



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

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STATE OF WASHINGTON
FILED

DATE: October 31, 2023

TIME: 7:46 AM

WSR 23-22-102

Agency: Department of Ecology AO #21-09

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: The Washington State Department of Ecology (Ecology) adopted a new rule, Chapter 173-925 WAC – Post-consumer recycled content in plastic containers. The new rule implements the requirements in chapter 70A.245 of the Revised Code of Washington (RCW) – Recycling, Waste, and Litter Reduction - to establish a post-consumer recycled content (PCRC) program for covered products. Producers of covered products must meet the PCRC requirements as well as annually register, pay agency fees, and report.

The law requires Ecology to:

- Prepare an annual workload analysis identifying the agency cost to implement, administer and enforce the law, and offer the analysis for public comment.
- Adopt rules that establish a PCRC program for producers of covered products and require them to annually register, pay agency fees, and report.

The adopted rule:

- Defines terms and clarifies intent of the law.
- Establishes equitable producer fees required to fund Ecology’s administration and oversight of the PCRC program.
- Specifies the information producers are required to provide at registration and in annual reports.
- Establishes 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 conditions that merit a penalty reduction.
 - Determining process for the Department to conduct audits.

Citation of rules affected by this order:

New: Chapter 173-925 WAC – Post-consumer recycled content in plastic containers
 Repealed:
 Amended:
 Suspended:

Statutory authority for adoption: Chapter 70A.245 – Recycling Waste and Litter Reduction

Other authority: N/A

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 23-10-062 on 5/2/2023 (date).

Describe any changes other than editing from proposed to adopted version: **WAC 173-925-030 Definitions**

Change (1)

- Changed text in definition of “Beverage” in consideration of public comments suggesting greater clarity.
- Change: WAC173-925-030(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.
- Change: WAC173-925-030(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 WAC173-925-030 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.

(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.

WAC 173-925-040 Annual registration and address reporting requirements

Change (5)

- Changed language about resin data requirements in response to comments suggesting greater clarity.
- Change: WAC173-925-040(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 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 WAC173-925-060(2)(b) in response to comments suggesting greater clarity.
- Change: WAC173-925-060(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 WAC173-925-070(1)(b) to clarify the timeline in which Ecology will respond to requests for temporary exclusions from PCRC minimum requirements.
- WAC173-925-070(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 WAC173-925-070(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.

Change: WAC173-925-070(2)(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:

Change (9)

- Changed WAC173-925-070(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.
- Change: WAC173-925-070(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 WAC173-925-070(2)(e) in response to comments requesting greater clarity.
- Change: WAC173-925-070(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.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: Shannon Jones

Address: Department of Ecology, Solid Waste Management Program
PO Box 47600, Olympia, WA 98504-7600

Phone: 360-742-9874

Fax: N/A

TTY: For Washington Relay Service or TTY call 711 or 877-833-6341.

Email: recycledcontent@ecy.wa.gov

Web site: <https://apps.ecology.wa.gov/publications/SummaryPages/2307054.html>

Other: N/A

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	<u>1</u>	Amended	___	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
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The number of sections adopted on the agency’s own initiative:

New	___	Amended	___	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>10</u>	Amended	___	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

Signature:

Date Adopted: 10-31-2023

Name: Laura Watson

Title: Director

A handwritten signature in black ink, appearing to read 'L. Watson', is written over the signature line.