



Concise Explanatory Statement Chapter 173-925 WAC Post-consumer recycled content in plastic containers

Summary of Rulemaking and Response to Comments

Washington State Department of Ecology
Olympia, Washington

October 2023, Publication 23-07-052

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Department of Ecology's regional offices

Map of counties served



Southwest Region
360-407-6300

Northwest Region
206-594-0000

Central Region
509-575-2490

Eastern Region
509-329-3400

Region	Counties served	Mailing address	Phone
Southwest	Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Mason, Lewis, Pacific, Pierce, Skamania, Thurston, Wahkiakum	PO Box 47775 Olympia, WA 98504	360-407-6300
Northwest	Island, King, Kitsap, San Juan, Skagit, Snohomish, Whatcom	PO Box 330316 Shoreline, WA 98133	206-594-0000
Central	Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, Yakima	1250 W Alder St Union Gap, WA 98903	509-575-2490
Eastern	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman	4601 N Monroe Spokane, WA 99205	509-329-3400
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Solid Waste Management Program
Washington State Department of Ecology
Olympia, WA

October 2023 | Publication 23-07-052



DEPARTMENT OF
ECOLOGY
State of Washington

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Introduction

The Washington State Department of Ecology (Ecology, we) developed this Concise Explanatory Statement to:

- Comply with section 325 of the Administrative Procedure Act (APA) that requires agencies to prepare a Concise Explanatory Statement ([RCW 34.05.325](#)).
- Provide reasons for adopting the rule.
- Describe differences between the proposed rule and the adopted rule.
- Provide Ecology's response to public comments.

This Concise Explanatory Statement provides information on Ecology's rule adoption for:

Title:	Post-consumer recycled content in plastic containers
WAC chapter:	173-925
Adopted:	October 31, 2023
Effective:	December 1, 2023

To see more information related to this rulemaking or other Ecology rulemakings, visit our [laws, rules, and rulemaking webpage](#).

Overview of this Rulemaking

On November 3, 2021, we [announced the start of rulemaking](#) to develop a new chapter in the Washington Administrative Code, 173-925 WAC, “Post-consumer recycled content in plastic containers.” In February and March of 2022, we hosted webinars to share information about the new law, including the rulemaking process. During the webinars and through our e-mail subscriber list, we requested volunteers to join an advisory committee that would provide input from representatives of some of the primary parties affected by the law, including some producers of covered products. The advisory committee participated in periodic meetings which were open to the public. We regularly posted revisions of the draft on our website for public comment until November 1, 2022.

On May 2, 2023 we posted the [proposed rule](#) and rulemaking documents, including the [Preliminary Regulatory Analyses](#) and the [SEPA Determination of Nonsignificance](#), on our [PCRC rulemaking webpage](#). We accepted comments on the proposed rule from May 2, 2023, through July 1, 2023. During the 60-day public comment period, we received 22 [comment submissions](#) on the proposed rule including verbal testimony provided during the one of the two [June hearings](#). We used that feedback to develop the adopted rule, this Concise Explanatory Statement, and the [Final Regulatory Analyses](#).

Ecology’s director, Laura Watson, signed and adopted the new rule, Chapter 173-925 WAC, on October 31, 2023.

Post-consumer recycled content (PCRC) program

In 2021, the Washington State Legislature passed the “Recycling, waste, and litter reduction” bill, chapter 70A.245 RCW, to reduce the impact of single-use plastic and expanded polystyrene products. This bill also supports the increased use of post-consumer recycled content or PCRC, in plastic packaging.

Chapter 70A.245 RCW assigns Ecology responsibility to oversee requirements for producers of plastic trash bags and several categories of common consumer products sold in plastic containers. This oversight includes:

- Adoption of processes, such as the calculation and distribution of annual fees, through rulemaking instead of through statute—providing opportunity for public involvement
- Establishment of clear registration and reporting requirements and processes to help producers comply with the law
- Annual publication of registered producers and their compliance status on our website
- Calculation of Ecology’s costs to oversee the program in an annual workload analysis, and making this analysis available for public comment before using as the basis for producer annual fee distribution
- Adoption of rules by 2024

Public engagement

The adopted rule is the result of a robust public outreach and involvement effort spanning two years. The following list summarizes our outreach and involvement actions.

- Websites
 - [PCRC rulemaking webpage](#)
 - [Plastic producer registration and reporting webpage](#)
 - [Recycled content minimums webpage](#)
- Webinars (from 2022 to 2023)
 - Ecology presented [four webinars](#) in February and March 2022 to provide information about the new requirements and the rulemaking process and request advisory committee volunteers.
 - We published a [five-part webinar](#) with outreach and information for producers on the producer registration and reporting webpage.
- Announcements via the [Post-consumer recycled content email list](#):
- Focus sheets and public outreach materials, including
 - Blog posts
 - Social media content
 - News releases
- Eight public rule advisory committee meetings to present rule language, discuss content, and accept feedback. Visit the [rulemaking website](#) to review presentation slides and note summaries from these meetings
- Public comment periods:
 - [Rule announcement](#) (November 2021)
 - Rule Development (March – November 2022)
 - [Rule Proposal](#) (May 2023)

Reasons for Adopting the Rule

Ecology adopted a new chapter in the Washington Administrative Code—Chapter 173-925 WAC – Post-consumer Recycled Content in Plastic Containers. This new rule:

- Implements a program to require the use of recycled content resin in some single-use consumer packaging, as directed in Chapter 70A.245 RCW.
- Determines methods to equitably calculate and divide fees among producers.
- Provides clarity for definitions, scope, and timelines.
- Outlines Ecology’s strategy to implement and enforce the law.

In 2021, Washington state codified the Post-consumer Recycled Content in Plastic Containers program in [Chapter 70A.245 RCW -- Recycling, Waste, and Litter Reduction Act](#) to require producers of covered products to report on their use of PCRC, pay fees to cover Ecology’s costs to administer the law, and meet increasing minimum PCRC requirements in certain types of plastic packaging.

Ecology adopted chapter 173-925 WAC to:

- Implement the requirements of chapter 70A.245 RCW.
- Define terms and clarify the intent of the law.
- Establish equitable producer fees required to fund Ecology’s administration and oversight of the PCRC program for covered products.
- Specify the information producers are required to provide at registration and in annual reports.
- Establish the process Ecology will follow for:
 - Conducting audits and investigations of producers’ annual reports.
 - Measuring the amount and methods for assessing PCRC.
 - Reviewing and adjusting PCRC rates.
 - Excluding certain plastic containers or elements of containers from PCRC requirements.
 - Determining technical feasibility of meeting PCRC rates.
 - Establishing corrective action requirements for producers out of compliance.
 - Determining methods for granting penalty adjustments.

Differences Between the Proposed Rule and the Adopted Rule

[RCW 34.05.325](#)(6)(a)(ii) requires Ecology to describe the differences between the text of the proposed rule as published in the Washington State Register (WSR) and the text of the rule as adopted—other than editing changes—and state the reasons for the differences.

The adopted rule filed on October 31, 2023, in WSR 23-22-102, and the proposed rule filed on May 2, 2023, in WSR 23-10-062 have some differences. Ecology made these changes:

- In response to the comments we received.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.
- To facilitate effective program implementation.

The following content describes the changes and Ecology's reasons for making them. This section does not include changes made solely to correct section numbers, letters, and sub-sections in response to content changes in the document. We included the proposed rule language and indicated changes made using strikethroughs to note removed text and underlines to note added text.

WAC 173-925-030 Definitions

Change #1: Changed text in definition of "Beverage" in consideration of public comments suggesting greater clarity.

- WAC 173-925-030(1)(b)(i) "Beverage" does not include: (i) Liquid in a concentrated form that must be reconstituted with water or another liquid to be consumed, or is added to another beverage for flavoring or sweetening.

Change #2: Changed text to be consistent with revised "producer" definition (See Change 4), and to remove the implication that the brand owner is the sole producer.

- WAC 173-925-030(3) "Brand" means a name, symbol, word, logo, or mark that identifies a product and attributes the product to the brand owner ~~as the producer.~~

Change #3: Changed "entity" to "person" to be consistent with revised "producer" definition. (See Change 4). Change was made in WAC 173-925-030 subsections: (6)(a), (6)(b), and (14).

Change #4: Changed "producer" definition to mirror the definition of "producer" in RCW 70A.245.010(19)(a). Change was made in response to numerous comments expressing concern with the proposed definition.

- WAC 173-925-030(2223)(a) "Producer" means the following person responsible for compliance with minimum postconsumer recycled content requirements under this chapter for a covered product sold, offered for sale, or distributed in or into this state:
 - (i) If the covered product is sold under the manufacturer's own brand or lacks identification of a brand, the producer is the person who manufactures the covered product;
 - (ii) If the covered product is manufactured by a person other than the brand owner, the producer is the person who is the licensee of a brand or trademark under which a covered product is sold, offered for sale, or distributed in or into this state, whether or not the trademark is registered in this state, unless the manufacturer or brand owner of the covered product has agreed to accept responsibility under this chapter; or
 - (iii) If there is no person described in (a)(i) and (ii) of this subsection over whom the state can constitutionally exercise jurisdiction, the producer is the person who imports or distributes the covered product in or into the state.
- "Producer" means the entity responsible for compliance with all requirements of this chapter for covered products sold, offered for sale, or distributed in or into Washington state.
- (a) The producer of a covered product is the entity that affixes its brand, or specifies that its brand be affixed, to the covered product container or retail packaging, except as follows:
 - (i) If an entity is a "brand licensor," meaning it has licensed its brand to be used on a covered product that is to be sold by the licensee, then the licensee is the producer.
 - (ii) If the covered product lacks identification of a brand, the entity that specified the material composition of the covered product packaging is the producer.
 - (iii) If there is no identifiable person described above, the entity who imports or distributes the covered product in or into the state, including through online sales, is the producer.

WAC 173-925-040 Annual registration and reporting requirements

Change #5: Changed language about resin data requirements in response to comments suggesting greater clarity.

- WAC 173-925-040(2)(b) Plastic resin data for each covered product category in WAC 173-925-060(1) sold or offered for sale in or into Washington state in the prior calendar year, including total pounds of virgin resin (by resin type) and total pounds of PCRC (by resin type) in each covered product category. Plastic resin data for each covered product category in WAC 173-925-060(1) sold or offered for sale in or into Washington state in the prior calendar year, including total pounds of plastic resin within each covered product category.

Change was also made in WAC 173-925-040(1)(d) to reflect the revised definition of “entity” to “person.”

WAC 173-925-060 PCRC product requirements

Change #6: Changed language in WAC 173-925-060(2)(b) in response to comments suggesting greater clarity.

- WAC 173-925-060(2)(b) Plastic sold or marketed for use as fuel feedstock may not be included ~~in~~ as contributing to required PCRC reports to the department.

WAC 173-925-070 Exclusions or adjustments to PCRC requirements

Change #7: Changed language in WAC 173-925-070(1)(b) to clarify the timeline in which Ecology will respond to requests for temporary exclusions from PCRC minimum requirements.

- WAC 173-925-070(1)(b) In order for the department to respond to all requests within 120 days, producers must annually submit their temporary exclusion request from PCRC minimum percentage requirements for the coming calendar year to the department by September 1st of the prior calendar year.

~~In order for the department to consider and grant temporary exclusions from PCRC minimum percentage requirements producers must annually submit their temporary exclusion request for the coming calendar year to the department by September 1st in order to have a decision from the department by December 31st.~~

Change #8: Changed WAC 173-925-070(2)(b) to remove April 1st deadline for producers to submit requests for temporary adjustments to the annual PCRC minimum percentages. This is to ensure that requests can be submitted at any time and may be initiated by either producers or by Ecology.

- WAC 173-925-070(2)(b) ~~By April 1st~~ Producers or PCRC product industry representatives may annually submit requests for consideration by the department to temporarily adjust the annual PCRC minimum percentages for the following year. These requests must provide the following information:

Change #9: Changed WAC 173-925-070(2)(b)(iv) to remove “transportation barriers” from the list of factors producers may provide as supporting documentation to justify a request to adjust the annual PCRC minimum requirement. This change was made in response to a comment that this factor was not in the RCW language and should not be included, unless under the “and/or other relevant factors” clause.

- WAC 173-925-070(2)(b)(iv) Supporting documentation including changes in market conditions, recycling collection rates, product quality or shelf life issues, production line issues, capacity of recycling and processing infrastructure, domestic and global PCRC resin bale availability, ~~transportation barriers~~, public health emergencies, work stoppages, catastrophic events, and/or other relevant factors;

Change #10: Changed WAC 173-925-070(2)(e) in response to comments requesting greater clarity.

- WAC 173-925-070(2)(e) For all PCRC product categories, any annual adjustments made by the department may not increase PCRC requirements beyond the minimum requirement for the current reporting year. ~~For all PCRC product categories, annual adjustments may not exceed the minimum requirement for the current reporting year.~~

Summarized Comments and Ecology Responses

Ecology accepted formal comments on the proposed rule during the 60-day public comment period that closed on July 1, 2023. We received 22 comment submissions on the proposed rule, including one verbal testimony shared during the June 8, 2023, public hearing. Some submissions included multiple comments, and several submissions represented many individuals or organizations. We accepted formal comments via:

- The online comment tool on Ecology's webpage (written).
- U.S. mail (written).
- E-mail (written).
- Two online public hearings held on June 8 and 15, 2023 (verbal).

Table 1. Commenter index: lists each commenter, the topics they commented on, and the comment category. To see Ecology's response to your comment, find your name or organization in the following table and go to the section for your comment topic.

After carefully considering all comments received, we summarized comments for readability and conciseness, and included a response. You can view the full comments in Appendix B: Written Comments, and in [Ecology's online comment tool](#). To find the summary of each comment along with Ecology's response, please refer to the comment category codes and find the codes associated with each commenter.

Comment Category	Category Code
Support rule but suggest that Ecology do more.	A
Encourage 3rd party verification of PCRC data	B
Encourage eco-modulated fee structure	C
Address reporting, registration, and fee payment requirements	D
Opposition to proposed "producer" definition	E
Address proposed "beverage" definition	F
Exemptions, adjustments, and exclusions	G
Address proposed "household cleaning product" definition	H
Address enforcement and penalties	I
Rule language in relation to future legislation or actions	J
Miscellaneous	K
Commenters:	Category Code
Brandon Housekeeper, Northwest Grocery Association	D, E
Brendan Flanagan, Consumer Brands Association	E
Brennan Georgianni, American Cleaning Institute	C, G
Cheryl Nelson	A
Christopher Finarelli, Household & Commercial Products Association	C, J, G, H
DeeAnna Holland	A, K

Dwight Rousu	B
Frank Leach, S.C. Johnson & Son, Inc	C, D, J
Heather Trim, Zero Waste Washington	F, G
Jody Mason, Danon North America	F
Kate Eagles, Association of Plastic Recyclers	B, D, G, I, J
Katie Beeson, Washington Food Industry Association	E
Kenisha Cromity, Personal Care Products Council	D
Leatta Dahlhoff, Washington Department of Enterprise Services	K
Mark Engel	A
Mark Johnson, Washington Retail Association	D, E
Paul Fischer	K
Peter Godlewski, Association of Washington Businesses	E
Samantha Louderback, Washington Hospitality Association	E
Tim Shestek, American Chemistry Council	B

Comment Category A: Support rule but suggest that Ecology do more.

Commenters:

- Mark Engel should their association [sic] being included here as well
- Cheryl Nelson
- Deanna Holland

Summary:

Commenters support the proposed rule and asked Ecology to take more actions to reduce waste, improve recycling, and increase positive environmental outcomes.

Response:

With the adoption of this rule, Ecology is complying with the Recycling, Waste, and Litter Reduction Act (Chapter 70A.245 RCW) to increase the use of post-consumer recycled content in single-use plastic packaging. This is a milestone for plastics reduction and is one of the most comprehensive post-consumer recycled content laws in the nation.

Single-use plastics are a large part of our waste stream, and result in litter, pollution, contaminated recycling, and increased landfill waste. Parts of the law which directed this rulemaking address other single use plastic products such as single-use serveware and expanded polystyrene. Chapter 70A.530 RCW bans single-use plastic bags in grocery and retail businesses.

This rulemaking does not address additional potential measures that the legislature may enact to continue to improve recycling and reduce non-recyclables and single-use plastics. Authority to conduct this rulemaking is specific to the parts of the law related to post-consumer recycled content requirements in chapter 70A.245 RCW, WAC 173-925-010 through 173-925-060, and 173-925-090. To ensure transparency and accountability,

Ecology will publish the names of producers who have registered. The adopted rule outlines the enforcement protocols that Ecology will follow for those producers not in compliance with the requirements.

Comment Category B: Encourage 3rd party verification of PCRC data

Commenters:

- Dwight Rousu
- Tim Shestek
- Kate Eagles

Summary:

Commenters support the addition of third party verification for PCRC data, with one commenter suggesting more stringent certification requirements for producers who voluntarily submit certifications.

Response:

Ecology was not granted the authority in law to create additional requirements through rulemaking that are not outlined in the authorizing RCW. The law does not authorize Ecology through rulemaking to include a requirement for 3rd party certification of recycled content data.

Within Ecology's registration and reporting database, there is an option for producers to provide third party certification. That certification may reduce the chance of audit by Ecology, but producers may also opt to simply attest that the data submitted is accurate. The rule outlines Ecology's authority to audit PCRC claims for non-compliance. Ecology may request 3rd party certification if we are unable to verify PCRC claims after an audit.

Comment Category C: Encourage eco-modulated fee structure

Commenters:

- Frank Leach
- Brennan Georgianni
- Christopher Finarelli

Summary:

Commenters support an eco-modulated fee structure for producer payment of Ecology costs.

Response:

Chapter 70A.245 RCW does not provide Ecology the authority to require or encourage standards beyond those specified in the law, or to reward compliance or exceeded requirements through fee structure.

Total plastic resin weight in Washington was selected as the basis for fee determination because it is a measurable quantity and represents each producer's relative volume of plastic in each covered product category. Assuming no significant weight difference between virgin plastic resin and recycled plastic resin, this value provides a fair, objective basis to represent each producer's share of the covered products driving Ecology's workload to administer the law. All producers, regardless of their PCRC content, are required to pay a fee and to annually report and register.

Total plastic weight also provides a data point that can represent a producer's relative market share within a covered product category without requiring producers to submit confidential business information to Ecology. Fee distribution based on market share provides a sliding-scale fee structure to support affordability for smaller businesses.

Because not all producers have equal access to the resources needed to exceed PCRC requirements, offering fee discounts to producers that are able to exceed those requirements would be inequitable.

The law specifies calculations for a required penalty for producers who fail to meet the required PCRC minimums; Ecology must apply the financial penalty according to the calculation, without exception, for all producers who do not meet PCRC requirements in the law; it is not discretionary. If the fee structure includes additional costs for producers who do not exceed the PCRC content standards, it could be construed as an additional penalty for producers who fail to meet minimum PCRC requirements.

Comment Category D: Address reporting, registration, and fee payment requirements

Commenters:

- i. Frank Leach
- ii. Mark Johnson
- iii. Brandon Housekeeper
- iv. Kenisha Cromity
- v. Kate Eagles

Summary:

- i. Registration: Commenter supports certain provisions of rule, including the allowance for registration by a 3rd party and for producers to report national data prorated for Washington state or the northwest region.
- ii. Reporting: Commenter wants to ensure that national or regional averaging allowance factors in retail brand owners who have covered products distributed non-homogenously throughout the state.

- iii. Reporting: Commenter opposes the separation of dairy milk and wine from the compliance target averaging for PCRC in other (non-dairy or wine) beverage containers.
- iv. Fee payment: Commenter requests extended deadline for submitting annual fees after invoices are sent to producers, with the explanation that some companies have internal policies that require at least 180 days to process invoices.
- v. Reporting: (a) Commenter expressed the need to require producers to provide PCRC data by resin type within each product category, and suggests language to further detail this in the adopted rule.

Reporting: (b) Commenter also suggested additional language (italicized) to WAC 173-925-040(3)(a) "The data must be allocated to Washington on a per capita or other accurate basis for calculation, and the producer or reporting representative must demonstrate that the percentage of PCRC for the product category sold into Washington is the same as the PCRC percentage calculated for the nation or region *and meets or exceeds the state's PCRC requirement.*"

Reporting: (c) Commenter suggested clarifying language (italicized) WAC 173-925-060(2)(b), "Plastic sold or marketed for use as fuel feedstock may not be included *as contributing to required PCRC* in PCRC reports to the department."

Response:

- i. Registration: Provisions for 3rd party registration and using national or regional data pro-rated for Washington are allowed under the law and adopted rule. Ecology will publish rule guidance to further clarify the processes for these types of reporting.
- ii. Reporting: Ecology will elaborate on the allowance for this type of reporting scenario in guidance, to be published in January 2024. When a retail brand is identified as the responsible producer, they may calculate the reported weight based upon the national sales weight multiplied by a percentage representing the number of stores that are located in Washington. They may then add the total weight of online sales into Washington. The registration and reporting database will also have a comment box to allow producers to explain the method by which they calculated their reported weight.
- iii. Reporting: The law establishes separate reporting requirements for beverage containers vs dairy and wine containers in accordance with their compliance timelines. Allowing for averaging across these categories may disproportionately impact producers of beverages that do not include dairy and wine. For this reason, Ecology does not intend to allow for averaging across these two distinct categories of products.
- iv. Fee Payment: Ecology will address the potential for producers to request an alternative timeline in its upcoming guidance to be published in January 2024.
- v. Reporting: (a) This data requirement is not outlined in the rule but is requested in the registration and reporting database. Producers are to give us their total resin weight, and then are asked for more detail by providing what kind of resin type, if it is virgin or PCRC, and how much of it they used.

Reporting: (b) Ecology did not incorporate this suggested revision into the adopted rule because it may imply that the entity is required to exceed the state requirement. Further

clarification will be provided in guidance published in January 2024.

Reporting:(c) Ecology adopted this clarifying revision in the final rule language.

Comment Category E: Opposition to proposed “producer” definition

Commenters:

- Brandon Housekeeper
- Katie Beeson
- Mark Johnson
- Peter Godlewski
- Brendan Flanagan
- Samantha Louderback

Summary:

Commenters oppose the proposed rule’s “producer” definition. Commenters expressed concern that Ecology exceeded its authority in its interpretation of “brand owners” as producers, did not meet the intent of the definition negotiated at the time of the bill’s passage, and should refer to the direction of the legislature to make any potential amendments. Commenters expressed concern that Ecology’s proposed interpretation would place an undue compliance burden on retailers with products sold under private label store brands. Some commenters state that retailers were intentionally excluded from the statute’s definition of “producer” except when acting as manufacturers. Commenters overall support a return to the RCW definition of “producer.”

Response: The definition of producer was the most extensively discussed topic during the rule development process, with many stakeholders providing input to highlight areas believed to be lacking in clarity and to provide their industry knowledge. Concerns have been raised that retailers do not make the decisions around the material composition of their packaging and should not have to oversee compliance with the new PCRC requirements.

The concern voiced by commentors, primarily those representing the retail and grocery industry and private label brands, is with Ecology’s interpretation that the brand owner is the primary party responsible for compliance under the law.

For this reason, Ecology revised the proposed rule to mirror the definition of “producer” as set out in the statute. Clarity will be provided in a guidance document to address situations where a brand owner, retailer, or manufacturer has not accepted responsibility or the assignment of responsibility is in dispute. Ecology will also replace the term “entity” with “person” to reflect the statutory language.

Comment Category F: Address proposed "beverage" definition

Commenters:

- i. Jody Mason
- ii. Heather Trim

Summary:

- i. Commenter suggested that "beverage" should not include coffee creamers sold in plastic packaging.
- ii. Commenter expressed concern that the proposed rule language exclusion for "concentrated liquid" is not well defined and could be misused. Commenter provided suggested language to use for clarity.

Response:

- i. The rule clarifies Ecology's intent to include coffee creamers in the products subject to the requirement since large containers of creamer meet all of the criteria which qualifies them as a beverage. These criteria apply to the packaging, not to the suggested serving size. The volume consumed in one sitting does not exclude the serving size in a 12-ounce bottle of creamer. Creamer sold in this type of packaging is intended for human consumption and is larger than 2 ounces and thereby meets the definition of beverage.

The definition of creamer in the law applies to single-serve coffee creamers subject to the new restrictions around the automatic provision of single-use food service items to customers from food service providers. These creamers are not subject to the PCRC requirements because they do not meet the container size parameters outlined in the rule. However, coffee creamer sold in quantities greater than 2 fluid oz and less than 1 gallon still meet the definition of beverage.

- ii. Ecology has adopted a revised version of the language as follows:

(b) "Beverage" does not include:

(i) Liquid in a concentrated form that must be reconstituted with water or another liquid to be consumed, or is added to another beverage for flavoring or sweetening.

Comment Category G: Exemptions, adjustments, and exclusions

Commenters:

- i. Christopher Finarelli
- ii. Brennan Georgianni
- iii. Kate Eagles
- iv. Heather Trim

Summary:

- i. Exemptions: Commenter expressed concern over the language (italicized below) for exemptions to the definition of “Covered products” in 173-925.010(5)(b)(iii), “Products in containers sufficiently durable for multiple rotations of their original or similar purpose, *and are intended to function in a system of reuse;*”
The commenter’s concern is that this language will only apply to “take-back” programs and not to products aimed at reducing plastic usage through reusable products.
- ii. Exclusions and Adjustments: Commenter expressed concern over the timelines for producers to annually request an exclusion from the PCRC minimum requirements and to annually request adjustments to the minimum PCRC requirements. The concern is that the lack of certainty in the timeline will not allow producers adequate preparation to know whether or not they are granted an exclusion from requirements, and that the deadline for requesting adjusted PCRC minimums does not allow for circumstances arising after the deadline to submit requests.
- iii. Exemptions: (a) Commenter expressed concern that the exemptions for de minimis producers may undermine the environmental outcomes of the policy by establishing thresholds that allow many large producers to qualify as de minimis and receive an exemption from the requirements.

Adjustments: (b) Commenter also suggests clarifying language (italicized) to revise the language in WAC 173-925-070(2)(e) from “For all PCRC product categories, annual adjustments may not exceed the minimum requirement for the current reporting year.” to “*For all PCRC product categories, any annual adjustments made by the department may not increase PCRC requirements beyond the minimum requirement for the current reporting year.*”
- iv. Adjustments: Commenter suggested that “transportation barriers” be removed as a factor for Ecology’s consideration in producer requests for adjustments to the minimum PCRC requirements.

Response:

- i. Exemptions: Ecology does not intend to limit the “system of reuse” language only to take-back programs, and will interpret products such as spray bottles with concentrated drop-in refill cartridges as a product included in a system of reuse. This will be clarified in guidance published in January, 2024.

- ii. Exclusions and Adjustments: Regarding the timeline for annually requesting exclusions and adjustments to the minimum PCRC requirements, Ecology has revised the rule language as follows:

WAC 173-925-070(1)(b) In order for the department to respond to all requests within 120 days, producers must annually submit their temporary exclusion request from PCRC minimum percentage requirements for the coming calendar year to the department by September 1st of the prior calendar year.

This means that Ecology will respond within 120 days of a producer request for exclusion regardless of the submittal data. The rule language will maintain the September 1st deadline for all exclusion requests. Additionally, in the adopted rule, Ecology removed “By April 1st,” from WAC 173-925-070(2)(b) to reflect the allowance for producers or the department to initiate a review of the annual PCRC minimum percentage and consider a reduction.

Ecology will elaborate on the process for requesting adjustments and exclusions in guidance published in January, 2024.

- iii. Exemptions : (a) The law does not grant Ecology the authority or directive to review the effectiveness of the de minimis exemptions or to alter the established thresholds.
Adjustments: (b) Ecology adopted this clarifying revision in the final rule language.
- iv. Adjustments: We have accepted the suggestion to remove “transportation barriers” from the list of considerations for adjustments to the PCRC rate in the adopted rule, however, this may still be a consideration covered under the language in 173-925-070(2)(b)(iv), “...and/or other relevant factors.”

Comment Category H: Definition of “household cleaning product”

Commenter:

Christopher Finarelli

Summary:

Commenter supports the adopted rule definition of “household cleaning product,” but recommends the removal of the term “solely” from the language (*italicized*) in the definition of “household cleaning products” in 173-925.010(10)(b). “Household” when used in the term “household cleaning products” denotes products marketed at least in part for residential or individual consumer use, but does not include products marketed *solely* for use in institutions such as hospitals and schools, or in commercial or industrial settings.”

The commenter’s concern is that this language could capture products used predominantly or exclusively for use in settings outside of the home. The commenter also suggested further guidance as to specific items within the scope of the definition.

Response:

Ecology does not interpret the definition of “household cleaning products” to apply to items used predominantly or exclusively in settings outside the home. The term “solely” is intended to acknowledge that there are some products which may be marketed for both household and commercial or industrial settings, and that those will still be within the scope of the definition. The definition and requirements would not apply to products that are solely for use in commercial and industrial settings. Ecology will not remove the term “solely,” but will provide further clarity on the scope of included and excluded products in guidance published in January 2024.

Comment Category I: Enforcement and penalties

Commenter:

Kate Eagles

Summary:

Commenter expressed concern that the 20-cent penalty is not effective enough to drive producers to use more PCRC rather than simply paying the non-compliance fee.

Response:

The penalty levels are set in statute and would require a change by the legislature. Ecology does not have the authority to adopt this change in rule.

Comment Category J: Rule language in relation to future legislation or actions

Commenters:

- Christopher Finarelli
- Frank Leach
- Mark Johnson

Summary:

Commenters request opportunities to collaborate on further rule amendments or follow-up legislation, incorporate or align PCRC requirements with the proposed Washington Recycling and Packaging (WRAP) Act, or partner with other states implementing recycled content laws.

Response:

This rulemaking is specific to chapter 70A.245 RCW. Ecology will continue to partner with other states whenever possible, but an adopted rule cannot direct the department to participate in harmonization with other states unless required by the legislature.

Comment Category K: Miscellaneous

Commenters:

- i. Paul Fischer
- ii. Leatta Dahlhoff
- iii. Deeanna Holland

Summary:

- i. Commenter expressed concerns about potential burdens presented by the new PCRC law, including tax increases and loss of business due to regulatory expenses.
- ii. Commenter had questions about how the rule may impact Department of Enterprise Services purchasing or contracting.
- iii. Commenter expressed concerns regarding non-recyclable single-use packaging, especially poly bags used to wrap apparel and garments.

Responses:

- i. There are no new taxes associated with the PCRC rule. The legislature established these requirements and Ecology is required to implement them. Many businesses have already pledged

to use PCRC in their products prior to the passage of this law, though annual fees associated with the program will be an additional business expense.

- ii. This rule will not have direct impacts on Department of Enterprise Services purchasing or contracting.
- iii. This rulemaking only addresses the parts of chapter 70A.245 RCW related to post-consumer recycled content requirements for producers of plastic packaging sold into Washington. Washington instituted a single-use bag ban beginning in 2022 and the legislature continues to consider policies aimed at reducing single-use packaging.

Appendices

This Concise Explanatory Statement Appendices document includes the citation list, written comments, verbal testimony provided, and the proposed rule with track changes. To view the Concise Explanatory Statement Appendices documents, visit this publication's summary page.

The Concise Explanatory Statement Appendices documents include:

- [Appendix A: Citation List.](#)
- [Appendix B: Public Comments](#)
- [Appendix C: Proposed Rule with Track Changes](#)

Appendix A: Citation List

Chapter 173-925 WAC

Post-consumer Recycled Content in Plastic Packaging

AO # 21 – 09

Overview:

We developed this citation list to meet the requirements outlined in RCW 70A.350.050 and 34.05.272. It contains references for data. This citation list contains references for data, factual information, studies, or reports on which the agency relied in the adoption for this rule making (RCW 34.05.370(f)), to determine regulatory actions, and to support the implementation requirements for producers of covered plastic containers.

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Appendix B – Public Comments

Overview

Ecology accepted formal comments on the proposed rule during the 60-day public comment period that closed on July 1, 2023. We received a total of 22 comments, including verbal testimony received during the June 8 public hearing. Some submissions included multiple comments and several submissions represented many individuals or organizations. We accepted formal Comments via

- The online comment tool on Ecology’s webpage
- US mail
- E-mail
- Two public hearings held on June 8 and 15, 2023.

The following are the written and verbal comment submissions we received during the 60-day formal public comment period.

1. Mark Engel
2. DeeAnna Holland
3. Cheryl Nelson
4. Jody Mason, Danon North America
5. Paul Fischer
6. Dwight Rousu
7. Leatta Dahlhoff, Washington Department of Enterprise Services
8. Mark Johnson, Washington Retail Association
9. Frank Leach, S.C. Johnson & Son, Inc
10. Katie Beeson, Washington Food Industry Association
11. Mark Johnson, Washington Retail Association
12. Brandon Houekeeper, NW Grocery Association
13. Brennan Georgianni, American Cleaning Institute
14. Tim Shestek, American Chemistry Council

15. Kenisha Cromity, Personal Care Products Council
16. Peter Godlewski, Association of Washington Businesses
17. Kate Eagles, Association of Plastic Recyclers
18. Christopher Finarelli, Household & Commercial Products Association
19. Brendan Flanagan, Consumer Brands Association
20. Heather Trim, Zero Waste Washington
21. Samantha Louderback, Washington Hospitality Association

Mark Engel

05/04/23 at 9:06 AM PT

My background is in Mechanical Engineering and while I believe science and technology can solve many problems it's business metrics that tend to drive most decisions. I applaud any effort to improve recycling and eliminate non-recyclables. Therefore my input would be the following:

1. Are these changes to the plastics law in Washington State aggressive enough? Will they put enough strain on business's to push them develop ecological solutions faster or at least fast enough?

1. I have listened to far too many investigations that find that what people believe is recyclable does not actually end up getting recycled. Two things need to happen- a. The recycling process needs to be shored up to ensure that recyclables are actually ending up getting recycled. B. Manufacturers who produce non-recyclable materials need to pay into the recycling process.
2. I am a believer that all non-recyclable materials should come to and end as soon as possible. We throw away far too many non-recyclable materials usually in the form of packaging and convenience items on a daily basis at an alarming rate.
3. Please let me know if there is anything I can do to support legislation to reduce non-recyclable materials.

DeeAnna Holland

05/04/23 at 1:10 PM PT

I am in the apparel industry, where every piece of apparel arrives wrapped in tissue paper and inside a single use poly bag. Depending on season I can debug thousands of Nike garments, and as far as I am aware, they are not recyclable. One polo shirt may have 4 sheets of tissue paper in them, also not recyclable. The bag I get from Safeway to carry out 10lbs of food will be used over and over, little poly bags from apparel will never be reused. I'm not advocating for punishing businesses that receive the apparel with more fees but it would be nice to see apparel manufacturers shipping bulk rather than encased in single use packaging.

Cheryl Nelson

05/05/23 at 11:41 AM PT

I can't find a description of the proposal I'm supposed to be commenting on. The newspaper article that sent me here didn't have one. The page doesn't have one. The "Review CR-102 Rule Proposal" button doesn't open anything.

So I'll go general:

Yes please regulate plastics. Regulate it more! Fine companies that don't follow regulations A LOT. Fine them enough to actually deter them from doing it again.

In general, please prioritize environmental concerns over business concerns, because if the economy falls it'll hurt, but if the environment falls we all die.

Thank you.

Jody Mason, Danon North America

06/13/23 at 9:28 AM PT, attachments below comment

Thank you for the opportunity to provide comments on CR-102 Rule Proposal, WAC 173-925. I am writing on behalf of Danone North America and our coffee creamers portfolio, including the International Delight® and Silk® brands.

At issue is the broadening of the definition of "beverage" to include coffee creamers, which are already included in the list of condiments in the definition of "condiment packaging".

Section 70A.245.010 (3): "'Condiment packaging' means packaging used to deliver single-serving condiments to customers. Condiment packaging includes, but is not limited to, single-serving packaging for ketchup, mustard, relish, mayonnaise, hot sauce, coffee creamer, salad dressing, jelly, jam, and soy sauce."

Coffee creamer is not included in the definition of a beverage in statute, which specifies a liquid "intended for human or animal consumption in a quantity more than or equal to two fluid ounces and less than or equal to one gallon". However, the recommended quantity for coffee creamers, across brands, is one tablespoon per serving; an example from our brands stating this on-pack is attached. The intended use is demonstrated in the FDA reference amounts customarily consumed (RACC) in 21 CFR 101.12(b), which states that the serving for "Cream or cream substitutes, fluid" is 15mL / 1 Tbsp.

The FDA's general principles for defining the RACCs states:

- 21 CFR 101.12(a)(1) FDA calculated the reference amounts for persons 4 years of age or older to reflect the amount of food customarily consumed per eating occasion by persons in this population group. These reference amounts are based on data set forth in appropriate national food consumption surveys.

and

- 21 CFR 101.12(a)(3) An appropriate national food consumption survey includes a large sample size representative of the demographic and socioeconomic characteristics of the relevant population group and must be based on consumption data under actual conditions of use.

Indeed, creamers are intended to be used as a condiment or a flavoring in a beverage, but not as a stand-alone beverage.

The law defines a "beverage" as the following:

Section 70A.245.010 (1): "Beverage" means beverages identified in (a) through (f) of this subsection, intended for human or animal consumption, and in a quantity more than or equal to two fluid ounces and less than or equal to one gallon:

- (a) Water and flavored water;
- (b) Beer or other malt beverages;
- (c) Wine;
- (d) Distilled spirits;
- (e) Mineral water, soda water, and similar carbonated soft drinks; and
- (f) Any beverage other than those specified in (a) through (e) of this subsection, except infant formula as defined in 21 U.S.C. Sec. 321(z), medical food as defined in 21 U.S.C. Sec. 360ee(b)(3), or fortified oral nutritional supplements used for persons who require supplemental or sole source nutritional needs due to special dietary needs directly related to cancer, chronic kidney disease, diabetes, or other medical conditions as determined by the department.

Based on these definitions, and the scope of intended quantity for human consumption, we believe coffee creamers would not be subject to the PCR mandate, and the packaging should not be included in annual volume reporting.

Please feel free to reach out with any questions. We appreciate this opportunity to discuss the scope of the law.



NUTRITIONAL INFORMATION

Nutrition

Serving Size: 1 Tbsp (15 mL)
Amount Per Serving
Calories: 35

Reference Image 1:



PRODUCTS ▾



NUTRITIONAL FACTS

Serving Size: 1 Tbsp (15mL)
Calories: 25

Reference Image 2:

Paul Fischer

06/13/23 at 3:29 PM PT

First the Fed Government adds a plastic tax, then Washington state adds a plastics tax and now the state PCRC comes into play to increase the price again. The bottle manufacturer says by adding the 15% PCRC it will increase the price by 10 to 12%. Then the business gets lost to another state because this state makes it too expensive to do business here. Why don't we hear these things on the 5 o'clock news?

Dwight Rousu

6/19/23 at 8:33 PM PT

There should be a verification process to verify that the plastic is actually recycled. A PIRG group put geographic position transmitters in plastics to be "recycled" and something like 80% of the transponders reported that they were in waste dumps or enroute to foreign waste sites.

Do not let plastic recycling be a greenwashing lie.

Leatta Dahlhoff, Department of Enterprise Services

6/27/ at 4:21 PM PT

Is this rule for producers to report to ECY, ECY to figure out, or something else?

If it is producers reporting to ECY, then DES isn't really concerned. If ECY makes anything touching on procurement, DES needs to be included.

What are the operational impact on agencies?

For purchasing will DES need to check ECY website; and if so how will ECY come up with the list of products?

Who / what type of org is considered a producer?

Will this work have any impact on what DES would need to include in a solicitation or contract? For instance, would this be something DES would add as a requirement for contract extensions or could be used as a breach of contract?

Mark Johnson, Washington Retail Association

6/27/23 at 7:44 PM PT, additional verbal comments from 06/08/23 public hearing included below written comments here

July 26, 2023

Dear Department of Ecology – PCR Rule Coordinator:

Washington Retail expressed our concerns with the department's interpretation of the definition of "producer" 70A.245.010 (19)(a) as was outlined in Senate Bill 5022. We submitted written comments to this effect in January 2023 and during the stakeholder process and notices to the bill's sponsors.

SB 5022's definition of "producer" was very carefully negotiated and crafted between legislators, stakeholders, and the department to ensure retailers could comply with the provisions of the legislation. Washington Retail did not oppose the final passage of the bill. With the proposed definition of "producer" we would have opposed SB 5022.

Retailers have little to often no control over how product packaging is utilized, designed, or what goes into the products. Unfortunately, the proposed rule's definition is significantly different from what was agreed to and contained in the legislation.

As discussions continue on more widespread packaging legislation, such as the Washington Recycling and Packaging Act – or WRAP Act – this misinterpretation will hinder and delay future efforts.

Our suggestion to better reflect a workable definition of "producer" is contained in the recently enacted Battery Stewardship Act – Senate Bill 5144 – copied below:

Battery EPR definition of producer in SB 5144-S2.E on p. 4, line 13:

(i) For covered batteries:

(A) If the battery is sold under the brand of the battery manufacturer, the producer is the person that manufactures the battery;

(B) If the battery is sold under a retail brand or under a brand owned by a person other than the manufacturer, the producer is the brand owner;

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

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

(E) If there is no person described in (a)(i)(A) through (D) of this subsection with a commercial presence within the state, the producer is the person who first distributes the battery in or into this state

(ii)(b) A person is the "producer" of a covered battery or covered battery-containing product sold, offered for sale, or distributed in or into the state, as defined in (a) of this subsection, except where another party has contractually accepted responsibility as a responsible producer and has joined a registered battery stewardship program as the producer for that covered battery or battery-containing product under this chapter.

For consistency of this and future stewardship programs we recommend and encourage the department to adopt this definition of "producer" specifically with the allowance for a retailer to contract with a producer to accept responsibility.

We appreciate your consideration of our recommendations and are happy to work with you on clarifying our position.

Sincerely,

Mark Johnson

Sr. VP of Policy and Government Affairs

O: 360.943.0667 M: 360.704.0048

E: mjohnson@washingtonretail.org

618 Quince St. SE • PO Box 2227 • Olympia, WA 98507

www.washingtonretail.org

Frank Leach, S.C. Johnson & Son, Inc.

6/28/23 at 12:51 PM PT, Text from attachment below comment

Please see the attached file for comments from S.C. Johnson & Son, Inc. on Chapter 173-925 Washington Administrative Code (WAC) Post-consumer Recycled Content in Plastic Containers.

June 28, 2023

Washington State Department of Ecology

Solid Waste Management Program

Attn: Shannon Jones

PO Box 47600

Olympia, WA 98504

To: Washington State Department of Ecology

S.C. Johnson & Son, Inc. (SC Johnson) appreciates the opportunity to provide comments to the Washington State Department of Ecology (Department) on Chapter 173-925 Washington Administrative Code (WAC) Post-consumer Recycled Content in Plastic Containers.

About SC Johnson

SC Johnson is a family company dedicated to innovative, high-quality products, excellence in the workplace and a long-term commitment to the environment and the communities in which it operates. Based in the United States, the company is one of the world's leading manufacturers of household cleaning products and products for home storage, air care, pest control and shoe care, as well as professional products. It markets such well known brands as GLADE®, KIWI®, OFF!®, PLEDGE®, RAID®, SCRUBBING BUBBLES®, SHOUT®, WINDEX® and ZIPLOC® in the U.S. and beyond, with brands marketed outside the U.S. including AUTAN®, BAYGON®, BRISE®, KABIKILLER®, KLEAR®, MR MUSCLE® and RIDSECT®. The 136-year-old company employs approximately 13,000 people globally and sells products in virtually every country around the world.

SC Johnson Efforts to Address Plastic Waste & Pollution

SC Johnson recognizes the important role of the private sector in addressing plastic waste and pollution. Our company has been a leader in this effort, advocating for public policy that improves waste management systems, leading with new and unique product innovations, and working with likeminded partner organizations that help us create new markets for materials that might otherwise end up in landfills.

Over the past several years, SC Johnson has taken proactive steps towards incorporating post-consumer recycled content in our products and packaging as we seek to achieve a waste-free world. We have increased PCR content globally from 4.5% in 2018 to 19.2% in our most recent survey in 2021, setting us up to achieve our goal of 25% PCR by 2025. Beyond 2025, we will

continue to look for opportunities to incorporate PCR, recognizing that developing and producing sustainable packaging and products is an important step to supporting the circular economy.

SC Johnson Feedback on WAC 173-925

We appreciate the Department's engagement as you consider input on this rulemaking. We have been involved stakeholders throughout the rulemaking process and are encouraged by the receptiveness to feedback. However, there are still areas where we feel the rule could be improved and we provide the following comments:

- **Fee calculation for postconsumer recycling content (PCRC):** We ask for your reconsideration of the current fee approach and ask that you explore utilizing an eco-modulated fee structure that recognizes producers use of PCRC. During the initial PCRC rule development process last year, SC Johnson advocated for a similar approach, which provides credits to producers to incentive the use of recycled resin. This approach reflects the goals of PCRC requirements and recognizes the proactive work of producers who have already taken steps to incorporate PCRC in their products and packaging. As noted in the CR-102 document, several consumer brands have made voluntary recycled content standards for their products. Producers who have made these investments, and are working towards achieving these commitments, should be credited for their proactivity, and not assessed utilizing the same methodology as companies who have not made similar investments. These credits should be applied to businesses regardless of their size.
- **Reporting and registration requirements:** We are supportive of a streamlined approach to the reporting and registration requirements, and allowing a third-party, such as a producer responsibility organization (PRO), to manage these requirements. We feel this will help ease the administrative burden on the Department and provide producers with a simplified approach to reporting. Producers would be able to report to a third-party, which would in turn aggregate the data and submit it directly to the Department.
- **Data submissions for covered products:** We are also supportive of allowing producers to report national or regional covered product resin data that is prorated for Washington state. We utilize a national supply chain for the distribution of our products which makes gathering state specific resin data incredibly difficult. Allowing producers to supply national data that is prorated for Washington state significantly simplifies the reporting process and removes a potential burden on producers that does not necessarily provide more accurate information.

We would like to recognize Senator Rolfes and Representative Berry's legislation, SSB 5154 / 2SHB 1131, the Washington Recycling and Packaging (WRAP) Act, which would transition the PCRC reporting and registration requirements into an EPR system. Under the proposed legislation, producers would report their data to the PRO, which would aggregate all the PCRC data from its members and submit that data to Ecology. This approach would add additional efficiencies to the PCRC program and remove much of

the administrative burden from the Department. SC Johnson has supported creation of EPR systems around the country and see them as one of the most effective mechanisms to supporting a circular economy.

Notably, the WRAP Act creates an eco-modulated fee system for producers to incentivize the use of packaging designs that reduce the environmental impact of covered products. As part of this approach, the bill utilizes an eco-modulated fee to drive use of post-consumer recycled content (Sec. 112 (5) (a) (ii)). We strongly support this approach and have advocated for an eco-modulated fee system to also be used for the assessment of fees under the PCRC program.

In anticipation of the reconsideration of the bill during subsequent legislative sessions, we encourage the Department to review these provisions and look for ways to harmonize the current program with future legislative changes. If passed, the WRAP Act would significantly alter how the current PCRC program is managed.

Thank you for consideration of our comments and input. If you have any questions, please feel free to contact Frank Leach, fjleach@scj.com, or Intisar Surur, intisar@mcbridepa.com.

Katie Beeson, Washington Food Industry Association

6/29/23 at 4:12 AM PT, Text from attachment below:

June 29, 2023

TO: Shannon Jones

CC: Department of Ecology

FR: Washington Food Industry Association

RE: Washington Food Industry Association Comments on PCRC Rule (CR 102)

On behalf of Washington Food Industry Association (WFIA) and our independent grocery and convenience store industry members, we offer the following comments on the PCRC Rule (CR 102).

Our Association is deeply disappointed in the failure of the department to address the concerns we highlighted in October 2022 regarding the definition of producer. Once again, we find it necessary to demonstrate the differences in the proposed WAC 173-925 vs. RCW 70A.245.010.

In the rule, producer is defined more broadly, potentially capturing additional producers regardless of the clarifications laid out in the sequential subsections. These differences are outlined below.

- 19 (a) in statute: "Producer" means the following person responsible for compliance with minimum postconsumer recycled content requirements under this chapter for a covered product sold, offered for sale, or distributed in or into this state
- 22 (a) in rule: The producer of a covered product is the entity that affixes its brand, or specifies that its brand be affixed, to the covered product container or retail packaging

We continue to request the rule language mirror the statute to eliminate confusion and allow the explanations in the following subsections to clarify the definition of producer.

Additionally, the rule fails to include language allowing manufacturers or brand owners to accept responsibility which is addressed in statute.

- 19 (a) (ii) If the covered product is manufactured by a person other than the brand owner, the producer is the person who is the licensee of a brand or trademark under which a covered product is sold, offered for sale, or distributed in or into this state, whether or not the trademark is registered in this state, unless the manufacturer or brand owner of the covered product has agreed to accept responsibility under this chapter
- 22 (a) (i) If an entity is a "brand licensor," meaning it has licensed its brand to be used on covered product that is to be sold by the licensee, then the licensee is the producer.

We request the language “unless the manufacturer or brand owner of the covered product has agreed to accept responsibility” be added to the rule to account for contracts or agreements made between brand owners and manufacturers and licensees on producer responsibility.

The proposed definition would make more retailers responsible for the contents of plastic packaging in situations where the retailer has no control. This goes against the negotiated definition in statute and will make many retailers liable without any ability to affect change. The definition of “producer” was a significant discussion point during negotiations on 5022 when it was moving through the Legislature. Our groups all negotiated this definition in good faith with others at the table, including Ecology. The final language was agreed to and WFIA did not oppose the bill when it passed. Disregarding this carefully negotiated definition in an attempt to “clarify” the language is simply unacceptable.

Additionally, the Department acknowledges the “disproportionate impacts on small businesses” in Chapter 7 of the preliminary regulatory analyses. Some of these impacts could be mitigated by using the definition of producer in statute instead of substantially changing it in rule.

WFIA continues to be supportive of the concept of PCRC. We are looking forward to the completion of rulemaking and seeing the full implementation of 5022. However, the original definition of producer is key towards successful implementation of the policy. We sincerely hope we can continue to support policies like this, however, the lack of adherence to following the statute creates significant concern for future rulemaking.

We are grateful for the opportunity to present these comments. We urge the Department to reassess the producer definition and align with state statute.

Katie Beeson
Government Affairs Director
360-867-8721
katie@wafood.org

Mark Johnson, Washington Retail Association

6/29/23 at 2:21 PM PT

Calculation of weight (tonnages) of packaging for the state.

Most language allows producers to calculate their weights based upon their total national sales weights multiplied by a factor representing the percentage of US population that lives in that state. For a typical CPG, this works well as these national brand items are sold homogeneously at most or all retailers. However, for retail brand owners this is not accurate as our products are only sold in our own stores which are decidedly not distributed homogeneously. This could be resolved by clarifying that retail brand owners when identified as producers may calculate their weights based upon the total national sales weights multiplied by a percentage representing the percentage of our stores that are located in Washington plus online sales.

Brandon Housekeeper, NW Grocery Association

6/30/23 at 8:26 AM PT, text from attachment below
June 30, 2023

VIA ELECTRONIC MAIL

State of Washington

Department of Ecology

Attn: Shannon Jones

Shannon.jones@ecy.wa.gov

300 Desmond Drive SE, Lacey, WA 98503

RE: Comments on Proposed Rule WAC 173—925, Post-Consumer Recycled Content

Dear Ms. Jones:

Thank you for the opportunity to comment on the Department of Ecology's (Ecology) proposed rule for post-consumer recycled content (PCRC) rule, WAC 173-925, on behalf of the Northwest Grocery Association (NWGA). NWGA represents several grocery private labels, general retailers, and manufacturers, and employ more than 80,000 workers at more than 860 locations throughout Washington state.

We appreciate the ongoing dialogue and work with Ecology around the issues of product stewardship and particularly efforts related to the current rule development for PCRC. Unfortunately, there are two key issues that need to be addressed before Ecology finalizes the rule:

- Producer definition
- Compliance target averaging

Specific to those two outstanding issues:

Producer definition:

In previous communication with Ecology related to the drafting of the PCRC rules, NWGA expressed concern with the interpretation being used to define "producer" in WAC 173-925. As you are aware, our organization and members were at the table during the negotiation of SB 5022 – which became the enacting legislation of Chapter 70A.245 RCW. Ecology representatives also participated in the negotiated language in statute. However, the proposed definition for producer in WAC 173-925 does not follow the clear intent of the definitional compromise.

NWGA supported the definition of producer as written in statute, which provides certainty within the supply chain process for the manufacture, brand owner, and retailer.

RCW 70A.245.010(19) defines producer as:

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

- (i) If the covered product is sold under the manufacturer's own brand or lacks identification of a brand, the producer is the person who manufactures the covered product;
- (ii) If the covered product is manufactured by a person other than the brand owner, the producer is the person who is the licensee of a brand or trademark under which a covered product is sold, offered for sale, or distributed in or into this state, whether or not the trademark is registered in this state, unless the manufacturer or brand owner of the covered product has agreed to accept responsibility under this chapter; or
- (iii) If there is no person described in (a)(i) and (ii) of this subsection over whom the state can constitutionally exercise jurisdiction, the producer is the person who imports or distributes the covered product in or into the state.

In the proposed rule definition, Ecology re-writes the definition of producer ignoring the carefully crafted and negotiated language in statute. Here are a few examples of issues with the proposed definition in proposed WAC 173-925 (22) –

- *““Producer” means the entity responsible for compliance with all requirements of this chapter for covered products sold, offered for sale, or distributed in or into Washington state.”*
 - “entity” is only used in statute as part of the definition for Licensee, and the way Ecology uses entity strictly limits the overall proposed definition of producer.
 - Statute says a “... the follow person...” is responsible, and then proceeds to outline whom a “person” may be in relation to producer.
- *“(a) The producer of a covered product is the entity that affixes its brand, or specifies that its brand be affixed, the covered product container or retail packaging, except as follows:”*
 - The concept of affixing a label is not used in statute and appears to place burden on a label owner inconsistent with the statutory construct.

Ecology’s proposed definition lacks key language used in the statutory definition, found in (19)(a)(ii), “... unless the manufacturer or brand owner of the covered product has agreed to accept responsibility under this chapter...”.

- This language allows for any producer to assign responsibility for a covered product and was essential to the compromise of the final producer definition in law.

In addition to these examples highlighting concerns with the proposed definition, NWGA is concerned with Ecology interpretation of producer given the 2023 legislative discussion dealing with the definition of producer. HB 1131 (Improving Washington’s solid waste management

outcomes) and SB 5144 (Providing for responsible environmental management of batteries) both specifically dealt with the definition of producer. Ecology representative directly engaged in the negotiations, including signaling support for the language being used in both bills – which would have also modified the statutory language for the PCRC law.

Furthermore, SB 5144 was adopted in the 2023 Session and includes clarification for the definition of producer using the waterfall of responsibility for covered products. The producer definition in SB 5144 included the same key language found in RCW 70A.245.010(19) allowing producers to assign responsibility to other persons for participation in stewardship programs.

Given the ongoing policy debate around the definition of producer in the state Legislature and the clear intent from stakeholders to ensure consistency across stewardship programs, and that Ecology was part of the negotiation of current law and the continued policy discussion – it begs the question, “If Ecology is not using the strict, plain-English, interpretation of the definition of producer in current statute – then why not use the latest clarification provided by the Legislature in SB 5144?”

During the rulemaking process Ecology has suggested the changes to the definition of producer ensures easier enforcement. However, if Ecology believes there are enforcement challenges, then why not bring those to the Legislature? Ecology, as noted above, is in the room during the negotiations, but has failed to clearly articulate the concerns it has with using the statutorily required definition.

The definition of producer is very important to our retail groups because there is little to no control from the retailer over how product packaging is utilized. There is also little to no retailer control over what goes into the product. Certain situations do allow some modicum of control – generally based on contractual provisions. The rules should reflect this and we believe the limitations are properly expressed in current law.

Compliance target averaging:

Industry has tough challenges ahead meeting the requirements outlined in statute, yet Ecology’s proposed rule will make it more difficult to meet the compliance targets by limiting the averaging for all beverage containers. We believe this is inconsistent with the statute.

In the rule, Ecology splits out dairy milk and wine as separate categories from other beverages for reporting PCRC. Creating subcategories and not averaging across dairy, wine, and other beverages to reach our compliance targets will narrow our flexibility in complying with the requirements. Yet the statute doesn’t require this of Ecology. The law expressly states, “A producer of a beverage in a plastic beverage container must meet the following annual minimum postconsumer recycled content percentage on average for the total quantity...by weight, that are sold, offered for sale or distributed....”

There is no limitation in statute on the averaging across products or subcategories. The language in statute does provide a delay in the requirement for certain products – but doesn’t tell Ecology to limit the averaging for compliance. Industry will need all the flexibility

contemplated by the statute to comply with these requirements. Moreover, the proposed approach unnecessarily disincentivizes early action by not allowing for total averaging across beverage containers as statute allows.

The law requires that wine and dairy be calculated separately from other beverages since they have different implementation dates and minimum percentage requirements. The adopted rule reflects this requirement and does not have the authority to allow for earlier averaging.

We appreciate the opportunity to comment, providing critical feedback on the proposed rules for WAC 173-925. As an industry we are committed to working with Ecology to ensure compliance with post-consumer recycling content and appropriate stewardship of products in Washington state. We hope Ecology will reconsider the part of the proposed rule dealing with the definition of producer and averaging of PCRC across beverage products. Given the ongoing work in the product stewardship space it will be important to work together and honor the compromise achieved in the process of developing the governing laws.

Please don't hesitate to follow up if you have any questions or concerns. We look forward to our continued work on these important issues.

Sincerely,

Amanda Dalton
President Northwest Grocery Association
Cc: Brandon Housekeeper, Washington Legislative Counsel

Brennan Georgianni, American Cleaning Institute

06/30/23 at 10:37 AM PT, text from attachment below

Shannon Jones, Rulemaking Lead

Washington Department of Ecology,

Solid Waste Management Program

P.O. Box 47600

Olympia, WA 98504-7600

Re: Comments from the American Cleaning Institute on the proposed rule for Chapter

173-925 WAC, Postconsumer Recycled Content in Plastic Containers

Thank you for the opportunity to provide our comments on the proposed rule to implement

Chapter 173-925 WAC on post-consumer recycled content (PCRC) in plastic containers. The

American Cleaning Institute (ACI) – the association for detergent and cleaning product

manufacturers – has a vested interest in ensuring packaging such as that which is encompassed by this law complies with all requirements. Our members are already making great strides in reducing their packaging usage and incorporating more recycled content into the packaging they do introduce to the market.

We appreciate the opportunity we had to sit on the rulemaking advisory committee for much of 2022 to help develop this rule. The Department of Ecology (Ecology) provided ample

opportunity for stakeholder involvement in this development. As key elements of the law

approach and more producers are required to meet registration and reporting requirements, we expect there to be more opportunities for Ecology to improve how this law is implemented. As such, our comments focus on areas that we hope Ecology will revisit and will consider for the future.

Adjusting Fee Structure to Benefit Producers in Compliance

We appreciate the effort that Ecology has made to develop an equitable fee structure which accounts for business size, market share and cost sharing of Ecology's administrative and

oversight expenses. The law allows Ecology complete control over the fee structure which has resulted in costs savings for producers with plastic resin weights under the mean plastic resin weight across all fee-paying producers, and cost increases for producers above the average resin weight. Similarly, it would be beneficial for there to be an opportunity for a producer to reduce their fee if they are achieving higher PCRC percentages than are required for that calendar year. This would further enhance the purpose of the law. Because revenue from penalties associated with non-compliance are earmarked for supporting local solid waste and financial assistance programs, a fee adjustment is the only other mechanism to incentivize more positive contributions from companies that are complying.

Dates

The law provides important deadlines that producers are already preparing for. Our concern is that some of the dates do not provide enough time for a producer to respond to determinations made by Ecology. We request assurances from Ecology that timely announcements will be made in response to producer inquiries. We outline a couple examples below.

Ecology has proposed a September 1 deadline for a producer to request a temporary PCRC percentage exclusion for the following calendar year. Ecology must make a determination by December 31. There is no indication how long it will take for Ecology to respond to a request whether that is made early in the year or just before the September 1 deadline. In either case, we seek a method that will ensure a quick reply to producers so that they may adequately prepare for the following year.

The law dictates that registration, reporting and requests for adjustments to the PCRC percentages for the following calendar year be made by April 1. As already mentioned, there is no indication how long it will take Ecology to respond, although in this case a response could come up to nine months later (just before the end of the year). Furthermore, rules should be established to determine how adjustments can be requested after the April 1 deadline in the event that new circumstances arise that would make complying with PCRC percentages difficult.

We would like to reiterate that ACI commends the work that Ecology has conducted so far with appropriate public input. We hope that Ecology will take more time to contemplate ACI input on this rulemaking. ACI looks forward to providing necessary input regarding the performance of our products and packaging to achieve desired policy goals.

Sincerely,

Brennan Georgianni

Director, State Government Affairs

Bgeorgianni@cleaninginstitute.org

Tim Shestek, American Chemistry Council

06/30/23 at 10:48 AM PT, Text from attachment below

Attached is a comment from the American Chemistry Council (ACC). Thank you in advance for considering our views.

Tim Shestek

Senior Director, State Affairs

June 30, 2023

Shannon Jones Department of Ecology

Solid Waste Management Program

PO Box 47600 Olympia, WA 98504-7600

RE: Post-Consumer recycled content rulemaking (Chapter 173-925 WAC)

Dear Ms. Jones:

On behalf of the members of the American Chemistry Council (ACC), thank you for the opportunity to comment on the Department of Ecology's (ECY) proposed post-consumer recycled content (PCR) rulemaking (Chapter 173-925 of the Washington Administrative Code (WAC)).

ACC supports efforts to create a more circular economy for plastics and we were among the first organizations to establish ambitious, forward-thinking goals that all plastic packaging in the United States is reused, recycled, or recovered by 2040 and that all U.S. plastic packaging is recyclable or recoverable by 2030. A key component of achieving these goals will be the establishment of sustainable end markets for recovered plastics.

As producers strive to meet the requirements of this statute and voluntary industry targets for increased use of recycled resin in new packaging, manufacturers will need access to recycled materials from a variety of sources. ACC supports the inclusion of proposed language in WAC 173-925-060 that recognizes varying recycling processes and requires that any data/claims be validated by recognized 3rd party certification systems.

The requirements in the proposed rule ensure materials are tracked through complex manufacturing systems in a verifiable and transparent fashion. Similar accounting and verification systems are used to track renewable energy, forest products, coffee, and other products. The proposed language will ensure transparency, consistency and that recycled content claims are attributed accurately.

ACC appreciates and thanks ECY for the past dialogue on this important issue. We look forward to working with ECY and other stakeholders to improve the recovery of plastics packaging so that more recycled material can be used as feedstock to manufacture new packaging. Thank

you again for the opportunity to provide these comments. Should you have any questions, please contact me at tim_shestek@americanchemistry.com.

Sincerely,

Tim Shestek
Senior Director, State Affairs
American Chemistry Council

Kenisha Cromity, Personal Care Products Council

July 1, 2023

Via Electronic Submission

Department of Ecology

Solid Waste Management Program

PO Box 47600 Olympia, WA 98504-7600

Attn: Shannon Jones, Regulatory Lead and Plastics Reduction Coordinator

Shannon Jones, Rulemaking Lead

Re: WSR 23-10-062, Comments on Washington State Department of Ecology's Proposed Rule The Personal Care Products Council ("PCPC") is pleased to submit the following comments on the Washington State Department of Ecology's ("Ecology") WSR 23-10-062 Proposed Rule, released on May 2, 2023 (the "Proposed Rule"). Our member companies are involved in the distribution and sale of over-the-counter nonprescription drug products, cosmetics, toiletries, fragrances, and ingredients in Washington, and therefore have a strong interest in the scope and applicability of this Proposed Rule.

The Proposed Rule addresses in detail the importance of implementing Chapter 70A.245 RCW ("Plastics Law") so that Washington consumers are able to access products made with plastic packaging and other packaging materials that are reduced, recycled, and reused. While PCPC supports Ecology's role to establish a postconsumer recycled content ("PCRC") program for producers of covered products, we do believe that the program could include more flexibility in the timeline for annual fee payments.

Our Position

PCPC supports Washington's goals to establish a domestic market for recycled materials and reduce the economic dependence on virgin plastics. We are also very appreciative of Ecology's inclusion in the Proposed Rule of the language that allows confidentiality rights granted to producers to be carried over year to year. We kindly request for Ecology to consider our feedback on the Proposed Rule concerning annual fee payments.

Annual Fee Payments

While we appreciate Ecology's willingness to provide a 30-day timeline to submit annual fees after the billing statement is sent, our member companies require more time. It is important to note that companies have varying internal policies and procedures regarding the processing of invoices. Specifically, some of our member companies have internal policies and agreements that require at least 180 days to process invoices, but few would be able to meet the 30-day deadline. We request that Ecology consider a 180-day timeline to submit annual fees. In addition, we kindly request Ecology to consider including additional language that allows individual companies to make requests to Ecology for a timeline extension. Such requests will provide flexibility to those companies who have reasonable circumstances that prevent the

company from meeting the finalized timeline for submitting annual fees. With the inclusion of the additional language, we request Ecology to also consider the inclusion of the italicized language below or similar language to the Proposed Rule.

Producer annual fees are due 30 days after the department sends a billing statement, unless the department has approved an alternative timeline for such individual Producer.

Thank you for the opportunity to submit comments on this Proposed Rule, and we look forward to continued engagement on this important issue.

Best regards,
Kenisha Cromity
Staff Counsel
Personal Care Products Council

Peter Godlewski, Association of Washington Businesses

06/30/23 at 3:14 PM PT, Text from attachment below

June 30, 2023

Department of Ecology

Attn: Shannon Jones

PO Box 47600 Olympia, WA 98504

RE: Public Comments on Proposed Rule WAC 173 -925, Post-Consumer Recycled Content

Dear Ms. Jones

On behalf of the membership of the Association of Washington Business (AWB), thank you for the opportunity to provide comment on the proposed rulemaking for the post-consumer recycled content (PCRC) rule, WAC 173-925. AWB is the state's oldest and largest business trade association representing around 7,000 large, medium, and small employers across the state.

AWB appreciates the stakeholder outreach and opportunities to participate in conversations around this policy. We have many members who support this policy and are engaged in this rulemaking. AWB supports robust PCRC policies and while we were neutral on the enacting legislation, SB 5022, we did support those policies in the final bill. Key to that support, however, was the carefully negotiated definition of producer, which provided a clear hierarchy for responsibility for our members and their exposure under this proposed program. It is also uses the same definition which Oregon uses for a similar program and the continuity across state jurisdictions makes compliance with the law much easier for our members.

We are therefore deeply concerned that the producer definition in the proposed WAC has been significantly changed from the definition passed by the Legislature. We do not believe that the Department of Ecology has the authority to change statutory law in this fashion and we strongly oppose the adoption of this rule based on this new definition. Ecology has stated in webinars that the original language creates challenges with enforcement and made it difficult to ascertain the responsible party in certain circumstances.

The original definition of "producer" was adopted after significant and wide-reaching stakeholder conversations during the 2021 Legislative session. Groups representing the agency, environmental NGOs, brand managers, packing producers, waste management, and retailers were all present during these discussions and worked together to craft this final language. After the language was finalized, there was further opportunity for public testimony on the bill, which included the new definition. At no time were concerns about enforcement challenges or unresolved questions of responsibility brought up by Ecology staff either during these conversations or in public testimony.

In addition, Oregon continues to utilize this exact same definition for the management of their EPR program and has reported no challenges with ongoing implementation or enforcement that AWB or its members have been made aware of. It is unclear why Oregon Department of Environment Quality continues to move forward with this definition while Washington's Department of Ecology has expressed concerns about workability and enforcement.

AWB supports agency efforts to provide clarity to legislative language, however in this instance the agency has moved beyond interpretation to re-drafting existing law. Furthermore, the extent of the discussions around this definition make the need for additional clarity unnecessary. The case *Association of Washington Spirits & Wine Distributors v. Liquor Control Bd.* 2013 established that state agencies may not change existing law via rule. Any changes that are needed would need to go back to the Legislature, and AWB contends that the significant changes in the producer definition and how it completely re-writes the responsibilities of covered parties go far beyond the authority of the agency.

AWB continues to be supportive of the concept of PCRP and this policy. We would like to see this policy implemented and appreciate all the work that has been accomplished towards that goal. However, the original definition of producer is key towards successful implementation of the policy, especially as it relates to alignment with Oregon's existing program. The employer community is deeply concerned at actions of Ecology to change of existing law via the rulemaking process. AWB believes that the fastest and smoothest path towards implementation would be to restore the statutory definition of producer as passed by the Legislature.

Thank you,

Peter Godlewski
Government Affairs Director
Energy Environment and Water
Association of Washington Business

Kate Eagles, Association of Plastic Recyclers

06/30/23 at 3:42 PM PT, Text from attachment below

Dear Shannon Jones and Department of Ecology staff,

On behalf of the Association of Plastics Recyclers (APR), I am submitting comments on the CR-102 rule proposal for WAC 173-925, post-consumer recycled content (PCRC) in plastic containers (via the attached pdf letter). The APR deeply appreciates your time and efforts to improve the value of household recycled plastic and the quality of recycled materials for use in plastic containers and trash bags. Our staff are available at your convenience for any questions or additional information. Please contact me at Kate Eagles, kate@plasticsrecycling.org.

June 30, 2023

Department of Ecology, Solid Waste Management Program
PO Box 47600 Olympia, WA 98504

Re: Comments on CR-102 Rule Proposal, WAC 173-925: Post-consumer Recycled Content in Plastic Containers

Dear Shannon Jones and Department of Ecology staff,

On behalf of the Association of Plastics Recyclers (APR), I am submitting comments on the CR-102 rule proposal for WAC 173-925, post-consumer recycled content (PCRC) in plastic containers.

The APR is a US-based, international trade association representing hundreds of US companies working every day to recycle your plastic bottles, milk jugs, yogurt tubs, and more into new products and packaging. Our members have the capacity to recycle over 40% more bottles than we do now. One of our greatest challenges is that we are not collecting enough plastic water and soda bottles, milk jugs, and other common plastics for recycling from households and businesses.

The APR strongly supports the need for more post-consumer recycled content in plastic packaging and products and commends Washington state for its leadership. This law and rulemaking have several top notch provisions, including the definition of post-consumer recycled content and its alignment with ISO 14021:2016 Environmental labels and declarations; consideration of anomalous market conditions; inclusion of household cleaning products and trash bags; and the scaled increase in PCRC rates over time. It is, and will continue to be, a model adopted by other states as content laws gain more traction.

The APR would like to offer suggested changes and clarifications to improve the efficacy and implementation of the rulemaking and program implementation.
Areas of concern and suggested changes

4. Review effectiveness of exemptions for de minimis producers.

The APR interprets the goals of the de minimis exclusions as a means of reducing the burden on small and medium businesses, and reducing the compliance burden on the Department of Ecology (Department), without undermining the environmental outcomes of the policy. Based on the current reporting, there appear to be a large number of de minimis producers, including many large producers. It is unclear how much of the market share is covered by the law and what share is exempt. Washington state is on the leading edge of PCRC regulations, and the APR is not aware of any research to justify the current de minimis levels as the most effective balance of reducing the regulatory burden while maximizing the environmental outcomes of the policy. As such, the APR suggests that the Department commission or conduct a market analysis or research to understand what percentage of the market share, by tons of resin, is reporting on the PCRC requirements to evaluate the effectiveness of the de minimis exemptions.

2. Require third-party certification for PCRC.

The APR strongly supports third-party certification for PCRC to ensure program credibility, guarantee a level competitive playing field for producers, and reduce regulatory compliance and auditing burden on the Department. Certification further confirms the consistent sourcing of recycled resins, and that these resins are produced from post-consumer feedstocks vs. post-industrial or other. The current draft rule leaves certification as optional with no incentive to move producers toward certification. The APR strongly suggests that the rulemaking gives preference to third-party certification and sets a timeline for producers to move away from self-reporting.

Suggestion: No later than January 1, 2028, producers shall submit third-party certification unless the Department determines no adequate and commercially feasible third-party certifications for PCRC are available for each covered product category with PCRC requirements.

For non-mechanical recycling as referenced in PART C, (2) (a) (ii), we support the requirement for use of a recognized international or multinational third-party certification system which incorporates chain of custody, and certified mass balance attribution as identified in ISO 22095:2020. However, there remain many unknowns in the definitions, system boundaries and calculations of the mass balance free allocation models for recycled plastics, and how they differ for the various non-mechanical processes under development. The questions that remain on mass balance implementation are expressed in recent publications such as these linked here for reference: [National Institute of Standards and Technology \(NIST\)](#), [Eunomia](#), [Eastman Chemical Company](#) and [Zero Waste Europe](#).

Suggestion: Mass balance PCRC be specifically limited to proportional allocation (vs. free allocation) until mass balance guidelines for non-mechanical recycling are more fully established in the marketplace, potentially to be revisited circa 2027.

3. Reference specific ISO certification for recycled content requirements.

We suggest adding a more specific reference to the type of ISO certification required to Part B (5) (a), specifically an ISO conformity assessment that is applicable to bodies that certify products, processes and services. Suggestion: “...nationally recognized, independent laboratory or certification body that has received ISO/IEC 17065 accreditation as it existed as of January 1, 2024, or a similar accreditation as determined by the Department.”

4. Review 20-cent penalty for effectiveness. The APR has strong concerns with setting a fixed dollar amount penalty given the dynamics of the plastic recycling markets and as a general standard for long-term policy. The penalty must be high enough to drive producers to use more PCRC, not simply to pay the fee. The fixed penalty does not reflect the real-time cost difference between virgin and recycled plastic. [Currently, the abundance of inexpensive virgin plastic on the market is threatening to undercut markets for recycled plastics.](#) This could create a scenario where producers are just paying the fee to comply versus actually sourcing and using PCRC. The APR suggests that the Department commission or conduct a study on the effectiveness of the penalty level at least once every five years.

5. Add definition of covered product category for clarification; also more detail on PCRC averaging.

We suggest a simple addition of the covered categories within the rule for reference. We also suggest data collection by resin and some examples on how averaging of resins across categories will be considered for reporting and penalty calculations.

The top of Part C, (1) states, “Producers must annually meet no less than the minimum

PCRC percentages, on average, for the total weight of PCRC product plastic containers

sold, offered for sale, ...” This implies that PCRC can be averaged across package types within the category, but presumably also across resins within the category. For example, if I am a producer of household cleaning and beauty products in both High Density Polyethylene (HDPE) and Polyethylene Terephthalate (PET) resins, I would be able to meet an average of 15% PCRC across my product range in a covered category, potentially by using more PCRC in only one resin.

With future reporting and PCRC increases in mind, it would be valuable for the Department to have PCRC data by resin within product categories. This will provide clarity as to how producers are meeting PCRC requirements and help to manage requirements and any unforeseen consequences. We suggest further detailing this in the reporting requirements of Part B, (2) (b).

Suggestion: Plastic resin data for each covered product category in WAC 173-925-060(1) sold or offered for sale in or into Washington state in the prior calendar year, including total pounds of virgin resin (by resin type) and total pounds of PCRC (by resin type) in each covered product category.

You might also consider extending this to the penalty calculations to understand the

PCRC shortfalls (or compliance routes) more specifically, as in this Part D penalty equation below. Suggestion for consideration: Equation A – Determine actual PCR rate achieved within a covered category: Total pounds of PCRC plastic resin #1 + total pounds of PCRC plastic resin #2 (if relevant) + total pounds of PCRC plastic resin (#3 - if relevant, add other resins if needed) / total pounds of all plastic resin (potentially detailed by resin type) = Actual PCRC rate achieved within a covered category.

6. Allow the Department to partner with other states. As PCRC policies become more prevalent in other states, there is growing interest in creating shared reporting and compliance systems to minimize the reporting burden on both state agencies and affected producers. If appropriate for this rulemaking, APR suggests including language to allow the department to participate in such efforts.

Suggested language: The Department may participate in the establishment and implementation of a multi-state clearinghouse to assist in carrying out the requirements of this subtitle, including to: (i) help coordinate the review of registrations, waiver requests, and certifications; and (ii) implement education and outreach activities. If the Department determines to participate in such a clearinghouse, such participation may provide producers the ability to register on a centralized portal offered by such clearinghouse in lieu of a state-specific portal provided such registration requirement shall not otherwise be affected by the use of any such centralized portal.

7. In Part C, New Section, (2) (e), the draft rule states, “(e) For all PCRC product categories, annual adjustments may not exceed the minimum requirement for the current reporting year.” We understand that this reflects statute and sought clarity with the Department on how this was to be interpreted. It’s our understanding that this allows the Department to adjust PCRC requirements (where statute allows), but not to increase requirements.

Suggestion for consideration: For all PCRC product categories, any annual adjustments made by the department may not increase PCRC requirements beyond the minimum requirement for the current reporting year.

8. Minor suggested edit (in bold) for Part B, (3) (a): The data must be allocated to Washington on a per capita or other accurate basis for calculation, and the producer or reporting representative must demonstrate that the percentage of PCRC for the product category sold into Washington is the same as the PCRC percentage calculated for the nation or region **and meets or exceeds the state’s PCR requirement.**

9. In Part C, (2) (B), a minor suggested edit (in bold): (b) Plastic sold or marketed for use as fuel feedstock may not be included **as contributing to required PCRC** in PCRC reports to the department.

The APR deeply appreciates your time and efforts to improve the value of household recycled plastic and the quality of recycled materials for use in plastic containers and trash bags. Our

staff are available at your convenience for any questions or additional information. Please contact me at Kate Eagles, kate@plasticsrecycling.org.

Sincerely,

Kate Eagles
Program Director, Association of Plastics Recyclers

cc: Alex Alston, Alex Alston Consulting Kate Baily, APR Chief Policy Officer

Christopher Finarelli, Household & Commercial Products Association

06/30/23 at 4:10 PM PT, Text from attachment below

Submitted on behalf of the Household & Commercial Products Association.

June 30, 2023 via electronic submission

Shannon Jones
Plastics Rule Lead
Washington State Department of Ecology
300 Desmond Drive SE Lacey, WA 98503

Subject: Proposed Rule: Postconsumer Recycled Content in Plastic Containers

Dear Ms. Jones: The Household & Commercial Products Association (HCPA)¹ appreciates the opportunity to provide comments to the Washington State Department of Ecology on the proposed regulations for Chapter 173-925 of the Washington Administrative Code (WAC),² Postconsumer Recycled Content in Plastic Containers.

HCPA would like to express our appreciation to the Department of Ecology for conducting a comprehensive rule development process. While HCPA maintains certain concerns with sections of the proposed rule, we acknowledge that the stakeholder process was thorough, transparent, and indicative of the department's commitment to thoughtful public policy. HCPA is pleased to have participated in the PCR Advisory Committee alongside other diverse committee representatives.

Post-consumer recycled content (PCRC) Fees

As a general matter, HCPA remains concerned that the fee structure is punitive toward good actors seeking to comply, or more importantly, exceed the PCR standards established in law. Indeed, if a producer commits to 100% PCR in all product lines – likely adding costs to its production – they would still be subject to the same fees as any other company. This is in direct conflict with the intent of a law that seeks to increase post-consumer recycled content. HCPA believes this was a missed opportunity in Washington state and strongly encourages the

¹The Household & Commercial Products Association (HCPA) is the premier trade association representing companies that manufacture and sell \$180 billion annually of trusted and familiar products used for cleaning, protecting, maintaining, and disinfecting homes and commercial environments. HCPA member companies employ 200,000 people in the U.S. whose work helps consumers and workers to create cleaner, healthier and more productive lives.

² Codified by SB 5022, 2021 (Chapter 70A.245 RCW)

department to revisit this approach after the program has been operational for a period of time.

Exemptions and Preemption

Reusable products are listed as exclusions under covered products and HCPA applauds the recognition of reusable packaging as an environmentally beneficial option. However, we respectfully request removing or clarifying the language "and intended to function in a system of reuse." We are concerned that this definition may hinder innovations in the household cleaning market aimed at reducing plastic usage through reusable products. For example, a growing trend involves the use of spray bottles with concentrated drop-in refill cartridges. Based on feedback during the June 15, 2023 public hearing, Ecology staff indicated the current language in the proposed regulations was intended to apply to "take back" programs. HCPA suggests removing the "system of reuse" language to ensure reusable products are not discouraged by the PCRC program.

Thank you for your comment. Ecology interprets the spray bottles with concentrated drop-in refill cartridges as a system of reuse. This will be clarified in guidance published in January, 2024.

As it relates to product exclusions, HCPA appreciates the recognition of plastic aerosols being excluded from the covered products, considering the current state of federal regulations governing these products. As you are aware, federal law strictly prohibits the use of reused materials in plastic aerosols. We also agree that all products, regardless of category, should be treated equally concerning liners, caps, and closures.

Finally, HCPA continues to maintain that federal law preempts the state from regulating packaging of products under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The reasoning behind this has been outlined in previous comments submitted to the Department, and we commend the Ecology staff for engaging in dialogue on this matter.

Thank you for your comment. Ecology will continue to evaluate PCRC exclusions for FIFRA-regulated products on a case by case basis based on annual requests for exclusions submitted by producers.

Household Cleaning Product Definition

Given SB 5022 never fully defined Household Cleaning Product, this definition has been the subject of many conversations through the PCR Advisory Committee. At this time, we believe the definition represents the letter of the law as adopted by the Legislature. Specifically, that the products are designed to clean and are associated with the household, and to that end we appreciate the Department's careful consideration of this key definition that directly impacts the scope of the rule. When defining and clarifying "Household" under Section 173-925-030, paragraph 10(b), we recommend removing the term – "solely" as this could capture products used predominantly or perhaps exclusively for use in settings outside of the home.

With that said, there will continue to be an issue of interpretation. Given the diversity of products in the household cleaning industry, there will inevitably be questions about what products are in scope and how they fit into this definition. To that end, it may be helpful for Department staff to publish guidance on product types that are known to be in scope and those that are known to be out of scope. For example, Ecology staff stated recently that pet shampoos are in scope in this proposal but it may not be obvious to the public that “pet cleaners” would include such products since the program is designed to capture household cleaning products. As indicated in previous comments, we do not believe pet shampoos fit into the cleaning product category but regardless, clarity will be needed for producers.

Ecology will elaborate on the scope of the definition in guidance.

Future Changes to the Law

The new PCRC program was the subject of follow-up legislation this past year and to the degree further amendments are of interest to Ecology, we welcome any opportunity to discuss the impact they may have on Household Cleaning Products. HCPA believes there are opportunities to streamline reporting and compliance in a way that reduces burdens on the department as well as the regulated community -- while still upholding the goals set out in SB 5022.

Once again, we extend our gratitude for the opportunity to provide comments on the Department's proposed PCRC rule. HCPA looks forward to maintaining a collaborative relationship with the department as it finalizes its process and proceeds with implementation.

Respectfully submitted,
Christopher Finarelli

Director, State Government Relations & Public Policy - Western Region

Brendan Flanagan, Consumer Brands Association

07/01/2023 at 1:34 PM PT, Text from attachment below

June 30, 2023

Solid Waste Management Program

WA Department of Ecology

PO Box 47600 Olympia, WA 98504

RE: Public Comments on Proposed Rule WAC 173-925, Post-Consumer Recycled Content

Dear Shannon Jones: Thank you for the opportunity to comment on the proposed rules WAC Chapter 173-925 related to postconsumer recycled content regulations.

The Consumer Brands Association (Consumer Brands) represents the world's leading CPG companies. From household and personal care items to food and beverage products, the CPG industry plays a vital role in powering Washington's economy, contributing \$26.8 billion to the state's GDP, and supporting more than 454,000 jobs.

Manufacturers, distributors, retailers, environmental stakeholders, and others came together to help finalize SB 5022, the legislation which became the PCRC law. We worked with the Washington Department of Ecology (the Department) as these rules were drafted, from the concepts begun in 2022 to the proposed CR 102 now in review. Based on the final rule, Consumer Brands is concerned the Department has determined it has the authority to rewrite definitions which are codified in statute, including the definition of producer. We respectfully ask that these rules be redrafted to reflect underlying law.

The Department appears to be setting a highly concerning precedent by changing the statutory definitions in this instance, and we have serious concerns with the implications this may have on other policy matters before the Department going forward. We note several changes that appear statutory in nature. The Department declares on its recycled content minimums website that the producer is the brand owner "[unless] provided with evidence otherwise". This language does not exist in RCW 70A Chapter, which clearly defines producer contrary to this statement. The proposed rules (WAC 173-95-030 (22)) state that the producer "is the entity that affixes its brand, or specifies that its brand be affixed, to the covered product container or retail packaging" then provides exemptions. This is contrary to the RCWs which state that the producer is the person who is the licensee of a brand or trademark, NOT the entity that affixes the brand. The proposed rules create a definition "brand licensor" – this term is new to the rule and does not exist in RCW 70A.245. Finally, in (22)(ii) the proposed rule states that if the covered product lacks identification of a brand, the entity that specified the material composition of the covered product packaging is the producer. The RCWs state the producer in this scenario would be the person who manufactures the covered product NOT the packaging.

The definition of producer was heavily negotiated for months among all stakeholders and purposefully mirrors the approach taken in neighboring Oregon to facilitate regional

collaboration and support performance goals. The definition was also reviewed and included in the final legislation, voted on by House and Senate members, and signed by the Governor. It is aberrant for an agency to change definitions via rulemaking by changing words, adding additional defined terms not found in the law, and to redefine responsible parties in contradiction to the RCW.

The Consumer Brands Association would ask that the Washington Department of Ecology review its definition of producer to correctly align the proposed rule definitions with those in the law. The precedent this sets is extremely concerning especially to stakeholders who worked in good faith with all parties to create these definitions. Should the Department wish to change the definitions or if the agency determines that the definitions are not workable, legislation should be introduced.

We request your attention to this matter.

Respectfully,

Brendan Flanagan
Senior Director, State Affairs
Consumer Brands Association

Heather Trim, Zero Waste Washington

07/01/23 at 9:00 PM PT

Hi Ecology team,

Just a few comments:

1. In Definitions: Concentrated liquid is not defined and thus could be misused. It could be better constrained by saying something similar to: "Liquid in a concentrated form that must be reconstituted with water or another liquid in order to be consumed."

2. Under Exclusions or adjustments to PCRC requirements (2.b.iv): "Transportation barriers" is a strong deviation from statute and I suggest it be removed. The rest of the clause is sufficient to provide justification for adjustment.

Thank you.

Best

Heather Trim

Executive Director

Zero Waste Washington

Samantha Louderback, Washington Hospitality Association

06/30/23, 10:25 AM PT

June 30th, 2023

Washington State Department of Ecology

Attn: Post Consumer Recycled Content Rulemaking Tam Via: Shannon Jones

Subject: Post Consumer Recycled Content Rulemaking

On behalf of the Washington Hospitality Association and the more than 6500 restaurants, hotels and local hospitality businesses we represent state-wide, we would like to thank the Department of Ecology for the opportunity to comment on the proposed PCRC rule.

We respectfully ask that the Department to thoughtfully consider the following comments and suggestions:

The Washington Hospitality Association is proud to have been at the table when important policy issues, like PCRC, have been brought before the legislature. In fact, we were a part of the key negotiations of the producer definition in SB 5022, along with the Department of Ecology and other stakeholders when it was discussed during the 2021 legislative session. With that being said, we would like to respectfully ask that the Department pause on the proposed changes to the producer definition and punt the issue back to the legislature where state statute should be amended.

While it is our understanding that the current version has proven to be difficult for the Department to work with, we believe that any changes to state statute need to be proposed and agreed to by the legislature. Not only does the current proposed producer definition ultimately make sweeping changes to current state statute, but it also changes the intent of the legislature when they voted on this passing SB 5022.

In the proposed rule, producer is defined more broadly, capturing additional producers regardless of the clarifications laid out in the sequential subsections. These differences are outlined below.

- 19 (a) in statute: "Producer" means the following person responsible for compliance with minimum postconsumer recycled content requirements under this chapter for a covered product sold, offered for sale, or distributed in or into this state:
 - (i) If the covered product is sold under the manufacturer's own brand or lacks identification of a brand, the producer is the person who manufactures the covered product;

- (ii) If the covered product is manufactured by a person other than the brand owner, the producer is the person who is the licensee of a brand or trademark under which a covered product is sold, offered for sale, or distributed in or into this state, whether or not the trademark is registered in this state, unless the manufacturer or brand owner of the covered product has agreed to accept responsibility under this chapter
- 22 (a) in rule: The producer of a covered product is the entity that affixes its brand, or specifies that its brand be affixed, to the covered product container or retail packaging
 - (i) If an entity is a "brand licensor," meaning it has licensed its brand to be used on a covered product that is to be sold by the licensee, then the licensee is the producer.

(ii) If the covered product lacks identification of a brand, the entity that specified the material composition of the covered product packaging is the producer.

The changes outlined above completely change who is responsible for compliance obligations, shifting it from a few big businesses who manufacture and control the make-up the products, down to small businesses who do not make the product and therefore do not know the make-up.

As noted in the Departments small business impact statement, this change “ has disproportionate impacts on small businesses”. Most of these impacts would be mitigated by pausing on changes to the definition of producer through rule, and bringing this issue before the legislature.

Additionally, the rule fails to include language allowing manufacturers or brand owners to accept responsibility which is addressed in statute.

- 19 (a) (ii) If the covered product is manufactured by a person other than the brand owner, the producer is the person who is the licensee of a brand or trademark under which a covered product is sold, offered for sale, or distributed in or into this state, whether or not the trademark is registered in this state, unless the manufacturer or brand owner of the covered product has agreed to accept responsibility under this chapter
- 22 (a) (i) If an entity is a “brand licensor,” meaning it has licensed its brand to be used on a covered product that is to be sold by the licensee, then the licensee is the producer.

The way the new language is drafted, those who have entered into a franchisee business model are disproportionately impacted at no fault to themselves. Franchisees are “licensed” under a brand but make no packaging decisions or get to choose from whom they purchase products. This language assumes all responsibility to a franchisee, yet purchasing and manufacturing agreements and decisions are made at the franchisor level. We ask that this language not be changed, and that state statute remains.

The Washington Hospitality Association appreciates the opportunity to share our comments and concerns and would again ask the Department to pause and reconsider the proposed CR-

102 for Post Consumer Recycled Content, specifically the definition of producer. Thank you for your consideration.

Samantha Louderback

Senior Manager, State Government Affairs

Washington Hospitality Association

Mark Johnson, Washington Retail Association

Verbal testimony provided at public hearing on June 8, 2023.

Thank you, for the record, Mark Johnson, Senior Vice President of Government Affairs and Policy for the Washington Retail Association. We represent over 4,500 retailers in the state of Washington, in all 49 legislative districts in all 39 counties. Here today to express our concerns, in particular with the definition of “producer.” Washington Retail and other associations back in January of 2023 sent a letter to the bill sponsors expressing our concerns with the Department’s interpretation of Senate Bill 5022, specifically as it relates to “producer” contained in 70A.245.010(19)(a). We also brought this to the Department’s attention during the stakeholder process earlier in the year. Senate Bill 5022’s definition of “producer” was very carefully negotiated and crafted between legislators and stakeholders, which included the Department, to ensure retailers could comply with the provisions of the bill. Washington retail did not oppose the final passage of the legislation in which the definition as it has been changed we would have opposed it. Retailers have little to no control over how product packaging is utilized or what goes into the product. Unfortunately the proposed rule’s definition of “producer” is significantly different than what was agreed to and contained in the legislation. As discussions continue on proposed legislation to further reduce packaging, this misinterpretation might significantly hinder future efforts. Unfortunately, the proposed rule’s definition of producer is significantly unworkable for us in the retail industry. We will be also submitting written comments as well before the July 1st deadline. Our hope is that the Department will change the rule’s definition of “producer” to better reflect the intent of the original legislation and stakeholders. Washington Retail stands very ready to work with you and other interested parties on amending the proposed rule. Thank you for this opportunity.

Appendix C – Proposed Rule with Track Changes

Chapter 173-925 WAC POST-CONSUMER RECYCLED CONTENT IN PLASTIC CONTAINERS

PART A

GENERAL REQUIREMENTS

NEW SECTION

WAC 173-925-010 Purpose. (1) Washington state law mandates minimum post-consumer recycled content (PCRC) requirements for plastic beverage containers, trash bags, and household cleaning and personal care product containers. This requirement supports new and existing end markets for PCRC material and helps ensure that plastic packaging and other packaging materials are reduced, reused, and recycled.

(2) This chapter implements post-consumer recycled content (PCRC), RCW 70A.245.010 through 70A.245.050 and 70A.245.090 (1), (2), and (4).

[]

NEW SECTION

WAC 173-925-020 Applicability. This chapter applies to producers that offer for sale, sell, or distribute in or into Washington state:

- (1) Beverages in plastic containers;
- (2) Plastic trash bags;
- (3) Household cleaning products in plastic containers; or
- (4) Personal care products in plastic containers.

[]

NEW SECTION

WAC 173-925-030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1)(a) **"Beverage"** means liquid products intended for human or animal consumption sold in a quantity more than or equal to two fluid ounces and less than or equal to one gallon.

This includes, but is not limited to, any of the following:

- (i) Water and flavored water;
- (ii) Beer or other malt beverages;
- (iii) Distilled spirits;
- (iv) Artificial or nondairy milks and creamers;
- (v) Juices, including those derived from concentrate;
- (vi) Mineral water, soda water, and similar carbonated soft drinks;
- (vii) Dairy milk; or

(viii) Wine;

(b) "Beverage" does not include:

(i) Liquid in a concentrated form **that must be reconstituted with water or another liquid to be consumed, or is added to another beverage for flavoring or sweetening.;**

(ii) Syrup;

(iii) Powder concentrates or instant drink powders;

(iv) Infant formula;

(v) Medical food; or

(vi) Fortified oral nutritional supplements used for persons who require supplemental or sole source nutritional needs due to special dietary needs directly related to cancer, chronic kidney disease, diabetes, or other medical conditions.

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

(3) **"Biomedical waste"** means, and is limited to, the following types of waste:

(a) "Animal waste" is waste animal carcasses, body parts, and bedding of animals that are known to be infected with, or that have been inoculated with, human pathogenic microorganisms infectious to humans.

(b) "Biosafety level 4 disease waste" is waste contaminated with blood, excretions, exudates, or secretions from humans or animals who are isolated to protect others from highly communicable infectious diseases that are identified as pathogenic organisms assigned to

biosafety level 4 by the centers for disease control, national institute of health, biosafety in microbiological and biomedical laboratories, current edition.

(c) "Cultures and stocks" are wastes infectious to humans and includes specimen cultures, cultures and stocks of etiologic agents, wastes from production of biologicals and serums, discarded live and attenuated vaccines, and laboratory waste that has come into contact with cultures and stocks of etiologic agents or blood specimens. Such waste includes, but is not limited to, culture dishes, blood specimen tubes, and devices used to transfer, inoculate, and mix cultures.

(d) "Human blood and blood products" is discarded waste human blood and blood components, and materials containing free-flowing blood and blood products.

(e) "Pathological waste" is waste human source biopsy materials, tissues, and anatomical parts that emanate from surgery, obstetrical procedures, and autopsy. "Pathological waste" does not include teeth, human corpses, remains, and anatomical parts that are intended for final disposition.

(f) "Sharps waste" is all hypodermic needles, syringes with needles attached, IV tubing with needles attached, scalpel blades, and lancets that have been removed from the original sterile package.

(3) "**Brand**" means a name, symbol, word, logo, or mark that identifies a product and attributes the product to the brand owner. ~~as the producer.~~

(4)(a) "**Covered products**" means all beverages, trash bags, personal care products, and household cleaning products sold in plastic containers that are subject to, or will become subject to (according to the timeline in WAC 173-925-040(4)(a)), the requirements of this chapter, including registration, reporting, fee payment, and PCRC minimum percentages.

(b) "Covered products" does not include:

(i) Rigid plastic containers or bottles that are used for the containment, protection, delivery, presentation, or distribution of:

(A) Prescription or nonprescription drugs as defined in RCW 18.64.011(14) and regulated by the United States Food and Drug Administration;

(B) Dietary supplements as defined in this section;

(C) Medical devices or medical products required to be sterile, as regulated by the United States Food and Drug Administration under 21 C.F.R., Parts 200, 300 and 800;

(D) Aerosols in plastic containers that are subject to 49 C.F.R. Sec. 178.33b;

(ii) Plastic trash bags used for biomedical waste as defined in this section;

(iii) Products in containers sufficiently durable for multiple rotations of their original or similar purpose, and are intended to function in a system of reuse; or

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

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

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

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

(6)(a) **"De minimis producer"** means ~~a person entity~~ that annually sells, offers for sale, distributes, or imports in or into the country for sale in or into Washington state:

(i) Less than one ton in aggregate of a single category of covered product each calendar year; or

(ii) A single category of a covered product that in aggregate generates less than \$1,000,000 each calendar year in gross revenue from sales of covered products into Washington state.

(b) These thresholds are to be calculated at the level of the ~~"entity"~~"person" as defined in subsection (149) of this section.

(c) Meeting the qualifications of de minimis producer in one single category of covered products does not preclude a producer from meeting requirements for other covered product categories for which they are above the de minimis threshold.

(7) **"Department"** means the Washington state department of ecology.

(8) **"Dietary supplement"** as defined by RCW 82.08.0293 means any product, other than tobacco, intended to supplement the diet that:

(a) Contains one or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) An herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subsection;

(b) Is intended for ingestion in tablet, capsule, powder, soft-gel, gel-cap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(c) Is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label as required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as of January 1, 2003.

(d) "Dietary supplements" does not include a product labeled with both a "supplement facts" box and a "nutrition facts" box.

~~(9) "Entity" means an individual and any form of business enterprise, including all legal entities that are affiliated by common ownership of 50 percent or greater, including parents, franchises, subsidiaries, and commonly owned affiliate companies.~~

~~(910)~~(a) **"Household cleaning products"** means products labeled, marketed, or otherwise indicating that the purpose of the product is to clean, freshen, or remove unwanted substances, such as dirt, stains, and other impurities from possessions, objects, surfaces,

interior or exterior structures, textiles, and environments associated with a household. These items include:

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

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

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

(b) "Household" when used in the term "household cleaning products" denotes products marketed at least in part for residential or individual consumer use, but does not include products marketed solely for use in institutions such as hospitals and schools, or in commercial or industrial settings.

~~(104)~~ **"Household cleaning and personal care product manufacturing industry"** means an association that represents companies that manufacture household cleaning and personal care products.

~~(112)~~ **"Infant formula"** means a food which purports to be or is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk.

~~(123)~~ **"Medical food"** means a food which is formulated to be consumed or administered enterally under the supervision of a physician and which is intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation.

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

(14) **"Person"** means an individual and any form of business enterprise, including all legal entities that are affiliated by common ownership of 50 percent or greater, including parents, subsidiaries, and commonly owned affiliate companies.

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

- (a) Shampoo, conditioner, styling sprays and gels, and other hair care products;
- (b) Lotion, moisturizer, facial toner, and other skin care products;
- (c) Liquid soap and other body care products; or
- (d) Other products used to maintain, improve, alter, or enhance personal care or appearance.

(16)(a) **"Plastic beverage container"** means a factory-sealed bottle or other rigid container that is:

- (i) Capable of maintaining its shape when empty;
- (ii) Comprised of one or multiple plastic resins; and

(iii) Designed to contain a beverage in a quantity more than or equal to two fluid ounces and less than or equal to one gallon.

(b) Plastic beverage container does not include bladders or pouches that contain a beverage.

(17) **"Plastic household cleaning container and plastic personal care product container"** means a rigid bottle, jug, tube, or other container capable of maintaining its shape when empty and with a neck or mouth narrower than the base of the container, and:

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

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

(c) Comprised of one or multiple plastic resins; and

(d) Containing a household cleaning or personal care product.

(18)(a) **"Plastic trash bag"** means a bag that is made of plastic, is at least 0.70 mils thick, and is designed and manufactured for use as a container to hold, store, or transport materials for disposal or recycling. "Plastic trash bag" includes, but is not limited to, a garbage bag, recycling bag, lawn or leaf bag, can liner bag, kitchen bag, or compactor bag.

(b) "Plastic trash bag" does not include compostable bags meeting the requirements of chapter 70A.455 RCW and plastic carryout bags meeting the requirements of chapter 70A.530 RCW.

(19) **"Plastic trash bag manufacturing industry"** means an association that represents companies that manufacture plastic trash bags.

(20)(a) **"Post-consumer recycled content (PCRC)"** means the plastic resin incorporated into plastic packaging or bags for a PCRC product, that is derived specifically from recyclable material generated by households or by commercial or institutional facilities in their role as end users of plastic products and packaging which is no longer used for its intended purpose.

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

(c) "PCRC" does not include plastic that is separated from the waste stream during manufacturing, such as scrap or other materials that are generated and reused during the same process.

(21) **"PCRC products"** means items in the following categories which are actively required to meet and report PCRC minimum requirements in the product packaging for a given year according to the timeline in WAC 173-925-040 (4)(a):

(a) Beverages in plastic beverage containers;

(b) Plastic trash bags; or

(c) Household cleaning products and personal care products in plastic containers.

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

(i) If the covered product is sold under the manufacturer's own brand or lacks identification of a brand, the producer is the person who manufactures the covered product;

(ii) If the covered product is manufactured by a person other than the brand owner, the producer is the person who is the licensee of a brand or trademark under which a covered product is sold, offered for sale, or distributed in or into this state, whether or not the trademark is registered in this state, unless the manufacturer or brand owner of the covered product has agreed to accept responsibility under this chapter; or

(iii) If there is no person described in (a)(i) and (ii) of this subsection over whom the state can constitutionally exercise jurisdiction, the producer is the person who imports or distributes the covered product in or into the state.

~~(22) "Producer" means the entity responsible for compliance with all requirements of this chapter for covered products sold, offered for sale, or distributed in or into Washington state.~~

~~(a) The producer of a covered product is the entity that affixes its brand, or specifies that its brand be affixed, to the covered product container or retail packaging, except as follows:~~

~~(i) If an entity is a "brand licensor," meaning it has licensed its brand to be used on a covered product that is to be sold by the licensee, then the licensee is the producer.~~

~~(ii) If the covered product lacks identification of a brand, the entity that specified the material composition of the covered product packaging is the producer.~~

~~(iii) If there is no identifiable person described above, the entity who imports or distributes the covered product in or into the state, including through online sales, is the producer.~~

(b) Producer does not include:

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

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

(iii) De minimis producers as defined in subsection (10) of this section.

(23) "**Resin**" means polymer compounds used to make plastic packaging such as bottles or films.

(24)(a) "**Third-party representative**" means a person acting as agent for a producer for the purpose of registering the producer, submitting reports, and paying the fees required of the producer by this chapter.

(b) Third-party representatives do not assume full responsibility for compliance as a producer.

(25) "**Ton**" means the United States customary short ton, equal to 2,000 pounds.

(26) "**Workload analysis (WLA)**" means a document posted for public comment each year by January 31st, summarizing the department's estimated costs for the forthcoming fiscal year, July 1st to June 30th of the following year, to implement, administer, and enforce the post-consumer recycled content requirements per RCW 70A.245.020(3).

[]

PART B

PRODUCER REGISTRATION AND FEES

NEW SECTION

WAC 173-925-040 Annual registration and reporting requirements. (1)(a) Producers of covered products distributed, imported, sold, or offered for sale in or into Washington state must annually register using the department's registration and reporting system.

(b) Third-party representatives may submit data on behalf of a producer or group of producers, including information required in subsection (2) of this section for each producer, but the producer as defined in WAC 173-925-030(22) is the party responsible for compliance and subject to potential enforcement actions outlined in WAC 173-925-080 through 173-925-100.

(c) De minimis producers are not required to meet annual registration, reporting, PCRC, or fee requirements of covered products, but must annually indicate their de minimis status in the department's online registration and reporting system to notify the department that they meet the de minimis threshold.

(d) If a producer's supplier or distributor entities have agreed to report on behalf of a producer for a subset of the products that would otherwise be attributable to the producer, the category is only considered de minimis if it still meets minimum resin weight or revenue

threshold after being added to other product category data provided by the ~~entity-person~~ as defined in WAC 173-925-030(9).

(2) Producers must annually submit the following registration information to the department:

(a) General information, including:

(i) Producer name, mailing address, website, and tax identification number;

(ii) Contact person name, email, and telephone number; and

(iii) List of all brand and sub-brand names under which the covered products are sold, and, if applicable, any unique tax identification numbers not provided in (a)(i) of this subsection.

(b) ~~Plastic resin data for each covered product category in WAC 173-925-060(1) sold or offered for sale in or into Washington state in the prior calendar year, including total pounds of virgin resin (by resin type) and total pounds of PCRC (by resin type) in each covered product category. Plastic resin data for each covered product category in WAC 173-925-060(1) sold or offered for sale in or into Washington state in the prior calendar year, including total pounds of plastic resin within each covered product category.~~

(c) Identification and resin weight of PCRC products temporarily excluded from PCRC minimum requirements based on criteria in WAC 173-925-070(1).

(d) Attestation that all reported data accounts for all covered products sold in or into Washington and confirms that the percentage of PCRC calculated for PCRC products sold in Washington is accurately allocated in accordance with subsection (3) of this section.

(3)(a) Producers or representatives reporting on behalf of producers may use national or regional covered product resin data for reporting in subsection (2) of this section. The data must be allocated to Washington on a per capita or other accurate basis for calculation, and the producer or reporting representative must demonstrate that the percentage of PCRC for the product category sold into Washington is the same as the PCRC percentage calculated for the nation or region.

(b) Producers submitting information based on regional or national data in place of Washington state data must account for all products in its calculations and must provide the following to the department:

- (i) Justification for using national or regional data instead of state level data; and
- (ii) Documentation of the methodology and source data used to prorate the regional or national data.

(4)(a) Producers must annually report PCRC percentages for PCRC products in addition to the covered product registration requirements in subsection (2) of this section, beginning on the following dates:

- (i) April 1, 2024, for plastic trash bags and plastic beverage containers other than plastic dairy milk containers and 187 milliliter plastic wine containers; and
- (ii) April 1, 2026, for plastic household cleaner and personal care product containers; and
- (iii) April 1, 2029, for plastic dairy milk containers and 187 milliliter plastic wine containers.

(b) PCRC annual reports must include:

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

(ii) The total PCRC resin as a percentage of the total weight of plastic reported for a single covered product category.

(5) For PCRC annual reports, producers must certify that the PCRC percentages for PCRC products sold, offered for sale, or distributed in or into Washington state comply with the requirements of this chapter. The PCRC certification may include one or both of the following:

(a) Independent third-party certification: Submit to the department the certification from a qualified International Organization for Standardization (ISO) accredited, or other qualified accrediting body subject to department review, with the results of the PCRC analysis for each category of PCRC products; or

(b) Self-certification: Submit to the department attestation that the information reported by the responsible official is true and accurate to the best knowledge of the producer.

(6)(a) If a producer or third-party representative believes the information provided to the department as required by this chapter is confidential business information (CBI), in whole or in part, they may request that the department treat the information as CBI as provided in RCW 43.21A.160.

(b) The director of the department shall consider requests to treat registration and reporting information as CBI.

(c) A decision by the director of the department to grant protection of CBI will be based upon information provided by the producer sufficient to demonstrate that the release of the information to the public or a competitor may affect adversely the competitive position of the producer.

(d) A decision by the director of the department to grant protection of CBI shall remain effective until a producer is otherwise notified or until additional information is requested by the department.

(7)(a) Registration and reporting as required by the PCRC product category timeline established in subsection (3)(a) of this section is considered delinquent if not completed by April 1st of each calendar year.

(b) Failure to meet the registration and reporting timeline requirements is cause for a notice of noncompliance per WAC 173-925-080 through 173-925-100.

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NEW SECTION

WAC 173-925-050 Producer annual fee calculation and payment. (1) All producers of covered products sold or offered for sale in or into Washington state are required to pay an

annual fee calculated by the department based on the department's published workload analysis (WLA) and fee distribution calculations described in this section.

(2) By January 31st of each year, the department will publish for public comment the annual WLA for the next fiscal year (July 1st through June 30th). The WLA provides the department's estimated annual cost in the following two workload categories:

(a) Ecology program administration costs include the department's costs to support producer registration, manage and maintain the registration and reporting system and department website, prepare the annual workload analysis and fee calculation, conduct rule and guideline updates, and implement any requirements that would apply to all producers of covered products, regardless of their PCRC requirements.

(b) Ecology PCRC oversight costs include the department's costs to provide compliance monitoring and technical assistance for producers submitting PCRC product reports required to meet minimum PCRC requirements for the prior calendar year.

(3)(a) Producer fees are calculated based on the producer's reported total pounds of covered product plastic resin data submitted during annual registration or reporting by April 1st, as shown in the calculation formulas below.

(i) Ecology program administration costs are allocated to each producer based on the producer's share of the total pounds of all covered product resin (virgin and PCRC) sold in or offered for sale in or into Washington during the prior calendar year as illustrated in equation 1(a) below.

Equation 1(a), Program Administration Fee

Program Administration Fee = Ecology Program Administration Cost ×

[(Individual Producer Resins for Covered Products)/

(Washington Resin Totals for Covered Products)]

Program Administration Fee = Fee for all producers registered for covered product categories, excluding de minimis producers.

Ecology Program Administration Cost = Estimated annual workload cost for the department to administer the program as a whole, such as producer registration, management and maintenance of the registration and reporting database and department website, preparation of the annual workload analysis and fee calculation, rule and guideline updates, and any requirements that would apply to all producers of covered products.

Individual Producer Resins for Covered Products = One registered producer's total pounds of all plastic resins (PCRC and virgin) used in all covered products sold or offered for sale in Washington state during the previous calendar year.

Washington Resin Totals for Covered Products = Total pounds of all plastic resins (PCRC and virgin) used in all covered products sold or offered for sale in or into Washington state for the prior calendar year.

(ii) Ecology PCRC product oversight costs are allocated based on each producer's share of the total pounds of all plastic resins (PCR and virgin) used in the PCRC product categories sold in

or offered for sale in or into Washington state in the prior calendar year as illustrated in equation 1(b) below.

Equation 1(b), PCRC Oversight Fee

$$\text{PCRC Oversight Fee} = \text{Ecology PCRC Oversight Cost} \times \frac{[(\text{Individual Producer Resins for PCRC Products})/(\text{Washington Resin Totals for PCRC Products})]}{1}$$

PCRC Oversight Fee = Fee for producers submitting PCRC reports for PCRC products.

Ecology PCRC Oversight Cost = Estimated annual workload cost for the department to provide compliance monitoring and technical assistance to producers submitting PCRC reports for PCRC products.

Individual Producer Resins for PCRC Products = One registered and reporting producer's total pounds of all plastic resins (PCRC and virgin) used in all PCRC products sold or offered for sale in or into Washington state during the previous calendar year.

Washington Resin Totals for PCRC Products = Total pounds of all plastic resins (PCRC and virgin) used in all PCRC products sold or offered for sale in or into Washington state for the prior calendar year.

(iii) Each producer will be invoiced a Total Producer Fee, based on the sum of the producer's individual Program Administration Fee and PCRC Oversight Fee, as shown in equation 1(c).

Equation 1(c) Total Producer Fee

$$\text{Total Producer Fee} = \text{Program Administration Fee (Equation 1(a))} + \text{PCRC Oversight Fee (Equation 1(b))}$$

Total Producer Fee = Fee for each producer submitting registration and reporting data for covered products. For producers of covered product categories not yet required to submit PCRC reports, the PCRC oversight fee amount is zero, and only the program administration fee amount applies.

(b) De minimis producers are not required to pay annual fees, and resin data submitted by de minimis producers in their annual de minimis notification is not included in the calculations described above.

(4)(a) The department may adjust annual billing for the following reasons:

(i) Difference between actual revenue and costs for the most recent prior closed fiscal year;

(ii) Registration and reporting data submitted by producers after the April 1st deadline;
or

(iii) Revised resin weight data.

(b) Any adjustment to billing as described in (a)(i) of this subsection will be distributed among all producers using their proportions of the total fee amounts from the appropriate billing cycle.

(c) For adjustments made under the conditions of (a)(ii) of this subsection, producers who register or report after April 1st will be billed for the adjusted annual fee in the next billing cycle. The invoice for the next billing cycle will include the fee for that year, plus the adjusted fee for the previous year, for which registration or reporting was submitted late. The fees for producers who had registered by April 1st will be adjusted in the following billing cycle with a credit for their proportionate share, based on individual plastic resin weights, of applied changes resulting from the late registration(s) of other producers.

(d) For adjustments made in response to (a)(iii) of this subsection, fees will not be adjusted for revised resin weight data submitted after April 1st until the following annual billing cycle.

(i) Producers will be responsible for paying the fees calculated using the data submitted for that year.

(ii) Producers will be responsible for ensuring that their data is accurate.

(iii) Resin weight data should be reported in pounds and appropriately prorated when derived from national or regional totals.

(e) In the event that a significant error is discovered, the department will notify producers of the estimated impact for the forthcoming billing cycle.

(5)(a) Producer annual fees are due 30 days after the department sends a billing statement.

(b) Annual fees shall be deemed delinquent if they are not received by the first invoice billing due date.

(c) If a producer's annual fee payment is delinquent, the producer will be notified by certified letter and have 30 days to pay the invoice before the department takes further action.

(d) Accounts that remain delinquent will be submitted to a collection agency. The collection agency will charge the producer a service fee, in addition to the delinquent amount due.

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PART C

POST-CONSUMER RECYCLED CONTENT (PCRC) PRODUCTS

NEW SECTION

WAC 173-925-060 PCRC product requirements. (1) Producers must annually meet no less than the minimum PCRC percentages, on average, for the total weight of PCRC product plastic containers sold, offered for sale, or distributed in or into Washington state in their respective PCRC product categories beginning on the dates below:

(a) Beverages, (except those listed in (d) of this subsection):

(i) January 1, 2023: 15 percent;

(ii) January 1, 2026: 25 percent; and

(iii) January 1, 2031: 50 percent.

(b) Plastic trash bags:

(i) January 1, 2023: 10 percent;

(ii) January 1, 2025: 15 percent; and

(iii) January 1, 2027: 20 percent.

(c) Household cleaning and personal care products:

(i) January 1, 2025: 15 percent;

(ii) January 1, 2028: 25 percent; and

(iii) January 1, 2031: 50 percent.

(d) Dairy milk and wine in 187 milliliter plastic beverage containers:

(i) January 1, 2028: 15 percent;

(ii) January 1, 2031: 25 percent; and

(iii) January 1, 2036: 50 percent.

(2)(a) For the purposes of reporting PCRC, producers may calculate resin weight and PCRC percentage from the following sources:

(i) PCRC derived from mechanical recycling using post-consumer materials;

(ii) PCRC from nonmechanical processing of post-consumer materials calculated using an existing and recognized international or multinational third-party certification system which incorporates chain of custody, and certified mass balance attribution as identified in ISO 22095:2020; or

(iii) Other sources or methods that the producer demonstrates to the department to have a comparable degree of accuracy.

(b) Plastic sold or marketed for use as fuel feedstock may not be included ~~in~~ as contributing to required PCRC reports to the department.

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NEW SECTION

WAC 173-925-070 Exclusions or adjustments to PCRC requirements. (1)(a) The department must grant a temporary exclusion from the minimum PCRC requirements for the following year when a producer demonstrates it is technically infeasible to meet minimum PCRC requirements for a type of covered product while also complying with federal health and safety standards applicable to the product or its packaging. Those federal standards include 21 C.F.R., chapter I, subchapter G, 7 U.S.C. Sec. 136, 15 U.S.C. Sec. 1471-1477, 49 C.F.R. Sec. 178.33b, 49 C.F.R. Sec. 173, 40 C.F.R. Sec. 152.10, 15 U.S.C. Sec. 1261-1278, 49 U.S.C. 5101 et seq., 49 C.F.R. Sec. 178.509, 49 C.F.R. Sec. 179.522, 49 C.F.R. Sec. 178.600-609, or other federal laws.

(b) In order for the department to respond to all requests within 120 days, producers must annually submit their temporary exclusion request from PCRC minimum percentage requirements for the coming calendar year to the department by September 1st of the prior calendar year.

~~In order for the department to consider and grant temporary exclusions from PCRC minimum percentage requirements producers must annually submit their temporary exclusion request for the coming calendar year to the department by September 1st in order to have a decision from the department by December 31st.~~

(i) Identifies the applicable health and safety standards that make the achievement of minimum PCRC requirements infeasible for a type of PCRC product; and

(ii) Documents and convincingly supports, with validated testing data or the sworn declaration of a qualified engineer, as appropriate, the producer's claim that it is technically infeasible to meet the minimum PCRC requirements during the following year while still meeting applicable federal health and safety standards.

(c) The producer's annual request must also include:

(i) Producer name, mailing address, and contact information;

(ii) Products and brand names for which the exclusion is requested;

(iii) Total resin weight of PCRC products estimated to be sold, offered for sale, or distributed in or into Washington for which the producer requests temporary exclusion from PCRC requirements.

(d) Federal regulations cited must be specific to the material composition of the packaging or trash bag material.

(e) The weight of any PCRC products that are granted the temporary exclusion according to this subsection must still be included in the producer's reported total pounds of resin.

(2)(a) By January 1st of each year, the department may review and determine temporary adjustments to the annual PCRC minimum percentage required for a type of container, PCRC product, or PCRC product category for the following calendar year.

(b) ~~By April 1st, producers~~Producers or PCRC product industry representatives may annually submit requests for consideration by the department to temporarily adjust the annual PCRC minimum percentages for the following year. These requests must provide the following information:

- (i) Producer name, mailing address, and contact information;
- (ii) Year(s) for which the temporary adjustment is requested;
- (iii) A thorough explanation by qualified experts supporting the producer's or PCRC product manufacturing industry's claim that a temporary adjustment to the minimum PCRC percentage for a type of container, PCRC product, or PCRC product category is needed;
- (iv) Supporting documentation including changes in market conditions, recycling collection rates, product quality or shelf life issues, production line issues, capacity of recycling and processing infrastructure, domestic and global PCRC resin bale availability, ~~transportation barriers~~, public health emergencies, work stoppages, catastrophic events, and/or other relevant factors;
- (v) Progress made by the producers of PCRC products in achieving the requirements of this chapter;

(vi) Estimated time period that the identified factors impacting PCRC minimum feasibility are expected to extend; and

(vii) Any additional information the producer or the department deems necessary and relevant to support the basis for the request.

(c) For household cleaning product and personal care product containers, temporary adjustments may not be lower than 10 percent.

(d) For plastic trash bags the PCRC minimum percentage requirement may not be adjusted below the minimum requirements.

(e) For all PCRC product categories, any annual adjustments made by the department may not increase PCRC requirements beyond the minimum requirement for the current reporting year. ~~For all PCRC product categories, annual adjustments may not exceed the minimum requirement for the current reporting year.~~

(3) Producers granted a temporary exclusion or adjustment to the PCRC requirements must continue to register, report, and pay fees according to the requirements of covered products in WAC 173-925-040 and 173-925-050.

(4) A producer or the manufacturing industry for a PCRC product may appeal a decision by the department pursuant to this subsection to the pollution control hearings board within 30 days of the department's determination, pursuant to chapter 43.21B RCW.

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PART D
ENFORCEMENT

NEW SECTION

WAC 173-925-080 Penalties and audits by the department. (1) Any producer that does not meet the registration, reporting, or PCRC minimum requirements of this chapter is subject to penalties as specified in WAC 173-925-090 and 173-925-100.

(2) The department may conduct audits and investigations for the purpose of ensuring producer compliance.

(a) In the event of an audit, producers must provide documents to the department within 30 days of the request.

(b) Audit materials the department requests from producers may include documents and records that:

- (i) Verify reported PCRC percentage data;
- (ii) Confirm reported pounds of plastic resin by product type sold, offered for sale, or distributed in or into Washington state;
- (iii) Demonstrate producer de minimis status;
- (iv) Verify the national or regional data used to determine reported plastic resin; and

(v) Additional information requested by the department pertinent to verifying compliance with this chapter.

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NEW SECTION

WAC 173-925-090 Noncompliance warnings and penalties. (1) If the department determines that a producer is out of compliance with the registration or reporting requirements of this chapter, the department will notify the producer in writing.

(a) The first written notice of noncompliance to the producer serves as a notice of the violation. That notice will be mailed to the producer by certified mail. The notice will outline the actions required by the producer to come into compliance within 30 days of certified mail receipt of the notice.

(b) Failure of the producer to comply within 30 days of receiving the first notice will result in the department sending a second notice by certified mail.

(c) The department must send two notices prior to assessing a penalty for noncompliance. The department may assess the producer a penalty up to \$1,000 for each day of noncompliance beginning with the first day of noncompliance recorded in the first notice.

(d) Failure to comply with the penalty notice may result in additional action by the department.

(2)(a) Producer PCRC penalty notifications will be mailed to the producer by certified mail.

(b) Penalties may be appealed to the pollution control hearings board within 30 days from the certified mail stamped receipt date to pay the PCRC penalty receipt, pursuant to chapter 43.21B RCW.

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NEW SECTION

WAC 173-925-100 Minimum PCRC penalties. (1) If the department determines that a producer is out of compliance with the minimum PCRC requirements of this chapter, the department will notify the producer in writing.

(a) The department will use the producer's reported PCRC data to determine compliance status and may use information obtained through an audit.

(b) Each PCRC product category's minimum PCRC percentage rates as outlined in WAC 173-925-060(1) apply to the penalty amounts assessed.

(c) The following producer-reported data by covered product category will be used to calculate penalties for noncompliance in accordance with equations in (d) of this subsection:

(i) Total pounds of all plastic resin;

(ii) Total pounds of PCRC plastic resin by type.

(d) Penalties will use the following formulas by PCRC product category:

(i) Equation A – Determine actual PCR rate achieved:

Total pounds of PCRC plastic resin/total pounds of all plastic resin = Actual PCRC rate achieved

(ii) Equation B – Determine PCRC penalty:

$$[(\text{Total pounds of all plastic resin} \times \text{minimum PCRC rate}) - (\text{Total pounds of all plastic resin} \times \text{actual PCRC rate achieved})] \times 20 \text{ cents} = \text{PCRC penalty}$$

(e) The department will calculate producer PCRC penalties by June of each year based on the PCRC minimum dates outlined in WAC 173-925-060(1).

(f) Producer PCRC penalty notifications will be mailed to the producer by certified mail.

(g) Penalties may be appealed to the pollution control hearings board within 30 days from the certified mail stamped receipt date to pay the PCRC penalty receipt, pursuant to chapter 43.21B RCW.

(2)(a) Producers may request penalty reductions or alternatives to PCRC minimum penalties to be considered by the department based on the information provided in the producer request that describes the following factors:

(i) Documentation of anomalous market conditions, including disruption in, or lack of supply of recycled plastics;

(ii) Date the product was manufactured, showing that the production preceded the PCRC minimum requirements for that PCRC product category;

(iii) Unforeseen circumstances such as a public health emergency, natural disaster, or state of emergency; or

(iv) Other relevant and documented factors that a producer deems has prevented them from meeting the requirements.

(b) Producers may submit a request to the department to implement a corrective action plan in lieu of or in addition to assessing a penalty under this section. The corrective action plan details how the producer will come into compliance with the requirements of this chapter.

(c) Producers may submit a request to the department for a penalty payment plan or extension of the penalty payment deadline.

(3) Penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.