H-3089.2

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**SECOND SUBSTITUTE HOUSE BILL 2049**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Berry, Doglio, Fitzgibbon, Ramel, Duerr, Mena, Ryu, Bateman, Slatter, Gregerson, Simmons, Peterson, Macri, Street, Alvarado, Fosse, Pollet, 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, 81.77.160, and 81.77.185; reenacting and amending RCW 43.21B.110 and 43.21B.300; adding a new section to chapter 70A.245 RCW; adding a new section to chapter 81.77 RCW; creating a new section; adding new chapters to Title 70A RCW; repealing RCW 70A.245.110; prescribing penalties; providing an effective date; 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 2024, Washington's statewide waste recovery rate, which seeks to preserve public health, safety, and welfare, and conserve energy and natural resources, has been generally static 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 contributed to 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 the collection, transportation, reuse, and recycling, and 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 waste 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 and assess various policy options. The study recommended, in part: (a) An extended producer responsibility policy for all consumer packaging and paper products with a framework that makes producers responsible for achieving specific environmental outcomes for the packaging and paper products they supply into Washington state; and (b) postconsumer recycled content requirements.

(6) The legislature also finds that the department of ecology was directed in 2023, through an independent consultant, to study and develop recycling, reuse, and source reduction performance targets for consumer packaging and paper materials. The targets study concluded that the highest achievable recycling performance rates could be achieved by a comprehensive policy scenario in which an extended producer responsibility program and postconsumer recycled content rate targets, as established in parts I and II of this act, are combined with a deposit return system for beverage containers.

(7) 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.

(8) It is the intent of the legislature to require extended producer responsibility programs for consumer packaging and paper products be implemented in a manner that involves producers in material management from design concept to end of life. These programs incentivize innovation and research to develop new and more efficient recycling and reuse technologies and minimize negative environmental impacts of the packaging and paper products.

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

(10) It is 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) and to create strong markets for recycled materials and achieve environmental benefits.

(11) It is the intent of the legislature that, through design and innovation, producers will reduce the use and negative climate impact of consumer packaging and paper products and increase the use of postconsumer recycled content.

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

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

(3) "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.

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

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

(6) "Contamination" means:

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

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

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

(b) "Covered product" does not include covered products for which the producer demonstrates to the department that the covered product meets all of the following criteria:

(i) The covered product is not collected through a residential recycling collection service;

(ii) The covered product is recycled at a responsible end market;

(iii) The covered product is intended to be used and collected within a commercial setting; and

(iv)(A) The producer annually demonstrates to the department that the covered product has had a state recycling rate of 65 percent for three consecutive years, until December 31, 2028. Beginning January 1, 2029, the producer must demonstrate to the department every two years that the covered product has had a state recycling rate of at least 70 percent annually; or

(B) The producer annually demonstrates to the department that the covered product is directly managed by the producer and has had a reuse or recycling rate of 65 percent for three consecutive years, until December 31, 2028. Beginning January 1, 2029, the producer must demonstrate to the department every two years that the covered product controlled by the producer has had a reuse or recycling rate of at least 70 percent annually.

(c) If only a portion of the covered product sold in or into the state by a producer meets the criteria of (b)(i) of this subsection, only the portion of the covered product that meets that criteria is exempt from this chapter and any portion that does not meet the criteria is a covered product for purposes of this chapter.

(8) "De minimis producer" means a producer that:

(a) Annually sells, offers for sale, distributes, or imports into Washington state less than one ton of covered products; or

(b) Has a global gross revenue of less than $5,000,000, not including on-premises alcohol sales, for the most recent fiscal year of the organization.

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

(10) "Designated for collection" means the covered products that are a material on the uniform statewide collection list for curbside recycling programs or otherwise identified as suitable for recycling collection in this state by the department as described in section 107 of this act.

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

(12) "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.

(13) "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.

(14) "Item" means a product in or with packaging.

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

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

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

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

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

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

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

(v) Supplied to or purchased by consumers expressly for the purpose of facilitating food or beverage consumption that is ordinarily discarded by consumers after a single use or short-term use.

(b) "Packaging" does not include:

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

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

(iii) Products excluded temporarily under section 127 of this act;

(iv) Liquefied petroleum gas containers that are designed to be refilled or returned;

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

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

(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;

(viii) Qualifying beverage containers subject to a refund value, if applicable, and for which a distributor responsibility organization or other entity responsible for implementing the program has submitted and received approval from the department for a coordination plan that describes how the qualifying beverage containers will be managed in a manner that does not conflict with plans implemented under this chapter.

(18) "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.

(19) "Paper product" means paper sold or supplied, including 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.

(20) "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.

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

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

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

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

(B) If there is no person to which (a)(i)(A) of this subsection applies, the producer is the person that is licensed to manufacture and sell or offer for sale to consumers in this state an item with packaging under the brand or trademark of another manufacturer or person;

(C) If there is no person to which (a)(i)(A) or (B) of this subsection applies, the producer is the brand owner of the item;

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

(E) If there is no person described in (a)(i)(A) through (D) of this subsection, the producer is the person that first distributes the item in or into this state.

(ii) For items 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 item, the producer of the packaging is the same as the producer identified under (a)(i) of this subsection; and

(B) For packaging used to ship the item to a consumer, the producer of the packaging is the person that packages the item to be shipped 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 item in or into this state.

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

(v) For paper products not described in (a)(iv) of this subsection:

(A) If the paper product is sold under the manufacturer's own brand, the producer is the person that manufactures the paper product;

(B) If there is no person to which (a)(v)(A) of this subsection applies, the producer 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;

(C) If there is no person to which (a)(v)(A) or (B) of this subsection applies, the producer is the brand owner of the paper product;

(D) If there is no person described in (a)(v)(A), (B), or (C) of this subsection within the United States, the producer 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; or

(E) If there is no person described in (a)(v)(A) through (D) of this subsection, the producer is the person that first distributes the paper product in or into this state.

(vi) A person is the "producer" of a covered product sold, offered for sale, or distributed in or into this state, as defined in (a)(i) through (v) of this subsection, except:

(A) Where another person has mutually signed an agreement with a producer as defined in (a)(i) through (v) of this subsection that contractually assigns responsibility to the person as the producer, and the person has joined a registered producer responsibility organization as the responsible producer for that covered product under this chapter. In the event that another person is assigned responsibility as the producer under this subsection, the producer under (a)(i) through (v) of this subsection must provide written certification of that contractual agreement to the producer responsibility organization; and

(B) If the producer described in (a)(i) through (v) of this subsection is a business operated wholly or in part as a franchise, the producer is the franchisor, if that franchisor has franchisees that have a commercial presence within the state.

(b) "Producer" does not include:

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

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

(iii) De minimis producers.

(23) "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, 2027, 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.

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

(25)(a) "Public place" means 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.

(26) "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.

(27)(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.

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

(a) Minimizes negative impacts to the environment; and

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

(29) "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 negative impacts to the environment and minimizes risks to public health and worker health and safety.

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

(31) "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.

(32) "Reusable" means:

(a) For returnable packaging that is returned to a producer for reuse, 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 without undergoing a change in form;

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

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

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

(b) For refillable packaging that is 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 refill; and

(iii) Supported by adequate and convenient availability of services, infrastructure, or at-home refill systems to ensure the packaging can be conveniently and safely refilled by the consumer multiple times.

(33) "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 negative impacts to overburdened communities or vulnerable populations identified by the department.

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

NEW SECTION. **Sec.**  PRODUCER AND PRODUCER RESPONSIBILITY ORGANIZATION DUTIES. (1)(a) Beginning March 1, 2025, 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. Beginning October 1, 2025, a producer that is not a member of a registered producer responsibility organization or registered as 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 registrations for more than one producer responsibility organization are submitted to the department by March 1, 2025, not counting registrations 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.

(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 March 1, 2025, and each March 1st 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 associated with 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 or sold into the state to consumers. 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;

(ii) A description of how the quantities of packaging and paper products sold or supplied to consumers that are considered covered products under this chapter are distinguished from uses that are not considered covered products under this chapter; 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 502 of this act).

(4) A producer may submit national or regional data allocated on a per capita basis for Washington to approximate the information required in subsection (3) of this section if state-level data is not available or feasible to generate.

(5) By May 1, 2025, and every May 1st thereafter, a producer responsibility organization must submit the packaging financial assistance fee to the department, as determined in section 112(7) of this act.

(6) By May 1, 2026, and every May 1st thereafter, a producer responsibility organization must submit an annual payment to the department for the projected annual costs of the department to conduct oversight, administration, and enforcement for the next fiscal year, as determined by the department in section 104 of this act, to fund all costs to implement, administer, and enforce this chapter and chapter 70A.--- RCW (the new chapter created in section 502 of this act), including rule making but excluding the financial assistance program created in section 112(7) of this act.

(7) By October 1, 2027, or 12 months after the completion of the statewide needs assessment under section 105 of this act, whichever is later, a producer responsibility organization must submit a plan to the department for approval consistent with the requirements of this chapter.

(a) A producer responsibility organization registered with the department as of July 1, 2027, must:

(i) Implement its approved plan by January 1, 2029, or within six months of plan approval, whichever is later;

(ii) Submit the annual postconsumer recycled content report to the department in July of each year beginning in 2026 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, 2030, and each July 1st thereafter.

(b) A producer responsibility organization registering for the first time with the department after July 1, 2027, 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.

(8) Nothing in this chapter requires any individual producer to redesign covered products to reduce waste or to be reusable, recyclable, or compostable, requires any individual covered product to be reusable, recyclable, or compostable, or authorizes the department or a producer responsibility organization to require any individual covered product to be reusable, recyclable, or compostable.

(9) Nothing in this chapter or chapter 70A.--- RCW (the new chapter created in section 502 of this act) authorizes the department or a producer responsibility organization to impose any requirement including, but not limited to, a recycled content requirement, in direct conflict with a federal law or regulation, including but not limited to:

(a) Laws or regulations covering tamper-evident packaging pursuant to 21 C.F.R. Sec. 211.132;

(b) Laws or regulations covering child-resistant packaging pursuant to 16 C.F.R. Sec. 1700.1, et seq.;

(c) Regulations, rules, or guidelines issued by the United States department of agriculture or the United States food and drug administration related to packaging agricultural commodities; and

(d) Requirements for microbial contamination, structural integrity, or safety of packaging, where no viable recyclable or compostable packaging that can meet the requirements exists, pursuant to:

(i) The federal food, drug, and cosmetic act (21 U.S.C. Sec. 301, et seq.);

(ii) 21 U.S.C. Sec. 2101, et seq.;

(iii) The federal food and drug administration food safety modernization act (21 U.S.C. Sec. 2201, et seq.);

(iv) The federal poultry products inspection act (21 U.S.C. Sec. 451, et seq.);

(v) The federal meat inspection act (21 U.S.C. Sec. 601, et seq.); or

(vi) The federal egg products inspection act (21 U.S.C. Sec. 1031, et seq.).

(10) A producer, producer responsibility organization, or other entity in the distribution chain of covered products is not exempted from state or federal laws prohibiting actions that are considered to be a restraint of trade, a conspiracy, or are otherwise deemed unlawful activities in violation of federal or state antitrust laws.

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 502 of this act).

(2)(a) By January 31, 2026, and every January 31st 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 502 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 grant program specified in section 112(7) 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 2027, 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 workload analysis prepared in January 2026 must include contractor costs identified in section 105 of this act. This portion of the fee amounts paid under the general order must be deposited in the account that paid for these costs.

(c) 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)(a) The department must review new, updated, and revised plans submitted by a producer responsibility organization 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 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 disapproval letter. If a new or revised plan submitted by a producer responsibility organization does not comply, the department may use the enforcement powers specified in section 123 of this act.

(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.

(4) The department must review annual reports submitted by a producer responsibility organization as required in section 119 of this act and under chapter 70A.--- RCW (the new chapter created in section 502 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 this chapter, taking into consideration comments received under (a) of this subsection, 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 disapproval letter;

(d) Notify a producer responsibility organization if the annual report demonstrates that the performance rates will not be achieved or the plan fails to achieve other significant requirements under this chapter.

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

(6) 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 producers in Washington supply, or have the potential to supply, significant quantities of covered products.

(7) 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;

(b) Identifies any noncompliant producers; and

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

(8) The department must administer the grant program specified in section 112(7) of this act.

(9) The department must create a model comprehensive solid waste plan amendment by January 1, 2028, for use by jurisdictions in lieu of updating, amending, or revising a plan consistent with the requirements of RCW 70A.205.045(7)(b)(i).

NEW SECTION. **Sec.**  STATEWIDE NEEDS ASSESSMENT. (1) To inform program implementation, the department must conduct 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) The statewide needs assessment must:

(a) Use the recycling rates from the department's *December 2023 Washington Recycling, Reuse, and Source Reduction Target Study and Community Input Process*;

(b) Use information and recommendations from the department's 2020 plastic packaging study reports;

(c) Use the department's uniform statewide collection lists for covered products established under section 107 of this act;

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

(e) Evaluate what new or expanded services and infrastructure are needed in each county and city planning under chapter 70A.205 RCW to meet the requirements of this chapter, including the convenience standards established under section 113 of this act and what the anticipated costs are for those additional services and infrastructure;

(f) Reference local solid waste management plans;

(g) Evaluate what additional actions and investments are needed to meet the requirements of this chapter;

(h) Evaluate system needs and opportunities to facilitate recycling of covered products back into covered products and encourage development of circular economic activity in the state and region;

(i) Evaluate how the state's recycling system can be managed in a socially just manner. This evaluation must include meaningful consultation with overburdened communities and vulnerable populations and include an assessment and recommendations on the following:

(i) Material recovery facility worker conditions, wages, and benefits;

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

(iii) Activities that disproportionately negatively impact any community and in particular overburdened communities and vulnerable populations; and

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

(j) Compile information from available data sources on the presence of toxic substances in covered products and their potential negative impacts on reuse, recycling, and composting systems. The information compiled is intended to inform the development of 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;

(k) 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;

(l) Evaluate the actions and investments that will be needed by jurisdictions planning under chapter 70A.205 RCW to update their plans to implement this act; and

(m) Any other information the department determines necessary to complete the needs assessment.

(3) The first statewide needs assessment must be completed by October 1, 2026, and must be consistent with the following requirements:

(a) The final scope of the statewide needs assessment must be determined in consultation with a producer responsibility organization that is registered with the department by June 30, 2025, the advisory council established in section 120 of this act, and the utilities and transportation commission.

(b) Prior to completion of the statewide needs assessment:

(i) The utilities and transportation commission, the advisory council established 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;

(ii) Each county and city planning under chapter 70A.205 RCW must have an opportunity to review and comment on the portions of the draft statewide needs assessment relevant to the jurisdiction.

(4)(a) In consultation with the advisory council established in section 120 of this act, the utilities and transportation commission, and registered producer responsibility organizations, the department may update the statewide needs assessment no sooner than every five years to inform the development of producer responsibility organization plans and performance rates. Any updates must include an evaluation of public place recycling needs at locations that are significant sources of covered product waste and that are additional to those locations identified under section 113 of this act and an evaluation of alternative recycling technologies that meet the criteria of section 110(5) of this act. These additional locations may not include public places and official gatherings at which a local government does not provide solid waste services or retail establishments.

(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.

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 associated with 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 the development of key plan elements. 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, each jurisdiction planning under chapter 70A.205 RCW, 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) A public comment period for no less than 60 days prior to its submission to the department;

(b) Documentation of all comments received and a 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; and

(c) An individualized consultation by the producer responsibility organization, after the completion of the needs assessment in section 105 of this act, with each county and city planning under chapter 70A.205 RCW, regarding the portions of the plan relevant to that city or county.

(4) Each producer responsibility organization must coordinate its plan development and implementation with:

(a) Other producer responsibility organizations in the state; and

(b) Organizations formed to implement the requirements of chapters 70A.500, 70A.505, 70A.510, 70A.515, 70A.555, and 69.48 RCW.

NEW SECTION. **Sec.**  UNIFORM STATEWIDE RECYCLING COLLECTION LISTS-PROGRAM PLAN CONTENTS. (1)(a) By October 1, 2025, and no later than 30 days after approving a new, updated, or revised producer responsibility organization plan, the department must identify the materials and methods for uniform statewide recycling collection of covered products. In doing so, the department must distinguish between:

(i) Materials determined to be suitable for residential curbside collection, whether in a comingled or in a separate container;

(ii) Materials for drop-off collection; and

(iii) Materials for alternative collection only.

(b) In determining whether a material is suitable for curbside, drop-off, or alternative collection, the department shall consider:

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

(ii) Environmental health and safety considerations;

(iii) The anticipated yield loss for the material during the recycling process;

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

(v) The amount of the material available;

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

(vii) Contamination;

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

(ix) Economic factors;

(x) Environmental factors from a life-cycle perspective; and

(xi) The policy expressed in RCW 70A.205.010.

(c)(i) Except as described in (c)(ii) of this subsection, a material that is not identified as suitable for residential curbside collection may not be collected as part of a curbside recycling program.

(ii) A covered product that is not identified as suitable for residential curbside collection may be temporarily collected as part of a curbside recycling program and qualify for reimbursement if:

(A) The covered product is collected as part of a pilot program agreed to by the service provider, the government entity under whose authority the service is provided, and the producer responsibility organization;

(B) The pilot program is of limited duration; and

(C) The pilot program is conducted in a limited area.

(2) A producer responsibility organization may propose a covered product for addition to the list of materials for uniform statewide recycling collection as part of a producer responsibility organization plan. In considering the addition of a covered product proposed by a producer responsibility organization, the department shall consider the same criteria as those established under subsection (1)(b) of this section.

(3) The department must by rule determine the plan contents required to be included in a producer responsibility organization plan. Plan contents must address all aspects of responsibilities assigned to producers and producer responsibility organizations in this chapter and how the producer responsibility organization will carry out activities to fulfill such responsibilities and must provide information about services and other relevant details for each county and city planning under chapter 70A.205 RCW.

NEW SECTION. **Sec.**  PLAN APPROVAL, UPDATES, AND REVISIONS. (1)(a) The initial plan due to be submitted under section 103(7) of this act, and updated plans, must address five calendar years.

(b) A producer responsibility organization must submit an updated plan to the department, one year prior to the expiration of any plan.

(c) If the performance rates set in a producer responsibility organization plan 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. The evaluation must provide information for the producer responsibility organization to use to target and improve program outcomes relative to the approved performance rates. The evaluation must be submitted to the department with an updated plan.

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

(d) 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(7) 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 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 under this chapter 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)(a) Owners or operators of a material recovery facility that manages covered products under this chapter must ensure that workers at the facility are paid not less than the prevailing rate of wage for the same trade or occupation, as defined by the department of labor and industries. "Prevailing rate of wage" includes the hourly wage, usual benefits, and overtime paid in the locality as defined in RCW 39.12.010.

(b) Counties, cities, and companies that hold an applicable certificate issued by the utilities and transportation commission may only deliver or arrange for the delivery of covered products collected from residences as recyclable material to a material recovery facility that meets the requirements of this section.

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

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

(b) Promote and facilitate reuse of covered products;

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

(d) Prioritize agreements with material recovery facilities handling covered products regarding long-term contracts and other purchase agreements based on fair market pricing for commodities of comparable quality;

(e)(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 material recovery facilities or other processing facilities were preexisting, planned, or under construction as of plan approval.

(5)(a) The department must, in consultation with representatives from overburdened communities, the advisory council established in section 120 of this act, service providers, municipalities, state agencies, alternative recycling technology providers, and others, approve or deny a proposal by a producer responsibility organization to count towards recycling performance rates materials sent to facilities that use an alternative recycling process for conversion of plastic covered products for the purpose of producing recycled material.

(b) The department must establish a process by which a producer responsibility organization may propose to count towards recycling performance rates materials sent to a facility that uses an alternative recycling process.

(c) The department may only approve the producer responsibility organization's proposal to count towards recycling performance rates the materials sent to a facility that uses an alternative recycling process if the department determines that the alternative process meets all of the following criteria:

(i) Does not include combustion, fuel production, and other forms of energy recovery of plastic covered products in processing or disposal;

(ii) Provides equal or better protection for the environment and human health relative to recycling processes that occur through purely mechanical means, including as measured against all of the following criteria:

(A) Release or generation of air and water pollutants or any hazardous pollutants;

(B) Generation of hazardous waste;

(C) Energy use and generation of greenhouse gases;

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

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

(F) Public health impacts; and

(G) Capture and recycling rates;

(iii) Reduces gaps in collection, recycling, and composting services at covered entities;

(iv) Meets an unmet need in the state that will result in meeting recycling performance targets, including creating new recycling markets for materials currently disposed of in landfills or incinerated;

(v) Provides third-party certification of recycled content; and

(vi) Those other environmental impacts as determined by the department.

(d)(i) In making its determination under (c) of this subsection, the department must take into consideration any local, state, or federal environmental permitting requirements that govern the operation of an alternative recycling process that reduces air and water pollutants or the generation of hazardous waste or pollutants. The department must also take into consideration whether the alternative process produces food-grade or pharmaceutical grade recycled content.

(ii) The department must publish a determination on the producer responsibility organization's proposal, detailing why it was approved or denied and how it measured against the criteria listed in (c) of this subsection. The department must also conduct a public review process for at least 60 days.

(iii) A person may appeal a decision by the department under this subsection (5)(d) to the pollution control hearings board.

(e) The department must, no more frequently than every five years, require the producer responsibility organization to provide any updated information deemed necessary that demonstrates that the alternative process is continuing to meet the requirements of this section. If the facility fails to meet the requirements of this section, the department shall prohibit the producer responsibility organization from counting material sent to the alternative recycling facility towards recycling performance rates.

(f) Nothing in this chapter prohibits or affects the use of any alternative recycling process for products or packaging that are not covered products under this chapter.

(6)(a) Material recovery 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 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 negative impacts on other waste streams or facilities;

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

(vii) Any violations of existing permits, regarding emissions to air and water, and the status of those permit violations; and

(viii) Labor metrics including wages, unions, and workforce demographics.

(b) All data reported to the department by material recovery facilities under this subsection must, at the request of the department, be audited by an independent third party.

(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.

(7) Material recovery facilities and other processing facilities handling materials under this chapter 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) Any producer responsibility organization plan submitted to the department must include performance rates for covered products reported by the producer responsibility organization as supplied into the state, taking into account the findings of the *December 2023 Washington Recycling, Reuse, and Source Reduction Target Study and Community Input Process*, 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 the following performance rates averages across all covered products within a registered producer responsibility organization:

(i) An overall recycling rate of covered products;

(ii) Beginning with the second plan, a separate minimum reuse rate of covered products;

(iii) A 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 by the elimination of covered product components or a reduction in the weight of covered products, with at least 25 percent of the total rate being achieved by solely eliminating plastic components. Source reduction to achieve this rate cannot be achieved by shifting the material to plastic. Producers that make reductions in plastic components by replacement with other materials must not be required by a producer responsibility organization to reduce the weight of the replacement materials. The elimination of covered product components or a reduction in weight must not render the covered material nonrecyclable or be detrimental to recycling. This source reduction rate must calculate the amount of covered material the producers have source reduced from a baseline year of 2023, and the producer responsibility organization must provide credit to individual producers for source reductions achieved since January 1, 2013. If the elimination of covered product components or a reduction in the weight of covered products is not possible by an individual producer, for an individual covered product or specific covered material and product type combination, due to technological infeasibility or conflict with federal law or regulations, that covered product or products must be excluded from the baseline calculation under this subsection.

(b) Proposed rates must demonstrate continuous improvement in performance rates of covered products over time, until the department determines that a maximum level of technically achievable process has been achieved.

(c) Proposed rates must adhere to the performance rate calculation methodology established in subsections (2) through (4) of this section.

(d) Proposed rates must be justified, if they are different from those recommended in the most recent performance rates study.

(2) For the purposes of this chapter, the department must adopt rules for measuring the performance rates of each material category of covered products.

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

(4) 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 a category of small producers, determined by weight of covered products sold into the state, for whom no fees are charged by the producer responsibility organization.

(b) The fee system may include:

(i) 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 502 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 502 of this act), including funding the oversight of the department; and

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

(c) 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) The fee system must include a base rate designed to differentiate between types of covered products and the materials and formats that comprise these covered products. Any membership fees charged for different covered product types, materials, and formats must be proportional to the costs to the producer responsibility organization for that covered product type, material, or format. In establishing the base rate, 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) In addition to the base rate charged under subsection (4) of this section, the fee system must use eco-modulation factors to incentivize the use of packaging design attributes that reduce the negative environmental impacts of covered products. The factors must include both positive incentives, including discounted fees, and disincentives, including increased fees. 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 climate and other negative environmental impacts of covered products.

(b)(i) 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.

(ii) Any system of program fees under this section must consider and provide fair treatment to instances in which federal regulations constrain the use of packaging design attributes that reduce the negative environmental impacts of covered products.

(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 502 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.

(7)(a) Each producer responsibility organization must fund, through a fee paid to the department, the costs to the department to establish and implement a packaging financial assistance program to reduce the negative environmental impacts of covered products through reuse. The fee charged to any producer responsibility organization may not exceed:

(i) $5,000,000 each year, beginning with the year of producer responsibility organization registration with the department under section 103 of this act through the year 2028;

(ii) Four percent of the three-year average of the organization's annual expenditures, excluding payments of the fee established under this section, as described in the organizations' annual reports submitted under section 119 of this act, beginning in 2029.

(b) Fees to administer the packaging financial assistance program collected under this subsection must be deposited in the packaging financial assistance account created in section 128 of this act.

(c) Entities eligible for financial assistance include, but are not limited to:

(i) Government entities;

(ii) Tribal governments;

(iii) Nonprofit organizations; and

(iv) Private organizations, if the department determines that the money would be used to support the goals of this chapter.

(d) In providing financial assistance for programs under this section, the department must consider criteria that includes, but is not limited to:

(i) The environmental benefits of the program;

(ii) The human health benefits of the program;

(iii) The social and economic benefits of the program;

(iv) The cost-effectiveness of the program; and

(v) The needs of economically distressed or overburdened communities.

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 lists of covered products designated for collection by the department as described in section 107 of this act. Convenient collection services must be available to residents as follows:

(a) Curbside collection of materials identified as suitable for residential curbside collection must be provided to residents in single-family and multifamily residences wherever curbside garbage collection services are provided to these entities, except where a county has adopted an ordinance that designates that these materials must be collected exclusively through drop-off locations as allowed in section 114 of this act.

(b) Collection of materials identified as suitable for drop-off collection must be provided through free and equitable access to permanent collection facilities that are located, at minimum, at 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, that existed prior to the effective date of this section.

(c) Collection of materials identified as suitable for alternative collection only must be provided through collection services that provide free and equitable access to residents at a minimum:

(i) Consistent with the requirements described in (b) of this subsection applicable to materials suitable for drop-off collection; and

(ii) In communities that are not covered by a collection location described in (c)(i) 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 or services to be provided in underserved areas. A producer responsibility organization must give special consideration for providing opportunities to island and geographically isolated populations.

(d) 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.

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

(i) Any location where government entities provided and managed recycling collection receptacles as of July 1, 2024. 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) Collection of source separated recyclable materials through drop-off collection, alternative collection, and public place collection must be provided in a manner consistent with the authority of a city or town under RCW 35.21.120, of a county under RCW 36.58.040, or under chapter 81.77 RCW. A producer responsibility organization shall contract with existing recycling depots or drop-off center locations, including existing solid waste facilities, to provide for collection of covered products designated for drop off or alternate collection if the existing facility meets all of the following conditions:

(a) The operator of the existing recycling depot or drop-off center is willing to contract to provide collection service on behalf of the producer responsibility organization; and

(b) The operator of the existing recycling depot or drop-off center commits to meet standards and other requirements to meet goals consistent with this chapter.

(4) Every producer responsibility organization must identify in its plan and on its website, in appropriate languages, maps of each area where curbside, drop-off, 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 city or town that has previously exercised authority under RCW 35.21.120 or a county that has exercised authority under RCW 36.58.040 to contract for residential curbside recycling services, where the terms of the contract are legally enforceable as of the effective date of this section, and the contracted service provider shall make reasonable, good faith efforts to negotiate provisions or changes to contract terms consistent with the goals of this chapter, limited to those that pertain to service standards for the purpose of cost reimbursement as described in section 115 of this act, and that do not materially affect other provisions of the contract.

(3)(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)(i) A city or town that exercises authority under RCW 35.21.120 or a county under RCW 36.58.040 to contract for residential curbside recycling services is not restricted from providing service standards for curbside collection of source separated recyclable materials from residences that exceeds the service standards for curbside collection included in a producer responsibility organization plan approved by the department, but a producer responsibility organization is not obligated to reimburse costs associated with the additional service standards.

(ii) For the purposes of this subsection (3)(c), "service standards" has the same meaning as referred to in RCW 70A.205.045(7).

(4) 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.

(5) A county may, by ordinance, direct that the full list of materials on the uniform statewide collection list identified as suitable for residential curbside collection be collected exclusively through drop-off locations 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.

(6) 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.

(7) 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, planning, 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 informed by the costs established in the statewide needs assessment and included 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 informed by the costs established in the statewide needs assessment and included 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. (1) 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 for each residential customer to whom service is provided. The rate of reimbursement must be in accordance with the rates approved by the commission and in accordance with rules for solid waste collection company reimbursement established by the commission as described in section 306 of this act, including all associated taxes and fees that would be otherwise charged to residential customers directly or indirectly for recycling service.

(2) To be eligible for reimbursement from a producer responsibility organization under this section, the company granted a certificate must provide service that:

(a) Is offered to residents in single-family and multifamily residences wherever curbside garbage collection services are offered, except in areas subject to an ordinance described in section 114(5) of this act;

(b) Includes collection of all covered products designated for curbside collection by the department; and

(c) Is provided in a manner consistent with the requirements of chapter 70A.205 RCW for curbside collection services of source separated recyclable materials from residences and with chapter 81.77 RCW.

(3) A solid waste collection company may include text on service bills indicating that recycling services are being provided at no charge to the customer.

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, recycling, or composting of covered products not currently reused, recycled, or composted, such as:

(a) Providing funding for the purchase and installation of new equipment or infrastructure or for upgrades to existing equipment or infrastructure to improve sorting of covered products or mitigating the negative impacts of covered products to other commodities at existing material recovery facilities that accept covered products;

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

(c) Providing funding for the purchase and installation of new equipment or infrastructure or for upgrades to existing equipment or infrastructure to meet the goals of this chapter for:

(i) Solid waste collection companies regulated under chapter 81.77 RCW;

(ii) Providers of curbside solid waste collection services under a contract with a city under chapter 35.21 RCW or a county under chapter 36.58 RCW; and

(iii) A government entity that elects to provide its own curbside collection of source separated recyclable materials from residences.

(2)(a) Investments must be detailed in the annual report submitted to the department in the manner specified in section 119 of this act.

(b) In meeting the requirements of this section, a producer responsibility organization must prioritize investments in preexisting infrastructure within Washington state.

(c) 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.

(3) The direct or indirect receipt of funds from a producer responsibility organization under this chapter does not confer any inherent ownership or interest to the producer responsibility organization in any asset or company to which producer responsibility funds are directed and does not confer any inherent right to control use of any asset or company operations.

NEW SECTION. **Sec.**  EDUCATION AND OUTREACH. (1) A producer responsibility organization must implement education and outreach activities that effectively reach diverse residents, are accessible, are clear, and support the achievement of the performance rates. A producer responsibility organization must, at minimum:

(a) Develop and provide outreach and educational materials, resources, and campaigns that encourage participation in recycling collection and reuse systems and address education and engagement with residents. The outreach and education materials must support recycling and reuse behaviors;

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

(c) Provide information that helps reduce the rate of inbound contamination or unwanted materials with the aim of reducing resident confusion regarding the end-of-life management options available for different covered products;

(d) Use consistent and easy to understand messaging and education statewide;

(e) 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 and in collaboration with youth organizations engaged in recycling promotion, waste reduction, or similar activities;

(f) Develop education and outreach materials that are able to be used by retail establishments, collectors, government entities, schools, institutions, youth organizations, and nonprofit organizations;

(g) 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;

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

(i) 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 REPORT. (1) Beginning July 1, 2030, and each July 1st thereafter, a producer responsibility organization must submit an annual report to the department for the preceding calendar year of plan implementation.

(2) The annual report must include specified information related to the activities and responsibilities of the producer responsibility organization under this chapter, as determined by the department by rule.

(3)(a) The annual report must include 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, material recovery facilities, and other approved entities for services under chapter 70A.--- (the new chapter created in section 502 of this act).

(b) 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 or internationally recognized, independent laboratory or certification body that has received ISO/IEC 17065 accreditation as it existed as of January 1, 2024, or a similar accreditation as determined by the department.

(c) 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 advisory 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, 2025. In appointing members, the department shall:

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

(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 statewide needs assessment prior to its completion;

(c) Review and comment on draft lists developed under section 107 of this act and any updates to the collection lists;

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

(e) Review and comment on all new and updated plans submitted by a producer responsibility organization 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;

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

(g) 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;

(h) Provide input, review, and comment on rules proposed by the department under this chapter; and

(i) As part of the review of producer responsibility annual reports, review the implementation by producers and producer responsibility organizations of their obligations under this chapter and provide comment to the department if the advisory council finds that a producer or producer responsibility organization has not met or is not meeting a requirement under this chapter. The advisory council may submit a request to the department, stating the violation and supported with documentation, to take the enforcement actions specified in section 123 (1), (2), or (5) of this act.

(9) Prior to the submission of a plan or plan update to the department, each producer responsibility organization must submit the plan to the advisory council for review and comment. The producer responsibility organization must address each comment and respond as to whether and how each was incorporated into the plan submitted to the department.

(10) 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.

(11) The department must include costs related to the advisory council in the estimate of annual costs as established in section 104 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 (10) of this section.

(12) Nothing in this section limits the authority of the department to approve plans or reports or carry out other duties as assigned under this chapter.

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 or chapter 70A.--- RCW (the new chapter created in section 502 of this act) 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 producer who violates this chapter or on any producer responsibility organization that violates this chapter 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 the producer responsibility organization has not met a significant requirement of this chapter or chapter 70A.--- RCW (the new chapter created in section 502 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) A person may not sell or distribute in or into the state a covered product of a producer that is not participating in a producer responsibility organization or that is not in compliance with the requirements of this chapter or rules adopted under this chapter.

(5) The department shall serve, or send with delivery confirmation, a written warning explaining the violation to a person distributing or selling covered products in or into the state of a producer that is not participating in a producer responsibility organization or that is not in compliance with this chapter or rules adopted under this chapter.

(6) The department may assess a penalty on a person that continues to sell or distribute covered products of a producer that is not participating in an approved producer responsibility organization 60 days after receipt of the written warning under subsection (5) of this section. The amount of the penalty that the department may assess under this subsection is twice the value of the covered products sold in violation of this chapter or $500, whichever is greater. The department must waive the penalty upon verification that the person has discontinued distribution or sales of the covered product within 30 days of the date the penalty is assessed.

(7) Any person who incurs a penalty under subsection (1) or (6) 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.

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

(9) Upon receipt of a request from the advisory council established in section 120 of this act, the department must consider the appropriateness of the use of enforcement authority authorized in this section.

NEW SECTION. **Sec.**  TRUTH IN LABELING. (1) Beginning January 1, 2028, 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 PCRC product under chapter 70A.245 RCW, or PCRC product under chapter 70A.--- RCW (the new chapter created in section 502 of this act) that makes a deceptive or misleading claim about its recyclability, percentage of recycled content, or, consistent with chapter 70A.455 RCW, its ability to be composted.

(a) A covered product, certified PCRC product, or PCRC product that displays a chasing arrows symbol, a chasing arrows symbol surrounding a resin identification code, or any other symbol or statement indicating that it is recyclable is deemed to be deceptive or misleading unless it is designated for collection by the department as described in section 107 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)(a) 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.

(b) In the plan submitted under section 107 of this act, a producer responsibility organization must outline guidance to producers for compliance with the requirements of this section.

(3) Beginning August 1, 2024, a city, town, or county may not enforce an ordinance restricting the distribution or sale of covered products, certified PCRC products, or PCRC products due to displaying a chasing arrows symbol, a chasing arrows symbol surrounding a resin identification code, or any other symbol or statement indicating that it is recyclable if the covered product is, at the time that the claim is made:

(a) Designated for collection 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.**  OTHER. Nothing in this act impacts an entity's eligibility for any state or local incentive or assistance program to which they are otherwise eligible. Nothing in this act limits the authority of private parties or government entities to enter into contracts.

NEW SECTION. **Sec.**  ACCOUNT. The responsible packaging management account is created in the custody of the state treasurer. All receipts received by the department under this chapter and chapter 70A.--- RCW (the new chapter created in section 502 of this act), except those specified for deposit in the recycling enhancement account created in RCW 70A.245.100 and those specified for deposit in the packaging financial assistance account created in section 128 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 502 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 under the poison prevention packaging act of 1970; 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 502 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.

NEW SECTION. **Sec.**  PACKAGING FINANCIAL ASSISTANCE ACCOUNT. The packaging financial assistance account is created in the custody of the state treasurer. All receipts received by the department under section 112(7) 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 must be used by the department only for implementing and administering the packaging financial assistance program established in section 112(7) 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 nutrition to meet nutritional needs due to special dietary needs directly related to cancer, chronic kidney disease, diabetes, malnutrition, and failure to thrive, as those terms are defined by the international classification of diseases, 10th revision, or other medical conditions as determined by the department.

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

(3) "Brand" means a name, symbol, word, logo, or mark that identifies an item and attributes the item and its components, including packaging, to the brand owner of the item 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; or

(b) That have a global gross revenue of less than $5,000,000, not including on-premises alcohol sales, 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 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 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, beginning January 1, 2026.

(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 or nonprescription drugs, and dietary supplements as defined in RCW 82.08.0293, and packaging used for those products;

(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; and

(iv) Liners, corks, closures, labels, and other items added externally or internally but otherwise separate from the structure of the bottle or container, other than a cap or lid.

(16)(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 plastic 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 recycled 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 item is sold in or with packaging under the brand of the item manufacturer or is sold in packaging that lacks identification of a brand, the producer is the person that manufactures the item;

(ii) If there is no person to which (a)(i) of this subsection applies, the producer is the person that is licensed to manufacture and sell or offer for sale to consumers in this state an item with packaging under the brand or trademark of another manufacturer or person;

(iii) If there is no person to which (a)(i) or (ii) of this subsection applies, the producer is the brand owner;

(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 is the importer of record for the item into the United States for use in a commercial enterprise that sells, offers for sale, or distributes the item in this state;

(v) If there is no person described in (a)(i) through (iv) of this subsection, the producer is the person that first distributes the item in or into this state;

(vi) A person is a "producer" of a PCRC product sold, offered for sale, or distributed in or into this state, as defined in (a)(i) through (v) of this subsection, except where another person has mutually signed an agreement with a producer as defined in (a)(i) through (v) of this subsection that contractually assigns responsibility to the person as the producer, and the person has joined a registered producer responsibility organization as the responsible producer for that PCRC product under this chapter. In the event that another person is assigned responsibility as the producer under this subsection, the producer under (a)(i) through (v) of this subsection must provide written certification of that contractual agreement to the producer responsibility organization; or

(vii) If the producer described in (a)(i) through (v) of this subsection is a business operated wholly or in part as a franchise, the producer is the franchisor, if that franchisor has franchisees that have a commercial presence within the state.

(b) "Producer" does not include:

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

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

(iii) De minimis producers.

(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;

(iii) Thermoform plastic containers; or

(iv) 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 or nonprescription 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, 2029.

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 a 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) A producer responsibility organization may demand from participating producers and 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, not including on-premises alcohol sales;

(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, 2026, and each January 1st thereafter, a producer responsibility organization under chapter 70A.--- RCW (the new chapter created in section 501 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 and pay the department an annual fee under the methods established in chapter 70A.245 RCW, as it existed as of January 1, 2024, until a producer responsibility organization registers with the department under chapter 70A.--- RCW (the new chapter created in section 501 of this act), after which time each producer of PCRC products must either join a registered producer responsibility organization and comply with the requirements of this chapter through that producer responsibility organization, or must register with the department as an individual producer responsibility organization for purposes of compliance with chapter 70A.--- RCW (the new chapter created in section 501 of this act) and this chapter.

(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.

(c) A producer may report multiple brand employer identification numbers under a single account to the producer responsibility organization, provided that required information for each brand employer identification number is listed separately.

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

(a) Beginning January 1, 2023, 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, 2027, 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 other information deemed necessary by the department to ensure an effective program that is in compliance with all applicable laws and rules.

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) For products manufactured between January 1, 2023, through December 31, 2025: No less than 15 percent PCRC plastic by weight;

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

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

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

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

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

(3) Products manufactured 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) Products manufactured between January 1, 2027, through December 31, 2030: No less than 10 percent PCRC plastic by weight; and

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

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

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

(b) Products manufactured 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: Products manufactured 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 501 of this act). Fees collected by the producer responsibility organization from producers must be assessed to incentivize the use of PCRC material within each product category, including fee credits for PCRC by resin type reported to the producer responsibility organization.

(2) Beginning July 1, 2026, and each July 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 PCRC 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) Pounds of imported PCRC by country of origin;

(e) 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)(i) A producer must maintain a certificate of compliance for purposes of oversight by the department identifying each PCRC product of the producer that is in compliance with postconsumer requirements under this chapter. No later than six months prior to the initial effective dates of the requirements of sections 203 through 208 of this act, a producer responsibility organization shall evaluate if there are adequate and commercial feasible third-party certifications for PCRC for each PCRC product category with requirements and report to the department on the adequacy of these certifications with a recommendation for their adoption. The department shall have 60 days to respond to the producer responsibility organization to approve, partially approve, deny, or request additional information on their recommendation.

(ii) If adequate third-party certifications are deemed to exist by the producer responsibility organization and the department, the certificate of compliance must be conducted by a third-party certification entity, stating that the PCRC 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.

(iii) If no adequate third-party certifications are deemed to exist by the producer responsibility organization and the department, the department may request a producer responsibility organization to reevaluate the availability of certification programs at a future time.

(c) If compliance with minimum recycled content requirements is achieved through an adjustment, extension, or temporary exclusion made pursuant to section 210 of this act, the certificate must state the specific basis upon which the adjustment, extension, or temporary exclusion 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 a person is 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 a separate submission in February of each year in advance of the effective dates in sections 204 through 208 of this act, petition for an extension, temporary 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 extension, 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 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(3) of this act.

(d) 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(5) of this act.

(5) The department must review and determine whether to approve PCRC reports under this section and petitions under section 210 of this act submitted by producer responsibility organizations. The department must:

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

(b) Make a determination as to whether or not an annual report meets the requirements of this section or a separately submitted petition meets the requirements of section 210 of this act and notify the producer responsibility organization of the:

(i) Determination of approval of the PCRC annual report or a separately submitted petition for a rate adjustment, extension, or temporary exclusion; or

(ii) Reasons for not approving the PCRC annual report or separately submitted petition. 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 or a separately submitted petition submitted by each producer responsibility organization under this section on its website.

NEW SECTION. **Sec.**  EXTENSIONS, ADJUSTMENTS, AND TEMPORARY EXCLUSIONS TO PCRC RATES. (1) In response to a petition received from the producer responsibility organization under section 209 of this act, the department has 60 days to review and determine for the following calendar year whether to extend, adjust, or temporarily exclude the minimum PCRC percentage required for a type of container or PCRC product or category of PCRC products under this chapter.

(2) PCRC rate extensions may only be requested for the PCRC requirements in sections 204 (1)(c) and (2)(c), 205(3), 206(2), 207 (1)(b) and (2)(b), and 208(1)(b) of this act. The producer responsibility organization must include an assessment of market conditions and PCRC availability and the technological feasibility of these requirements. The department must consider these factors in the assessment in making a determination to extend a PCRC rate pursuant to subsection (1) of this section.

(3)(a) Petitions for a rate adjustment must include credible evidence on the pertinent following factors, and when making their determination, the department must consider, at a minimum:

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

(ii) Recycling rates;

(iii) The availability of recycled plastic suitable to meet the minimum PCRC requirements, 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 PCRC requirements in PCRC 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

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

(b) 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.

(c) 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 producer responsibility organization may submit a petition to the department for a temporary exclusion from minimum PCRC requirements for any types of PCRC products in plastic containers providing credible evidence that the 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 achievement of PCRC requirements in the container material is not technologically feasible.

(5)(a) The department shall review extension, adjustment, and temporary exclusion requests from the producer responsibility organization within 60 days of the request and approve, partially approve, deny, or request additional information to evaluate the extension request.

(b) The department may renew an approved extension, adjustment, or temporary exclusion, upon request of the producer responsibility organization and submission of data demonstrating that the conditions justifying the current extension, adjustment, or temporary exclusion remain in place.

(c) If an extension, adjustment, or temporary exclusion is granted, the producer responsibility organization may include in its annual report, any potential need to revise these requirements, prior to the expiration of an extension period.

(6) A producer responsibility organization must continue to provide producer registration data and report consistent with the requirements of this chapter for PCRC products granted an extension, adjustment, or temporarily exclusion from minimum PCRC requirements under this subsection.

(7) A producer or producer responsibility organization may appeal a decision by the department to extend or adjust PCRC percentages under this section or to temporarily exclude PCRC 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 not 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~~)) nutrition to meet nutritional needs due to special dietary needs directly related to cancer, chronic kidney disease, diabetes, malnutrition, or failure to thrive, as those terms are defined by the international classification of diseases, 10th revision, or other medical conditions as determined by the department.

(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) "Department" means the department of ecology.

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

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

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

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

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

(b) Household cleaning products;

(c) Liquid soap;

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

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

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

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

((~~(13)~~)) (12) "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)~~)) (13) "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)~~)) (14)(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)~~)) (15) "Plastic trash bag" means a bag that is made of noncompostable plastic, is at least 0.70 mils thick, and is designed and manufactured for use as a container to hold, store, or transport materials to be discarded or recycled, and includes, but is not limited to, a garbage bag, recycling bag, lawn or leaf bag, can liner bag, kitchen bag, or compactor bag. "Plastic trash bag" does not include any compostable bags meeting the requirements of chapter 70A.455 RCW. "Plastic trash bag" does not include any reusable plastic carryout bag meeting the requirements of RCW 70A.530.020(6)(b).

((~~(17) "Plastic trash bag~~)) (16) "Certified PCRC product manufacturing industry" means an association that represents companies that manufacture ((~~plastic trash bags~~)) a certified PCRC product.

((~~(18)~~)) (17) "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)~~)) (18)(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~~)) or certified 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 item manufacturer or is sold in packaging that lacks identification of a brand, the producer is the person that manufactures the product;

(ii) If there is no person to which (a)(i) of this subsection applies, the producer is the person that is licensed to manufacture and sell or offer for sale to consumers in this state an item with packaging under the brand or trademark of another manufacturer or person;

(iii) If there is no person to which (a)(i) or (ii) of this subsection applies, the producer is the brand owner;

(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 is the importer of record for the item into the United States for use in a commercial enterprise that sells, offers for sale, or distributes the product in this state; or

(v) If there is no person described in (a)(i) through (iv) of this subsection, the producer is the person that first distributes the item in or into this state.

(b)(i) A person is a "producer" of a covered product or certified PCRC product sold, offered for sale, or distributed in or into this state, as defined in (a)(i) through (v) of this subsection, except where another person has mutually signed an agreement with a producer as defined in (a)(i) through (v) of this subsection that contractually assigns responsibility to the person as the producer, and the person has joined a registered producer responsibility organization as the responsible producer for that covered product or certified PCRC product under this chapter. In the event that another person is assigned responsibility as the producer under this subsection, the producer under (a)(i) through (v) of this subsection must provide written certification of that contractual agreement to the producer responsibility organization;

(ii) If the producer described in (a)(i) through (v) of this subsection is a business operated wholly or in part as a franchise, the producer is the franchisor, if that franchisor has franchisees that have a commercial presence within the state.

((~~(b)~~)) (c) "Producer" does not include:

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

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

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

~~(A) Less than one ton of 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~~)) For covered products, de minimis producers as defined in section 102 of this act.

((~~(20)~~)) (19)(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)~~)) (20)(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.

(21) "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, in plastic containers, 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 501 of this act) and 70A.--- RCW (the new chapter created in section 502 of this act);

(b) Plastic trash bags; and

(c) Plastic plant pots or trays.

(22) "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)~~)) (7) 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)~~)) (6) 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 until a producer responsibility organization takes on such duties under chapter 70A.--- RCW (the new chapter created in section 502 of this act) on January 1, 2026, 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~~)) until January 31, 2025, 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 until April 1, 2025, 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~~)) in a plastic beverage container, except wine in 187 milliliter plastic beverage containers and dairy milk, must achieve no less than 15 percent postconsumer recycled content plastic by weight 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)~~)) for products manufactured between January 1, 2023, through December 31, 2025((~~: No less than 15 percent postconsumer recycled content plastic by weight;~~

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

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

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

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

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

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

(5) A producer of household cleaning and personal care products in plastic containers must meet the following annual minimum postconsumer recycled content percentage on average for the total quantity of plastic containers, by weight, that are sold, offered for sale, or distributed in or into Washington by the producer and manufactured between January 1, 2025, through December 31, 2025: No less than 15 percent postconsumer recycled content plastic by weight.

(6) 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. and that are excluded from the requirements of chapters 70A.--- (the new chapter created in section 501 of this act) and 70A.--- RCW (the new chapter created in section 502 of this act) in plastic containers that are in direct contact with the regulated product 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) Products manufactured between January 1, 2025, through December 31, 2027: No less than 15 percent postconsumer recycled content plastic by weight;

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

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

((~~(6)~~)) (7) 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) Products manufactured between January 1, 2023, through December 31, 2024: No less than 10 percent postconsumer recycled content plastic by weight;

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

(c) ((~~On~~)) Products manufactured 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, review and determine for the following year whether to adjust the minimum postconsumer recycled content percentage required for a type of container or product or category of covered products pursuant to subsection (4), (5), or (6) of this section. The department's review may be initiated by the department or at the petition of a producer or a covered product manufacturing industry not more than once annually. When submitting a petition, producers or a producer manufacturing industry must provide necessary information that will allow the department to make a determination under (b) of this subsection.~~

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

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

~~(ii) Recycling rates;~~

~~(iii) The availability of recycled plastic suitable to meet the minimum postconsumer recycled content requirements pursuant to subsection (4), (5), or (6) 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)~~)) (8) 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 plastic plant pots or trays, by weight, that are sold, offered for sale, or distributed in or into Washington by the producer effective:

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

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

(9)(a) The department must manage requests by producers under this chapter for a PCRC rate adjustment, extension, or temporary exclusion in a manner consistent with the procedures for the submission and review of rate adjustments, extensions, or temporary exclusions by producer responsibility organizations under section 209 of this act. Subsections (b), (c), and (d) of this subsection provide specific additional provisions applicable to the rate adjustments, extensions, or temporary exclusions allowed under this chapter.

(b) 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)~~)) (6) of this section or below a minimum of 10 percent.

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

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

~~(8) 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~~)) Any exclusion for a product regulated under 7 U.S.C. Sec. 136 et seq. must be granted for a period of four years from the date of department approval.

((~~(9)~~)) (10) 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 RCW 70A.245.060 is subject to penalties established in RCW 70A.245.040.

((~~(10)~~)) (11)(a) A city, town, county, or municipal corporation may not implement local recycled content requirements for ((~~a covered product that is~~)) certified PCRC products or covered 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 or covered 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) In-state distributors, wholesalers, and retailers in possession of ((~~covered products~~)) certified PCRC products or covered products manufactured before the date that postconsumer recycled content requirements become effective may exhaust their existing stock through sales to the public.

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

(1)(a) Except as provided in (b) ((~~and (c)~~)) of this subsection, ((~~beginning~~)) on April 1, 2024, and April 1, 2025, 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.

(d) A plastic trash bag producer must develop a certificate of compliance within one year of the beginning of postconsumer recycled content requirements applicable to a plastic trash bag, 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. The producer 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.

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

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

(4)(a) The certificate of compliance must be signed by an authorized official of the producer unless the certificate is provided by a third-party certification entity.

(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 a person is 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) For covered products:

(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) For certified PCRC products:

(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.

(7) 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.

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

((~~(7)~~)) (9) 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~~)) Until December 31, 2025, the department may conduct audits and investigations for the purpose of ensuring covered product compliance with RCW 70A.245.020 and 70A.245.040 based on the information reported under RCW 70A.245.030.

(2) ((~~The~~)) Until December 31, 2025, 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) 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 and 211 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 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 502 of this act) and this chapter, and for plastic collection bins subject to section 221 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.

(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, 2026, the percentage of postconsumer recycled content that the plastic trash bag contains in accordance with 16 C.F.R. Part 260, as it existed as of the effective date of this section; or

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

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

(b) For the purposes of this subsection:

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

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

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

ROLL CARTS.

(1) Beginning January 1, 2025, a manufacturer or person may only sell, offer for sale, or distribute for use in Washington plastic collection bins made from at least 25 percent postconsumer recycled content. However, a person providing solid waste collection services may distribute for use in Washington any plastic collection bins that were in use or in its inventory in Washington state prior to January 1, 2025, until the end of such a bin's useful life.

(2) A person with an existing municipal contract for plastic collection bins that was in place prior to August 1, 2024, is exempt from this section until the expiration or renewal date of the contract. A new or renewed contract whose terms take effect after August 1, 2024, must be consistent with the requirements of this section. Exempt persons are encouraged to meet the requirements of this section as collection bins are replaced under existing contracts.

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

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

**Part Three**

**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:

(1) 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)~~)) (a) 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;

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

((~~(3)~~)) (c) 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)~~)) (d) 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)~~)) (e) To provide technical and financial assistance to local governments in the planning, development, and conduct of solid waste handling programs;

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

~~(7)~~)) (g) 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; and

(h) To assign producer responsibility for covered products under chapters 70A.500, 70A.505, 70A.510, 70A.515, 70A.550, 69.48, and 70A.--- RCW (the new chapter created in section 501 of this act).

(2) 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~~)) 20 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~~)).

(A) Until January 1, 2029, these programs shall include collection of source separated recyclable materials from single and multiple-family residences, in urban areas, unless the department approves an alternative program, according to the criteria in the planning guidelines. Such criteria shall include: Anticipated recovery rates and levels of public participation, availability of environmentally sound disposal capacity, access to markets for recyclable materials, unreasonable cost impacts on the ratepayer over the six-year planning period, utilization of environmentally sound waste reduction and recycling technologies, and other factors as appropriate. In rural areas, these programs shall 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;

(B) Beginning January 1, 2029, except where the county has adopted an ordinance consistent with section 114 of this act establishing that the full list of materials on the uniform statewide collection list for curbside recycling programs established by the department must be collected exclusively through drop-off locations in areas regulated by the utilities and transportation commission under the provisions of chapter 81.77 RCW as allowed under the provisions of chapter 70A.--- RCW (the new chapter created in section 501 of this act), these programs shall:

(I) Provide curbside collection of source separated recyclable materials from single-family and multiple-family residences wherever curbside garbage collection services are provided to these entities;

(II) Include materials on the uniform statewide collection list designated for curbside collection established by the department; and

(III) Include the service standards for curbside collection frequency, container size, and method of collection, established under plans approved by the department under chapter 70A.--- RCW (the new chapter created in section 501 of this act);

(C) Comprehensive solid waste management plans that are newly developed, updated, or amended after October 1, 2027, may incorporate by reference programs described in an approved producer responsibility organization plan under chapter 70A.--- RCW (the new chapter created in section 501 of this act) to fulfill this requirement in whole or in part;

(D) Before January 1, 2029, each comprehensive solid waste management plan must be amended, revised, or updated by a jurisdiction consistent with the requirements of this subsection (7)(b)(i). Beginning January 1, 2029, until a comprehensive solid waste management plan is amended, revised, or updated to be consistent with the requirements of this subsection (7)(b)(i), the model comprehensive solid waste plan amendment provided by the department under section 104 of this act applies in the jurisdiction;

(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, reuse, 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~~)) 25,000 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. 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 501 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. 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; and

(h) By requiring certificate holders under this chapter to deliver covered products, as defined in section 102 of this act, collected from residents only to facilities that meet the requirements of section 110(2) of this act.

(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 81.77.160 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; and

(c) All costs related to the implementation of curbside recycling collection services performed by a solid waste collection company consistent with chapter 70A.--- RCW (the new chapter created in section 501 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.

NEW SECTION. **Sec.**  A new section is added to chapter 81.77 RCW to read as follows:

(1) The commission shall adopt rules to establish schedules for payments from producer responsibility organizations formed under chapter 70A.--- RCW (the new chapter created in section 501 of this act) to solid waste collection companies for full cost recovery and reimbursement mechanisms for residential recycling customers.

(2)(a) For solid waste collection company payment schedules, the commission shall adopt rules to ensure that solid waste collection companies maintain:

(i) Financial solvency; and

(ii) Ordinary cash flow.

(b) Under the rules adopted by the commission, payment schedules must be consistent with:

(i) Any tariffs approved by the commission;

(ii) Payment schedules included in comprehensive solid waste management plans prepared under RCW 70A.205.045;

(iii) Local service level ordinances; and

(iv) Other factors determined by the commission to be necessary and in the public interest.

(3) For residential recycling customer reimbursement, the commission shall develop rules that:

(a) Establish a credit mechanism for customers to be reimbursed for the full cost of curbside recycling consistent with section 116 of this act; and

(b) Maintain existing billing practices for solid waste collection companies.

(4) Nothing in this section requires a solid waste collection company to issue a billing credit for curbside recycling to customers if the company has not received a payment from the producer responsibility organization sufficient to cover the cost of the credit to all customers covered by the company tariff.

**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 501 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.

**Part Four**

**Other Conforming Amendments and Miscellaneous Provisions**

**Sec.**  RCW 43.21B.110 and 2023 c 455 s 5, 2023 c 434 s 20, 2023 c 344 s 5, and 2023 c 135 s 6 are each reenacted and amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, the air pollution control boards or authorities as established pursuant to chapter 70A.15 RCW, local health departments, the department of natural resources, the department of fish and wildlife, the parks and recreation commission, and authorized public entities described in chapter 79.100 RCW:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070, 70A.515.060, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080, 70A.245.130, 70A.245.140, 70A.65.200, 70A.455.090, 70A.550.030, 70A.555.110, 70A.560.020, sections 123 and 211 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, 70A.555.110, 70A.560.020, sections 123 and 211 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 210 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.

(p) Decisions by the department of ecology under section 110(5) of this act regarding a proposal by a producer responsibility organization to count materials sent to an alternative recycling facility towards recycling performance rates.

(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 2023 c 455 s 6, 2023 c 434 s 21, and 2023 c 135 s 7 are each reenacted and amended to read as follows:

(1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160, 70A.205.280, 70A.300.090, 70A.20.050, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080, 70A.245.130, 70A.245.140, 70A.65.200, 70A.455.090, 70A.555.110, 70A.560.020, sections 123 and 211 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) 30 days after receipt of the notice imposing the penalty;

(b) 30 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) 30 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, 70A.555.110, and 70A.560.020, 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 501 of this act), which shall be credited to the recycling enhancement account created in RCW 70A.245.100.

NEW SECTION. **Sec.**  AUTHORITY OF UTILITIES AND TRANSPORTATION COMMISSION. Nothing in this chapter or chapter 70A.--- RCW (the new chapter created in section 502 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.**  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 501 of this act), the department of ecology and the department of revenue must study:

(a) The impacts of producer requirements under chapter 70A.--- RCW (the new chapter created in section 501 of this act) on the litter rates of covered products under that chapter; and

(b) Possible improvements to the structure of the litter tax under chapter 82.19 RCW including administration, compliance, and distribution of the tax and application of the tax to certain products, for achieving the purpose of chapter 82.19 RCW. The improvements to the structure of the litter tax to be studied under this section may not include an increase in the rate of the litter tax under chapter 82.19 RCW or an expansion of the types of covered products under chapter 70A.--- RCW (the new chapter created in section 501 of this act) that are subject to the litter tax.

(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, 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 under chapter 70A.--- RCW (the new chapter created in section 501 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.

NEW SECTION. **Sec.**  If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2024, in the omnibus appropriations act, this act is null and void.

**Part Five**

**Codification Directives**

NEW SECTION. **Sec.**  Sections 101 through 128, 403, and 404 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.

**--- END ---**