

**WSR 21-22-111**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF ECOLOGY**

[Order 21-09—Filed November 3, 2021, 8:38 a.m.]

Subject of Possible Rule Making: New chapter 173-925 WAC, Post-consumer recycled content for plastic containers.

The new rule will implement the requirements in chapter 70A.245 RCW, Recycling, waste, and litter reduction, to establish a postconsumer recycled (PCR) content program for covered products. Producers of covered products will have to meet the PCR content requirements as well as annually register, pay agency fees, and report.

The law requires the department of ecology (ecology) to:

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

The rule will:

- Define terms and clarify intent of the law.
- Establish equitable producer fees required to fund ecology's administration and oversight of the PCR content program for covered products.
- Specify the information required to be provided by producers 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 PCR content.
  - Reviewing and adjusting PCR content rates.
  - Excluding certain plastic containers or elements of containers from PCR content requirements.
  - Determining technical feasibility of meeting PCR content rates.
  - Establishing corrective action requirements for producers out of compliance.
  - Determining penalty reductions.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 70A.245 RCW, Recycling, waste, and litter reduction.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The 2021 legislature passed chapter 70A.245 RCW to increase recycled content in specific types of plastic packaging to improve plastic packaging collection, processing, and markets. Rules are required to establish the process and procedures for regulatory compliance, producer payment of annual fees, and ecology oversight.

Many consumer brands have committed to voluntary recycled content standards for their plastic bottles, but very few have met those commitments. Mandated PCR content requirements are presumed to motivate increased recovery of plastic packaging in order to provide recyclable feedstock for producers to meet these requirements. Use of recycled content plastic will reduce the use of virgin plastic to manufacture these plastic containers and associated greenhouse gas emissions.

The law provides for adjustment of the PCR content targets, exclusions from meeting the targets under certain conditions, and cor-

rective action plans to help noncompliant producers reach the targets, as well as penalty reductions.

Process for Developing New Rule: Ecology will follow the standard process for the adoption of rules under the Administrative Procedure Act (chapter 34.05 RCW).

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Kara Steward, Department of Ecology, Solid Waste Management Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 564-999-0555, for Washington relay service or TTY call 711 or 877-833-6341, email [kara.steward@ecy.wa.gov](mailto:kara.steward@ecy.wa.gov), website <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-925>, <https://ecology.wa.gov/Waste-Toxics/Reducing-recycling-waste/2021-plastic-pollution-laws>.

Additional comments: Interested parties can stay informed about the rule making and public involvement opportunities as described above. Ecology will extend an offer for government-to-government consultation with tribal governments during each phase of rule development.

November 3, 2021  
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