**  Sections 301 through 319 and 415 of this act constitute a new chapter in Title 70A RCW.

**--- END ---**