

## WAC 173-925 PART A

### GENERAL REQUIREMENTS

#### WAC 173-925-010 Purpose.

(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 of 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 postconsumer recycled content, chapter RCW [70A.245.010](#) through [70A.245.050](#) and [70A.245.090](#) (1), (2), and (4).

#### WAC 173-925-020 Applicability.

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

- (1) Beverages in plastic beverage containers between two fluid ounces and one gallon)
- (2) Plastic Trash bags, or
- (3) Household cleaning and personal care products in plastic containers with a neck narrower than the base

#### WAC 173-925-030 Definitions.

**(1)(a) "Beverage"** means products 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. This includes, but is not limited to, any of the following:

- (i) Water and flavored water;
- (ii) Beer or other malt beverages;
- (iii) Wine;
- (iv) Distilled spirits;
- (v) Dairy milk;
- (vi) Artificial or non-dairy milks and creamers;
- (vii) Juices;
- (viii) Liquid concentrates;
- (ix) Syrups; or
- (x) Mineral water, soda water, and similar carbonated soft drinks.

**(b) "Beverage"** does not include:

- (i) Infant formula,
- (ii) Medical food, or;
- (iii) 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.

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

**Commented [JS(1)]:** Added for the same reason as the original law's inclusion of "wine" as a listed "beverage." Both are still beverages even though they fall on different compliance timelines.

**Commented [JS(2)]:** Original language for "beverage" exclusions specifically referenced RCW definitions for infant formula, medical food, and oral nutritional supplements. We added the those definitions to this definitions section for quick reference within the rule. None of the reference definitions are altered from their original RCW language.

**(3)(a) "Covered product"** means the retail-ready item in one of the following categories:

- (i) Plastic trash bags;
  - (ii) Household cleaning products in plastic household cleaning product containers;
  - (iii) Personal care products in plastic personal care product containers; and
  - (iv) Beverages in plastic beverage containers.
- (b) "Covered product" does not include any type of container or bag for which the state is preempted from regulating content of the container material or bag material under federal law.

**Commented [JS(3):** Returned to simplified version of original RCW definition. Added "retail-ready" to clarify that the covered product is not the packaging itself.

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

- (i) Low-fat milk, skim milk, cream, half-and-half, condensed milk; or
  - (ii) Cultured or acidified milk, kefir, or eggnog.
- (b) Dairy-milk does not include:
- (i) Artificial or non-dairy creamers; or
  - (ii) Nut milk, soy milk, oat milk, coconut milk or any other artificial, non-dairy, or plant-derived milk product.

**Commented [JS(4):** Changed definition since most milk products do not list "dairy milk" as a primary ingredient as this term was originally defined in the RCW definition. Drafted new definition based upon modification of [FDA definition of "milk products"](#).

**(5)(a) "De minimis producers"** means producers, including all of their collectively owned subsidiary brands, assortments, collections, or vendors, that annually sell, offer for sale, distribute, or import in or into the country for sale in Washington:

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

**Commented [JS(5):** Ecology assumes the brand-owner is the producer unless provided with documentation that they do not have final control over the composition of the packaging.  
The separation and expansion of the "de minimis producer" exclusion that brand-owners who own one or more subsidiary or private label brands must calculate annual single category tonnage and single category revenue collectively, unless those subsidiary brands are owned by another producer.  
The de minimis producer standard is intended to exclude small or independent brand-owners from requirements. Subsidiary brands may still report on behalf of the larger brand, but cannot be considered separate producers to meet the de minimis exclusion.

**(6) "Department"** means the Washington Department of Ecology.

**(7) "Dietary supplement"** as defined by RCW 82.08.093 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.

**(8)(a) "Drug"** means:

- (i) 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;
  - (ii) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or animals;
  - (iii) 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
  - (iv) Substances intended for use as a component of any article specified in (i), (ii), or (iii) of this subsection.
- (b) "Drug" does not include substances listed or described in the definition of "Personal care product" as defined in (17) of this sub-section.

**Commented [JS(6)]:** Added for clarification in beverage container and personal care product container. Altered language in those definitions to reflect this addition. Clarifies in (b) that items listed in "personal care products" are not excluded as "drugs". Altered exclusions to simply reference "drugs".

**(9) "Household"** means all of the people who occupy a residential property regardless of their relationship to one another.

**Commented [JS(7)]:** Added to clarify the intended application of the term household and the persons using the products within the category.

**(10) "Household cleaning products"** means all chemically formulated consumer products available for purchase by a household including, but not limited to:

- (i) Laundry soaps, detergents, softeners, surface polishes, stain removers, and air cleaners, fresheners, and purifiers;
- (ii) Textile, carpet, and pet shampoos and conditioners; or
- (iii) Other consumer products labeled, marketed, or described to indicate that the purpose of the product is to clean or otherwise care for any possession, fabric, component, structure, vehicle, article, surface, or area associated with the household.

**Commented [JS(8)]:** Revised to include all items on a property with a designated purpose to clean.

**(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"** as defined by 21 USC section 321 (z) 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) "Licensee"** means a manufacturer or entity who licenses a brand and manufactures a covered product under that brand.

**(14) "Medical food"** as defined in 21 USC Sec 360ee(b)(3) 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.

**(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 a consumer 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 that including, but not limited to:

- (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; or
- (d) Cosmetics and fragrances.

**(17)(a) "Plastic beverage container"** means a sealed bottle or 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.

(b) Plastic beverage container does not include:

- (i) 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;
- (ii) Rigid plastic containers or plastic bottles that are used as packaging for medical devices, medical products that are required to be sterile, drugs, or dietary supplements;
- (iii) Bladders or pouches that contain wine; 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.

**(18)(a) "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:

- (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) Comprised of one or multiple plastic resins; and
- (iv) Containing a household cleaning or personal care product.

(b) "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;
- (ii) Rigid plastic containers or plastic bottles that are or are used as packaging for medical devices, medical products that are required to be sterile, drugs, or dietary supplements;
- (iii) 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; or
- (iv) Containers used for products registered by the U.S. Environmental Protection Agency as pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

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

**Commented [JS(10)]:** Added the word "sealed" to provide clarity that the definition does not include un-sealed beverage cups.

**Commented [JS(11)]:** Repeated "in a quantity more than or equal to two fluid ounces and less than or equal to one gallon" from the definition of "beverage" for additional clarity

**Commented [JS(12)]:** Added "rigid" and "tube" to clarify that as long as tubes are capable of maintaining their shape when empty and meet the other requirement, they are considered a rigid container.

**Commented [JS(13)]:** Taken from the definition of "plastic beverage container" but added the terms "sprayers" and "triggers" for additional clarity.

**Commented [JS(14)]:** Added to clarify the exclusion of FIFRA-regulated pesticides.

**(19)(a) "Plastic trash bag"** means a bag that is made of non-compostable 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.

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

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

**(21)(a) "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, or institutional facilities in their role as end users of a product that can no longer be used for its intended purpose.

(b) "Postconsumer recycled content" includes returns of material from the distribution chain.

**(22) (a) "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) The person who has legal ownership of the brand, logo representing the brand, brand-name, or co-brand of the covered product;

(ii) If the covered product is sold under the manufacturer's own brand the producer is the brand owner;

(iii) If the covered product lacks identification of a brand, the producer is the manufacturer of the covered product;

(iv) If the manufacturer of a covered product is a person other than the brand owner, the producer is the licensee of a brand or trademark, whether or not the trademark is registered in this state; or

(v) If there is no person described in (i), (ii), (iii) or (iv) of this subsection with a physical presence in the United States, 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 (5) of this sub-section.

**Commented [JS(15):** Definition altered to reflect ongoing input and discussions around language that was unclear or incomplete.

**Commented [JS(16):** Part B is considering language to outline the option and process for a producer to designate a person who agrees to accept responsibility on the producer's behalf.

(i) The person accepting responsibility on behalf of the producer must submit documentation to inform the Department of this agreement.

(ii) In the event that the person who assumes responsibility fails to comply with this chapter, the producer as defined under (23)(a) of this subsection remains fully responsible.

**Commented [JS(17):** Moved into a separate and modified definition for "de minimis producers" (5).