

Draft Legend:

- Black text is copied directly from the law
- Yellow highlights completely NEW language (new definitions or new section language).
- Comments provide reasoning for adding the proposed change.

Chapter 173-925 WAC

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Commented [JS(1)]: Part A is the content for Advisory Committee Meeting 1 (April 14)

Post-consumer recycled content for plastic container
Part A

General requirements

WAC 173-925-010 | Purpose

This section summarizes the reason the rule is being adopted and is based on the Legislative intent of the law.

(1) Washington state law requires minimum recycled content requirements for plastic beverage containers, trash bags, and household cleaning and personal care product containers. This requirement was enacted to contribute to the improvement the state's recycling system, support post-consumer recycled material end markets, and take another step towards ensuring plastic packaging and other packaging materials are reduced, recycled, and reused.

(2) This chapter implements post-consumer recycled content, chapter RCW 70A.245.030 through 70A.245.060 and 70A.245.090 (1), (2), and (4).

WAC 173-925-020 | Applicability

This section identifies who has to comply with the requirements in the rule

This chapter applies to producers that offer for sale, sell, or distribute in or into Washington:

- (1) Plastic beverage containers with a capacity between two fluid ounces and one gallon
- (2) Plastic Trash bags, or
- (3) Plastic household cleaning and personal care product containers containing the equivalent volume of two fluid ounces to five fluid gallons in a container with a neck narrower than the base.

WAC 173-925-030 | Definitions

This section includes definitions from the law and adds additional definitions necessary to implement the program.

(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) Non-dairy milks and creamers

(f) Mineral water, soda water, and similar carbonated soft drinks; and

(g) Any beverage other than those specified in (a) through (g) 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.

Commented [JS(2)]: Added for clarity, since dairy milk is a later category than beverage containers and alternative milks could create confusion. Could also consider adding other covered beverages like juice, but these are more broadly covered in (g).

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

(3) "Covered product" means an item in one of the following categories subject to minimum postconsumer recycled content requirements:

- (i) Plastic trash bags;
- (ii) Plastic containers containing household cleaning products;
- (iii) Plastic containers containing personal care products; and
- (iii) Plastic containers containing beverages.

"Covered product" does not include any type of plastic container or bag for which the state is preempted from regulating content of the container material or bag material under federal law.

(4) "Dairy milk" means a beverage that designates milk as the predominant (first) ingredient in the ingredient list on the container's label.

(5) "Department" means the Washington Department of Ecology.

(6) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

- (i) Contains one or more of the following dietary ingredients:
 - (A) A vitamin;
 - (B) A mineral;
 - (C) An herb or other botanical;
 - (D) An amino acid;
 - (E) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or
 - (F) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subsection;
- (ii) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, 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
- (iii) 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.

(7) "Drug" means the definition provided by the Washington State Department of Health, which states:

- (a) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;
- (b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or animals;

Commented [JS(3)]: Revised clarify that the covered product is the container itself and not the product contained within.

Commented [JS(4)]: Added this definition for easier reference because it is referenced in definition of beverage container, HHCP container, and PCP container. The definition comes from [RCW 82.08.093](#)

(c) Substances other than food, minerals, or vitamins that are intended to affect the structure or any function of the body of human beings or animals; and
(d) Substances intended for use as a component of any article specified in (a), (b), or (c) of this subsection.

(2) "Drug" does not include:

Substances listed in "Personal care product".

(8) "Household cleaning product" means any of the following:

- (a) laundry soaps, detergents, softeners, surface polishes, air cleaners, and stain removers; or
- (b) other chemically formulated domestic consumer products labeled to indicate that the purpose of the product is to clean, or otherwise care for fabric, dishes, or other wares, surfaces including, floors, furniture, countertops, showers, and baths; or other hard surfaces, such as stovetops, microwaves, and other appliances.

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

(10) "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.

(11) "Licensee" means a manufacturer or entity who licenses a brand and manufactures a covered product under that brand.

(14) "Medical food" means a food which is formulated to be consumed or administered internally 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.

(15) "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.

(16) "Personal care product" means any of the following

- (a) Shampoo, conditioner, styling sprays and gels, and other hair care products;
- (b) Lotion, moisturizer, facial toner, and other skin care products; or
- (c) Liquid soap

(17) "Plastic beverage container" means a bottle, other rigid container that is capable of maintaining its shape when empty, comprised solely of one or multiple plastic resins designed to contain a beverage in a quantity more than or equal to two fluid ounces and less than or equal to one gallon.

Plastic beverage container does not include:

Commented [JS(5): Comes from drug takeback program <https://app.leg.wa.gov/RCW/default.aspx?cite=69.48.020>

This language is intended to help clarify whether or not over-the-counter personal care products advertised with medical purposes are considered "drugs" or personal care products, regardless of other "drug" designations (covered products).

Commented [JS(6): In the RCW, household cleaning product is defined as "(a) laundry detergents, softeners, and stain removers, (b) household cleaning products (c) Liquid soap."

Defining household cleaning products as "household cleaning products" leaves too much ambiguity. Does it include exterior products? Does it include industrial cleaners? Does it include air "Cleaners"? etc etc.

We are currently using CA's definition in addition to some language from our own. For now, we have included air cleaners, but excluded exterior or industrial cleaning products. We also added surface polishes.

Commented [JS(7): Added for quick reference because these are referenced as excluded products in the definition of "beverage." Definition for infant formula comes from **21 USC section 321 (z)** as outlined in the law.

Commented [JS(8): Added for quick reference because these are referenced as excluded products in definition of beverage as defined in **21 USC Sec 360ee(b)(3)**

Commented [JS(9): Separated this definition from the definition of household cleaning product for clarity (these were combined in the original RCW)

Commented [JS(10): Repeated this from the definition of "beverage" for additional clarity

- (a) Refillable beverage containers, such as containers that are sufficiently durable for multiple rotations of their original or similar purpose and are intended to function in a system of reuse;
- (b) Rigid plastic containers or plastic bottles that are or are used for medical devices, medical products that are required to be sterile, nonprescription and prescription drugs, or dietary supplements as defined in RCW [82.08.0293](#);
- (c) Bladders or pouches that contain wine; or
- (d) Liners, caps, corks, closures, labels, and other items added externally or internally but otherwise separate from the structure of the bottle or container.

Commented [JS(11): This is another instance where the definition of "drug" becomes relevant and important.

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

Commented [JS(12): Added "tube" and "tub" due to a number of questions from producers.

- (i) A minimum capacity of eight fluid ounces or its equivalent volume;
- (ii) A maximum capacity of five fluid gallons or its equivalent volume;
- (iii) That is capable of maintaining its shape when empty;
- (iv) Comprised solely of one or multiple plastic resins; and
- (v) Containing a household cleaning or personal care product.

"Plastic household cleaning and personal care product container" does not include:

- (i) Refillable household cleaning and personal care product containers, such as containers that are sufficiently durable for multiple rotations of their original or similar purpose and are intended to function in a system of reuse; and
- (ii) Rigid plastic containers or plastic bottles that are medical devices, medical products that are required to be sterile, and nonprescription and prescription drugs, dietary supplements as defined in RCW [82.08.0293](#), and packaging used for those products.

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

Commented [JS(13): Added under the assumption that these items are also excluded from household cleaning and personal care product containers in the same way they are from beverage containers. Language taken from the definition of "plastic beverage container" for consistency, but added the terms "sprayers" and "triggers" for additional clarity.

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

(a) "Plastic trash bag" does not include any compostable bags meeting the requirements of chapter [70A.455](#) RCW.

- (b) "Plastic trash bag" does not include
- (i) federally regulated bags required for use in hospital or medical settings;
 - (ii) "Biomedical waste" as defined under RCW 70A.228.010; and
 - (iii) "Dangerous waste" as defined under RCW 70A.300.010.

Commented [JS(14): Added because the trash bag labeling section exempts these – moved to definitions section/part A for easier reference and clarity.

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

Commented [JS(15): Separated hospital/medical setting here into its own (i) because the dangerous waste definition will apply in settings that do not occur in hospital/medical setting.

(21) "Post-consumer recycled content" means the content of a covered product made of recycled materials derived specifically from recycled material generated by households or by commercial, industrial, and institutional facilities in their role as end users of a product that can

no longer be used for its intended purpose. "Postconsumer recycled content" includes returns of material from the distribution chain.

(22) "Producer" means the following person responsible for compliance with minimum postconsumer recycled content, registration, fee payment, and reporting 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 the producer is the brand owner;

(ii) if the covered product lacks identification of a brand, the producer is the person who manufactures the covered product;

(iii) If the covered product is sold by a person who is the licensee of a brand or trademark, the producer is the licensee of the brand or trademark, unless the manufacturer or brand owner of the covered product has agreed to accept responsibility under this chapter; or

(iv) If there is no person described in (a)(i), (ii) or (iii) 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" 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 that annually sell, offer for sale, distribute, or import in or into the country for sale in Washington:

(A) Less than one ton of a single category of plastic beverage containers, plastic household cleaning and personal care containers, or plastic trash bags each year; or

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

Commented [JS(16): Added to clarify that producers must also comply with registration, fee payment, and reporting requirements in addition to the minimum percent PCR content requirements.

Commented [JS(17): May need to add a definition for "manufacturer" through either rule or guidance. E-cycle defines it in the WAC below, but this law may require more nuance (e-cycle's interpretation is "manufacturer=brand owner"). Could mirror the "producer" definition in some regards.

[Chapter 173-900 WAC Manufacturer:](#)

Commented [JS(18): Revised from the original language for simplification and clarity

Commented [JS(19): Added for clarity due to a number of questions around this.