

WSR 23-22-102

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 21-09—Filed October 31, 2023, 7:46 a.m., effective December 1, 2023]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The Washington state department of ecology (ecology) adopted new chapter 173-925 WAC, Post-consumer recycled content in plastic containers. The new rule implements the requirements in chapter 70A.245 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:
 - o Conducting audits and investigations of producers' annual reports.
 - o Measuring the amount and methods for assessing PCRC.
 - o Reviewing and adjusting PCRC rates.
 - o Excluding certain plastic containers or elements of containers from PCRC requirements.
 - o Determining technical feasibility of meeting PCRC rates.
 - o Establishing corrective action requirements for producers out of compliance.
 - o Determining conditions that merit a penalty reduction.
 - o Determining process for ecology to conduct audits.

Citation of Rules Affected by this Order: New chapter 173-925 WAC, Post-consumer recycled content in plastic containers.

Statutory Authority for Adoption: Chapter 70A.245 RCW, Recycling, waste, and litter reduction.

Adopted under notice filed as WSR 23-10-062 on May 2, 2023.

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: 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.
- Change: 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 (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: 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 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.
- Change: 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.
- Change: 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.

- Change: 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.
- Change: 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.

A final cost-benefit analysis is available by contacting Shannon Jones, Department of Ecology, Solid Waste Management Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-742-9874, Washington relay service or TTY call 711 or 877-833-6341, email recycledcontent@ecy.wa.gov, website <https://apps.ecology.wa.gov/publications/SummaryPages/2307054.html>.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 10, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 31, 2023.

Laura J. Watson
Director

OTS-4533.3

**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.

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

(5)(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.

(6) **"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.

(7) (a) **"De minimis producer"** means a person 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 "person" as defined in subsection (15) 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.

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

(9) **"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.

(10) (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.

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

(12) **"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.

(13) **"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.

(14) **"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.

(15) **"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.

(16) **"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.

(17) (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.

(18) **"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.

(19) (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.

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

(21) (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.

(22) "**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.

(23) (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.

(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.

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

(25) (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.

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

(27) **"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(23) 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 on-line 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 person as defined in WAC 173-925-030(15).

(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.
- (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.

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 cov-

ered 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

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

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

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

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.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

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 as contributing to required PCRC reports to the department.

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.

(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) 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, 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.

(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.

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.

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.

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:

$$\text{Total pounds of PCRC plastic resin} / \text{total pounds of all plastic resin} = \text{Actual PCRC rate achieved}$$

(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.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.