

Proposed Second Substitute House Bill 1131 (H-1409.2/23)

House Appropriations Committee

By Representative Slatter

Original Bill:

Improving Washington's solid waste management outcomes.

Proposed Second Substitute House Bill 1131 (Appropriations) As Compared to Substitute House Bill 1131 (As Recommended by the Environment & Energy Committee):

Part I: Extended Producer Responsibility for Packaging and Paper Products

- Amends definitions, including the definition of the "producer" responsible for compliance with producer responsibility organization (PRO) participation and funding requirements.
- Exempts packaging for drugs used as animal medicines and products intended for animals used to treat or administered to animals that are regulated under the Food, Drug, and Cosmetic Act from PRO participation and funding requirements.
- Exempts packaging for products regulated as prescription medical devices or prescription drugs under the Federal Food, Drug, and Cosmetic Act from PRO participation and funding requirements.
- Specifies the threshold for qualifying as a de minimis producer exempt from PRO participation requirements is an annual gross revenue dollar amount less than or equal to \$5 million, or, rather than and, a total product weight less than or equal to one ton.
- Clarifies elements of the relationship between Distributor Responsibility Organizations (DROs) and PROs, including by: (1) requiring PRO plans to identify producers of qualifying beverage containers (QBCs) who participate in the PRO for purposes of fulfilling postconsumer recycled content (PCRC) requirements; (2) Specifying that a DRO's registration with the Department of Ecology (Ecology) is the action that leads to QBCs being managed by a DRO rather than a PRO; (3) clarifying that 'recyclability' product labeling requirements apply to beverage containers regardless of whether they are managed by a PRO or a DRO; (4) and clarifying that a PRO may not impose fees on qualifying beverage containers except for activities related to PCRC requirements and for packaging other than the qualifying beverage container itself and lids or enclosures.
- Specifies that fees paid by a PRO to Ecology for Ecology's administrative costs must cover the projected annual costs in the next fiscal year and must include the contractor costs related to the needs assessment, rate study, and advisory council support.
- Clarifies that any rules adopted by Ecology that require covered product collection services from public places or official gathering may apply at locations where a local government provides

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solid waste services, but may not include locations at which a local government does not provide solid waste services.

- Delays certain deadlines for actions to be taken by a PRO or Ecology, including the deadline for the completion of the performance rates study and the statewide needs assessment.
- Provides for separate recycling rates and reuse rates to be studied as part of the rate study, proposed as part of the PRO plan, and achieved as part of PRO program implementation rather than a single combined recycling and reuse rate.
- Requires a recycling rate for each material category of covered product.
- Specifies that performance rates are averaged across all covered products managed by a PRO.
- Specifies that recommended performance rates must consider the commercial viability and technical feasibility of achieving the recommended rates based on directly comparable real world performance data in other jurisdictions.
- Requires Ecology to consult with registered PROs in determining the final scope of the statewide needs assessment.
- Requires the needs assessment to identify costs based on a county-by-county assessment, and taking into consideration the results of a survey open to all county and city governments.
- Specifies that a PRO may not require any individual covered product to be reusable, recyclable, or compostable.
- Requires PRO plans to include guidance necessary in order for producers to comply with new 'recyclability' product labeling requirements.
- Clarifies that environmental reviews for alternative recycling processes do not prohibit or affect the use of alternative recycling processes for products or packaging that are not covered products managed under a PRO.
- Authorizes a PRO to use, with justification, an alternative performance rate calculation methodology than the methodology used in the performance rates study.
- Provides for source reduction requirements to be measured based on the elimination of plastic components of products dating back to January 1, 2013.
- Requires systems of PRO fees to consider and provide fair treatment for instances in which federal regulations constrain the use of packaging design attributes that reduce the environmental impacts of covered products.

Part II: Postconsumer Recycled Content Requirements

- Provides for postconsumer recycled plastic content (PCRC) requirements to begin applying to beverage container caps and lids January 1, 2025, rather than at the same time as beverage containers.
- Applies PCRC requirements for durable goods only to durable good models designed after January 1, 2028, rather than January 1, 2025.
- Authorizes the PRO to demand information from producers necessary to demonstrate to Ecology that a producer qualified for de minimis status.

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- Clarifies that producers of products subject to PCRC requirements under existing statutory obligations must continue to register and report to Ecology under the existing PCRC registration, fee-payment, and reporting methods until a PRO registers with Ecology to fulfill PCRC obligations for participating producers.
- Authorizes PROs to request an extension of certain PCRC requirements applicable to all products within a category of products subject to PCRC requirements and authorizes Ecology to issue one-year extensions of PCRC requirements based on market conditions, PCRC availability, and technological feasibility considerations.
- Clarifies that PCRC requirements for beverage containers remain in effect as of January 1, 2023, rather than beginning January 1, 2024.
- Exempts prescription drugs from PCRC requirements for rigid plastic household cleaning and personal care product containers and thermoform plastic containers, in addition to the exemption for prescription drugs from PCRC requirements for plastic bottles and plastic tubs.
- Requires the certifications of PCRC products maintained by producers to be third-party certified only if there are adequate and commercially feasible third-party certifications for a category of product subject to PCRC requirements.
- Authorizes product-specific petitions to Ecology to adjust the PCRC rate applicable to a product or issue a temporary exclusion to be submitted either as part of a PRO's annual report, or in a separate petition.
- Clarifies that PCRC requirements for plastic trash bags do not apply to reusable plastic carryout bags.
- Requires plastic trash bag producers to develop a certificate of compliance within one year of the beginning of PCRC requirements applicable to a trash bag.
- Eliminates the authority for Ecology to prohibit the sale of products that fail to provide a certificate of compliance for PCRC requirements.
- Restores the PCRC requirements for plastic collection bins that were eliminated from the House Bill in the Substitute House Bill.

Part III: Deposit Return System Requirements

- Delays until October 1, 2024, the deadline for distributors to register with a DRO that has registered by July 1, 2024.
- Clarifies that DROs may not disseminate funds from unclaimed refunds as any form of profit to distributors.
- Prohibits DROs from using funds from unclaimed refunds for legislative or political advocacy efforts that would require reporting to the Public Disclosure Commission.
- Clarifies that DRO plans must achieve performance requirements specified for 2028 and 2031 beginning with respect to the data that are reported for deposit return system activities carried out in those years.
- Requires a DRO to submit updated plans to Ecology for review in 2031 and 2036 and directs Ecology to inform the appropriate committees of the Legislature if it deems a plan

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insufficient after providing a 60 day cure period for a DRO to remedy any insufficiencies initially identified by Ecology.

- Adds components that a DRO must include in its plan submitted to Ecology for approval, including descriptions of how the DRO will coordinate with PROs, identify bottles that it will not accept or pay refunds for, conduct education and outreach activities, and accept and pay refunds for containers collected by material recovery facilities or other government entities.
- Specifies that penalties for a DRO's failure to achieve performance requirements must be deposited in the model toxics operating account.
- Specifies that the PCRC requirements applicable to drop-off bags used by the deposit return system must meet the same PCRC requirements for plastic trash bags.
- Requires requests to the Department of Commerce for funds from the Recycling Revenue Augmentation Fund (RRAF) must be received by July 1 for revenue losses incurred during the preceding calendar year by local governments or operators of recycling programs.
- Specifies elements of the fiscal administration of the RRAF by the Department of Commerce.
- Exempts the 10 cent refund value applied to qualifying beverage containers from Business and Occupation Tax and the Litter Tax.
- Specifies that city and county permitting and siting procedures applicable to deposit return system storage or drop-off containers must consider containers to be mobile regardless of whether they have wheels, electrical power, or are affixed to a site.

Other

- Requires Ecology to evaluate best practices in other jurisdictions and any applicable federal requirements for the labeling of items as 'home compostable' and requires a report to be submitted to the Legislature by December 1, 2024.
- Eliminates the directive to the Liquor and Cannabis Board to update rules pertaining to the packaging of cannabis products.

1 AN ACT Relating to improving Washington's solid waste management
2 outcomes; amending RCW 70A.245.010, 70A.245.020, 70A.245.030,
3 70A.245.040, 70A.245.090, 70A.245.100, 70A.245.120, 70A.245.060,
4 82.19.050, 70A.205.005, 70A.205.010, 70A.205.045, 81.77.030,
5 81.77.040, 81.77.160, 81.77.185, 43.21B.110, and 43.21B.300; adding
6 new sections to chapter 70A.245 RCW; adding a new section to chapter
7 82.04 RCW; adding a new section to chapter 70A.222 RCW; adding a new
8 section to chapter 70A.350 RCW; adding a new section to chapter
9 70A.230 RCW; adding a new section to chapter 70A.340 RCW; adding a
10 new section to chapter 70A.455 RCW; adding a new section to chapter
11 35.21 RCW; adding a new section to chapter 35.21A RCW; adding a new
12 section to chapter 36.01 RCW; adding new chapters to Title 70A RCW;
13 creating new sections; repealing RCW 70A.245.110; prescribing
14 penalties; and providing an expiration date.

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

16 **Part One**
17 **Providing for Producer Responsibility in the Management of Packaging**
18 **and Paper Products**

19 NEW SECTION. **Sec. 101.** FINDINGS—INTENT. (1) The legislature
20 finds that, as of 2023, Washington's statewide waste recovery rate,

1 which seeks to preserve public health, safety, and welfare, and
2 conserve energy and natural resources, has been on a declining trend
3 since 2011 and that Washington is not meeting the statewide goal of
4 50 percent recycling established in 1989.

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

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

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

28 (5) The legislature also finds that the department of ecology was
29 directed, through an independent consultant, to study how plastic
30 packaging is managed in the state and assess various policy options.
31 The recommendations from the study included establishing: (a) An
32 extended producer responsibility policy for all consumer packaging
33 and paper products with a framework that makes producers responsible
34 for achieving specific management and environmental outcomes for the
35 packaging and paper products they supply into Washington state; (b)
36 postconsumer recycled content requirements; and (c) a deposit return
37 system for beverage containers.

38 (6) In addition, the legislature finds extended producer
39 responsibility policies designed to cover all consumer packaging and
40 paper materials offer the potential for greater economies of scale

1 and operational efficiencies than could be achieved under a policy
2 applied only to a subset of materials.

3 (7) It is the intent of the legislature to require that extended
4 producer responsibility programs, which must achieve minimum
5 recycling and other performance rates, are implemented by and for
6 producers of consumer packaging and paper products in a manner that
7 involves producers in material management from design concept to end-
8 of-life. These programs incentivize innovation and research to
9 develop more efficient recycling technologies and minimize
10 environmental impacts of the packaging and paper products.

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

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

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

28 (11) Finally, it is the intent of the legislature that Washington
29 should maintain the successful public-private partnership between
30 state, local government, and solid waste and recycling service
31 providers. The legislature does not intend to diminish or displace
32 the primary role of the utilities and transportation commission and
33 local governments in regulating or contracting directly with service
34 providers for the curbside collection of residential recyclables.
35 Local governments maintain their existing authority to collect,
36 contract for collection with solid waste and recycling service
37 providers, or defer to solid waste collection services regulated by
38 the utilities and transportation commission.

1 NEW SECTION. **Sec. 102.** DEFINITIONS. The definitions in this
2 section apply throughout this chapter unless the context clearly
3 requires otherwise.

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

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

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

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

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

17 (6) "Compostable" means a product that is capable of undergoing
18 aerobic biological decomposition in a composting system, that results
19 in the material being broken down primarily into carbon dioxide,
20 water, inorganic compounds, and biomass, and is in compliance with
21 the requirements for a product labeled as compostable under chapter
22 70A.455 RCW.

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

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

29 (9) "Contamination" means:

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

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

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

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

39 (12) "Designated for collection" means the covered products that
40 are included in the material categories listed in a producer

1 responsibility organization's plan to be collected for reuse or
2 recycling.

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

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

8 (a) Becomes a reused material;

9 (b) Becomes a recycled material; or

10 (c) Is delivered to a disposal site, as defined in RCW
11 70A.205.015.

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

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

16 (17) "Government entity" means any:

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

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

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

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

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

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

32 (a) Plastic beverage containers;

33 (b) Rigid plastic, excluding plastic beverage containers;

34 (c) Flexible plastic;

35 (d) Paper;

36 (e) Aluminum;

37 (f) Steel; and

38 (g) Glass.

1 (20) "Overburdened communities" means the overburdened
2 communities identified and prioritized by the department under RCW
3 70A.02.050(1)(a).

4 (21)(a) "Packaging" means a material, substance, or object that
5 is:

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

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

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

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

13 (v) Supplied to or purchased by consumers expressly for the
14 purpose of facilitating food or beverage consumption that is
15 ordinarily discarded by consumers after a single use or short-term
16 use, whether or not it could be reused.

17 (b) "Packaging" does not include:

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

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

28 (iii) Products excluded temporarily under section 128 of this
29 act;

30 (iv) Qualifying beverage containers and container labels and
31 closures, but not secondary or ancillary packaging, subject to the
32 requirements of chapter 70A.--- RCW (the new chapter created in
33 section 603 of this act), upon the receipt by the department of a
34 registration under section 303 of this act of a distributor
35 responsibility organization that will implement a deposit return
36 system under chapter 70A.--- RCW (the new chapter created in section
37 603 of this act);

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

1 (vi) (A) Packaging for drugs that are used for animal medicines
2 including, but not limited to, parasiticide products for animals; and
3 (B) packaging for products intended for animals that are regulated as
4 animal drugs, biologics, parasiticides, medical devices, or
5 diagnostics used to treat, or administered to, animals under the
6 federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.), or
7 the federal virus-serum-toxin act, 21 U.S.C. Sec. 151 et seq., as
8 amended;

9 (vii) Packaging for products that are regulated as a prescription
10 medical device or prescription drug by the United States food and
11 drug administration under the federal food, drug, and cosmetic act,
12 21 U.S.C. Sec. 321 et seq.; and

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

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

20 (23) "Paper product" means paper sold or supplied including, but
21 not limited to, flyers, brochures, booklets, catalogs, magazines,
22 copy paper, printing paper, and all other paper materials except for:
23 (a) Bound books; (b) conservation grade and archival grade paper; (c)
24 newspapers; (d) paper designed for use in building construction; and
25 (e) paper products that, by any common and foreseeable use, could
26 reasonably be anticipated to become unsafe or unsanitary to handle.

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

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

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

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

38 (A) If the item is sold in or with packaging under the brand of
39 the item manufacturer or is sold in packaging that lacks

1 identification of a brand, the producer of the packaging is the
2 person that manufactures the item;

3 (B) If the item is sold under a retail brand, the producer is the
4 brand owner;

5 (C) If there is no person to which (a)(i)(A) or (B) of this
6 subsection applies, the producer of the packaging is the person that
7 is the licensee of a brand or trademark under which a packaged item
8 is used in a commercial enterprise, sold, offered for sale, or
9 distributed in or into this state, whether or not the trademark is
10 registered in this state;

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

16 (E) If there is no person described in (a)(i)(A) through (D) of
17 this subsection with a commercial presence within the state, the
18 producer of the packaging is the person that first distributes the
19 item in or into this state.

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

22 (A) For packaging used to directly protect or contain the item,
23 the producer of the packaging is the same as the producer identified
24 under (a)(i) of this subsection; and

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

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

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

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

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

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

1 (C) If there is no person to which (a)(v)(A) or (B) of this
2 subsection applies, the producer is the person that is the owner or
3 licensee of a brand or trademark under which the paper product is
4 used in a commercial enterprise, sold, offered for sale, or
5 distributed in or into this state, whether or not the trademark is
6 registered in this state;

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

12 (E) If there is no person described in (a)(v)(A) through (D) of
13 this subsection with a commercial presence within the state, the
14 producer is the person that first distributes the paper product in or
15 into this state.

16 (vi) A person is the "producer" of a covered product sold,
17 offered for sale, or distributed in or into this state, as defined in
18 (a)(i) through (v) of this subsection, except where another
19 responsible producer has contractually accepted responsibility as the
20 producer and has joined a registered producer responsibility
21 organization as the producer responsible for that covered product
22 under this chapter.

23 (b) "Producer" does not include:

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

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

28 (iii) De minimis producers that annually sell, offer for sale,
29 distribute, or import:

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

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

33 (27) "Producer responsibility organization" means:

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

38 (b) Until January 15, 2026, an organization that has applied for
39 a tax exemption under 26 U.S.C. Sec. 501(c)(3) of the federal
40 internal revenue code and is designated by a producer or group of

1 producers to develop and carry out the activities required of
2 producers under this chapter;

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

5 (d) An organization as defined by rule by the department.

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

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

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

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

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

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

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

33 (a) Minimizes impacts to the environment; and

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

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

1 (34) "Responsible producer" means a producer that is not a de
2 minimis producer.

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

7 (36) "Reusable" means:

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

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

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

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

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

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

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

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

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

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

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

34 (39) "Socially just management" means practices that:

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

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

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

4 (40) "Steel" means any covered product made of a ferrous metal
5 substance.

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

8 NEW SECTION. **Sec. 103.** PRODUCER RESPONSIBILITY ORGANIZATION

9 DUTIES. (1)(a) Beginning October 1, 2024, each producer that offers
10 for sale, sells, or distributes in or into Washington a covered
11 product must join a producer responsibility organization that is
12 registered with the department or register with the department as a
13 producer responsibility organization. Beginning October 1, 2024, a
14 producer that is not a member of a registered producer responsibility
15 organization or registered as a producer responsibility organization
16 may not sell or supply covered products in or into Washington.

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

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

1 multiple producer responsibility organizations and individual
2 producers may register with the department.

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

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

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

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

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

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

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

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

1 (B) A list of all producers of qualifying beverage containers
2 that are members of a distributor responsibility organization under
3 chapter 70A.--- RCW (the new chapter created in section 603 of this
4 act) and their brands, and that satisfy the postconsumer recycled
5 content requirements of chapter 70A.--- RCW (the new chapter created
6 in section 602 of this act) through membership in a producer
7 responsibility organization under this chapter.

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

12 (4)(a) By June 30, 2025, and every June 30th thereafter, every
13 registered producer responsibility organization must submit an annual
14 payment to the department for the projected annual costs in the next
15 fiscal year, as determined by the department in section 104 of this
16 act, to fund the:

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

20 (ii) Statewide needs assessment and rate study established in
21 section 105 of this act; and

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

24 (b) The annual payment to the department on June 30, 2025, must
25 cover department contractor costs identified under (a) (ii) and (iii)
26 of this subsection.

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

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

34 (i) Implement its plan as approved by the department by January
35 1, 2028, or within six months of plan approval, whichever is later;

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

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

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

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

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

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

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

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

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

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

24 NEW SECTION. **Sec. 104.** DEPARTMENT'S DUTIES. (1) The department
25 must implement, administer, and enforce this chapter. The
26 department's implementation, administration, and enforcement duties
27 under this chapter, including the requirements of this section, are
28 supplemented by the provisions of chapter 70A.--- RCW (the new
29 chapter created in section 602 of this act).

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

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

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

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

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

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

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

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

17 (b) The workload analysis prepared in April 2025 must include
18 contractor costs identified in section 103(4)(a) (ii) and (iii) of
19 this act. This portion of the fee amounts paid under the general
20 order must be deposited in the account that paid for these costs.

21 (c) The department must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (8) The department may by rule require producer responsibility
36 organizations to fund activities to make convenient collection
37 services available for recycling of covered products designated for
38 collection from locations or entities determined to be significant
39 sources of covered product waste and that are additional to those
40 locations identified under section 113 of this act. These locations

1 or entities may include, but are not limited to, public places and
2 official gatherings at which a local government provides solid waste
3 services. These locations or entities may not include public places
4 and official gatherings at which a local government does not provide
5 solid waste services or retail establishments. Rules adopted under
6 this subsection apply to producer responsibility organizations no
7 earlier than January 1, 2029, and may be updated no more frequently
8 than every five years.

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

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

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

15 NEW SECTION. **Sec. 105.** RATE STUDY AND STATEWIDE NEEDS
16 ASSESSMENT. (1) To inform the implementation of the program, the
17 department must conduct a performance rates study and a statewide
18 needs assessment that must be:

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

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

23 (2) (a) The performance rates study must be completed by October
24 1, 2024, and must:

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

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

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

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

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

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

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

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

5 (iv) Recommend performance rates averaged across all covered
6 products, including:

7 (A) An overall recycling rate of covered products;

8 (B) A separate specific minimum reuse rate of covered products;

9 (C) A recycling rate for each material category of covered
10 products reported by the producer responsibility organization as
11 supplied into the state;

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

14 (E) Alternate rates as described under (a)(iv) (A) through (C) of
15 this subsection that would exclude qualifying beverage containers
16 managed under the deposit return system, and which assumes a scenario
17 in which a distributor responsibility organization registers with the
18 department under chapter 70A.--- RCW (the new chapter created in
19 section 603 of this act).

20 (b) Recommendations under (a) of this subsection must consider
21 the commercial viability and technological feasibility of achieving
22 recommended rates based on current rates achieved in the state, rates
23 achieved based on directly comparable real world performance data in
24 other jurisdictions with directly comparable programs, and additional
25 relevant data. The recommended performance rates must be designed to
26 be achieved for covered products statewide by 2032.

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

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

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

37 (a) The final scope of the statewide needs assessment must be
38 determined in consultation with any producer responsibility
39 organization that is registered with the department by July 15, 2024,
40 after considering comments and recommendations from the advisory

1 council established in section 120 of this act and from the utilities
2 and transportation commission; and

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

8 (4) The statewide needs assessment must be:

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

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

15 (5) The statewide needs assessment must:

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

18 (i) Availability and types of recycling services for covered
19 products relative to the convenience standards specified in section
20 113 of this act and to additional potential service methods
21 recommended by producer responsibility organizations during the study
22 scoping process;

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

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

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

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

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

39 (b) Compile information related to actual costs incurred by
40 government entities, including entities of sparsely populated, remote

1 areas and dense urban areas, for curbside collection services, drop-
2 off collection services, and other information relevant to the
3 funding requirements for producer responsibility organizations in
4 accordance with section 112 of this act, including costs for various
5 service methods recommended by producer responsibility organizations
6 during the study scoping process;

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

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

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

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

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

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

22 (vi) Cost increases over time; and

23 (vii) Any other factors, as determined to be necessary by the
24 department, with input from producer responsibility organizations,
25 the advisory council, and the utilities and transportation
26 commission;

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

33 (e) Identify costs based on a county-by-county assessment, as
34 appropriate, and take into consideration the results of a survey open
35 to all county and city governments;

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

1 (g) Compile relevant information to be considered in the
2 development of criteria by the department to determine whether a
3 covered product is recyclable, reusable, or compostable. The
4 department may adopt rules establishing criteria for the
5 determination of whether a covered product is recyclable, reusable,
6 or compostable. The relevant information to be compiled may include
7 whether covered product materials are:

8 (i) Or may be, collected, separated, and processed in sufficient
9 quantity and quality into a marketable feedstock that can be used in
10 the production of new products; or

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

13 (h) Evaluate how the state's recycling system can be managed in a
14 socially just manner for the purpose of informing how each producer
15 responsibility organization implementing a plan can support this
16 objective as it relates to activities required under this chapter.
17 The assessment must:

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

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

22 (A) An evaluation of recycling processing facility worker
23 conditions, wages, and benefits;

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

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

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

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

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

38 (i) Evaluate the extent to which covered products contribute to
39 litter and marine debris for the purpose of informing how a producer
40 responsibility organization implementing a plan can support litter

1 and marine debris prevention as it relates to activities required
2 under this chapter. The assessment should draw on available data,
3 assess gaps, and identify strategies for improving prevention and
4 cleanup of litter and marine debris from covered products;

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

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

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

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

32 (i) Analyzing market conditions and opportunities in the state's
33 recycling industry for meeting the minimum postconsumer recycled
34 content requirements for covered products identified in chapter
35 70A.--- RCW (the new chapter created in section 602 of this act); and

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

39 (d) A needs assessment performed prior to January 1, 2029, that
40 includes an analysis of the plastic resin market as described in (c)

1 of this subsection is sufficient to satisfy the requirements of RCW
2 70A.245.060.

3 NEW SECTION. **Sec. 106.** PLAN PARTICIPATION OBLIGATION—
4 STAKEHOLDER CONSULTATION FOR PLAN. (1) Each producer of covered
5 products must participate in, implement, and fund a producer
6 responsibility organization plan approved by the department,
7 consistent with the timelines established in sections 103 and 108 of
8 this act, and in accordance with the funding requirements established
9 in section 112 of this act.

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

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

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

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

1 NEW SECTION. **Sec. 107.** PLAN CONTENTS—OVERVIEW. All plans and
2 plan updates must contain the following information:

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

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

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

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

14 (5) (a) How the producer responsibility organization will
15 encourage and incentivize redesign of covered products to be
16 reusable, recyclable, or compostable.

17 (b) Nothing in this chapter requires any individual producer to
18 redesign covered products to reduce waste or to be reusable,
19 recyclable, or compostable, requires any individual covered product
20 to be reusable, recyclable, or compostable, or authorizes a producer
21 responsibility organization to require any individual covered product
22 to be reusable, recyclable, or compostable;

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

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

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

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

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

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

37 (ii) Through alternate collection; and

38 (iii) Through public place collection;

39 (c) If the list required in (a) of this subsection includes any
40 covered product that is not recyclable as defined in section 102 of

1 this act, the plan must provide a justification for its inclusion on
2 the list and describe activities to be undertaken to allow the
3 covered product to meet the definition of recyclable within a
4 reasonable time frame;

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

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

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

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

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

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

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

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

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

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

- 1 (13) Activities to be undertaken to meet the performance rates;
- 2 (14) Activities to be undertaken to implement the education and
3 outreach component as required under section 118 of this act;
- 4 (15) Activities to facilitate recycling of covered products back
5 into covered products and encourage development of circular economic
6 activity in the state and region. The producer responsibility
7 organization shall provide a description of how producers would
8 generally propose to structure agreements to purchase recycled
9 materials from material recovery facilities or other processing
10 facilities, reclaimers, or other end markets to support producers'
11 priority access to commodities, based on fair market pricing for
12 commodities of comparable quality and considering long-term contracts
13 and other purchase arrangements;
- 14 (16) Activities to be undertaken to minimize the amount and cost
15 of residuals from the collection and processing of covered materials
16 designated for collection. These include residuals from materials
17 recovery facilities or similar facilities producing specification-
18 grade commodities for sale, but do not include residuals from further
19 processing of end market-ready material;
- 20 (17) Activities to be undertaken to develop or support
21 responsible end markets for covered products;
- 22 (18) A description of how plan implementation will maintain
23 responsible management practices for covered products through to
24 final disposition and ensure that any covered products collected for
25 recycling will be delivered to a responsible end market as reported
26 by material recovery facilities under section 110(5) of this act;
- 27 (19)(a) A description of the base cost formulas to be used to
28 calculate per unit reimbursement rates for curbside collection
29 services with similar attributes that are delivered by government
30 entities in accordance with the requirements of this chapter, whether
31 such services are provided directly or through a contracted service
32 provider. If a plan includes more than one base cost formula for
33 curbside collection services, the producer responsibility
34 organization must make clear the conditions under which each formula
35 will be applied;
- 36 (b) A description of the reimbursement rates to be used for any
37 services other than curbside collection included in the plan that are
38 to be carried out by government entities;
- 39 (c) A description of:

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

5 (ii) How reimbursements will be distributed;

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

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

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

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

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

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

28 (22) A stakeholder consultation report, as described in section
29 106(3)(b) of this act;

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

34 (24) A description of how the producer responsibility
35 organization will coordinate with other producer responsibility
36 organizations and any distributor responsibility organizations formed
37 under chapter 70A.--- RCW (the new chapter created in section 603 of
38 this act) in the state, in specific terms if more than one producer
39 responsibility organization or distributor responsibility
40 organization is registered with the department as of the date of a

1 plan's submission, and in general terms addressing coordination
2 priorities to ensure the smooth implementation of this chapter in the
3 event an additional plan or plans become registered with the
4 department during the period of plan implementation;

5 (25) A list of the material categories if distinguished or
6 additional to the material categories identified in section 102(19)
7 (a) through (g) of this act;

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

9 (27)(a) A list and description of exempted labels as specified in
10 section 124(2)(b) of this act;

11 (b) Additional guidance deemed necessary in order for producers
12 to comply with section 124 of this act; and

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

15 NEW SECTION. **Sec. 108.** PLAN APPROVAL, UPDATES, AND REVISIONS.

16 (1)(a) The initial plan due to be submitted under section 103(5) of
17 this act, and updated plans, may address no more than five calendar
18 years.

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

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

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

1 (i) In response to an order from the department; or
2 (ii) Subsequent to a letter disapproving of a plan submission by
3 the producer responsibility organization and for which the original
4 plan submitted by the producer responsibility organization had been
5 subject to the consultation process required in section 106 of this
6 act.

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

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

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

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

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

22 NEW SECTION. **Sec. 109.** CONTINGENCY PLAN. (1) A producer
23 responsibility organization must submit to the department a
24 comprehensive contingency plan demonstrating how the activities in
25 the plan will continue to be carried out by some other entity, if
26 needed, such as an escrow company:

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

29 (b) Upon the expiration of an approved plan;

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

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

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

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

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

12 NEW SECTION. **Sec. 110.** COLLECTION AND MANAGEMENT. (1) Producer
13 responsibility organizations, government entities, and service
14 providers implementing the program must manage covered products in a
15 manner consistent with the state's solid waste management hierarchy
16 established in RCW 70A.205.005.

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

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

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

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

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

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

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

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

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

15 (ii) Energy efficiency and greenhouse gas emissions;

16 (iii) Generation of hazardous waste;

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

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

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

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

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

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

34 (5) (a) Material recovery facilities and other processing
35 facilities receiving covered products from government entities or
36 private service providers collected through activities undertaken in
37 accordance with this chapter must measure and report annually to the
38 department by commodity type and material category, in a form and
39 format approved by the department, on the following parameters
40 associated with covered products and qualifying beverage containers

1 subject to the provisions of chapter 70A.--- RCW (the new chapter
2 created in section 603 of this act) received and processed:

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

4 (ii) Inbound material quality and contamination;

5 (iii) Outbound material quality and contamination;

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

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

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

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

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

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

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

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

1 NEW SECTION. **Sec. 111.** PERFORMANCE RATES. (1) By January 1,
2 2025, any registered producer responsibility organization must submit
3 to the department proposed performance rates for covered products
4 reported by the producer responsibility organization as supplied into
5 the state to be achieved by the ninth calendar year from the
6 effective date of this section. In proposing rates, the producer
7 responsibility organization must:

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

10 (b) Propose, at minimum:

11 (i) An overall recycling rate of covered products;

12 (ii) A separate specific minimum reuse rate;

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

16 (iv) A source reduction rate to be achieved solely by eliminating
17 plastic components;

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

20 (d) Adhere to the performance rate calculation methodology
21 established in the performance rates study or provide justification
22 for use of an alternative methodology and include a detailed
23 description of the alternative methodology and calculations used.

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

31 (a) At minimum, the plan must include the following performance
32 rates averages across all covered products within a registered
33 producer responsibility organization:

34 (i) An overall recycling rate of covered products;

35 (ii) A separate minimum reuse rate of covered products;

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

39 (iv) A source reduction rate to be achieved solely by eliminating
40 plastic components. This source reduction rate must calculate the

1 amount of covered material the producers have source reduced since
2 January 1, 2013.

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

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

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

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

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

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

26 NEW SECTION. **Sec. 112.** FUNDING REQUIREMENTS. (1) A producer
27 responsibility organization implementing a plan must fully fund all
28 activities required under this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

1 and that achieve reuse, recycling, and home and industrial
2 composting;

3 (ii) Encourage the use of postconsumer recycled content;

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

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

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

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

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

21 (c) Fees collected under this fee system must be used exclusively
22 for plan implementation and other activities required under this
23 chapter and chapter 70A.--- RCW (the new chapter created in section
24 602 of this act).

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

33 NEW SECTION. **Sec. 113.** CONVENIENCE STANDARDS. (1) In every
34 jurisdiction in which covered products are sold or supplied to
35 consumers, a producer responsibility organization must fund
36 activities to make convenient collection services available for the
37 full list of covered products designated for collection in the plan.
38 Convenient collection services must be available to residents as
39 follows:

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

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

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

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

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

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

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

39 (ii) At additional locations as determined by the producer
40 responsibility organization, after considering the recommendations of

1 the statewide needs assessment in section 105 of this act and
2 stakeholder consultation in section 106 of this act. Collection in
3 additional locations is subject to mutual agreement by the producer
4 responsibility organization and the government entity or other entity
5 responsible for the public place.

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

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

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

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

31 NEW SECTION. **Sec. 114.** GOVERNMENT ENTITIES—AUTHORITY TO COLLECT
32 COVERED PRODUCTS. (1) The provisions of this chapter do not:

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

1 (b) Restrict the authority of a city under RCW 35.21.120,
2 35.21.130, and 35.21.152; or

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

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

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

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

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

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

35 (5) Government entities are not obligated to provide resident
36 education and outreach under this chapter but may carry out or
37 contract for resident education and outreach consistent with producer
38 responsibility organization plan provisions under section 118 of this
39 act and be reimbursed for the costs of education and outreach

1 performed by the government entity as described in section 115 of
2 this act.

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

8 NEW SECTION. **Sec. 115.** COST REIMBURSEMENT FOR SERVICES PROVIDED
9 BY GOVERNMENT ENTITIES. (1) A producer responsibility organization
10 with covered products designated for curbside collection under its
11 plan must provide reimbursement to a government entity that chooses
12 to seek reimbursement for costs incurred in delivering curbside
13 collection services, whether these services are provided directly or
14 through a contracted service provider, or both. Costs that must be
15 reimbursed by a producer responsibility organization include, as
16 applicable, any administrative, public education, collection,
17 transportation, and sorting or processing costs incurred in
18 delivering curbside collection services in accordance with the
19 requirements of this chapter. Reimbursements for curbside collection
20 services must be calculated using base cost formulas established in
21 the producer responsibility organization plan approved by the
22 department.

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

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

35 NEW SECTION. **Sec. 116.** COST REIMBURSEMENT FOR SERVICES
36 REGULATED BY THE UTILITIES AND TRANSPORTATION COMMISSION. In areas
37 where collection of source separated recyclable materials from
38 residences is regulated by the utilities and transportation

1 commission under chapter 81.77 RCW, a producer responsibility
2 organization must provide reimbursement to the company granted a
3 certificate to provide the service in accordance with the rates
4 approved by the commission, including all associated taxes and fees
5 that would be otherwise charged to residential customers directly or
6 indirectly for recycling service. To be eligible for reimbursement
7 from a producer responsibility organization under this section, the
8 company granted a certificate must provide service that:

9 (1) Is offered to residents in single-family and multifamily
10 residences wherever curbside garbage collection services are offered,
11 except in areas subject to an ordinance described in section 114(4)
12 of this act;

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

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

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

20 NEW SECTION. **Sec. 117.** INFRASTRUCTURE INVESTMENTS. (1) Each
21 producer responsibility organization must fund and support
22 investments in infrastructure and market development in Washington
23 state as needed to achieve the convenience standards specified in
24 section 113 of this act, the management standards specified in
25 section 110 of this act, the performance rates set in producer
26 responsibility organization plans as described in section 111 of this
27 act, or to address infrastructure gaps, as identified through the
28 statewide needs assessment under section 105 of this act and through
29 the consultation process under section 106 of this act. Investments
30 in infrastructure and market development may include, but are not
31 limited to, those needed to enable reuse of covered products or the
32 recycling or composting of covered products not currently recycled or
33 composted in the residential recycling system, such as:

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

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

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

9 NEW SECTION. **Sec. 118.** EDUCATION AND OUTREACH. (1) Each plan
10 implemented by a producer responsibility organization under this
11 chapter must include education and outreach activities that
12 effectively reach diverse residents, are accessible, are clear, and
13 support the achievement of the performance rates set in producer
14 responsibility organization plans as described in section 111 of this
15 act. To implement the education and outreach activities described in
16 the plan, a producer responsibility organization must, at minimum:

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

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

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

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

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

37 (c) Use consistent and easy to understand messaging and education
38 statewide, with the aim of reducing resident confusion regarding the

1 recyclability, reuse, compostability, and end-of-life management
2 options available for different covered products;

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

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

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

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

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

24 NEW SECTION. **Sec. 119.** ANNUAL REPORTING ON ACTIVITIES. (1)
25 Beginning July 1, 2028, and each July 1st thereafter, each producer
26 responsibility organization must submit an annual report to the
27 department for the preceding calendar year of plan implementation.
28 Each annual report must include data, descriptions, and other
29 information sufficient to allow the department to determine whether a
30 producer responsibility organization has fulfilled its obligations
31 under this chapter during the preceding calendar year, including
32 actions identified by the producer responsibility organization to be
33 undertaken as part of the plan submitted under section 107 of this
34 act, and actions to implement the requirements and other provisions
35 of this chapter including, but not limited to, sections 110 through
36 118 of this act.

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

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

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

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

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

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

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

18 (ii) A copy of the independent audit; and

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

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

32 (b) Annual independent auditing and verification must:

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

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

38 NEW SECTION. **Sec. 120.** ADVISORY COUNCIL. (1) The advisory
39 council is established.

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

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

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

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

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

15 (e) Two representatives of environmental nonprofit organizations;

16 (f) One owner or operator of a small business that is not
17 eligible for representation under (g), (h), or (i) of this
18 subsection;

19 (g) Six representatives of the recycling industry, including
20 local governments' service providers, solid waste collection
21 companies or associations, material recovery facilities, or other
22 processing facilities;

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

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

32 (j) One representative of a retail establishment.

33 (3) Advisory councilmembers must be appointed by the director of
34 the department by January 1, 2024. In appointing members, the
35 department shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (d) Review and comment on all new and updated plans submitted by
40 producer responsibility organizations to the department, including

1 making recommendations to the department on plan approvals, as part
2 of the public comment period as established under section 104 of this
3 act;

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

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

12 (g) Provide input, review, and comment on rules proposed by the
13 department under this chapter.

14 (9) Advisory councilmembers that are representatives of tribes or
15 tribal and indigenous services organizations or community-based and
16 environmental nonprofit organizations must, if requested, be
17 compensated and reimbursed in accordance with RCW 43.03.050,
18 43.03.060, and 43.03.220.

19 (10) The department must include costs related to the advisory
20 council in the estimate of annual costs as established in sections
21 104 and 307 of this act, including costs for:

- 22 (a) Department resources, including staff time;
- 23 (b) A third-party facilitator, including related costs; and
- 24 (c) Expenses related to member participation as established in
25 subsection (9) of this section.

26 NEW SECTION. **Sec. 121.** CONFIDENTIAL INFORMATION SUBMISSION. A
27 producer responsibility organization, material recovery facility, or
28 other processing facility that submits information or records to the
29 department under this chapter may request that the information or
30 records be made available only for the confidential use of the
31 department, the director of the department, or the appropriate
32 division of the department. The director of the department must give
33 consideration to the request and if this action is not detrimental to
34 the public interest and is otherwise in accordance with the policies
35 and purposes of chapter 43.21A RCW, the director must grant the
36 request for the information to remain confidential as authorized in
37 RCW 43.21A.160.

1 NEW SECTION. **Sec. 122.** PROHIBITION ON THE USES OF FUNDS BY
2 PRODUCER RESPONSIBILITY ORGANIZATIONS. (1) A producer responsibility
3 organization may not use funds collected for purposes of implementing
4 a plan required under this chapter for costs associated with:

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

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

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

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

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

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

24 NEW SECTION. **Sec. 123.** ENFORCEMENT AUTHORITY. (1)(a) The
25 department may administratively impose a civil penalty of up to
26 \$1,000 per violation per day on any person who violates this chapter
27 or on any producer responsibility organization that violates the
28 postconsumer recycled content provisions applicable to producer
29 responsibility organizations under chapter 70A.--- RCW (the new
30 chapter created in section 602 of this act) and up to \$10,000 per
31 violation per day for the second and each subsequent violation.

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

1 the requirements of this chapter 60 days following the date the
2 written notification of the violation was sent.

3 (2) Upon the department notifying a producer responsibility
4 organization that it has not met a significant requirement of this
5 chapter or chapter 70A.--- RCW (the new chapter created in section
6 602 of this act), the department may, in addition to assessing the
7 penalties provided in subsection (1) of this section, take any
8 combination of the following actions:

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

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

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

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

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

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

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

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

31 NEW SECTION. **Sec. 124.** TRUTH IN LABELING. (1) Beginning January
32 1, 2027, a producer may not offer for sale, sell, or distribute in or
33 into Washington, including by means of remote sale, any covered
34 product under this chapter, certified product under chapter 70A.245
35 RCW, or qualifying beverage container under chapter 70A.--- RCW (the
36 new chapter created in section 603 of this act) that makes a
37 deceptive or misleading claim about its recyclability.

38 (a) A covered product, certified product, or qualifying beverage
39 container that displays a chasing arrows symbol, a chasing arrows

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

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

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

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

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

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

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

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

33 (a) Designated for collection in a producer responsibility
34 organization plan approved by the department as described in section
35 107 of this act or is a qualifying beverage container covered by a
36 deposit return system under chapter 70A.--- RCW (the new chapter
37 created in section 603 of this act);

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

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

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

6 NEW SECTION. **Sec. 125.** PACKAGING REGISTRATION CLEARINGHOUSE—
7 PRODUCER REGISTRATION. (1) The department is authorized to
8 participate in the development and ongoing operation of a regional or
9 multistate clearinghouse for the purpose of facilitating the
10 implementation of state laws and rules on packaging and paper
11 products including, but not limited to, requirements established
12 under this chapter and chapters 70A.222, 70A.230, 70A.245, 70A.340,
13 70A.350, 70A.455, 70A.--- (the new chapter created in section 602 of
14 this act), and 70A.--- RCW (the new chapter created in section 603 of
15 this act) and other relevant laws.

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

20 NEW SECTION. **Sec. 126.** OTHER ASSISTANCE PROGRAMS. Nothing in
21 this act impacts an entity's eligibility for any state or local
22 incentive or assistance program to which they are otherwise eligible.

23 NEW SECTION. **Sec. 127.** ACCOUNT. The responsible packaging
24 management account is created in the custody of the state treasury.
25 All receipts received by the department under this chapter and
26 chapter 70A.--- RCW (the new chapter created in section 602 of this
27 act), except those specified for deposit in the recycling enhancement
28 account created in RCW 70A.245.100, must be deposited in the account.
29 Only the director of the department or the director's designee may
30 authorize expenditures from the account. The account is subject to
31 the allotment procedures under chapter 43.88 RCW, but an
32 appropriation is not required for expenditures. Expenditures from the
33 account may be used by the department only for implementing,
34 administering, and enforcing the requirements of this chapter and
35 chapter 70A.--- RCW (the new chapter created in section 602 of this
36 act).

1 NEW SECTION. **Sec. 128.** PETITION FOR THE EXCLUSION OF CERTAIN

2 PRODUCTS. (1) Prior to the submission of a new or updated plan under
3 section 107 of this act, the department may review and determine for
4 the duration of the upcoming plan's period of applicability whether
5 to temporarily exclude for reasons of public health and safety from
6 the requirements of this chapter, except as provided in subsection
7 (5) of this section, packaging used to contain the following
8 categories of products, subcategories of the following categories of
9 products, or individual products that are:

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

16 (b) Regulated under the poison prevention packaging act of 1970;
17 and

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

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

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

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

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

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

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

15 **Part Two**

16 **Postconsumer Recycled Content Requirements**

17 NEW SECTION. **Sec. 201.** DEFINITIONS. The definitions in this
18 section and section 102 of this act apply throughout this chapter
19 unless the context clearly requires otherwise.

20 (1)(a) "Beverage" means liquid products intended for human or
21 animal consumption and in a quantity more than or equal to two fluid
22 ounces and less than or equal to one gallon, including:

23 (i) Water and flavored water;

24 (ii) Beer or other malt beverages;

25 (iii) Wine;

26 (iv) Distilled spirits;

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

29 (vi) Dairy milk; and

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

31 (b) "Beverage" does not include infant formula as defined in 21
32 U.S.C. Sec. 321(z), medical food as defined in 21 U.S.C. Sec.
33 360ee(b)(3), or fortified oral nutritional supplements used for
34 persons who require supplemental or sole source nutritional needs due
35 to special dietary needs directly related to cancer, chronic kidney
36 disease, diabetes, or other medical conditions as determined by the
37 department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (b) Textile cleaners, carpet and pet cleaners, and treatments; or
- 2 (c) Other products used to clean or freshen areas associated with
- 3 a household.

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

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

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

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

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

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

19 (14)(a) "Plastic beverage container" means a bottle or other
20 rigid container that is solely made of plastic material and is
21 capable of maintaining its shape when empty, comprised of one or
22 multiple plastic resins designed to contain a beverage. "Plastic
23 beverage container" includes a container's cap or lid, beginning
24 January 1, 2025.

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

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

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

34 (iii) Bladders or pouches that contain a beverage;

35 (iv) Paper-based beverage containers; or

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

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

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

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

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

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

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

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

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

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

21 (iii) Pesticide products regulated by the federal insecticide,
22 fungicide, and rodenticide act, 7 U.S.C. Sec. 136 et seq. that are in
23 direct contact with the regulated product. This exemption does not
24 include products regulated by the United States food and drug
25 administration.

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

29 (i) Capable of maintaining its shape when empty;

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

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

34 (b) "Plastic tub" does not include:

35 (i) Household cleaning and personal care products;

36 (ii) Plastic containers that are or are used for medical devices,
37 medical products that are required to be sterile, nonprescription and
38 prescription drugs, or dietary supplements as defined in RCW
39 82.08.0293;

40 (iii) Thermoform plastic containers;

1 (iv) Single-use plastic cups; and

2 (v) Other covered products subject to minimum PCRC requirements.

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

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

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

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

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

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

20 (iii) Beverages that use plastic beverage containers;

21 (iv) Plastic tubs for food products;

22 (v) Thermoform plastic containers; and

23 (vi) Single-use plastic cups.

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

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

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

35 (ii) If the item is sold in or with packaging under a retail
36 brand, the producer is the brand owner;

37 (iii) If there is no person to which (a)(i) or (ii) of this
38 subsection applies, the producer of the packaging is the person that
39 is the licensee of a brand or trademark under which an item is used
40 in a commercial enterprise, sold, offered for sale, or distributed in

1 or into this state, whether or not the trademark is registered in
2 this state;

3 (iv) If there is no person described in (a)(i), (ii), or (iii) of
4 this subsection within the United States, the producer is the person
5 who is the importer of record for the item into the United States for
6 use in a commercial enterprise that sells, offers for sale, or
7 distributes the item in this state;

8 (v) If there is no person described in (a)(i), (ii), (iii), or
9 (iv) of this subsection with a commercial presence within the state,
10 the producer is the person that first distributes the item in or into
11 this state; or

12 (vi) A person is a "producer" of a PCRC product sold, offered for
13 sale, or distributed in or into this state, as defined in (a)(i)
14 through (v) of this subsection, except where another responsible
15 producer has contractually accepted responsibility as a producer and
16 has joined a registered producer responsibility organization as the
17 producer responsible for that PCRC product under this chapter.

18 (b) "Producer" does not include:

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

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

23 (iii) De minimis producers that annually sell, offer for sale,
24 distribute, or import:

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

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

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

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

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

36 (b) "Retail establishment" includes, but is not limited to, food
37 service businesses as defined in RCW 70A.245.010, grocery stores,
38 department stores, hardware stores, home delivery services,
39 pharmacies, liquor stores, restaurants, catering trucks, convenience

1 stores, or other retail stores or vendors, including temporary stores
2 or vendors at farmers markets, street fairs, and festivals.

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

5 (b) "Single-use plastic cups" do not include:

6 (i) Commercially or home compostable cups;

7 (ii) Expanded polystyrene cups; or

8 (iii) Composite plastic-lined fiber cups.

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

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

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

20 (iii) Unfilled containers that are sold directly.

21 (b) "Thermoform plastic container" includes:

22 (i) Hinged plastic containers, commonly known as "clamshells" or
23 "blister packaging";

24 (ii) Two-piece unhinged containers;

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

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

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

29 (i) Household cleaning products or personal care products;

30 (ii) Plastic tubs;

31 (iii) Reusable containers;

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

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

35 (vi) Plastic containers that are or are used for medical devices,
36 medical products that are required to be sterile, prescription or
37 nonprescription drugs, or dietary supplements as defined in RCW
38 82.08.0293;

39 (vii) Commercially or home compostable containers;

40 (viii) Other PCRC products; and

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

4 NEW SECTION. **Sec. 202.** DE MINIMIS PRODUCERS. (1) For purposes
5 of determining whether a producer is a de minimis producer, the
6 weight and revenue definitional thresholds must be calculated at the
7 level of the "entity" associated with the PCRC product by the
8 producer responsibility organization.

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

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

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

19 (4) The producer responsibility organization may demand from
20 participating producers and must submit to the department information
21 necessary to verify whether a producer qualifies for the de minimis
22 status, including:

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

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

26 (c) Any additional information requested by the department.

27 NEW SECTION. **Sec. 203.** PCRC REQUIREMENTS FOR PCRC PRODUCTS.

28 (1) (a) By January 1, 2025, and each January 1st thereafter, a
29 producer responsibility organization under chapter 70A.--- RCW (the
30 new chapter created in section 601 of this act) that represents
31 producers who offers for sale, sells, or distributes in or into
32 Washington PCRC products must register with the department on behalf
33 of each producer registered with the producer responsibility
34 organization with sale or distribution of PCRC products in or into
35 Washington. A producer must continue to register and report to the
36 department under the methods established in chapter 70A.245 RCW, as
37 it existed as of January 1, 2023, until a producer responsibility
38 organization registers with the department under chapter 70A.--- RCW

1 (the new chapter created in section 601 of this act), after which
2 time each producer of PCRC products must either join a registered
3 producer responsibility organization and comply with the requirements
4 of this chapter through that producer responsibility organization, or
5 must register with the department as an individual producer
6 responsibility organization for purposes of compliance with chapter
7 70A.--- RCW (the new chapter created in section 601 of this act) and
8 this chapter.

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

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

16 (a) Beginning January 1, 2023, producers of beverages other than
17 wine in 187 milliliter plastic beverage containers and dairy milk in
18 plastic beverage containers must meet minimum PCRC requirements
19 established under section 204 of this act.

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

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

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

32 (e) Beginning January 1, 2029, producers of single-use plastic
33 cups must meet minimum PCRC requirements established under section
34 207 of this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (4) (a) A producer responsibility organization shall evaluate the
31 PCRC requirements in sections 204 (1) (c) and (2) (c), 205 (3), 206 (2),
32 207 (1) (b) and (2) (b), and 208 (1) (b) and (2) (a) of this act, and
33 assess market conditions and PCRC availability and the technological
34 feasibility of these requirements, no later than six months prior to
35 the dates identified in those subsections. The producer
36 responsibility organization may request an extension of these
37 requirements and must present data, from the evaluation performed
38 under this subsection, to the department. The department may grant
39 the extension of the implementation of one or more of these
40 requirements for up to one year.

1 (b) The department shall review the extension request from the
2 producer responsibility organization within 30 days of the request
3 and approve, partially approve, deny, or request additional
4 information to evaluate the extension request.

5 (c) The department may renew an approved extension annually, upon
6 request of the producer responsibility organization and submission of
7 data demonstrating that the conditions justifying the current
8 extension remain in place.

9 (d) If an extension is granted, the producer responsibility
10 organization may include in its annual report, or the department may
11 report to the legislature, any potential need to revise these
12 requirements, prior to the expiration of a one-year extension period.

13 NEW SECTION. **Sec. 204.** PCRC REQUIREMENTS FOR PLASTIC BEVERAGE
14 CONTAINERS. A producer of a beverage in a plastic beverage container
15 must meet the following annual minimum PCRC percentage on average for
16 the total quantity of plastic beverage containers, by weight, that
17 are sold, offered for sale, or distributed in or into Washington by
18 the producer effective:

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

21 (a) January 1, 2023, through December 31, 2025: No less than 15
22 percent PCRC plastic by weight;

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

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

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

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

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

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

35 NEW SECTION. **Sec. 205.** PCRC REQUIREMENTS FOR HOUSEHOLD CLEANING
36 PRODUCTS AND PERSONAL CARE PRODUCTS. A producer of household cleaning
37 products in plastic containers or a producer of personal care
38 products in plastic containers must meet the following annual minimum

1 PCRC percentage on average for the total quantity of plastic
2 containers, by weight, that are sold, offered for sale, or
3 distributed in or into Washington by the producer effective:

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

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

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

10 NEW SECTION. **Sec. 206.** PCRC REQUIREMENTS FOR PLASTIC TUBS FOR
11 FOOD PRODUCTS. A producer of plastic tubs must meet the following
12 annual minimum PCRC percentage on average for the total quantity of
13 plastic tubs used for food products, by weight, that are sold,
14 offered for sale, or distributed in or into Washington by the
15 producer effective:

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

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

20 NEW SECTION. **Sec. 207.** PCRC REQUIREMENTS FOR SINGLE-USE PLASTIC
21 CUPS. A producer of single-use plastic cups must meet the following
22 annual minimum PCRC percentage on average for the total quantity of
23 single-use plastic cups, by weight, that are sold, offered for sale,
24 or distributed in or into Washington by the producer effective:

25 (1) For polypropylene single-use plastic cups:

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

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

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

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

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

36 NEW SECTION. **Sec. 208.** PCRC REQUIREMENTS FOR THERMOFORM PLASTIC
37 CONTAINERS. A producer of a thermoform plastic container must meet

1 the following annual minimum PCRC percentage on average for the total
2 quantity of thermoform plastic containers, by weight, that are sold,
3 offered for sale, or distributed in or into Washington by the
4 producer effective:

5 (1) For packaging for consumable goods:

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

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

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

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

16 NEW SECTION. **Sec. 209.** PCRC REPORTING BY PRODUCER
17 RESPONSIBILITY ORGANIZATIONS. (1) A producer responsibility
18 organization reporting to the department under this chapter must pay
19 fees as specified in chapter 70A.--- RCW (the new chapter created in
20 section 601 of this act).

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

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

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

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

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

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

38 (b) A producer must maintain a certificate of compliance stating
39 that the covered product is in compliance with postconsumer

1 requirements under this chapter. No later than six months prior to
2 the initial effective dates of the requirements of sections 203
3 through 208 of this act, a producer responsibility organization shall
4 evaluate if there are adequate and commercial feasible third-party
5 certifications for PCRC for each covered product category with
6 requirements and report to the department on the adequacy of these
7 certifications with a recommendation for their adoption. The
8 department shall have 30 days to respond to the producer
9 responsibility organization to approve, partially approve, deny, or
10 request additional information on their recommendation. If adequate
11 third-party certifications are deemed to exist by the producer
12 responsibility organization and the department, the certificate of
13 compliance must be conducted by a third-party certification entity,
14 stating that the covered product is in compliance with postconsumer
15 recycled content requirements under this chapter. A third-party
16 certification entity must be an independent, accredited (ISO/IEC
17 17065) certifying body. A producer shall maintain a certificate of
18 compliance within a year by the dates on which the postconsumer
19 recycled content requirements take effect for the producer's PCRC
20 products.

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

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

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

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

35 (g) If a person is required under any other state statute,
36 including chapter 70A.222 RCW, to provide a certificate of
37 compliance, one certificate may be developed containing all required
38 information.

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

4 (4) (a) A producer responsibility organization may, as part of the
5 annual report submitted to the department under this section, or as a
6 separate submission in advance of the effective dates in sections 204
7 through 208 of this act, petition for an exclusion or adjustment
8 under section 210 of this act covering the upcoming calendar year to
9 the minimum PCRC requirements on behalf of producers registered with
10 the producer responsibility organization.

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

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

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

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

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

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

36 (ii) Reasons for not approving the PCRC annual report or
37 separately submitted petition. The producer responsibility
38 organization must submit a revised PCRC annual report within 60 days
39 after receipt of the letter of disapproval.

1 (6) The department must post approved PCRC annual reports or a
2 separately submitted petition submitted by each producer
3 responsibility organization under this section on its website.

4 NEW SECTION. **Sec. 210.** ADJUSTMENTS AND TEMPORARY EXCLUSIONS TO
5 PCRC RATES. (1) The department may review and determine for the
6 following calendar year whether to adjust the minimum PCRC percentage
7 required for a type of container or PCRC product or category of PCRC
8 products under this chapter. The department's review may be initiated
9 by the department or upon a petition by a producer responsibility
10 organization in its annual report submitted to the department under
11 section 209 of this act or a separately submitted petition.

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

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

18 (b) Recycling rates;

19 (c) The availability of recycled plastic suitable to meet the
20 minimum PCRC requirements, including the availability of high quality
21 recycled plastic, and food-grade recycled plastic from recycling
22 programs;

23 (d) The capacity of recycling or processing infrastructure;

24 (e) The technical feasibility of achieving the minimum PCRC
25 requirements in covered products that are regulated under 21 C.F.R.,
26 chapter I, subchapter G, 7 U.S.C. Sec. 136, 15 U.S.C. Sec. 1471-1477,
27 49 C.F.R. Sec. 178.33b, 49 C.F.R. Sec. 173, 40 C.F.R. Sec. 152.10, 15
28 U.S.C. Sec. 1261-1278, 49 U.S.C. Sec. 5101 et seq., 49 C.F.R. Sec.
29 178.509, 49 C.F.R. Sec. 179.522, 49 C.F.R. Sec. 178.600-609, and
30 other federal laws; and

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

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

37 (b) For plastic household cleaning product containers and plastic
38 personal care product containers, the department may not adjust the
39 minimum PCRC requirements above the minimum PCRC percentages for the

1 year under review required pursuant to section 205 of this act or
2 below a minimum of 10 percent.

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

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

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

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

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

24 NEW SECTION. **Sec. 211.** ADMINISTRATIVE ROLE AND ENFORCEMENT BY
25 THE DEPARTMENT. (1) (a) A producer that does not pay fees, register,
26 report, or achieve the PCRC requirements established under this
27 chapter is subject to the penalties provided in this section.

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

32 (2) (a) A producer assessed a penalty pursuant to this chapter
33 must remit the penalty to the producer responsibility organization
34 with which it is registered. A producer responsibility organization
35 must submit aggregated penalty payments comprised of the remitted
36 penalty payments from all producers owing penalties under this
37 chapter that are members of the producer responsibility organization.
38 The producer responsibility organization's aggregated payment may be
39 a single annual payment, paid in quarterly installments, or on an

1 alternative payment schedule arranged subject to the approval of the
2 department. The department may not approve an alternative payment
3 schedule that exceeds a 12-month time frame unless the department
4 determines that an extension is needed due to unforeseen
5 circumstances, such as a public health emergency, state of emergency,
6 or natural disaster.

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

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

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

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

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

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

35 (3) (a) Upon request by a producer responsibility organization,
36 the department must consider granting a reduction of penalties
37 assessed under this section for a producer's failure to achieve PCRC
38 requirements established in this chapter. Penalty reduction requests
39 under this subsection must be submitted to the department by August
40 1st of each year. A producer responsibility organization's request to

1 the department must contain sufficient information described in (b)
2 of this subsection to allow the department to determine whether to
3 grant the request.

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

6 (i) Anomalous market conditions;

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

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

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

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

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

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

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

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

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

1 NEW SECTION. **Sec. 212.** RULE-MAKING AUTHORITY. The department
2 may adopt rules as necessary to implement, administer, and enforce
3 this chapter.

4 **Sec. 213.** RCW 70A.245.010 and 2021 c 313 s 2 are each amended to
5 read as follows:

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

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

12 ~~(a) Water and flavored water;~~

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

14 ~~(c) Wine;~~

15 ~~(d) Distilled spirits;~~

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

18 ~~(f) Any beverage other than those specified in (a) through (e) of~~
19 ~~this subsection, except infant formula as defined in 21 U.S.C. Sec.~~
20 ~~321(z), medical food as defined in 21 U.S.C. Sec. 360ee(b)(3), or~~
21 ~~fortified oral nutritional supplements used for persons who require~~
22 ~~supplemental or sole source nutritional needs due to special dietary~~
23 ~~needs directly related to cancer, chronic kidney disease, diabetes,~~
24 ~~or other medical conditions as determined by the department.~~

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

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

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

35 ~~(i) Plastic trash bags;~~

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

38 ~~(iii) Beverages that use plastic beverage containers.~~

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

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

7 ~~(6))~~ (2) "Department" means the department of ecology.

8 ~~((7))~~ (3) "Expanded polystyrene" means blown polystyrene and
9 expanded and extruded foams that are thermoplastic petrochemical
10 materials utilizing a styrene monomer and processed by any number of
11 techniques including, but not limited to, fusion of polymer spheres
12 (expandable bead polystyrene), injection molding, foam molding, and
13 extrusion-blow molding (extruded foam polystyrene).

14 ~~((8))~~ (4) "Food service business" means a business selling or
15 providing food for consumption on or off the premises, and includes
16 full-service restaurants, fast food restaurants, cafes,
17 delicatessens, coffee shops, grocery stores, vending trucks or carts,
18 home delivery services, delivery services provided through an online
19 application, and business or institutional cafeterias.

20 ~~((9))~~ (5) "Food service product" means a product intended for
21 one-time use and used for food or drink offered for sale or use. Food
22 service products include, but are not limited to, containers, plates,
23 bowls, cups, lids, beverage containers, meat trays, deli rounds,
24 utensils, sachets, straws, condiment packaging, clamshells and other
25 hinged or lidded containers, wrap, and portion cups.

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

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

29 ~~(b) Household cleaning products;~~

30 ~~(c) Liquid soap;~~

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

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

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

38 ~~(12))~~ (6) "Licensee" means a manufacturer of a certified PCRC
39 product or entity who licenses a brand and manufactures a ~~((covered~~
40 ~~product))~~ certified PCRC product under that brand.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ~~(16))~~ (7) "Plastic trash bag" means a bag that is made of
2 noncompostable plastic, is at least 0.70 mils thick, and is designed
3 and manufactured for use as a container to hold, store, or transport
4 materials to be discarded or recycled, and includes, but is not
5 limited to, a garbage bag, recycling bag, lawn or leaf bag, can liner
6 bag, kitchen bag, or compactor bag. "Plastic trash bag" does not
7 include any compostable bags meeting the requirements of chapter
8 70A.455 RCW. "Plastic trash bag" does not include any reusable
9 plastic carryout bag meeting the requirements of RCW
10 70A.530.020(6)(b).

11 ~~((17) "Plastic trash bag")~~ (8) "Certified PCRC product
12 manufacturing industry" means an association that represents
13 companies that manufacture ~~((plastic trash bags))~~ a certified PCRC
14 product.

15 ~~((18))~~ (9) "Postconsumer recycled content" means the content of
16 a ~~((covered product))~~ certified PCRC product made of recycled
17 materials derived specifically from recycled material generated by
18 households or by commercial, industrial, and institutional facilities
19 in their role as end users of a product that can no longer be used
20 for its intended purpose. "Postconsumer recycled content" includes
21 returns of material from the distribution chain.

22 ~~((19))~~ (10)(a) "Producer" means the following person
23 responsible for compliance with minimum postconsumer recycled content
24 requirements under this chapter for a ~~((covered product sold, offered~~
25 ~~for sale, or distributed in or into this state:~~

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

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

36 ~~(iii) If there is no person described in (a)(i) and (ii) of this~~
37 ~~subsection over whom the state can constitutionally exercise~~
38 ~~jurisdiction, the producer is the person who imports or distributes~~
39 ~~the covered product in or into the state))~~ certified product sold,
40 offered for sale, or distributed in or into this state:

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

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

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

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

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

24 (b) "Producer" does not include:

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

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

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

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

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

36 ~~((20))~~ (11)(a) "Retail establishment" means any person,
37 corporation, partnership, business, facility, vendor, organization,
38 or individual that sells or provides merchandise, goods, or materials
39 directly to a customer.

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

7 ~~((21))~~ (12) (a) "Utensil" means a product designed to be used by
8 a consumer to facilitate the consumption of food or beverages,
9 including knives, forks, spoons, cocktail picks, chopsticks, splash
10 sticks, and stirrers.

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

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

15 (a) Plastic household cleaning products or personal care
16 products, as defined in section 201 of this act, that are pesticide
17 products regulated by the federal insecticide, fungicide, and
18 rodenticide act, 7 U.S.C. Sec. 136 et seq., that are in direct
19 contact with the regulated product, and that are excluded from the
20 requirements of chapters 70A.--- (the new chapter created in section
21 601 of this act) and 70A.--- RCW (the new chapter created in section
22 602 of this act);

23 (b) Plastic trash bags; and

24 (c) Plastic plant pots or trays.

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

28 **Sec. 214.** RCW 70A.245.020 and 2021 c 313 s 3 are each amended to
29 read as follows:

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

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

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

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

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

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

16 ~~(b) The registration information submitted to the department~~
17 ~~under this section must include a list of the producers of covered~~
18 ~~products and the brand names of the covered products represented in~~
19 ~~the registration submittal. Beginning April 1, 2024, for plastic~~
20 ~~trash bags and plastic beverage containers other than wine in 187~~
21 ~~milliliter plastic beverage containers and dairy milk in plastic~~
22 ~~beverage containers, April 1, 2026, for plastic household and~~
23 ~~personal care product containers, and April 1, 2029, for wine in 187~~
24 ~~milliliter plastic beverage containers and dairy milk, a producer may~~
25 ~~submit registration information at the same time as the information~~
26 ~~submitted through the annual reporting required under RCW~~
27 ~~70A.245.030.~~

28 ~~(3)(a) By January 31, 2022, and every January 31st thereafter,~~
29 ~~the department must:~~

30 ~~(i) Prepare an annual workload analysis for public comment that~~
31 ~~identifies the annual costs it expects to incur to implement,~~
32 ~~administer, and enforce this section and RCW 70A.245.030 through~~
33 ~~70A.245.060 and 70A.245.090 (1), (2), and (4), including rule making,~~
34 ~~in the next fiscal year for each category of covered products;~~

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

39 ~~(iii) Until rules are adopted under (a)(iv) of this subsection,~~
40 ~~issue a general order to all entities falling within the definition~~

1 of producer. The department must equitably determine fee amounts for
2 an individual producer or third-party representatives within each
3 category of covered product;

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

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

13 (b) The department must:

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

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

20 (c) By April 1, 2022, and every April 1st thereafter, producers
21 or their third-party representative must submit a fee payment as
22 determined by the department under (a) of this subsection.

23 (4) A producer of a beverage in a plastic beverage container must
24 meet the following annual minimum postconsumer recycled content
25 percentage on average for the total quantity of plastic beverage
26 containers, by weight, that are sold, offered for sale, or
27 distributed in or into Washington by the producer effective:

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

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

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

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

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

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

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

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

5 ~~(5))~~ A producer of household cleaning ~~((and))~~ or plastic
6 personal care products that are pesticide products regulated by the
7 federal insecticide, fungicide, and rodenticide act, 7 U.S.C. Sec.
8 136 et seq. and that are excluded from the requirements of chapters
9 70A.--- (the new chapter created in section 601 of this act) and
10 70A.--- RCW (the new chapter created in section 602 of this act) in
11 plastic containers that are in direct contact with the regulated
12 product must meet the following annual minimum postconsumer recycled
13 content percentage on average for the total quantity of plastic
14 containers, by weight, that are sold, offered for sale, or
15 distributed in or into Washington by the producer effective:

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

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

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

22 ~~((6))~~ (2) A producer of plastic trash bags must meet the
23 following annual minimum postconsumer recycled content percentage on
24 average for the total quantity of plastic trash bags, by weight, that
25 are sold, offered for sale, or distributed in or into Washington by
26 the producer effective:

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

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

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

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

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

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

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

15 When submitting a petition, producers or (~~a producer~~) the certified
16 PCRC product manufacturing industry must provide necessary
17 information that will allow the department to make a determination
18 under (b) of this subsection.

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

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

24 (ii) Recycling rates;

25 (iii) The availability of recycled plastic suitable to meet the
26 minimum postconsumer recycled content requirements pursuant to
27 subsection (~~((4), (5), or (6))~~) (1), (2), or (3) of this section,
28 including the availability of high quality recycled plastic(~~(, and~~
29 ~~food-grade recycled plastic from recycling programs))~~);

30 (iv) The capacity of recycling or processing infrastructure;

31 (v) The technical feasibility of achieving the minimum
32 postconsumer recycled content requirements in covered products that
33 are regulated under 21 C.F.R., chapter I, subchapter G, 7 U.S.C. Sec.
34 136, 15 U.S.C. Sec. 1471-1477, 49 C.F.R. Sec. 178.33b, 49 C.F.R. Sec.
35 173, 40 C.F.R. Sec. 152.10, 15 U.S.C. Sec. 1261-1278, 49 U.S.C. 5101
36 et seq., 49 C.F.R. Sec. 178.509, 49 C.F.R. Sec. 179.522, 49 C.F.R.
37 Sec. 178.600-609, and other federal laws; and

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

40 (c) Under (a) of this subsection(~~(~~

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

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

10 ~~(iii) For plastic trash bags)), the department may not adjust the~~
11 ~~minimum postconsumer recycled content requirements above the minimum~~
12 ~~postconsumer recycled content percentages for the year under review~~
13 ~~required pursuant to subsection ((6)) (1), (2), or (3) of this~~
14 ~~section or below the minimum percentage required in subsection~~
15 ~~((6)) (1)(a), (2)(a), or (3)(a) of this section.~~

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

23 ~~((8))~~ (5) The department must temporarily exclude from minimum
24 postconsumer recycled content requirements for the upcoming year any
25 types of covered products in plastic containers for which a producer
26 annually demonstrates to the department by December 31st of a given
27 year that the achievement of postconsumer recycled content
28 requirements in the container material is not technically feasible in
29 order to comply with health or safety requirements of federal law,
30 including the federal laws specified in subsection (7)(b)(v) of this
31 section. A producer must continue to register and report consistent
32 with the requirements of this chapter for covered products
33 temporarily excluded from minimum postconsumer recycled content
34 requirements under this subsection.

35 ~~((9))~~ (6) A producer that does not achieve the postconsumer
36 recycled content requirements established under this section or does
37 not comply with the labeling requirements established in RCW
38 70A.245.060 is subject to penalties established in RCW 70A.245.040.

39 ~~((10))~~ (7)(a) A city, town, county, or municipal corporation
40 may not implement local recycled content requirements for (~~a covered~~

1 ~~product that is~~) certified PCRC products that are subject to minimum
2 postconsumer recycled content requirements established in this
3 section.

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

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

14 ~~(12))~~ (8) In-state distributors, wholesalers, and retailers in
15 possession of ~~((covered products))~~ certified PCRC products
16 manufactured before the date that postconsumer recycled content
17 requirements become effective may exhaust their existing stock
18 through sales to the public.

19 **Sec. 215.** RCW 70A.245.030 and 2021 c 313 s 4 are each amended to
20 read as follows:

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

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

1 ~~(c) The requirements of (a) of this subsection apply to wine in~~
2 ~~187 milliliter plastic beverage containers and dairy milk in plastic~~
3 ~~beverage containers beginning April 1, 2029.~~

4 ~~(d) The department must post the information reported under this~~
5 ~~subsection on its website, except as provided in subsection (2) of~~
6 ~~this section)) A plastic trash bag producer must develop a
7 certificate of compliance within one year of the beginning of
8 postconsumer recycled content requirements applicable to a plastic
9 trash bag, conducted by a third-party certification entity, stating
10 that a plastic trash bag is in compliance with the labeling
11 requirements of RCW 70A.245.060 and the postconsumer recycled content
12 requirements of RCW 70.245.020. A producer of other certified PCRC
13 products must maintain a certificate of compliance stating that the
14 certified PCRC product is in compliance with the postconsumer
15 recycled content requirements of RCW 70A.245.020. A third-party
16 certification entity must be an independent, accredited (ISO/IEC
17 17065) certifying body.~~

18 (2) A producer (~~that submits information or records to the~~
19 ~~department under this chapter may request that the information or~~
20 ~~records be made available only for the confidential use of the~~
21 ~~department, the director, or the appropriate division of the~~
22 ~~department. The director of the department must give consideration to~~
23 ~~the request and if this action is not detrimental to the public~~
24 ~~interest and is otherwise in accordance with the policies and~~
25 ~~purposes of chapter 43.21A RCW, the director must grant the request~~
26 ~~for the information to remain confidential as authorized in RCW~~
27 ~~43.21A.160)) shall develop a compliance certificate by the dates on
28 which the postconsumer recycled content requirements in RCW
29 70A.245.020 take effect for the producer's certified PCRC products.~~

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

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

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

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

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

8 (e) If a person is required under any other state statute,
9 including chapter 70A.222 RCW, to provide a certificate of
10 compliance, one certificate may be developed containing all required
11 information.

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

16 **Sec. 216.** RCW 70A.245.040 and 2021 c 313 s 5 are each amended to
17 read as follows:

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

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

33 ~~(2) Beginning June 1st of the year following the first year that~~
34 ~~minimum postconsumer recycled product content requirements apply to a~~
35 ~~category of covered product, and annually thereafter, the department~~
36 ~~shall determine the penalty for the previous calendar year based on~~
37 ~~the postconsumer recycled content requirement of the previous~~
38 ~~calendar year. The department shall calculate the amount of the~~
39 ~~penalty based upon the amounts in pounds in the aggregate of virgin~~

1 plastic, postconsumer recycled content plastic, and any other plastic
2 per category used by the producer to produce covered products sold or
3 offered for sale in or into Washington state, in accordance with the
4 following:

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

11 (ii) Example: $[(\text{Total pounds of plastic used} \times \text{minimum}$
12 $\text{postconsumer recycled plastic target percentage}) - (\text{Total pounds of}$
13 $\text{plastic used} \times \text{postconsumer recycled plastic percentage used})] \times 20$
14 cents.

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

17 (i) The total pounds of plastic used must equal the sum of the
18 amount of virgin plastic, postconsumer recycled content plastic, and
19 any other plastic used by the producer, as reported pursuant to RCW
20 70A.245.030.

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

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

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

- 31 (A) Anomalous market conditions;
- 32 (B) Disruption in, or lack of supply of, recycled plastics; and
- 33 (C) Other factors that have prevented a producer from meeting the
34 requirements.

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

39 (4) For the purposes of determining compliance with the
40 postconsumer recycled content requirements of this chapter, the

1 ~~department may consider the date of manufacture of a covered product~~
2 ~~or the container of a covered product.~~

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

7 ~~(6))~~ (a) The department may assess a civil penalty to a producer
8 in violation of the requirements of RCW 70A.245.020, 70A.245.030, or
9 70A.245.060 in the amount of up to \$2,000 for the first violation of
10 this chapter, up to \$5,000 for the second violation of this chapter,
11 and up to \$10,000 for the third and any subsequent violation of RCW
12 70A.245.020, 70A.245.030, or 70A.245.060.

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

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

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

24 ~~((7))~~ (4) Penalties collected under this section must be
25 deposited in the recycling enhancement account created in RCW
26 70A.245.100.

27 **Sec. 217.** RCW 70A.245.090 and 2021 c 313 s 12 are each amended
28 to read as follows:

29 ~~(1) ((The department may conduct audits and investigations for~~
30 ~~the purpose of ensuring compliance with RCW 70A.245.020 and~~
31 ~~70A.245.040 based on the information reported under RCW 70A.245.030.~~

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

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

38 (a) Must prepare and post on its website information regarding
39 the prohibitions on the sale and distribution of expanded polystyrene

1 products as specified under RCW 70A.245.070 and restrictions on the
2 provision of optional serviceware under RCW 70A.245.080;

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

8 ((4)) (2) The department may adopt rules as necessary to
9 administer, implement, and enforce this chapter.

10 **Sec. 218.** RCW 70A.245.100 and 2021 c 313 s 13 are each amended
11 to read as follows:

12 The recycling enhancement account is created in the custody of
13 the state treasurer. All penalties collected by the department
14 pursuant to RCW 70A.245.040 ~~((and))~~, 70A.245.050, and sections 123
15 and 211 of this act, and penalties specified in chapter 70A.--- RCW
16 (the new chapter created in section 603 of this act) must be
17 deposited in the account. Only the director of the department or the
18 director's designee may authorize expenditures from the account. The
19 account is subject to the allotment procedures under chapter 43.88
20 RCW, but an appropriation is not required for expenditures.
21 Expenditures from the account may be used by the department only for
22 providing grants to local governments for the purpose of supporting
23 local solid waste and financial assistance programs.

24 **Sec. 219.** RCW 70A.245.120 and 2021 c 313 s 15 are each amended
25 to read as follows:

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

31 (a) Analyzing market conditions and opportunities in the state's
32 recycling industry for meeting the minimum postconsumer recycled
33 content requirements for ~~((covered products))~~ certified PCRC products
34 pursuant to RCW 70A.245.020 and 70A.245.030 for products subject to
35 minimum postconsumer recycled content requirements under chapter
36 70A.--- RCW (the new chapter created in section 602 of this act) and
37 this chapter, and for plastic collection bins subject to section 221
38 of this act; and

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

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

9 (3) This section expires July 1, 2029.

10 **Sec. 220.** RCW 70A.245.060 and 2021 c 313 s 7 are each amended to
11 read as follows:

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

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

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

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

27 (b) For the purposes of this subsection:

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

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

32 NEW SECTION. **Sec. 221.** A new section is added to chapter
33 70A.245 RCW to read as follows:

34 ROLL CARTS. (1) Beginning January 1, 2024, a manufacturer or
35 person may only sell, offer for sale, or distribute for use in
36 Washington plastic collection bins made from at least 25 percent
37 postconsumer recycled content. However, a person providing solid
38 waste collection services may distribute for use in Washington any

1 plastic collection bins that were in use or in its inventory in
2 Washington state prior to January 1, 2024, until the end of such a
3 bin's useful life.

4 (2) A person with an existing municipal contract for plastic
5 collection bins that was in place prior to August 1, 2023, is exempt
6 from this section until the expiration or renewal date of the
7 contract. A new or renewed contract whose terms take effect after
8 August 1, 2023, must be consistent with the requirements of this
9 section. Exempt persons are encouraged to meet the requirements of
10 this section as collection bins are replaced under existing
11 contracts.

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

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

23 **Part Three**

24 **Reimbursable Deposit Program Standards (Beverage Container Deposit** 25 **Program Provisions)**

26 NEW SECTION. **Sec. 301.** INTENT. (1) The legislature finds that
27 the department of ecology was directed, through an independent
28 consultant, to study how plastic packaging is managed in the state,
29 to assess various policy options, and to provide recommendations to
30 achieve certain goals, which included:

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

33 (b) Plastic packaging sold into the state incorporates at least
34 20 percent postconsumer recycled content by January 1, 2025; and

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

37 (2) The legislature also finds that the study recommendations
38 included establishing an extended producer responsibility policy for

1 all consumer packaging and paper with a framework that makes
2 producers responsible for achieving specific management and
3 environmental outcomes for the consumer packaging they supply into
4 Washington state. In addition, the legislature finds that the study
5 recommends that a deposit return system is an effective way for
6 producers to meet outcomes required by an extended producer
7 responsibility framework.

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

18 NEW SECTION. **Sec. 302.** DEFINITIONS. The definitions in this
19 section apply throughout this chapter unless the context clearly
20 requires otherwise.

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

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

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

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

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

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

3 NEW SECTION. **Sec. 303.** RELATIONSHIP WITH CHAPTER 70A.--- (THE
4 NEW CHAPTER CREATED IN SECTION 601 OF THIS ACT) AND 70A.--- (THE NEW
5 CHAPTER CREATED IN SECTION 602 OF THIS ACT) RCW. (1)(a) As an
6 alternative to satisfying a producer's compliance obligation under
7 chapter 70A.--- RCW (the new chapter created in section 601 of this
8 act) for qualifying beverage containers, a distributor may implement
9 a deposit return system as provided in this chapter.

10 (b) The requirements of sections 304 through 319 of this act do
11 not apply to qualifying beverage containers unless and until a
12 distributor responsibility organization, other than a single
13 distributor independently complying with the requirements of a
14 distributor responsibility organization in this chapter, is
15 established and registers with the department at, or prior to, the
16 time of producer responsibility organization registration under
17 chapter 70A.--- RCW (the new chapter created in section 601 of this
18 act), to establish and operate a deposit return system. If a
19 distributor responsibility organization, other than a single
20 distributor independently complying with the requirements of a
21 distributor responsibility organization in this chapter, is to
22 register with the department, it must do so by July 1, 2024.

23 (c) Upon the receipt of the distributor responsibility
24 organization registration by the department under (a) of this
25 subsection, all qualifying beverage containers of all producers
26 subject to the requirements of chapter 70A.--- RCW (the new chapter
27 created in section 601 of this act) cease to be considered covered
28 products for purposes of chapter 70A.--- RCW (the new chapter created
29 in section 601 of this act) and are instead subject to the
30 requirements of this chapter.

31 (d) A producer of qualifying beverage containers subject to the
32 requirements of this chapter must satisfy postconsumer recycled
33 content requirements established in chapter 70A.--- RCW (the new
34 chapter created in section 602 of this act) through participation in
35 a producer responsibility organization for purposes of chapter
36 70A.--- RCW (the new chapter created in section 602 of this act). A
37 producer responsibility organization may not impose fees on
38 qualifying beverage containers and any closures or labels managed
39 under this chapter for purposes other than satisfying postconsumer

1 recycled content requirements established in chapter 70A.--- RCW (the
2 new chapter created in section 602 of this act).

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

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

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

19 NEW SECTION. **Sec. 304.** DISTRIBUTOR RESPONSIBILITY ORGANIZATION
20 DUTIES. (1) Beginning October 1, 2024, or four months after a
21 distributor responsibility organization's registration is approved by
22 the department, whichever is later, each distributor that offers for
23 sale, sells, or distributes in or into Washington beverages in
24 qualifying beverage containers must join a distributor responsibility
25 organization or independently carry out all duties and requirements
26 of a distributor responsibility organization described in this
27 chapter including, but not limited to, the following: (a) Providing a
28 convenient bulk bag drop-off system as described in section 307(5) of
29 this act that accepts all qualifying beverage containers in the same
30 bag, and at no cost to consumers; (b) providing the same number, and
31 geographic distribution, of drop-off locations as required of a
32 distributor responsibility organization; (c) paying to consumers the
33 refund value of qualifying beverage containers; (d) meeting the
34 performance targets described in section 306 of this act; (e) paying
35 all applicable performance penalties; and (f) fulfilling all
36 reporting requirements in this chapter.

37 (2) To qualify as a distributor responsibility organization,
38 other than an individual distributor independently fulfilling the
39 duties required of a distributor responsibility organization, and be

1 approved by the department as described in section 305 of this act, a
2 distributor responsibility organization must register with the
3 department and demonstrate to the department's satisfaction that its
4 initial membership represents the majority of beverages in qualifying
5 beverage containers sold or made available for sale in the state.
6 Distributors may not be initial members of more than one distributor
7 responsibility organization registering with the department.
8 Distributors that have not joined a distributor responsibility
9 organization, or that do not independently fulfill the duties
10 required of a distributor responsibility organization, may not sell
11 or supply beverages in qualifying beverage containers after October
12 1, 2024, or 120 days after a distributor responsibility organization
13 is approved by the department, whichever is later, in or into
14 Washington. Any distributor that operates in violation of this
15 requirement is subject to penalties and damages as described in
16 sections 305 and 307 of this act.

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

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

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

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

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

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

36 (5) By June 30th of the fiscal year of initial distributor
37 responsibility organization registration and every June 30th
38 thereafter, a distributor responsibility organization registered with
39 the department must submit an annual payment to the department to

1 fund the costs to implement, administer, and enforce this chapter,
2 including rule making.

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

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

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

16 (9) A distributor responsibility organization that submits
17 information or records to the department under this chapter may
18 request that the information or records be made available only for
19 the confidential use of the department, the director, or the
20 appropriate division of the department. The director of the
21 department must give consideration to the request, and if the
22 director determines that this action is not detrimental to the public
23 interest and is otherwise in accordance with the policies and
24 purposes of chapter 43.21A RCW, the director must grant the request
25 for the information to remain confidential as authorized in RCW
26 43.21A.160.

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

33 (b) A distributor responsibility organization may not use funds
34 from unclaimed refunds for the purpose of legislative or political
35 advocacy efforts that would require reporting under chapter 42.17A
36 RCW and the distributor responsibility organization shall report on
37 this requirement annually in the manner described in section 309 of
38 this act.

39 (11) A manufacturer distributor producing a de minimis quantity
40 of beverages in qualifying beverage containers, as specified in

1 section 312 of this act, may alternatively comply with the
2 requirements of this chapter by operating a small-scale refund
3 program approved by the department, as described in section 312 of
4 this act.

5 NEW SECTION. **Sec. 305.** DEPARTMENT DUTIES. (1) The department
6 shall implement, administer, and enforce this chapter. The department
7 may adopt rules to implement, administer, and enforce this chapter.

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

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

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

20 (c) Send notice to a distributor responsibility organization of
21 fee amounts due.

22 (3)(a) The department shall review new, updated, and revised
23 registrations submitted by a distributor responsibility organization
24 as required in section 304 of this act. Except for the registration
25 of an individual distributor independently fulfilling the duties
26 required of a distributor responsibility organization, the department
27 shall not approve the registration of a distributor responsibility
28 organization whose initial membership at the time of registration
29 does not represent a majority of beverages in qualifying beverage
30 containers sold or made available for sale in Washington the prior
31 year. The department shall:

32 (i) Approve the registration of:

33 (A) A distributor responsibility organization whose initial
34 membership at the time of registration represents, to the
35 department's satisfaction, a majority of beverages in qualifying
36 beverage containers sold or made available for sale in Washington the
37 prior year; and

38 (B) An individual distributor independently fulfilling the duties
39 required of a distributor responsibility organization; and

1 (ii) Make a determination, when applicable, as to whether the
2 distributor responsibility organization's plan, plan update, or plan
3 revision meets the criteria established in section 307 of this act.

4 (b) The department shall notify the distributor responsibility
5 organization of:

6 (i) The department's approval of a plan, if the plan provides for
7 a program that meets the requirements of section 307 of this act; or

8 (ii) The department's disapproval of a plan, and its reasons for
9 disapproval, if the department determines the plan does not meet the
10 requirements of section 307 of this act.

11 (c) If a distributor responsibility organization's plan is not
12 approved by the department, the distributor responsibility
13 organization must submit a new or revised plan within 60 days after
14 receipt of the department's letter of disapproval.

15 (4) The department shall receive the annual reports submitted by
16 a distributor responsibility organization, or individual distributor
17 independently complying with the requirements of this chapter,
18 pursuant to section 309 of this act and:

19 (a) Ensure the reports contain the items required in sections 304
20 and 309 of this act; and

21 (b) Make public the annual reporting required of the distributor
22 responsibility organization registered by the department, and any
23 individual distributor independently complying with the requirements
24 of this chapter, as described in sections 304 and 309 of this act.

25 (5)(a) In order to determine compliance with the provisions of
26 section 306(2) of this act, the department may, within six months of
27 the date that the department receives a report as described in
28 section 309 of this act, review the records of a distributor
29 responsibility organization specifically related to the accuracy of
30 the redemption rate. The records specifically related to the accuracy
31 of the redemption rate do not include financial details of a
32 distributor responsibility organization.

33 (b) If in the course of a review described in (a) of this
34 subsection the department determines that an audit of a distributor
35 responsibility organization is necessary to verify the redemption
36 rate, the department shall require the distributor responsibility
37 organization to retain an independent audit firm to determine the
38 accuracy of the redemption rate. The scope of the audit must be
39 limited to records specifically related to the accuracy of the
40 redemption rate. A distributor responsibility organization that is

1 subject to review shall pay the costs of the audit. The audit must be
2 limited to the records described in (a) of this subsection.

3 (6) In lieu of the payment described in section 304(5) of this
4 act and subsection (2) of this section, after October 1, 2024, or 120
5 days after a distributor responsibility organization is approved by
6 the department, whichever is later, a distributor independently
7 carrying out the duties and requirements of a distributor
8 responsibility organization described in this chapter shall pay a
9 registration fee to the department equal to 10 cents per qualifying
10 beverage container until such time as a distributor responsibility
11 organization begins operating a deposit return system.

12 (7)(a) After July 1, 2027, or the date in which a distributor
13 responsibility organization begins operating a deposit return system,
14 whichever is later, and after notification of noncompliance from the
15 department and a 60-day cure period, the department shall
16 administratively impose a civil penalty to any distributor who fails
17 to participate in a distributor responsibility organization as
18 specified in section 304 of this act, or fails to otherwise comply
19 with the requirements of this chapter by independently carrying out
20 the duties of a distributor responsibility organization described in
21 this chapter, which shall be at least 15 cents per qualifying
22 beverage container sold or made available for sale by that
23 distributor in the state, or \$10,000, whichever is greater.

24 (b) Any distributor who incurs a penalty under this section may
25 appeal the penalty to the pollution control hearings board
26 established in chapter 43.21B RCW.

27 (c) Fees paid under subsection (6) of this section must be
28 deposited into the deposit return organization program account
29 created in section 318 of this act and used by the department to
30 offset costs of implementing the requirements in this chapter.

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

33 NEW SECTION. **Sec. 306.** REUSE AND RECYCLING PERFORMANCE
34 REQUIREMENTS. (1) To meet the reuse and recycling performance
35 requirements established in this section, a distributor
36 responsibility organization must:

37 (a) Demonstrate, as part of the annual report submitted under
38 this chapter in 2030, that all qualifying beverage containers are
39 designed to be reusable or recyclable by January 1, 2031, in

1 accordance with criteria established by the department under section
2 105(5)(g) of this act; and

3 (b) Calculate the reuse sales rate and the redemption rate of
4 qualifying beverage containers and provide the verification to the
5 department as part of the annual reporting requirements. The reuse
6 sales rate is the number of units in reusable packaging sold in a
7 year. For materials reclaimed under a deposit return system, the
8 calculation point for the redemption rate is the number of qualifying
9 beverage containers redeemed statewide by the distributor
10 responsibility organization divided by the number of qualifying
11 beverage containers sold in the state by members of the distributor
12 responsibility organization.

13 (2) At a minimum, each plan must achieve the following
14 performance requirements:

15 (a) A minimum of 60 percent of all qualifying beverage containers
16 supplied into the state are redeemed for reuse or recycling through
17 the deposit return system in the data reported for 2028 and
18 thereafter;

19 (b) A minimum of 80 percent of all qualifying beverage containers
20 supplied into the state are redeemed for reuse or recycling through
21 the deposit return system in the data reported for 2031 and
22 thereafter; and

23 (c) By December 31, 2031, sales of beverages in reusable
24 packaging must reach at least one percent of all qualifying beverage
25 containers.

26 NEW SECTION. **Sec. 307.** DEPOSIT RETURN SYSTEM. (1) The
27 department shall make a determination whether to approve a
28 distributor responsibility organization's initial plan to operate a
29 deposit return system for qualifying beverage containers based on the
30 criteria in (a) through (h) of this subsection. A distributor
31 responsibility organization must submit an updated plan to the
32 department for review by July 1, 2031, and July 1, 2036. The
33 department must review the updated plans. If, in its review of an
34 updated plan, the department determines that the plan is insufficient
35 to meet the performance and convenience requirements in sections 306
36 and 307 of this act, it shall issue a notice of insufficiency to the
37 distributor responsibility organization, describing the ways in which
38 the distributor responsibility organization's plan is insufficient to
39 meet the performance and convenience requirements. Upon receipt of a

1 notice of insufficiency from the department, the distributor
2 responsibility organization shall have 60 days to submit an updated
3 plan. If, after 60 days the distributor responsibility organization
4 fails to submit an updated plan, or if the updated plan does not
5 adequately address the elements of insufficiency identified by the
6 department, the department shall inform the appropriate committees of
7 the house of representatives and the senate of its analysis of the
8 sufficiency of the updated plans by December 1, 2031, and December 1,
9 2036. The criteria for approval of a distributor responsibility
10 organization's plan are as follows:

11 (a) The distributor responsibility organization's registration
12 with the department meets the requirements described in sections 304
13 and 305 of this act;

14 (b) The distributor responsibility organization presents a plan
15 that imposes a refund value of 10 cents for all qualifying beverage
16 containers covered under the plan;

17 (c) The plan or plan update includes a method for paying the
18 refund value and collecting qualifying beverage containers from
19 consumers, including:

20 (i) A plan to provide convenient bulk, bagged returns;

21 (ii) A plan to accept direct, sorted returns at its processing
22 facilities for an additional refund value premium if the containers
23 are returned by organizations certified as nonprofit organizations
24 pursuant to section 501(c)(3) of the internal revenue code that are
25 approved by the distributor responsibility organization and serve
26 very low-income individuals who rely on regular container refunds
27 through the deposit return system as a source of daily funds; and

28 (iii) The distributor responsibility organization's plan
29 describing how it will establish partnerships with nonprofit
30 organizations receiving the additional refund value premium;

31 (d) Includes in the plan a process for annually reporting to the
32 department regarding the names, locations, return volume, cost per
33 container for each partnership, and other services provided through
34 the partnerships described in (c) of this subsection;

35 (e) Includes a description of how the distributor responsibility
36 organization and the deposit return system will coordinate with other
37 recycling systems and processes, including:

38 (i) Coordinating with producer responsibility organizations
39 established under chapter 70A.--- RCW (the new chapter created in
40 section 601 of this act);

1 (ii) Exploring the potential for colocating facilities as
2 described in section 308 of this act;

3 (iii) Establishing policies to facilitate the redemption of
4 materials from other recycling pathways as described in section 314
5 of this act; and

6 (iv) Providing clear communications about which products are
7 included in the deposit return system as described in section 313 of
8 this act. As part of its coordination with other recycling systems
9 and processes, the distributor responsibility organization will
10 coordinate with any producer responsibility organization formed under
11 chapter 70A.--- RCW (the new chapter created in section 601 of this
12 act) that includes boxed wine in a plastic bladder as a covered
13 product to explore potential partnerships, efficiencies, and consumer
14 convenience available through cooperation between the systems;

15 (f) Includes a description of how the distributor responsibility
16 organization will make determinations related to bottles that it is
17 not required to accept or pay refunds for under subsection (8) of
18 this section, including a description of the reasonable grounds the
19 distributor responsibility organization will use to determine which
20 beverage containers are believed to have not been purchased through
21 the state's deposit return system or for which a refund has already
22 been given;

23 (g) Includes a description of education and outreach activities
24 the distributor responsibility organization will implement to fulfill
25 the requirements in section 313 of this act; and

26 (h) Includes a description of the standards for how qualifying
27 beverage containers have to be collected, separated, and delivered to
28 a distributor responsibility organization processing facility by
29 material recovery facilities, governmental entities, and other
30 processing facilities in order to be eligible for the refund,
31 consistent with the requirements of section 314 of this act.

32 (2) A deposit return system must include the following qualifying
33 beverage containers:

34 (a) Except as provided in (b) of this subsection, any individual,
35 separate, sealed glass, metal, or plastic bottle or can, except for a
36 carton, foil pouch, drink box, or metal container that requires a
37 tool to be opened, that contains any beverage intended for human
38 consumption and in a quantity of greater than four ounces and less
39 than or equal to one gallon.

1 (b) The requirements of this chapter do not apply to beverages
2 with dairy milk as the first ingredient or infant formula.

3 (3) If a deposit return system is approved by the department,
4 except for containers covered by a small-scale refund program
5 established under section 312 of this act, all qualifying beverage
6 containers sold or offered for sale in the state of Washington:

7 (a) Must carry a 10 cent refund value;

8 (b) Must be registered at least annually with the distributor
9 responsibility organization by the producer or distributor, including
10 information on the brand, size, container material type or types,
11 beverage type, bar code or stock keeping unit information, and total
12 number of containers of each type, size, and brand sold in the state
13 of Washington;

14 (c) Must be sold by a distributor, importer, or producer that is
15 a member of the distributor responsibility organization submitting
16 the deposit return system plan for qualifying beverage containers or
17 an individual distributor independently carrying out the duties
18 required of a distributor responsibility organization described in
19 this chapter; and

20 (d) Must carry a clear and conspicuous marking indicating the
21 refund value of the container in the state of Washington. This
22 requirement may be satisfied through the abbreviation "WARV" or any
23 other standard abbreviation approved by the department. A beverage
24 container for wine may satisfy the requirement to indicate the refund
25 value of the container through the use of a quick response code.

26 (4) (a) In lieu of any other penalties for not achieving the
27 performance criteria in section 306 of this act, should the
28 redemption rate performance requirements described in section 306 of
29 this act not be met, the distributor responsibility organization
30 shall annually calculate the number of containers representing the
31 difference between the redemption rate of qualifying beverage
32 containers and the redemption rate performance requirements described
33 in section 306(2) (a) and (b) of this act, and pay a penalty that is
34 equal to 10 cents times the number of containers representing the
35 difference, to be deposited into the model toxics control operating
36 account created in RCW 70A.305.180.

37 (b) At the sole discretion of the department, if the requirements
38 in (a) of this subsection result in a penalty to be paid by the
39 distributor responsibility organization, the department may
40 alternatively identify priority areas for additional drop-off access

1 to be provided, or may identify a reduction in the penalty to be paid
2 in conjunction with the identification of priority areas for
3 additional drop-off access to be provided, and the department and the
4 distributor responsibility organization may agree to provide
5 additional access accordingly. If agreement is not reached, the
6 financial penalty in (a) of this subsection must be paid.

7 (c) There is no penalty assessed on the distributor
8 responsibility organization related to the reuse performance
9 requirements described in section 306 of this act.

10 (5) The distributor responsibility organization must, at its own
11 cost, provide a convenient bulk drop-off option for bagged qualifying
12 beverage containers at geographically dispersed locations in
13 Washington that sell beverages in qualifying beverage containers, are
14 located a convenient distance from a dealer, or are located at a
15 publicly owned facility. The distributor responsibility organization
16 may not charge customers for the use of this drop-off service and
17 must credit the cost of any required bag purchase back to the
18 customer when the bag is processed. If drop-off bags are made of
19 plastic film, bags must have a minimum postconsumer recycled content
20 that equals the minimum postconsumer recycled content standard under
21 chapter 70A.245 RCW for plastic trash bags and the distributor
22 responsibility organization must be able to demonstrate that waste
23 film from bags is being recycled in the best commercially available
24 manner.

25 (6) (a) Upon launch of the deposit return system, the distributor
26 responsibility organization shall provide at least 270 bag drop sites
27 around the state, with at least one drop site located in each county,
28 and at least one drop site located in each island community served by
29 the Washington state ferries system, distributed by county
30 proportional to the volume of qualifying beverage containers sold in
31 each county.

32 (b) The distributor responsibility organization shall calculate a
33 drop-off capacity formula that is equal to the ratio of drop-off
34 locations to total sales of beverages in qualifying beverage
35 containers represented by the initial deployment of 270 sites, and
36 the number of beverages in qualifying beverage containers sold the
37 year prior to the year the distributor responsibility organization
38 begins operating a deposit return system in Washington. Within two
39 years of the date in which the distributor responsibility
40 organization begins operating a deposit return system, the

1 distributor responsibility organization shall add an additional 10
2 drop-off locations. The locations of the additional 10 drop-off sites
3 must be agreed upon by the distributor responsibility organization
4 and the department, in consultation with the consumer convenience
5 advisory council established in section 310 of this act, balancing
6 the need for consumer convenience and access in rural counties, small
7 cities, and underserved areas, and data regarding where beverages in
8 qualifying beverage containers are sold.

9 (c) Five years after the distributor responsibility organization
10 is required to provide 280 drop-off locations, and every five years
11 after that, the distributor responsibility organization shall
12 calculate an updated number of drop-off locations required using the
13 drop-off capacity formula. If this calculation determines that the
14 distributor responsibility organization needs to add additional drop-
15 off sites to reach the number required by the capacity formula, the
16 distributor responsibility organization shall provide the department
17 with a list of proposed new locations, equal to the number determined
18 by the drop-off capacity formula, based on input from the consumer
19 convenience advisory council established in section 310 of this act,
20 consideration of consumer convenience, and data regarding where
21 beverage sales occur. The distributor responsibility organization
22 shall make the new drop-off locations available within three years.

23 (d) Drop-off locations may be located at dealers, or any other
24 retail establishment, publicly owned facility, or any other location
25 convenient to consumers. However, nothing in this chapter may be
26 interpreted to create a legal obligation on the part of dealers
27 either to accept returned qualifying beverage containers or allow a
28 drop-off location to be sited at a dealer. Local governments shall
29 coordinate with the distributor responsibility organization to
30 identify opportunities for the siting of necessary collection
31 infrastructure including, where appropriate, on city and county
32 properties, to help ensure convenient access across the state. All
33 sites must be paid for in full by the distributor responsibility
34 organization.

35 (e) The distributor responsibility organization, with input from
36 the consumer convenience advisory council established in section 310
37 of this act, may provide an alternative access plan for any county
38 that has not reached the required number of drop-off locations and
39 the department may approve an alternative access plan for that county
40 if it deems the alternative access plan for that county to be

1 similarly convenient to consumers as the proportional drop site
2 requirement. The distributor responsibility organization shall pay
3 for the cost of these facilities.

4 (7) Unless otherwise specified in a distributor responsibility
5 organization's bylaws or in a contract between a distributor
6 responsibility organization and an individual distributor arranging
7 specifically for the collection of beverage containers sold for the
8 purpose of consumption on premises, any manufacturer, distributor, or
9 importer that fails to pay to a distributor responsibility
10 organization the refund value of qualifying beverage containers
11 included in this chapter is liable to the distributor responsibility
12 organization for treble the unpaid refund value and treble the
13 collection costs incurred by the distributor responsibility
14 organization for any beverage containers that were sold without the
15 refund value of the container being remitted to the distributor
16 responsibility organization.

17 (8) The distributor responsibility organization is not required
18 to accept or pay refunds for:

19 (a) Beverage containers visibly containing or contaminated by a
20 substance other than water, residue of the original contents, or
21 ordinary dust;

22 (b) Beverage containers that are crushed, broken, or damaged to
23 the extent that the brand appearing on the container cannot be
24 identified; or

25 (c) Any beverage container for which the distributor
26 responsibility organization has reasonable grounds to believe was not
27 purchased through the state's deposit return system or for which a
28 refund has already been given.

29 (9) If the distributor responsibility organization uses automated
30 industrial counting equipment to count containers returned in bulk
31 and credit refund values to consumers, the distributor responsibility
32 organization may use commercially viable methods of counting, and
33 shall have a customer service system, which serves as the remedy to
34 resolve complaints and discrepancies.

35 (10) The distributor responsibility organization may create
36 reasonable terms and conditions for participation in the program.

37 (11) For the first five years in which a deposit return system is
38 operated by a distributor responsibility organization in this state,
39 a distributor responsibility organization shall remit \$15,000,000 by
40 December 31st of each year for the first five years in which it

1 operates a deposit return system, to the department of commerce's
2 recycling revenue augmentation fund created in section 317 of this
3 act. If the first year of operations of a deposit return system
4 begins after January 1st, the payment amount shall be prorated in
5 accordance with the portion of the year in which the deposit return
6 system is operating. These payments constitute the full financial
7 obligation of the distributor responsibility organization to the
8 recycling revenue augmentation fund created in section 317 of this
9 act.

10 (12)(a) All dealers over 5,000 square feet and with qualifying
11 beverage unit sales greater than 100,000 annually must install a
12 self-serve kiosk, provided at no charge by the distributor
13 responsibility organization, to facilitate the printing of redemption
14 vouchers, pay the value of redemption vouchers to customers, and must
15 sell bags for redemption at the price established by the distributor
16 responsibility organization. The distributor responsibility
17 organization shall reimburse dealers for the value of valid vouchers
18 redeemed by customers. Dealers may additionally offer a voucher
19 redemption option for funds to be used as store credit. There is no
20 other cost or requirement for dealers associated with container
21 redemption.

22 (b) Storage and drop-off containers sited for the purposes of
23 fulfilling the requirements of this section are considered mobile
24 containers regardless of whether they have wheels, have electrical
25 power, or are affixed to the site.

26 (c) The distributor responsibility organization shall establish a
27 geographically distributed network of processing facilities across
28 the state for the purpose of counting, crediting, sorting, and
29 compacting bagged container returns and facilitating the program for
30 organizations certified as nonprofit organizations pursuant to
31 section 501(c)(3) of the internal revenue code as described in
32 subsection (1)(c) of this section.

33 NEW SECTION. **Sec. 308.** PARTICIPATION IN THE FEASIBILITY STUDY.
34 In order to facilitate the potential for shared drop-off locations
35 with other depots or return pathways provided by producer
36 responsibility organizations, the distributor responsibility
37 organization must participate in the feasibility study described in
38 section 504 of this act. The distributor responsibility
39 organization's participation in the feasibility study is limited to

1 helping identify potential partnerships and shared drop-off locations
2 between the distributor responsibility organization and producer
3 responsibility organizations, and the distributor responsibility
4 organization retains sole discretion to determine how to achieve the
5 required number and geographic distribution of drop-off locations
6 required of the distributor responsibility organization.

7 NEW SECTION. **Sec. 309.** ANNUAL REPORTING ON ACTIVITIES. (1)
8 Beginning July 1, 2028, and each July 1st thereafter, a distributor
9 responsibility organization must submit an annual report to the
10 department for the preceding calendar year of plan implementation.

11 (2) Each annual report must include the following information:

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

14 (b) The number of qualifying beverage containers supplied into
15 the state in aggregate, and by material categories of glass, metal,
16 and plastic, by members of the distributor responsibility
17 organization;

18 (c) (i) The number of beverages in reusable containers that were
19 supplied into the state in aggregate, and by material categories of
20 glass, metal, and plastic, by members of the distributor
21 responsibility organization;

22 (ii) A report describing the successes, challenges, and
23 opportunities for refillable bottles in Washington; and

24 (iii) A statistical sample or other available data indicating the
25 reuse rates of reusable containers for beverages;

26 (d) The number of qualifying beverage containers redeemed in
27 aggregate, and by material categories of glass, metal, and plastic,
28 including reusable containers, through the deposit return system
29 operated by the distributor responsibility organization;

30 (e) A list and explanation of the beverage types in qualifying
31 beverage containers supplied or sold in Washington by members of the
32 distributor responsibility organization and brands of qualifying
33 beverage containers participating in the deposit return system;

34 (f) The amount and final destinations of recycled material and
35 disposed material managed by the program;

36 (g) The total budget for the distributor responsibility
37 organization;

1 (h) The total value of unclaimed refunds, including unclaimed
2 refunds used by the distributor responsibility organization to
3 support operations;

4 (i) The annual redemption rate by qualifying beverage container
5 material category and reuse sales rate; and

6 (j) For drop-off bags made of film plastic, reporting on their
7 postconsumer recycling content and the recycling markets for the used
8 bags.

9 (3) The reporting described in subsection (2)(b) of this section
10 does not include containers that are sold to dealers outside of the
11 state or to other entities for delivery outside of the state.

12 (4) A distributor responsibility organization may rely on member
13 reporting for reporting requirements in this chapter.

14 (5) Included in its annual report, a distributor responsibility
15 organization shall provide verification from a third-party financial
16 auditing firm confirming:

17 (a) The total budget for the distributor responsibility
18 organization and the total cost of implementing the plan approved by
19 the department;

20 (b) The total value of unclaimed refunds;

21 (c) A verification that funds represented by unclaimed refunds
22 were not distributed to members of the cooperative as a dividend or
23 similar form of profit; and

24 (d) A verification that funds represented by unclaimed refunds
25 were not used for legislative or political advocacy efforts that
26 require reporting under chapter 42.17A RCW.

27 NEW SECTION. **Sec. 310.** CONSUMER CONVENIENCE ADVISORY COUNCIL.

28 (1) The distributor responsibility organization, in coordination with
29 the department, shall establish the consumer convenience advisory
30 council by January 1, 2025.

31 (2) The consumer convenience advisory council must include the
32 following members:

33 (a) A representative of the distributor responsibility
34 organization charged with securing and making available drop-off
35 locations;

36 (b) Two representatives of a grocery association, or individual
37 grocers with more than 10 retail locations over 5,000 square feet in
38 size in the state;

1 (c) Two representatives of a city association, or individual city
2 government, with one representing a city with a population over
3 200,000 people;

4 (d) Two representatives of a county association, or individual
5 county government, with one representing an urban county and one
6 representing a rural county; and

7 (e) An environmental organization.

8 (3) Any additional representatives deemed by the distributor
9 responsibility organization to provide important insight into
10 assisting with the deployment of drop-off locations may be approved
11 by the department.

12 (4) The consumer convenience advisory council shall work with the
13 distributor responsibility organization to identify potential bag
14 drop-off locations and achieve the consumer convenience required in
15 section 307 of this act.

16 (5) The consumer convenience advisory council shall meet at least
17 twice per year and more frequently at the request of the distributor
18 responsibility organization or the department.

19 (6) (a) The consumer convenience advisory council shall elect one
20 of its members to serve as chairperson and another to serve as vice
21 chairperson, for the terms and with the duties and powers necessary
22 for the performance of the functions of such offices as the advisory
23 council determines. The chairperson and vice chairperson may not both
24 be members appointed under the same subsection of subsection (2) (a)
25 through (e) of this section.

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

29 NEW SECTION. **Sec. 311.** CONSUMER CONVENIENCE ASSESSMENT. (1) (a)
30 In the fourth and ninth full year in which a distributor
31 responsibility organization operates a deposit return system in the
32 state, the department, in consultation with the distributor
33 responsibility organization and the consumer convenience advisory
34 council established in section 310 of this act, shall conduct an
35 assessment of consumer convenience.

36 (b) The distributor responsibility organization will contract
37 with, and pay for, an independent third-party consultant approved by
38 the department, to identify barriers to achieving the number of drop-
39 off locations required by the consumer convenience requirements in

1 section 307 of this act and any other potential barriers to consumer
2 convenience or participation.

3 (2) If the required number of drop-off locations has not been
4 achieved, or if the system's redemption rate is significantly lower
5 than the redemption rate performance targets described in section 307
6 of this act, the consultant shall make recommendations to the
7 department, the distributor responsibility organization, and the
8 consumer convenience advisory council, regarding ways to increase
9 consumer convenience and enhance performance. The distributor
10 responsibility organization shall address these recommendations in
11 the updated plans submitted to the department for review under
12 section 307 of this act in 2031 and 2036.

13 NEW SECTION. **Sec. 312.** SMALL-SCALE REFUND PROGRAM. (1) A
14 distributor that is also a manufacturer may submit a plan to the
15 department to operate a small-scale refund program for beverages in
16 qualifying beverage containers produced by the manufacturer, and the
17 department may approve the plan if it meets all of the following
18 criteria:

19 (a) The manufacturer sells or distributes no more than 10,000
20 beverages in qualifying beverage containers per year in the state;

21 (b) The beverages are packaged in reusable qualifying beverage
22 containers;

23 (c) The manufacturer offers a refund value for the containers
24 that is greater than the refund value for containers redeemed by the
25 distributor responsibility organization;

26 (d) The department determines that the plan includes return
27 pathways and options that are convenient for consumers returning
28 their brand of beverage containers covered by the plan for a refund;
29 and

30 (e) The plan includes annual reporting requirements that, in the
31 department's determination, are sufficient to measure the performance
32 of the small-scale refund program.

33 (2) If the department approves a small-scale refund program plan
34 as described in subsection (1) of this section, the distributor
35 manufacturer operating a plan approved by the department is not
36 subject to the requirements of distributors independently complying
37 with the requirements in this chapter for those containers covered by
38 the plan, as described in section 304(1) of this act and elsewhere in
39 this chapter.

1 (3) Reusable containers sold through a program approved through
2 this section count towards the reusable container performance
3 requirements described in section 306 of this act.

4 (4) The department may revoke plan approval for a manufacturer
5 distributor operating a small-scale refund program at any time if, in
6 its sole discretion, the department determines that the program is
7 not providing sufficient performance or not meeting the consumer
8 convenience requirements submitted with its plan.

9 NEW SECTION. **Sec. 313.** EDUCATION AND OUTREACH ACTIVITIES. (1)
10 Each plan implemented by a distributor responsibility organization
11 under this chapter must include education and outreach activities
12 that effectively reach diverse residents, are accessible, are clear,
13 and support the achievement of the performance requirements described
14 in section 306 of this act. To implement the education and outreach
15 activities described in the plan, a distributor responsibility
16 organization must, at minimum:

17 (a) Develop and provide outreach and educational materials,
18 resources, and campaigns about the program to be used by the
19 distributor responsibility organization, dealers, governmental
20 entities, and nonprofit organizations. The materials, resources, and
21 campaigns developed under this section to encourage participation in
22 the deposit return system must, at minimum:

23 (i) Provide information to residents on recycling and reuse
24 practices related to the deposit return system, including where and
25 how to redeem qualifying beverage containers, and what happens to
26 containers once they are returned; and

27 (ii) Provide education and engagement with users of the deposit
28 return system to reduce the rate of inbound contamination or unwanted
29 materials;

30 (b) Use media channels that may include, but are not limited to,
31 print publications, radio, television, the internet, and online
32 streaming services to promote the program statewide;

33 (c) Use consistent and easy to understand messaging and education
34 statewide, with the aim of reducing resident confusion regarding the
35 recyclability, reuse, compostability, and end-of-life management
36 options available for different qualifying beverage containers;

37 (d) Be conceptually, linguistically, and culturally accurate for
38 the communities served and tailored to effectively reach the state's

1 diverse populations, including through meaningful consultation with
2 overburdened communities and vulnerable populations;

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

5 (f) Provide a map of each area where drop-off and other
6 collection services for qualifying beverage containers are available
7 on its website; and

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

11 (2) A distributor responsibility organization may coordinate with
12 government entities that choose to participate in carrying out
13 resident education and outreach regarding the deposit return system.

14 NEW SECTION. **Sec. 314.** PAYMENT OF REFUND VALUE FOR COLLECTION
15 USING OTHER INFRASTRUCTURE. (1) The distributor responsibility
16 organization must accept, and must pay the full refund value for, any
17 qualifying beverage containers returned to the distributor
18 responsibility organization by material recovery facilities,
19 governmental entities, and other processing facilities if all of the
20 following criteria are met:

21 (a) The qualifying beverage containers have been collected and
22 separated in accordance with standards established by the distributor
23 responsibility organization and are delivered directly to a
24 distributor responsibility organization processing facility;

25 (b) In order to avoid redeeming containers not purchased in the
26 state, the material recovery facilities, governmental entities, and
27 other processing facilities may only handle or process materials from
28 this state, or provide third-party auditing and verification
29 sufficient to confirm that the containers being returned were
30 recovered only from material originating in the state; and

31 (c) The containers are separated by material type, not
32 contaminated with other materials, and are not crushed, broken, or
33 otherwise substantially manipulated into a shape other than the shape
34 of the container at the time of purchase.

35 (2) Nothing in this chapter requires a person, including a
36 business, to use the infrastructure provided by a deposit return
37 system created under this chapter or precludes the disposal for
38 recycling of qualifying beverage containers via curbside recycling
39 collection systems.

1 NEW SECTION. **Sec. 315.** CIVIL PENALTIES FOR DISTRIBUTOR
2 RESPONSIBILITY ORGANIZATIONS. (1) Upon notice of a significant
3 violation of the deposit return system plan or performance
4 requirements of this chapter by a distributor responsibility
5 organization, and after a cure period of at least 60 days, the
6 department may assess a civil penalty of at least \$200 per violation
7 per day, but no more than \$500 per violation per day.

8 (2) The department shall make its best efforts to work with the
9 distributor responsibility organization to remedy issues without the
10 use of penalties and make reasonable accommodations when the nature
11 of the violation is significantly outside of the distributor
12 responsibility organization's control.

13 (3)(a) A failure to achieve the redemption rates specified in
14 section 306 of this act is not subject to the penalties described in
15 this section and is instead subject to the penalties described in
16 section 307 of this act.

17 (b) A civil penalty may not be assessed based on the reuse sales
18 rate performance requirements.

19 NEW SECTION. **Sec. 316.** RECYCLING REVENUE AUGMENTATION FUND. (1)
20 The department of commerce shall administer the recycling revenue
21 augmentation fund, created in section 317 of this act, which shall,
22 for the first five years in which a distributor responsibility
23 organization operates a deposit return system in the state:

24 (a) Collect funds from a distributor responsibility organization
25 as described in section 307(11) of this act; and

26 (b) Beginning January 1st of the year following the year in which
27 a distributor responsibility organization first operates a deposit
28 return system in the state, and each January 1st for the following
29 four years, accept requests annually from local governments, or
30 operators of curbside or drop-off recycling programs in the state, or
31 both, to receive funds from the recycling revenue augmentation fund
32 to offset revenue losses from the previous calendar year from scrap
33 material being diverted to the deposit return system. These requests
34 must be received by the department of commerce by July 1st of each
35 year for the preceding calendar year. These requests must include
36 third-party audited financial data demonstrating any revenue losses
37 from the value of scrap materials diverted from curbside or drop-off
38 recycling programs by a deposit return system, less any decreased
39 operating costs from not collecting, hauling, processing, or

1 landfilling the material, less any new revenue provided through other
2 provisions within this chapter that offsets revenue losses, and less
3 any material weight losses represented by the operator serving fewer
4 accounts. For local government and publicly operated curbside or
5 drop-off recycling programs, the government entity's annual audit may
6 satisfy the audited data requirement of this section if the
7 department of commerce determines that it is sufficient to verify the
8 claim. Each request must include the average total tons of glass,
9 plastic, and metal for that applicant for the three years preceding
10 the operation of a deposit return system in the state, compared to
11 the total tons of glass, plastic, and metal material for the year for
12 which funds are requested.

13 (2) The department of commerce shall:

14 (a) Evaluate all requests annually and determine the validity of
15 the data submitted by each requester;

16 (b) Reject requests that do not include sufficient or
17 sufficiently accurate data;

18 (c) Make payments from the recycling revenue augmentation fund
19 created in section 317 of this act to operators of curbside and drop-
20 off recycling systems proportionally, based on valid requests and
21 available revenue in the fund; and

22 (d)(i) After the close of each calendar year, remit any
23 unobligated fund balance in the recycling revenue augmentation fund
24 to the distributor responsibility organization, excluding any fund
25 balance attributable to account revenues received pursuant to section
26 305(7) of this act.

27 (ii) The department may not remit revenues received in the fund
28 pursuant to section 305(7) of this act to the distributor
29 responsibility organization. The department may use those revenues
30 only to pay requests. If any revenues received in the fund pursuant
31 to section 305(7) of this act remain at the conclusion of the
32 program, the department must provide those moneys to the state
33 treasurer for deposit in the deposit return organization program
34 account created in section 318 of this act.

35 NEW SECTION. **Sec. 317.** ACCOUNT FOR RECYCLING REVENUE
36 AUGMENTATION FUND. The recycling revenue augmentation fund is created
37 in the custody of the state treasurer. All receipts received by the
38 department of commerce under section 316 of this act must be
39 deposited in the account. Expenditures from the account may be used

1 by the department of commerce only for implementing and administering
2 the requirements of section 316 of this act. Only the director of the
3 department of commerce or the director's designee may authorize
4 expenditures from the account. The account is subject to the
5 allotment procedures under chapter 43.88 RCW, but an appropriation is
6 not required for expenditures.

7 NEW SECTION. **Sec. 318.** DEPOSIT RETURN ORGANIZATION PROGRAM
8 ACCOUNT. The deposit return organization program account is created
9 in the custody of the state treasurer. All receipts received by the
10 department under this chapter must be deposited in the account.
11 Expenditures from the account may be used by the department only for
12 implementing, administering, and enforcing the requirements of this
13 chapter. Only the director of the department or the director's
14 designee may authorize expenditures from the account. The account is
15 subject to the allotment procedures under chapter 43.88 RCW, but an
16 appropriation is not required for expenditures.

17 NEW SECTION. **Sec. 319.** CONTINGENCY. If a distributor
18 responsibility organization ceases to exist and operate a deposit
19 return system in Washington, other than for temporary disruptions due
20 to unforeseen circumstances, as determined by the department,
21 qualifying beverage containers become covered products under chapter
22 70A.--- RCW (the new chapter created in section 601 of this act).

23 NEW SECTION. **Sec. 320.** A new section is added to chapter 82.04
24 RCW to read as follows:

25 In computing tax due under this chapter, a taxpayer may deduct
26 from the measure of tax amounts derived from charges for the refund
27 value of qualifying beverage containers as required under chapter
28 70A.--- RCW (the new chapter created in section 603 of this act). To
29 qualify for this deduction, the taxpayer must separately itemize the
30 charges for the refund value on a receipt, invoice, or similar
31 billing document given to the purchaser. The amount of the deduction
32 claimed under this section for a reporting period may not exceed the
33 aggregate charges for the refund value of qualifying beverage
34 containers for beverages sold by the taxpayer during such reporting
35 period.

1 **Sec. 321.** RCW 82.19.050 and 2005 c 289 s 1 are each amended to
2 read as follows:

3 The litter tax imposed in this chapter does not apply to:

4 (1) The manufacture or sale of products for use and consumption
5 outside the state;

6 (2) The value of products or gross proceeds of the sales exempt
7 from tax under RCW 82.04.330;

8 (3) The sale of products for resale by a qualified grocery
9 distribution cooperative to customer-owners of the grocery
10 distribution cooperative. For the purposes of this section,
11 "qualified grocery distribution cooperative" and "customer-owner"
12 have the meanings given in RCW 82.04.298;

13 (4) The sale of food or beverages by retailers that are sold
14 solely for immediate consumption indoors at the seller's place of
15 business or at a deck or patio at the seller's place of business, or
16 indoors at an eating area that is contiguous to the seller's place of
17 business; ((~~or~~))

18 (5) (a) The sale of prepared food or beverages by caterers where
19 the food or beverages are to be served for immediate consumption in
20 or on individual nonsingle use containers at premises occupied or
21 controlled by the customer.

22 (b) For the purposes of this subsection, the following
23 definitions apply:

24 (i) "Prepared food" has the same meaning as provided in RCW
25 82.08.0293.

26 (ii) "Nonsingle use container" means a receptacle for holding a
27 single individual's food or beverage that is designed to be used more
28 than once. Nonsingle use containers do not include pizza delivery
29 bags and similar insulated containers that do not directly contact
30 the food. Nonsingle use containers do not include plastic or paper
31 plates or other containers that are disposable.

32 (iii) "Caterer" means a person contracted to prepare food where
33 the final cooking or serving occurs at a location selected by the
34 customer; or

35 (6) The charge for the refund value of qualifying beverage
36 containers as required under chapter 70A.--- RCW (the new chapter
37 created in section 603 of this act), if the charge is separately
38 stated on a receipt, invoice, or similar billing document given to
39 the purchaser.

1 process and dispose of remaining wastes in a manner that is
2 environmentally safe and economically sound. It is further the
3 responsibility of state, county, and city governments to monitor the
4 cost-effectiveness and environmental safety of combusting separated
5 waste, processing mixed municipal solid waste, and recycling
6 programs.

7 (c) It is the responsibility of county and city governments to
8 assume primary responsibility for solid waste management and to
9 develop and implement aggressive and effective waste reduction and
10 source separation strategies.

11 (d) It is the responsibility of state government to ensure that
12 local governments are providing adequate source reduction and
13 separation opportunities and incentives to all, including persons in
14 both rural and urban areas, and nonresidential waste generators such
15 as commercial, industrial, and institutional entities, recognizing
16 the need to provide flexibility to accommodate differing population
17 densities, distances to and availability of recycling markets, and
18 collection and disposal costs in each community; and to provide
19 county and city governments with adequate technical resources to
20 accomplish this responsibility.

21 (e) It is the responsibility of producers to help provide for the
22 responsible management of their products.

23 (7) Environmental and economic considerations in solving the
24 state's solid waste management problems requires strong consideration
25 by local governments of regional solutions and intergovernmental
26 cooperation.

27 (8) The following priorities for the collection, handling, and
28 management of solid waste are necessary and should be followed in
29 descending order as applicable:

30 (a) Waste reduction;

31 (b) Recycling, with source separation of recyclable materials as
32 the preferred method;

33 (c) Energy recovery, incineration, or landfill of separated
34 waste;

35 (d) Energy recovery, incineration, or landfill of mixed municipal
36 solid wastes.

37 (9) It is the state's goal to achieve a (~~fifty~~) 50 percent
38 recycling rate by 2007.

39 (10) It is the state's goal that programs be established to
40 eliminate residential or commercial yard debris in landfills by 2012

1 in those areas where alternatives to disposal are readily available
2 and effective.

3 (11) Steps should be taken to make recycling at least as
4 affordable and convenient to the ratepayer as mixed waste disposal.

5 (12) It is necessary to compile and maintain adequate data on the
6 types and quantities of solid waste that are being generated and to
7 monitor how the various types of solid waste are being managed.

8 (13) Vehicle batteries should be recycled and the disposal of
9 vehicle batteries into landfills or incinerators should be
10 discontinued.

11 (14) Excessive and nonrecyclable packaging of products should be
12 avoided.

13 (15) Comprehensive education should be conducted throughout the
14 state so that people are informed of the need to reduce, source
15 separate, and recycle solid waste.

16 (16) All governmental entities in the state should set an example
17 by implementing aggressive waste reduction and recycling programs at
18 their workplaces and by purchasing products that are made from
19 recycled materials and are recyclable.

20 (17) To ensure the safe and efficient operations of solid waste
21 disposal facilities, it is necessary for operators and regulators of
22 landfills and incinerators to receive training and certification.

23 (18) It is necessary to provide adequate funding to all levels of
24 government so that successful waste reduction and recycling programs
25 can be implemented.

26 (19) The development of stable and expanding markets for
27 recyclable materials is critical to the long-term success of the
28 state's recycling goals. Market development must be encouraged on a
29 state, regional, and national basis to maximize its effectiveness.
30 The state shall assume primary responsibility for the development of
31 a multifaceted market development program to carry out the purposes
32 of chapter 431, Laws of 1989.

33 (20) There is an imperative need to anticipate, plan for, and
34 accomplish effective storage, control, recovery, and recycling of
35 discarded tires and other problem wastes with the subsequent
36 conservation of resources and energy.

37 **Sec. 402.** RCW 70A.205.010 and 2005 c 394 s 2 are each amended to
38 read as follows:

1 The purpose of this chapter is to establish a comprehensive
2 statewide program for solid waste handling, and solid waste recovery
3 and/or recycling which will prevent land, air, and water pollution
4 and conserve the natural, economic, and energy resources of this
5 state. To this end it is the purpose of this chapter:

6 (1) To assign primary responsibility for adequate solid waste
7 handling to local government, reserving to the state, however, those
8 functions necessary to assure effective programs throughout the
9 state, and sharing with producers' responsibility for the management
10 of their covered products under chapter 70A.--- RCW (the new chapter
11 created in section 601 of this act);

12 (2) To provide for adequate planning for solid waste handling by
13 local government;

14 (3) To provide for the adoption and enforcement of basic minimum
15 performance standards for solid waste handling, including that all
16 sites where recyclable materials are generated and transported from
17 shall provide a separate container for solid waste;

18 (4) To encourage the development and operation of waste recycling
19 facilities needed to accomplish the management priority of waste
20 recycling, to promote consistency in the requirements for such
21 facilities throughout the state, and to ensure that recyclable
22 materials diverted from the waste stream for recycling are routed to
23 facilities in which recycling occurs;

24 (5) To provide technical and financial assistance to local
25 governments in the planning, development, and conduct of solid waste
26 handling programs;

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

30 (7) To encourage the development and operation of waste recycling
31 facilities and activities needed to accomplish the management
32 priority of waste recycling and to promote consistency in the
33 permitting requirements for such facilities and activities throughout
34 the state.

35 It is the intent of the legislature that local governments be
36 encouraged to use the expertise of private industry and to contract
37 with private industry to the fullest extent possible to carry out
38 solid waste recovery and/or recycling programs.

1 **Sec. 403.** RCW 70A.205.045 and 2020 c 20 s 1163 are each amended
2 to read as follows:

3 Each county and city comprehensive solid waste management plan
4 shall include the following:

5 (1) A detailed inventory and description of all existing solid
6 waste handling facilities including an inventory of any deficiencies
7 in meeting current solid waste handling needs.

8 (2) The estimated long-range needs for solid waste handling
9 facilities projected twenty years into the future.

10 (3) A program for the orderly development of solid waste handling
11 facilities in a manner consistent with the plans for the entire
12 county which shall:

13 (a) Meet the minimum functional standards for solid waste
14 handling adopted by the department and all laws and regulations
15 relating to air and water pollution, fire prevention, flood control,
16 and protection of public health;

17 (b) Take into account the comprehensive land use plan of each
18 jurisdiction;

19 (c) Contain a six year construction and capital acquisition
20 program for solid waste handling facilities; and

21 (d) Contain a plan for financing both capital costs and
22 operational expenditures of the proposed solid waste management
23 system.

24 (4) A program for surveillance and control.

25 (5) A current inventory and description of solid waste collection
26 needs and operations within each respective jurisdiction which shall
27 include:

28 (a) Any franchise for solid waste collection granted by the
29 utilities and transportation commission in the respective
30 jurisdictions including the name of the holder of the franchise and
31 the address of his or her place of business and the area covered by
32 the franchise;

33 (b) Any city solid waste operation within the county and the
34 boundaries of such operation;

35 (c) The population density of each area serviced by a city
36 operation or by a franchised operation within the respective
37 jurisdictions;

38 (d) The projected solid waste collection needs for the respective
39 jurisdictions for the next six years.

1 (6) A comprehensive waste reduction and recycling element that,
2 in accordance with the priorities established in RCW 70A.205.005,
3 provides programs that (a) reduce the amount of waste generated, (b)
4 provide incentives and mechanisms for source separation, and (c)
5 establish recycling opportunities for the source separated waste.

6 (7) The waste reduction and recycling element shall include the
7 following:

8 (a) Waste reduction strategies, which may include strategies to
9 reduce wasted food and food waste that are designed to achieve the
10 goals established in RCW 70A.205.715(1) and that are consistent with
11 the plan developed in RCW 70A.205.715(3);

12 (b) Source separation strategies, including:

13 (i) Programs for the collection of source separated materials
14 from residences (~~in urban and rural areas. In urban areas, these~~),
15 including programs that are the responsibility of producer
16 responsibility organizations in chapter 70A.--- RCW (the new chapter
17 created in section 601 of this act) and distributor responsibility
18 organizations in chapter 70A.--- RCW (the new chapter created in
19 section 603 of this act). These programs shall include collection of
20 source separated recyclable materials from single and multiple-family
21 residences, unless the county has adopted an ordinance establishing
22 that covered products designated for collection by a producer
23 responsibility organization plan must be collected exclusively
24 through alternate collection in areas regulated by the utilities and
25 transportation commission under the provisions of chapter 81.77 RCW
26 or the department approves an alternative program, according to the
27 criteria in the planning guidelines. Such criteria shall include:
28 Anticipated recovery rates and levels of public participation,
29 availability of environmentally sound disposal capacity, access to
30 markets for recyclable materials, unreasonable cost impacts on the
31 ratepayer over the six-year planning period, utilization of
32 environmentally sound waste reduction and recycling technologies, and
33 other factors as appropriate. ((In rural areas, these)) These
34 programs shall also include but not be limited to drop-off boxes,
35 buy-back centers, or a combination of both, at each solid waste
36 transfer, processing, or disposal site, or at locations convenient to
37 the residents of the county. The drop-off boxes and buy-back centers
38 may be owned or operated by public, nonprofit, or private persons.
39 Comprehensive solid waste management plans that are newly developed,
40 updated, or amended after July 1, 2026, may incorporate by reference

1 the plans of producer responsibility organizations established in the
2 jurisdiction under chapter 70A.--- RCW (the new chapter created in
3 section 601 of this act) to fulfill this requirement in whole or in
4 part;

5 (ii) Programs to monitor the collection of source separated waste
6 at nonresidential sites where there is sufficient density to sustain
7 a program;

8 (iii) Programs to collect yard waste and food waste, if the
9 county or city submitting the plan finds that there are adequate
10 markets or capacity for composted yard waste and food waste within or
11 near the service area to consume the majority of the material
12 collected; and

13 (iv) Programs to educate and promote the concepts of waste
14 reduction and recycling;

15 (c) Recycling strategies, including a description of markets for
16 recyclables, a review of waste generation trends, a description of
17 waste composition, a discussion and description of existing programs
18 and any additional programs needed to assist public and private
19 sector recycling, and an implementation schedule for the designation
20 of specific materials to be collected for recycling, and for the
21 provision of recycling collection services;

22 (d) Other information the county or city submitting the plan
23 determines is necessary.

24 (8) An assessment of the plan's impact on the costs of solid
25 waste collection. The assessment shall be prepared in conformance
26 with guidelines established by the utilities and transportation
27 commission. The commission shall cooperate with the Washington state
28 association of counties and the association of Washington cities in
29 establishing such guidelines.

30 (9) A review of potential areas that meet the criteria as
31 outlined in RCW 70A.205.110.

32 (10) A contamination reduction and outreach plan. The
33 contamination reduction and outreach plan must address reducing
34 contamination in recycling. Except for counties with a population of
35 twenty-five thousand or fewer, by July 1, 2021, a contamination
36 reduction and outreach plan must be included in each solid waste
37 management plan by a plan amendment or included when revising or
38 updating a solid waste management plan developed under this chapter.
39 Jurisdictions may adopt the state's contamination reduction and
40 outreach plan as developed under RCW 70A.205.070 or participate in a

1 producer responsibility organization's plan in lieu of creating their
2 own plan. In comprehensive solid waste management plans that are
3 newly developed, updated, or amended after July 1, 2027, a
4 jurisdiction must reference the plans of producer responsibility
5 organizations established in the jurisdiction under chapter 70A.---
6 RCW (the new chapter created in section 601 of this act) and any
7 plans of distributor responsibility organizations under chapter
8 70A.--- RCW (the new chapter created in section 603 of this act). A
9 recycling contamination reduction and outreach plan must include the
10 following:

11 (a) A list of actions for reducing contamination in recycling
12 programs for single-family and multiple-family residences, commercial
13 locations, and drop boxes depending on the jurisdictions system
14 components;

15 (b) A list of key contaminants identified by the jurisdiction or
16 identified by the department;

17 (c) A discussion of problem contaminants and the contaminants'
18 impact on the collection system;

19 (d) An analysis of the costs and other impacts associated with
20 contaminants to the recycling system; and

21 (e) An implementation schedule and details of how outreach is to
22 be conducted. Contamination reduction education methods may include
23 sharing community-wide messaging through newsletters, articles,
24 mailers, social media, websites, or community events, informing
25 recycling drop box customers about contamination, and improving
26 signage.

27 **Sec. 404.** RCW 81.77.030 and 2020 c 20 s 1467 are each amended to
28 read as follows:

29 (1) The commission shall supervise and regulate every solid waste
30 collection company in this state,

31 ~~((1))~~ (a) By fixing and altering its rates, charges,
32 classifications, rules and regulations;

33 ~~((2))~~ (b) By regulating the accounts, service, and safety of
34 operations;

35 ~~((3))~~ (c) By requiring the filing of annual and other reports
36 and data;

37 ~~((4))~~ (d) By supervising and regulating such persons or
38 companies in all other matters affecting the relationship between
39 them and the public which they serve;

1 ~~((5))~~ (e) By requiring compliance with local solid waste
2 management plans and related implementation ordinances;

3 ~~((6))~~ (f) By reviewing producer responsibility organization
4 reimbursement of regulated service providers consistent with the
5 requirements of chapter 70A.--- RCW (the new chapter created in
6 section 601 of this act);

7 (g) By requiring certificate holders under this chapter (~~81.77~~
8 ~~RCW~~) to use rate structures and billing systems consistent with the
9 solid waste management priorities set forth under RCW 70A.205.005 and
10 the minimum levels of solid waste collection and recycling services
11 pursuant to local comprehensive solid waste management plans and with
12 implementation of curbside recycling collection services designated
13 by a producer responsibility organization in an approved plan to meet
14 the requirements of chapter 70A.--- RCW (the new chapter created in
15 section 601 of this act). The commission may order consolidated
16 billing and provide for reasonable and necessary expenses to be paid
17 to the administering company if more than one certificate is granted
18 in an area.

19 (2) The commission, on complaint made on its own motion or by an
20 aggrieved party, at any time, after providing the holder of any
21 certificate with notice and an opportunity for a hearing at which it
22 shall be proven that the holder has willfully violated or refused to
23 observe any of the commission's orders, rules, or regulations, or has
24 failed to operate as a solid waste collection company for a period of
25 at least one year preceding the filing of the complaint, may suspend,
26 revoke, alter, or amend any certificate issued under the provisions
27 of this chapter.

28 **Sec. 405.** RCW 81.77.040 and 2020 c 20 s 1468 are each amended to
29 read as follows:

30 A solid waste collection company shall not operate for the
31 hauling of solid waste for compensation without first having obtained
32 from the commission a certificate declaring that public convenience
33 and necessity require such operation. Operating for the hauling of
34 solid waste for compensation includes advertising, soliciting,
35 offering, or entering into an agreement to provide that service. To
36 operate a solid waste collection company in the unincorporated areas
37 of a county, the company must comply with the solid waste management
38 plan prepared under chapter 70A.205 RCW in the company's franchise
39 area and, if applicable, the service standards for curbside recycling

1 collection services established in an approved producer
2 responsibility organization plan to meet the requirements of chapter
3 70A.--- RCW (the new chapter created in section 601 of this act).

4 Issuance of the certificate of necessity must be determined on,
5 but not limited to, the following factors: The present service and
6 the cost thereof for the contemplated area to be served; an estimate
7 of the cost of the facilities to be utilized in the plant for solid
8 waste collection and disposal, set out in an affidavit or
9 declaration; a statement of the assets on hand of the person, firm,
10 association, or corporation that will be expended on the purported
11 plant for solid waste collection and disposal, set out in an
12 affidavit or declaration; a statement of prior experience, if any, in
13 such field by the petitioner, set out in an affidavit or declaration;
14 and sentiment in the community contemplated to be served as to the
15 necessity for such a service.

16 When an applicant requests a certificate to operate in a
17 territory already served by a certificate holder under this chapter,
18 the commission may, after notice and an opportunity for a hearing,
19 issue the certificate only if the existing solid waste collection
20 company or companies serving the territory will not provide service
21 to the satisfaction of the commission or if the existing solid waste
22 collection company does not object.

23 In all other cases, the commission may, with or without hearing,
24 issue certificates, or for good cause shown refuse to issue them, or
25 issue them for the partial exercise only of the privilege sought, and
26 may attach to the exercise of the rights granted such terms and
27 conditions as, in its judgment, the public convenience and necessity
28 may require.

29 Any right, privilege, certificate held, owned, or obtained by a
30 solid waste collection company may be sold, assigned, leased,
31 transferred, or inherited as other property, only if authorized by
32 the commission.

33 For purposes of issuing certificates under this chapter, the
34 commission may adopt categories of solid wastes as follows: Garbage,
35 refuse, recyclable materials, and demolition debris. A certificate
36 may be issued for one or more categories of solid waste. Certificates
37 issued on or before July 23, 1989, shall not be expanded or
38 restricted by operation of this chapter.

1 **Sec. 406.** RCW 81.77.160 and 1997 c 434 s 1 are each amended to
2 read as follows:

3 (1) The commission, in fixing and altering collection rates
4 charged by every solid waste collection company under this section,
5 shall include in the base for the collection rates:

6 (a) All charges for the disposal of solid waste at the facility
7 or facilities designated by a local jurisdiction under a local
8 comprehensive solid waste management plan or ordinance; and

9 (b) All known and measurable costs related to implementation of
10 the approved county or city comprehensive solid waste management plan
11 or to the implementation of curbside recycling collection services
12 performed by a solid waste collection company and designated by a
13 producer responsibility organization in an approved plan to meet the
14 requirements of chapter 70A.--- RCW (the new chapter created in
15 section 601 of this act).

16 (2) If a solid waste collection company files a tariff to recover
17 the costs specified under this section, and the commission suspends
18 the tariff, the portion of the tariff covering costs specified in
19 this section shall be placed in effect by the commission at the
20 request of the company on an interim basis as of the originally filed
21 effective date, subject to refund, pending the commission's final
22 order. The commission may adopt rules to implement this section.

23 (3) This section applies to a solid waste collection company that
24 has an affiliated interest under chapter 81.16 RCW with a facility,
25 if the total cost of disposal, including waste transfer, transport,
26 and disposal charges, at the facility is equal to or lower than any
27 other reasonable and currently available option.

28 **Sec. 407.** RCW 81.77.185 and 2010 c 154 s 3 are each amended to
29 read as follows:

30 (1) The commission shall allow solid waste collection companies
31 collecting recyclable materials other than covered products collected
32 under an approved plan in chapter 70A.--- RCW (the new chapter
33 created in section 601 of this act) and qualifying beverage
34 containers under an approved plan in chapter 70A.--- RCW (the new
35 chapter created in section 603 of this act) to retain up to ((fifty))
36 50 percent of the revenue paid to the companies for the material if
37 the companies submit a plan to the commission that is certified by
38 the appropriate local government authority as being consistent with
39 the local government solid waste plan and that demonstrates how the

1 revenues will be used to increase recycling. The remaining revenue
2 shall be passed to residential customers.

3 (2) By December 2, 2005, the commission shall provide a report to
4 the legislature that evaluates:

5 (a) The effectiveness of revenue sharing as an incentive to
6 increase recycling in the state; and

7 (b) The effect of revenue sharing on costs to customers.

8 NEW SECTION. **Sec. 408.** APPLICATION OF CHAPTER—COLLECTION AND
9 TRANSPORTATION OF RECYCLABLE MATERIALS BY RECYCLING COMPANIES OR
10 NONPROFIT ENTITIES—REUSE OR RECLAMATION. (1) Nothing in this chapter
11 or chapter 70A.--- (the new chapter created in section 602 of this
12 act) or 70A.--- RCW (the new chapter created in section 603 of this
13 act) prevents a recycling company or nonprofit entity from collecting
14 and transporting recyclable materials from a buy-back center, drop
15 box, or from a commercial or industrial generator of recyclable
16 materials that does not include materials generated from single and
17 multiple-family residences upon agreement with a solid waste
18 collection company.

19 (2) Nothing in this chapter or chapter 70A.--- (the new chapter
20 created in section 602 of this act) or 70A.--- RCW (the new chapter
21 created in section 603 of this act) may be construed as prohibiting a
22 commercial or industrial generator of commercial recyclable materials
23 that does not contain materials generated from single or multiple-
24 family residences from selling, conveying, or arranging for
25 transportation of the material to a recycler for reuse or
26 reclamation.

27 NEW SECTION. **Sec. 409.** A new section is added to chapter
28 70A.222 RCW to read as follows:

29 The department of ecology may direct producers to register and
30 submit any required data, annual reports, fees, and annual payments,
31 and any additional information or documentation to the clearinghouse
32 established in section 125 of this act in lieu of submission to the
33 department.

34 NEW SECTION. **Sec. 410.** A new section is added to chapter
35 70A.350 RCW to read as follows:

36 The department may direct producers to register and submit any
37 required data, annual reports, fees, and annual payments, and any

1 additional information or documentation to the clearinghouse
2 established in section 125 of this act in lieu of submission to the
3 department.

4 NEW SECTION. **Sec. 411.** A new section is added to chapter
5 70A.245 RCW to read as follows:

6 The department may direct producers to register and submit any
7 required data, annual reports, fees, and annual payments, and any
8 additional information or documentation to the clearinghouse
9 established in section 125 of this act in lieu of submission to the
10 department.

11 NEW SECTION. **Sec. 412.** A new section is added to chapter
12 70A.230 RCW to read as follows:

13 The department may direct producers to register and submit any
14 required data, annual reports, fees, and annual payments, and any
15 additional information or documentation to the clearinghouse
16 established in section 125 of this act in lieu of submission to the
17 department.

18 NEW SECTION. **Sec. 413.** A new section is added to chapter
19 70A.340 RCW to read as follows:

20 The department may direct producers to register and submit any
21 required data, annual reports, fees, and annual payments, and any
22 additional information or documentation to the clearinghouse
23 established in section 125 of this act in lieu of submission to the
24 department.

25 NEW SECTION. **Sec. 414.** A new section is added to chapter
26 70A.455 RCW to read as follows:

27 The department may direct producers to register and submit any
28 required data, annual reports, fees, and annual payments, and any
29 additional information or documentation to the clearinghouse
30 established in section 125 of this act in lieu of submission to the
31 department.

32 NEW SECTION. **Sec. 415.** The department of ecology may direct
33 distributors to register and submit any required data, annual
34 reports, fees, and annual payments, and any additional information or

1 documentation to the clearinghouse established in section 125 of this
2 act in lieu of submission to the department.

3 NEW SECTION. **Sec. 416.** A new section is added to chapter 35.21
4 RCW to read as follows:

5 Permitting or siting procedures applicable to a storage or drop-
6 off container under chapter 70A.--- RCW (the new chapter created in
7 section 603 of this act) must be consistent with section 307(12)(b)
8 of this act.

9 NEW SECTION. **Sec. 417.** A new section is added to chapter 35A.21
10 RCW to read as follows:

11 Permitting or siting procedures applicable to a storage or drop-
12 off container under chapter 70A.--- RCW (the new chapter created in
13 section 603 of this act) must be consistent with section 307(12)(b)
14 of this act.

15 NEW SECTION. **Sec. 418.** A new section is added to chapter 36.01
16 RCW to read as follows:

17 Permitting or siting procedures applicable to a storage or drop-
18 off container under chapter 70A.--- RCW (the new chapter created in
19 section 603 of this act) must be consistent with section 307(12)(b)
20 of this act.

21 **Part Five**
22 **Other Conforming Amendments and Miscellaneous Provisions**

23 **Sec. 501.** RCW 43.21B.110 and 2022 c 180 s 812 are each amended
24 to read as follows:

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

32 (a) Civil penalties imposed pursuant to RCW 18.104.155,
33 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070,
34 70A.515.060, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080,
35 70A.65.200, 70A.455.090, sections 123, 211, and 305 of this act,

1 76.09.170, 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270,
2 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

3 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
4 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070,
5 70A.245.020, 70A.65.200, sections 123, 211, and 305 of this act,
6 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

7 (c) Except as provided in RCW 90.03.210(2), the issuance,
8 modification, or termination of any permit, certificate, or license
9 by the department or any air authority in the exercise of its
10 jurisdiction, including the issuance or termination of a waste
11 disposal permit, the denial of an application for a waste disposal
12 permit, the modification of the conditions or the terms of a waste
13 disposal permit, or a decision to approve or deny an application for
14 a solid waste permit exemption under RCW 70A.205.260.

15 (d) Decisions of local health departments regarding the grant or
16 denial of solid waste permits pursuant to chapter 70A.205 RCW.

17 (e) Decisions of local health departments regarding the issuance
18 and enforcement of permits to use or dispose of biosolids under RCW
19 70A.226.090.

20 (f) Decisions of the department regarding waste-derived
21 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
22 decisions of the department regarding waste-derived soil amendments
23 under RCW 70A.205.145.

24 (g) Decisions of local conservation districts related to the
25 denial of approval or denial of certification of a dairy nutrient
26 management plan; conditions contained in a plan; application of any
27 dairy nutrient management practices, standards, methods, and
28 technologies to a particular dairy farm; and failure to adhere to the
29 plan review and approval timelines in RCW 90.64.026.

30 (h) Any other decision by the department or an air authority
31 which pursuant to law must be decided as an adjudicative proceeding
32 under chapter 34.05 RCW.

33 (i) Decisions of the department of natural resources, the
34 department of fish and wildlife, and the department that are
35 reviewable under chapter 76.09 RCW, and the department of natural
36 resources' appeals of county, city, or town objections under RCW
37 76.09.050(7).

38 (j) Forest health hazard orders issued by the commissioner of
39 public lands under RCW 76.06.180.

1 (k) Decisions of the department of fish and wildlife to issue,
2 deny, condition, or modify a hydraulic project approval permit under
3 chapter 77.55 RCW, to issue a stop work order, to issue a notice to
4 comply, to issue a civil penalty, or to issue a notice of intent to
5 disapprove applications.

6 (l) Decisions of the department of natural resources that are
7 reviewable under RCW 78.44.270.

8 (m) Decisions of an authorized public entity under RCW 79.100.010
9 to take temporary possession or custody of a vessel or to contest the
10 amount of reimbursement owed that are reviewable by the hearings
11 board under RCW 79.100.120.

12 (n) Decisions of the department of ecology that are appealable
13 under RCW 70A.245.020 or section 210 of this act to set recycled
14 minimum postconsumer content for ((covered)) products or to
15 temporarily exclude types of ((covered)) products in plastic
16 containers from minimum postconsumer recycled content requirements.

17 (o) Orders by the department of ecology under RCW 70A.455.080.

18 (2) The following hearings shall not be conducted by the hearings
19 board:

20 (a) Hearings required by law to be conducted by the shorelines
21 hearings board pursuant to chapter 90.58 RCW.

22 (b) Hearings conducted by the department pursuant to RCW
23 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,
24 70A.15.3110, and 90.44.180.

25 (c) Appeals of decisions by the department under RCW 90.03.110
26 and 90.44.220.

27 (d) Hearings conducted by the department to adopt, modify, or
28 repeal rules.

29 (3) Review of rules and regulations adopted by the hearings board
30 shall be subject to review in accordance with the provisions of the
31 administrative procedure act, chapter 34.05 RCW.

32 **Sec. 502.** RCW 43.21B.300 and 2022 c 180 s 813 are each amended
33 to read as follows:

34 (1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160,
35 70A.205.280, 70A.300.090, 70A.20.050, 70A.245.040, 70A.245.050,
36 70A.245.070, 70A.245.080, 70A.65.200, 70A.455.090, sections 123, 211,
37 and 319 of this act, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
38 90.56.310, 90.56.330, and 90.64.102 and chapter 70A.355 RCW shall be
39 imposed by a notice in writing, either by certified mail with return

1 receipt requested or by personal service, to the person incurring the
2 penalty from the department or the local air authority, describing
3 the violation with reasonable particularity. For penalties issued by
4 local air authorities, within 30 days after the notice is received,
5 the person incurring the penalty may apply in writing to the
6 authority for the remission or mitigation of the penalty. Upon
7 receipt of the application, the authority may remit or mitigate the
8 penalty upon whatever terms the authority in its discretion deems
9 proper. The authority may ascertain the facts regarding all such
10 applications in such reasonable manner and under such rules as it may
11 deem proper and shall remit or mitigate the penalty only upon a
12 demonstration of extraordinary circumstances such as the presence of
13 information or factors not considered in setting the original
14 penalty.

15 (2) Any penalty imposed under this section may be appealed to the
16 pollution control hearings board in accordance with this chapter if
17 the appeal is filed with the hearings board and served on the
18 department or authority 30 days after the date of receipt by the
19 person penalized of the notice imposing the penalty or 30 days after
20 the date of receipt of the notice of disposition by a local air
21 authority of the application for relief from penalty.

22 (3) A penalty shall become due and payable on the later of:

23 (a) Thirty days after receipt of the notice imposing the penalty;

24 (b) Thirty days after receipt of the notice of disposition by a
25 local air authority on application for relief from penalty, if such
26 an application is made; or

27 (c) Thirty days after receipt of the notice of decision of the
28 hearings board if the penalty is appealed.

29 (4) If the amount of any penalty is not paid to the department
30 within 30 days after it becomes due and payable, the attorney
31 general, upon request of the department, shall bring an action in the
32 name of the state of Washington in the superior court of Thurston
33 county, or of any county in which the violator does business, to
34 recover the penalty. If the amount of the penalty is not paid to the
35 authority within 30 days after it becomes due and payable, the
36 authority may bring an action to recover the penalty in the superior
37 court of the county of the authority's main office or of any county
38 in which the violator does business. In these actions, the procedures
39 and rules of evidence shall be the same as in an ordinary civil
40 action.

1 (5) All penalties recovered shall be paid into the state treasury
2 and credited to the general fund except those penalties imposed
3 pursuant to RCW 18.104.155, which shall be credited to the
4 reclamation account as provided in RCW 18.104.155(7), RCW
5 70A.15.3160, the disposition of which shall be governed by that
6 provision, RCW 70A.245.040 (~~and~~), 70A.245.050, and section 211 of
7 this act, which shall be credited to the recycling enhancement
8 account created in RCW 70A.245.100, RCW 70A.300.090, and section 307
9 of this act, which shall be credited to the model toxics control
10 operating account created in RCW 70A.305.180, RCW 70A.65.200, which
11 shall be credited to the climate investment account created in RCW
12 70A.65.250, RCW 90.56.330, which shall be credited to the coastal
13 protection fund created by RCW 90.48.390, (~~and~~) RCW 70A.355.070,
14 which shall be credited to the underground storage tank account
15 created by RCW 70A.355.090, and chapter 70A.--- RCW (the new chapter
16 created in section 601 of this act), which shall be credited to the
17 recycling enhancement account created in RCW 70A.245.100.

18 NEW SECTION. Sec. 503. AUTHORITY OF UTILITIES AND
19 TRANSPORTATION COMMISSION. Nothing in this chapter or chapter 70A.---
20 (the new chapter created in section 602 of this act) or 70A.--- RCW
21 (the new chapter created in section 603 of this act) changes or
22 limits the authority of the Washington utilities and transportation
23 commission to regulate collection of solid waste, including curbside
24 collection of residential recyclable materials, in accordance with
25 chapter 81.77 RCW.

26 NEW SECTION. Sec. 504. FEASIBILITY STUDY. (1) By December 1,
27 2025, the department of ecology must complete and publish on its
28 website the feasibility analysis described in this section.

29 (a) The purpose of the feasibility analysis is to:

30 (i) Identify options to improve the convenience experienced by
31 consumers with unwanted products or packaging covered by state
32 product stewardship, extended producer responsibility, and similar
33 takeback programs, by harmonizing or establishing a system of common
34 or centralized takeback centers or depots for consumers; and

35 (ii) Consider the viability, costs, and tradeoffs associated with
36 each option that might lead to improved outcomes for consumers and
37 improved end-of-life management outcomes for covered unwanted
38 products.

1 (b) The department of ecology must deliver policy recommendations
2 to the legislature by December 1, 2025.

3 (2) The department of ecology must consult with the department of
4 health for purposes of considering the potential for integration of
5 collection infrastructure under chapter 69.48 RCW with the collection
6 infrastructure of other state programs.

7 (3) The feasibility analysis required under this section must:

8 (a) Be conducted by an independent third party selected by the
9 department;

10 (b) Consider the following:

11 (i) Existing common collection infrastructure models used by
12 other jurisdictions;

13 (ii) Existing voluntary and contractually established collection
14 infrastructure currently used to collect unwanted products and
15 packaging in Washington; and

16 (iii) Options to deploy curbside collection systems for the
17 specialized collection of products;

18 (c) Include policy recommendations to the legislature to improve
19 consumer convenience and improve environmental end-of-life management
20 outcomes for any combination of products and packaging covered by
21 extended producer responsibility programs, takeback programs, or
22 product stewardship programs;

23 (i) The policy recommendations must consider:

24 (A) Beverage containers covered by the deposit return
25 requirements of chapter 70A.--- RCW (the new chapter created in
26 section 603 of this act);

27 (B) Covered products under chapter 70A.--- RCW (the new chapter
28 created in section 601 of this act);

29 (C) Covered drugs under chapter 69.48 RCW;

30 (D) Covered electronic products under chapter 70A.500 RCW;

31 (E) Mercury-containing lights under chapter 70A.505 RCW;

32 (F) Photovoltaic modules under chapter 70A.510 RCW; and

33 (G) Architectural paint under chapter 70A.515 RCW.

34 (ii) Any policy recommendations for changes to the collection of
35 products covered by programs identified in (c)(i) of this subsection
36 should consider:

37 (A) Whether and how to amend convenience standards established
38 under each program, including the types of curbside, drop off, event,
39 and public and private infrastructure that serves as collection
40 infrastructure; and

1 (B) Whether and how to specify that producers of products covered
2 by programs recommended for inclusion in the creation of a common
3 collection system be required to fund the establishment of the common
4 collection infrastructure; and

5 (d) Include an opportunity for public input on the feasibility
6 study and on any draft recommendations.

7 NEW SECTION. **Sec. 505.** LITTER TAX STUDY. (1) In consultation
8 with producer responsibility organizations registered with the
9 department of ecology under chapter 70A.--- RCW (the new chapter
10 created in section 601 of this act) and distributor responsibility
11 organizations under chapter 70A.--- RCW (the new chapter created in
12 section 603 of this act), the department of ecology and the
13 department of revenue must study:

14 (a) The impacts of producer and distributor requirements under
15 chapters 70A.--- (the new chapter created in section 601 of this act)
16 and 70A.--- RCW (the new chapter created in section 603 of this act)
17 on the litter rates of covered products and qualifying beverage
18 containers under those chapters; and

19 (b) Possible improvements to the structure of the litter tax
20 under chapter 82.19 RCW including, but not limited to,
21 administration, compliance, and distribution of the tax and
22 application of the tax to certain products, for achieving the purpose
23 of chapter 82.19 RCW.

24 (2) By January 1, 2029, the department of ecology, in
25 consultation with the department of revenue, must provide
26 recommendations to the appropriate committees of the legislature on:

27 (a) Applicability of the litter tax to covered products and
28 qualifying beverage containers, based on whether the purpose of the
29 litter tax under chapter 82.19 RCW is being achieved for those
30 products by the requirements of producers and distributors under
31 chapters 70A.--- (the new chapter created in section 601 of this act)
32 and 70A.--- RCW (the new chapter created in section 603 of this act);
33 and

34 (b) Improvements to the structure of the litter tax for meeting
35 the purposes of chapter 82.19 RCW.

36 (3) This section expires July 1, 2029.

37 NEW SECTION. **Sec. 506.** HOME COMPOSTING STANDARD. By December 1,
38 2024, the department of ecology must evaluate best practices in other

1 jurisdictions and any applicable federal standards for the labeling
2 of items as "home compostable." The department of ecology must submit
3 to the appropriate committees of the legislature recommendations for
4 a proposed testing and labeling standard for single-use items
5 eligible to be labeled as "home compostable."

6 NEW SECTION. **Sec. 507.** RCW 70A.245.110 (Recycled content
7 account) and 2021 c 313 s 14 are each repealed, effective July 1,
8 2029.

9 NEW SECTION. **Sec. 508.** If any provision of this act or its
10 application to any person or circumstance is held invalid, the
11 remainder of the act or the application of the provision to other
12 persons or circumstances is not affected.

13 **Part Six**
14 **Codification Directives**

15 NEW SECTION. **Sec. 601.** Sections 101 through 128, 408, 503, and
16 505 of this act constitute a new chapter in Title 70A RCW.

17 NEW SECTION. **Sec. 602.** Sections 201 through 212 of this act
18 constitute a new chapter in Title 70A RCW.

19 NEW SECTION. **Sec. 603.** Sections 301 through 319 and 415 of this
20 act constitute a new chapter in Title 70A RCW.

--- END ---