

**RCW 70A.208.150 Producer responsibility organization—**

**Performance targets.** (1) Each producer responsibility organization must propose performance targets based on the needs assessment that meet the statewide requirements in subsection (10) of this section that must be included in an approved plan. Performance targets must include reuse rates, return rates, recycling rates for materials delivered to responsible markets, composting rates, and targets for plastic source reduction and postconsumer recycled content by covered materials type, as applicable. For products for which postconsumer recycled content rates are established in RCW 70A.245.010 through 70A.245.050 and 70A.245.090 (1), (2), and (4), those rates must be included in an approved plan. The producer responsibility organization must propose the unit or units that are most appropriate to measure each performance target as informed by the needs assessment.

(2) The department may require that a producer responsibility organization obtain third-party certification of any activity or achievement of any performance target required by this chapter if a third-party certification is readily available, deemed applicable, and of reasonable cost. The department must provide the producer responsibility organization with notice of at least one year prior to requiring use of third-party certification under this subsection.

(3) Proposed targets must demonstrate continuous improvement in reducing environmental impacts and human health impacts of covered materials over time.

(4) For purposes of determining whether recycling performance targets are being met, except as modified by the department, a plan must provide a methodology for measuring the amount of covered material sent for recycling at the point at which material leaves a material recovery facility or other processing facility and must account for:

(a) Levels and types of estimated contamination documented by the facility;

(b) Any exclusions for fuel or energy capture; and

(c) Compliance with all state laws pertaining to toxic substances in covered materials.

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

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

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

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

(ii) Provides protection for the environment and human health with consideration of inputs and outputs, including as measured against all of the following criteria:

(A) Environmental release of air and water pollutants or any hazardous pollutants;

(B) Generation of hazardous waste;

(C) Energy use and generation of greenhouse gases;

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

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

(F) Public health impacts; and

(G) Capture and recycling rates;

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

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

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

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

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

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

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

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

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

(6) For purposes of determining whether plastic source reduction performance targets are being met, a plan must provide a methodology for measuring the amount of plastic source reduction of covered materials in a manner that can be used to determine the extent to which the amount of material used for a covered material can be reduced to what is necessary to efficiently deliver a product without damage or spoilage, or other means of covered material redesign to reduce overall use and environmental impacts and maintain

recyclability, compostability, or reusability. No more than eight percent of a producer responsibility organization's plastic source reduction performance target may be met by switching from virgin covered material to postconsumer recycled content through a sliding scale alternative compliance formula developed by the department based on the ratio of virgin plastic to postconsumer recycled plastic. For producers subject to the postconsumer recycled content requirements of chapter 70A.245 RCW, the postconsumer recycled content used to comply with those requirements may be credited towards the plastic source reduction performance target, subject to the eight percent limit.

(7) For purposes of determining whether reuse performance targets are being met, a plan must provide a methodology for measuring the amount of reusable covered materials at the point at which reusable covered materials meet the following criteria as demonstrated by the producer and approved by the department whether the:

(a) Average minimum number of cycles of reuses within a recognized reuse system has been met based on the number of times an item must be reused for it to have lower environmental impacts than the single-use versions of those items based on accepted industry standards; and

(b) Demonstrated or research-based anticipated return rate of the covered material to the reuse system has been met.

(8) For purposes of determining whether postconsumer recycled content performance targets are being met under this chapter, a plan must provide a methodology for measuring postconsumer recycled content across all producers for a covered materials type where producers may determine their postconsumer recycled content based on their United States market territory if state-specific postconsumer recycled content is impractical to determine.

(9) For other performance targets, the producer responsibility organization must propose methodologies for review and approval as part of the plan based on findings from the needs assessment.

(10)(a) The department must establish statewide requirements and a date by which those requirements must be met for each of the following categories:

(i) Recycling rate;

(ii) Composting rate;

(iii) Reuse rate;

(iv) Return rate;

(v) The percentage of covered materials introduced that must be plastic source reduced; and

(vi) The percentage of postconsumer recycled content that covered materials must contain, including an overall percentage for all covered materials, as applicable, excluding compostable materials that cannot include postconsumer recycled content due to unique chemical or physical properties or health or safety requirements that prohibit introduction of postconsumer recycled content.

(b) The department may use the following information and criteria when establishing statewide requirements under (a) of this subsection:

(i) The needs assessment;

(ii) The goals and requirements of chapter 70A.205 RCW;

(iii) The greenhouse gas emissions limits of chapter 70A.45 RCW;

(iv) The need for continuous progress towards overall reduction in the generation of covered materials waste, the reuse, recycling, or composting of covered materials to reduce environmental impacts and human health impacts, and progress to incorporate postconsumer

recycled content to replace virgin materials and support more regional markets;

(v) A preference for statewide requirements that accomplish and further the goals and requirements in (b)(ii) through (iv) of this subsection as soon as practicable and to the maximum extent achievable; and

(vi) Information from packaging and paper product producer responsibility programs operating in other jurisdictions.

(c) The department must consult with producer responsibility organizations on establishing statewide requirements, submit proposed statewide requirements for review by the advisory council, and consider the advisory council's recommendations before finalizing the statewide requirements.

(d) Every five years, the department must review the statewide requirements established under this subsection. If the department decides an update is not warranted at that time, the department must submit the reasoning to the advisory council and consider the advisory council's recommendations before making a final decision. If the department decides an update is warranted, the department must follow the process specified in (b) and (c) of this subsection.

(e) Producer responsibility organizations must ensure the statewide requirements are met. [2025 c 316 s 115.]