

Product Stewardship Framework Policy Content and Overview

Intent and Findings

- Convenient and environmentally sound product stewardship programs help protect our environment and the health of residents.
- Producers are the best entity to manage and finance product stewardship programs.
- Product stewardship programs encourage the design of products that have a lower carbon footprint and that are less toxic, less energy and material intensive, and more reusable and recyclable.

What is Product Stewardship?

“**Product stewardship**” means that producers take responsibility to manage and reduce the entire life-cycle impacts of their products and/or their packaging, from product design to end-of-life management.

“**Product stewardship program**” means a program that addresses the lifecycle impacts of a product and includes the collection, transportation, reuse, and either recycling or disposal, or both, of unwanted products, including historical products and the program’s fair share of orphan products. The product stewardship program is financed as well as managed or provided by the producers of those products.

“**Producer**” means a person that:

- (a) Has legal ownership of the brand, brand-name or cobrand of a covered product sold in or into Washington state;
- (b) Imports a covered product branded by a producer that meets (a) of this subsection and that producer has no physical presence in the United States; or
- (c) Sells at wholesale or retail a covered product and does not have legal ownership of the brand, and elects to fulfill the responsibilities of the producer for that product.

Product stewardship program required

Every producer of covered products and covered product categories sold in or into the state must participate in a product stewardship program by either:

- operating, individually or collectively with other producers, a product stewardship program approved by the department; or
- entering into an agreement with a stewardship organization to operate, on the producer’s behalf, a product stewardship program approved by the department.

Initial covered products

It is still to be determined which products, if any, would be included as initial covered products in the proposed bill.

Product selection process

At least every two years, the department will consider and evaluate through rulemaking, product categories or products to designate for product stewardship programs. The department will also determine the covered entities, the implementation date, management requirements and any labeling requirements for each additional product category. The department will also determine whether a product’s packaging is designated as a product.

Draft #2 – for discussion purposes only

Criteria for product selection:

- climate change impacts and benefits;
- energy conservation potential;
- public and environmental health and safety;
- resource recovery and material conservation potential;
- toxicity of the product;
- opportunity to achieve greater waste reduction, toxicity reduction, design for recycling, recycled content, and recycling;
- potential of a product to act as a contaminant in the materials streams collected in residential and commercial recycling programs;
- concerns about disposing of the product in the waste stream;
- the costs of management to local governments, ratepayers, and taxpayers in the absence of product stewardship programs;
- the opportunity to use existing and new businesses and infrastructure to manage products or product categories proposed for designation and to use or increase markets that utilize the recovered materials from such products or product categories;
- public demand;
- success in collecting and processing similar products in other programs in the U.S. and other countries; and
- the advice of the Advisory Committee.

Advisory committee to the department

The department will appoint and consult with an advisory committee of up to 15 members regarding new products or product categories, covered entities, implementation dates, management requirements, performance goals, labeling requirements, and other inputs requested by the department. The advisory committee shall vet the department's recommendations on new products or product categories.

The public may petition the department to consider products for inclusion in product stewardship programs required under this chapter. The department shall adopt rules describing the petition process. Public petitions will be considered during the product selection process established in section xxx of this chapter.

Involvement of the legislature

Before adoption of new products or product categories into regulations, the department must present the list of products or product categories to the appropriate standing committees of the legislature.

Product stewardship plan requirements

Plans describing the product stewardship program must be submitted to the department for approval. The plans must include the following:

- Contact information and participating producers;
- Performance and recovery goals for the first three years of the program;
- Description of the collection system(s) that will be used, including how unwanted products will be collected in all counties in the state and for all cities with populations greater than 10,000;
- Description of the handling systems and processing or disposal systems that will be used;
- How hazardous substances will be tracked through to final disposition;

Draft #2 – for discussion purposes only

- Best management practices that will be used by first processors and their downstream vendors to assure that hazardous substances and wastes are not released into the environment or impact human health;
- Description of how the program will seek to use businesses within the state, including retailers, processors, and collection and transportation services, in the implementation of the plan.
- Amount of green house gas reductions anticipated from implementation of the collection, transportation and recycling program;
- Financing mechanisms that will be used;
- Strategies to manage and reduce life-cycle impacts of the products and packaging, from product design to end-of-life management;
- Description of how producers participating in the plan will communicate and work with processors and recyclers used by that plan to encourage sustainable design of products and packaging;
- Education and outreach strategy, including how the program will measure the effectiveness of education and outreach; and
- A description of the process used to consult with affected stakeholders about the contents of the plan.

Required reuse or recycling

All products that have been collected by a product stewardship program must be reused or recycled, except if the department determines the products are not recyclable.

No fee to covered entity

Product stewardship programs shall be provided to covered entities without charging any fee at the time the unwanted products are delivered or collected for recycling or disposal.

Producers shall pay all the administrative costs, education and outreach costs, and operational costs associated with their product stewardship program, including the costs of collection, transportation, and recycling or disposal, or both, of the products covered by the program.

Education and outreach

Product stewardship programs must conduct effective and measurable education and outreach efforts promoting their use. Programs must provide pertinent information, including a toll free telephone number and website where collection options are listed, to covered entities, wholesalers, retailers, collectors, and other interested parties.

Education and outreach efforts must be sufficient to meet required recovery rates and to ensure that collection options are widely understood by covered entities.

If the program does not attain the required recovery rate, it must describe in its annual report what actions it will take during the next reporting period to do so, including how it will increase and improve its outreach and education.

Prison labor prohibited

No product stewardship program may include the use of federal or state prison labor for processing.

Draft #2 – for discussion purposes only

Encouraging collaboration

Producers are encouraged to collaborate with product retailers, certificated waste haulers, processors, recyclers, charities, and local governments within the state in the development and implementation of their plans.

Annual report

Annual reports describing the activities of the product stewardship program during the previous year must be submitted to the department.

Recovery rates

By June of the third program year for each product or product category, the department shall establish **required recovery rates** for the fourth and subsequent program years, and must establish a fine system for those producers and product stewardship programs that do not attain the mandated goals and rates.

The department will establish the fine system through rulemaking. Ecology will also establish through rulemaking a process for setting the recovery rates for the fourth and subsequent years and for adjusting recovery rates as needed.

Sale of covered products prohibited

As of the implementation date established by the department for each product, no producer, retailer or other person may sell or offer for sale that product to any person in this state unless the producer of the product is participating in an approved product stewardship plan.

Enforcement

Producers who are not participating in an approved product stewardship program and whose products continue to be sold in or into the state 60 days after receipt of a written warning, and retailers who sell products from producers who are not participating in an approved product stewardship program 60 days after receipt of the written warning, shall pay a fine of \$10,000 per day of noncompliance, beginning 60 days after receipt of the written warning.

Agency administrative costs paid by producers

The department may establish fees for administering this statute that are charged to the producers.

Anticompetitive conduct

A producer or stewardship organization that organizes product stewardship programs is authorized to engage in anticompetitive conduct to the extent necessary to plan and implement its chosen organized product stewardship program and is immune from liability under state laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce for this purpose.

No changes to WUTC authority

Nothing in this statute changes or limits the authority of the Washington utilities and transportation commission to regulate collection of solid waste in the state of Washington, including curbside collection of residential recyclable materials, nor does this statute change or limit the authority of a city or town to provide such service itself or by contract under RCW 81.77.020. (Note: consider additional reference to RCW 81.80 regarding commercial carriers.) ***Comment: Need to research questions about the impact of this section on retail collection and transportation.***