



# **PCR Rule Advisory Committee**

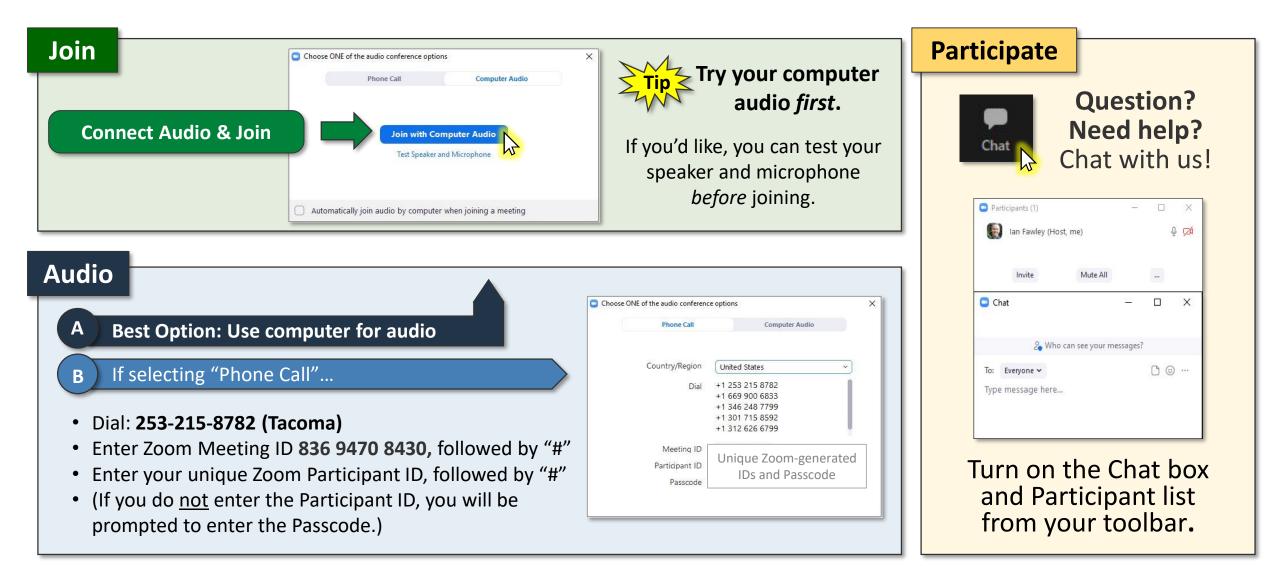
Shannon Jones, Solid Waste Management Program

April 14, 2022





### Please connect your audio and join.





## **Ecology PCR Implementation Team**





Alli Kingfisher Plastics Policy Specialist



Shannon Jones Plastics Reduction and Rule Coordinator



Heather Curtis Plastics Recycled Content Specialist Christina Kullberg Plastics Recycled Content Specialist Washington PCR Rule Advisory Committee

Name	Organization
	American Cleaning
Brennan Georgianni	Institute
	Household &
Christopher	Commercial Products
Finarelli	Association (HCPA)
Chris Cary	Tree Top, Inc
	American Beverage
Megan Daum	Association
Kyla Fisher	Ameripen
John Cook	Niagara Bottling
Emily Alexander	Darigold
Charles Knutson	Amazon
Heather Trim	Zero Waste WA
Mark Smith	Clorox/Glad
	Association of Plastic
Kate Eagles	Recyclers
Sally Jefferson	The Wine Institute



## **Revised Code of Washington 70A.245**

Chapter 70A.245 RCW
RECYCLING, WASTE, AND LITTER REDUCTION
Sections
70A.245.010 Definitions.
70A.245.020 Postconsumer recycled content.
70A.245.030 Producer reporting requirements.
70A.245.040 Penalties for postconsumer recycled content requirements—Penalty.
70A.245.050 Penalties for registration, labeling, and reporting.

70A.245.090 Department duties—Rule making.

RCW 70A.245.090(4) The department may adopt rules as necessary to administer, implement, and enforce this chapter.



## **Mission and Strategy**

### **Our mission**

Draft rule language by the end of 2022 that clarifies terms and requirements to comply with the PCR content law and is informed by affected stakeholder input.

### Our strategy

Draft and revise rule in four parts over four meetings in 2022. Collect comments from advisory committee and the public via eComments.

### Ground rules

- Articulate reasons for input •
- Comment without argument •
- Review draft language in advance •
- Remain in-scope •
- Clearly communicate to other stakeholders Share materials as DRAFTS •





## Rule vs. Guidance

#### • Limited changes

- Final and tied to law
- Mostly addresses law-outlined priorities
- Determine costs and set up payment process
- Identify areas that require clarification

### Guidance

**Rule** 

- Expansive scope
- Informed by FAQs and feedback
- Released in tandem with rule
- Detail-oriented
- More fluid—can be updated





## **PCR Law and Interim Interpretations**

Alli Kingfisher

Alli.Kingfisher@ecy.wa.gov



## **Covered products:**



Plastic Beverage Containers

\*Dairy & 187ml wine bottles Plastic Trash Bags



Plastic Household Cleaning & Personal Care Products





- A bottle or other rigid container
- One or multiple plastic resins
- Human or animal
- 2 oz 1 gallon
- Water, flavored water, beer, wine, spirits, soda, etc.



included

Not

- Refillables
- Bladders or pouches for wine
- Liners, caps, corks, closures, labels
- Used with medical devices/products
- Infant formula
- medical food, and prescription drugs, or dietary supplements as defined in RCW 82.08.0293







Non-compostable plastic
At least 0.70 mils thick
Garbage bag, recycling bag, lawn or leaf bag, can liner bag, kitchen bag, compactor bag, similar

Not included:

• Compostable bags meeting the requirements of Chapter 70A.455 RCW





# Labeling

Packages of plastic trash bags sold, offered for sale, or distributed in or into Washington are labeled with:

- Name of the producer and
- City, state, and country where the producer is located, which may be designated as the location of the producer's corporate headquarters;
- Or
- A uniform resource locator or quick response code to an internet website with the information





8 Products Household Cleaning Care Personal

- Bottle, jug, or other rigid container with a neck or mouth narrower than the base
- Capable of maintaining its shape when empty
- 8 oz 5 gallons
- One or multiple plastic resins



included

Not

- Refillables
- Used with medical devices/products
- Nonprescription and prescription drugs
- Dietary supplements as defined in RCW 82.08.0293



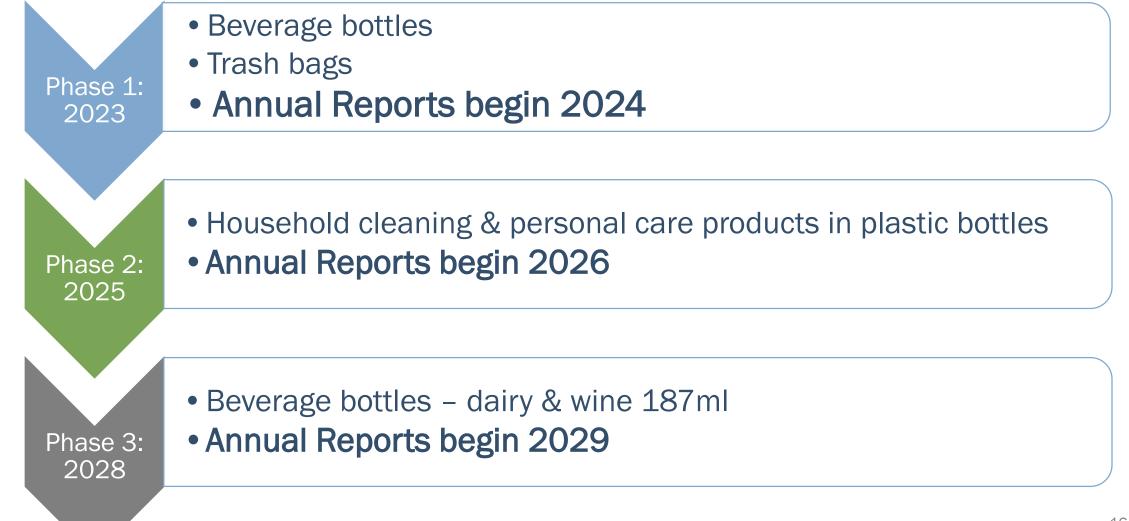
Household Cleaning & Personal Care Products

- Hair care: Shampoo, conditioner, styling sprays, gels, etc.
- Skin care: Lotion, moisturizer, facial toner, etc.
- Laundry detergents, softeners, and stain removers
- Liquid soap
- Household cleaning products

- 1. Definition of 'household'
- 2. Definition of 'household cleaning products'
- 3. What is covered under 'nonprescription drugs'
- 4. Under federal law what containers or bags the state is preempted from regulating the content of



## **Plastic Postconsumer Recycled Content**





Dairy milk

#### Minimum recycled-content phases

Plastic trash

Household cleaner

Plastic wine

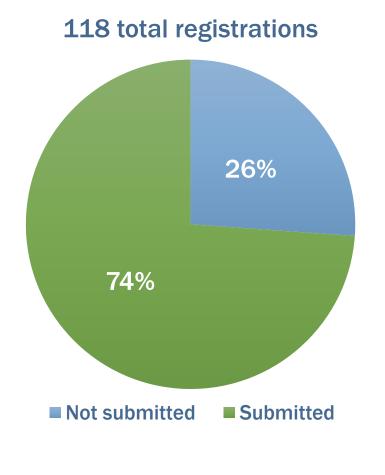
#### Beverage containers\* and personal care container container (187 bags containers milliliters) Year 2022 All producers must register by May 18, 2022 2023 10 percent 15 percent 2024 2025 15 percent 15 percent 2026 25 percent 2027 20 percent 2028 25 percent 15 percent 15 percent 2029 2030 2031 50 percent 50 percent 25 percent 25 percent 2032 2033 2034 2035 2036 50 percent 50 percent

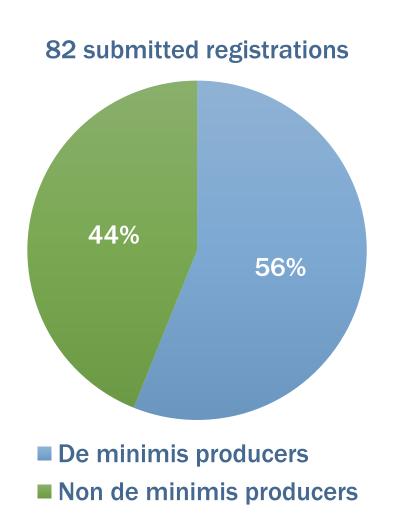
\*Excluding plastic wine and milk containers.

## Recycled content requirements increase over time



## **Plastic Producer Registration Break Down**









# **Producers:**

(19)(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.





# **Producers:**

(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 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.



### **De minimis "Producer"**



Annually sell, offer for sale, distribute, or import in or into the country for sale in Washington:

A single category of a covered product that in aggregate generates less than \$1,000,000 each year in revenue

### OR

Less than one ton of a single category of containers or plastic trash bags each year



## **Annual Fees:**

### Based on total amount of resin sold in or into the state

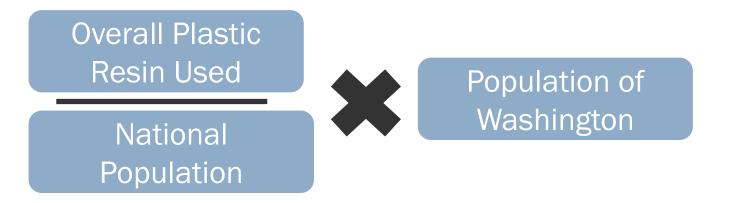




## **Annual Fees:**

### Based on total amount of resin sold in or into the state

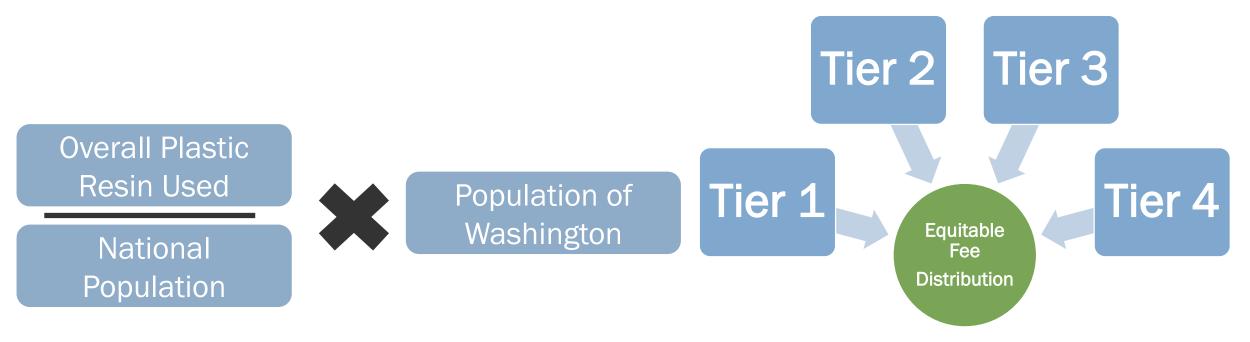
rior to completion of rulemaking





## **Annual Fees:**

### Based on total amount of resin sold in or into the state Prior to completion of rulemaking





## Workload analysis:

Table 1: FY 2023 Estimated Costs by Category

Cost Category	Estimated Cost
Salaries	\$312,507
Benefits	\$114,065
Goods and Services	\$20,303
Travel	\$9,383
Equipment	\$5,166
Facility costs, rulemaking meetings	\$2,000
Assistant Attorney General	\$19,000
Agency Administrative Overhead	\$120,720
Total Costs	\$603,144

https://apps.ecology.wa.gov/publications/SummaryPages/2207004.html



# **Penalties:**

## **Type 1: Failure to Register and Report**

Producers in violation of the registration, reporting, or labeling requirements are subject to a civil penalty for each day of violation in an amount not to exceed \$1,000.



# **Penalties:**

## **Type 2: Failure to meet PCR minimums**

[(Total lbs plastic used X Minimum PCR % Target) – (Total lbs plastic used X PCR % Used)] X \$00.20

Ecology may grant a reduction of penalties based on:

- a. Anomalous market conditions
- b. Disruption in or lack of supply of recycled plastics
- c. Other factors





# **Rulemaking:**

- Establishing rules for RCW 70A.245
  - WAC 173-925
  - Two-year process
- Scope:
  - Define technical terms
  - Establish equitable producer fees
  - Clarify
    - Report auditing procedures
    - PCR content calculation methods
    - Adjusting PCR content rates
    - Exclusions
    - Enforcement & Penalties



### WAC 173-925 Rulemaking Timeline



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# Rule Development 2022-2023



- April–Sept 2022: Advisory committee meetings & Draft revisions
- Ongoing comments on draft revisions
- Dec. 2022: Complete draft rule language for economic analysis
- Jan–March 2023: Economic analysis
  - Cost vs benefit
  - Least burdensome alternatives
  - Small Business Economic Impact

# **Rule Proposal 2023**

- Public Comment Period for 60 days:
  - July to August 2023
- Public Hearing(s):
  - August 2023
- Comment response
- Finalize rule language for adoption

#### Issue a rule proposal

- Include proposed rule language and economic analyses
- Open the formal comment period
- Publish in State Register

#### Accept Comments

- Accept written comments and oral comments (via online, email, mail, webinars and/or video conference)
- Hold public hearing(s)









# **Rule Adoption 2024**

#### **Consider Comments**

- Consider and respond to comments
- Are changes needed?
- Should Ecology seek adoption?

#### Adopt the rule

- Adopt within 6 months of proposal
- Publish in State Register

### Implementation

- Usually effective in 31 days after filing
- Issue guidance and tools
- Provide technical assistance

- Rule adoption December 2023
  - Publish responsiveness summary, updated economics
- Rule effective January 2024 (30 days after adoption)
- Related activities:
  - Publish PCR Rule Guidance
  - Ongoing technical assistance from Ecology



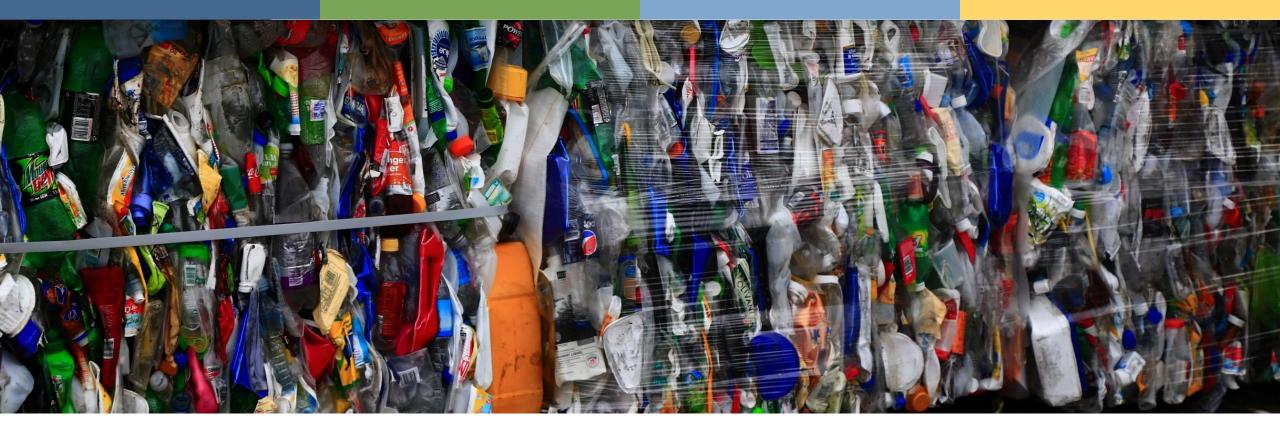
# How can I get involved?

- Attend upcoming advisory committee meetings
  - <u>June 9th, 2022</u>.
  - July 28<sup>th</sup>, 2022
  - <u>September 9, 2022</u>
  - Anyone can attend and provide comment
- Provide eComments on draft revisions on <u>PCR rule website</u>
  - Updated shortly after each advisory committee meeting
- Offer public comment or attend hearings on proposed rule: May June 2023
- Join Plastic Packaging e-mail subscriber list



**Break** 







## Part A Draft Discussion

# **Considerations for Discussion**



• Are changes needed to the original definition?

• Do the draft changes clarify intent?

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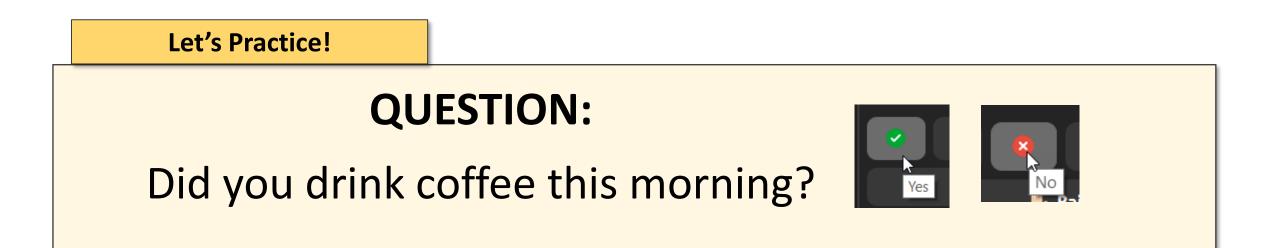
• What potential challenges do draft changes create or what are the unintended consequences of the change?

• What are your suggestions for further changes?



## **Practice... Using Reactions!**





## **Rule Outline**

#### Part A – General Requirements

- Purpose legislative intent
- Applicability who has to comply with this rule
- Definitions terms from the law and add those needed for the rule

#### Part B – Producer Registration and Fees

- Registration Requirements How do producers register (what data they submit)
- Producer Annual Fee when fees are determined, and paid
- Reporting Requirements annual what is required when this replaces "registration"
- Part A is the content for Advisory Committee Meeting 1 (April 14)

#### Part C – PCR Content



- PCR Content and reporting requirements for covered product categories
  - Beverages that use plastic containers
  - Trash Bags
  - Household cleaning products in plastic containers
  - Personal care products in plastic containers
  - Dairy Milk in plastic containers
  - Wine in 187 ml plastic bottles
- PCR minimum adjustment petition
- Technical feasibility exclusion

#### Part D - Enforcement

- Penalties for registration, labeling, and reporting.
- Penalties for PCR requirements
- Reporting audits and review.
- Corrective action.

# Reference definitions

## Original

In several definitions, exclusions are listed based upon other existing laws. Listing these definitions within the rule is only for convenience and reference within Part A.

## Draft Language

Adds:

- RCW 82.08.093, "dietary supplement" referenced as exclusions in "beverage container", "household cleaning product container" and "personal care product" container.
- 21 USC Section 321 (z), "infant formula" referenced as an exclusion in the definition of "beverage"
- 21 USC Section 360ee(b)(3), "medical food" referenced as an exclusion in the definition of "beverage"





Original

• 70A.245.060 outlines the following exemptions to the requirements for trash bag labelling.

#### Draft Change to plastic trash bag definition

• Added "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.

- Added because the trash bag labeling section exempts these moved to definitions section/part A for easier reference and clarity.
- 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.

"Plastic trash bag" reference to law "Plastic beverage container" size reference

## Original



- "Beverage" definition includes specifications around the volume of beverage containers subject to the law
- Repeated these specifications in "plastic beverage container" for clarity and quick reference.

### Added Draft Language

• (16) "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.* 

Adding nondairy milks and creamers to "beverage" definition

#### **Original Text**



(1) "Beverage" means beverages identified in (a) through (f) ...

(a) Water or flavored water;

(b) Beer or other malt beverages;

(c) Wine;

(d) Distilled spirits;

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

(f) Any beverage other than those specified in (a) through (e) of this subsection, except...

#### Draft Language

(1) "Beverage" means beverages identified in (a) through (f)...

(a) Water or 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..

## Producer

Original text:

(19)(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.



#### Draft Changes:

(21) "Producer" means the following person responsible for compliance with minimum postconsumer recycled content, <u>registration, fee payment, and reporting requirements</u> 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 <u>manufacturer</u> 's own brand <del>or lacks identification of a brand</del>, the producer is the <del>person who manufactures the covered product; **brand owner**;</del>

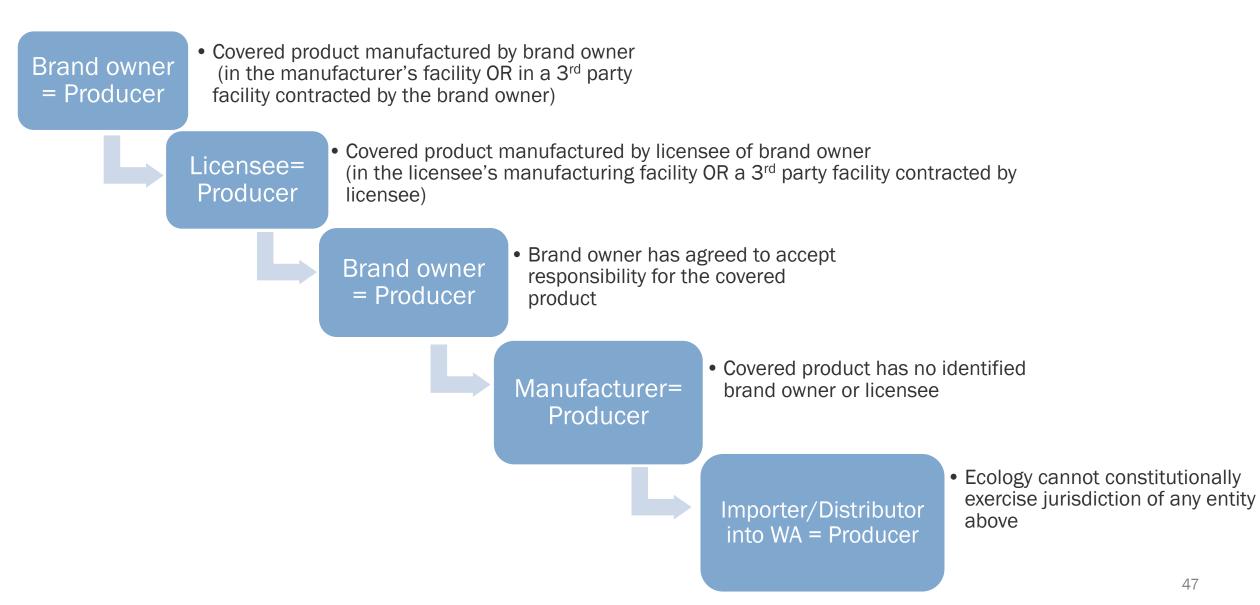
(ii) if the covered product lacks identification of a brand, the producer is the person who manufactures the covered product;

(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) 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.

#### **Current Interpretation**





Rewording of "covered product"

#### Original



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

(i) Plastic trash bags;

(ii) Household cleaning and personal care products that use plastic household cleaning and personal care product containers; and

(iii) Beverages that use plastic beverage containers.

#### **Draft Change**

(4) "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(iv) Plastic containers containing beverages.

Context:



• The law combines "personal care products" and "household cleaning" products in the same definition.

#### Draft change:

- Separated "PCP" definition from "HHCP" definition for clarity
- Left them together in the definition of "household cleaning product and personal care product container"

#### Additional Considerations:

- Add clarifying language for inclusion of personal care products in institutional or professional settings
- Add clarifying language for inclusion of cosmetics as personal care products

"Personal Care Product"

#### Context



- Not in original language
- Referenced in:
  - "plastic beverage container"
    - "Plastic beverage container" does not include...(b)Rigid plastic containers that are or are used for...nonprescription and prescription drugs"
  - "plastic household cleaning container and plastic personal care product container"
    - "Plastic household cleaning and personal care product container" does not include...(ii) Rigid plastic containers that are or are used for...non-prescription ...non-prescription and prescription drugs"
  - Important to interpretation of covered "personal care products"

#### **Draft Change**

(8) "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;

(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"*.

Addition of definition for "drug"



**Cosmetics Containing Drug Ingredients** 

- A suntan product is a cosmetic, but a sunscreen product is a drug.
- A deodorant is a cosmetic, but an antiperspirant is a drug.
- A shampoo is a cosmetic, but an antidandruff shampoo is a drug.
- A toothpaste is a cosmetic, but an anti-cavity toothpaste is a drug.
- A skin exfoliant is a cosmetic, but a skin peel is a drug.
- A mouthwash is a cosmetic, but an anti-gingivitis mouthwash is a drug.
- A hair bulking product is a cosmetic, but a hair growth product is a drug.
- A skin product to hide acne is a cosmetic, but an anti-acne product is a drug.
- An antibacterial deodorant soap is a cosmetic, but an antibacterial antiinfective soap is a drug.
- A skin moisturizer is a cosmetic, but a wrinkle remover is a drug.
- A lip softener is a cosmetic, but a product for chapped lips is a drug.

Context for "drug" definition Definition of "household cleaning product"

#### **Original Language**



• (10) "Household cleaning and personal care product" means any of the following:

(a) Laundry detergents, softeners, and stain removers;

(b) Household cleaning products;

(c) Liquid soap;

(d) Shampoo, conditioner, styling sprays and gels, and other hair care products; or

(e) Lotion, moisturizer, facial toner, and other skin care products.

#### **Draft Change**

- Separated from the definition of "personal care product" for clarity
- Expanded listed items in (a)
- In the interim, using CA's definition of household cleaning product:
  - "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.

Definition of "household cleaning product"

#### **Draft Definition:**



"Household cleaning product" means any of the following:
 (a) laundry soaps, detergents, softeners, surface polishes, air cleaners,

(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.

#### Considerations

What is the definition of "household" for the purpose of covered products under "household cleaning products"?

- Pet products
- Automotive
- Gardening products

and stain removers; or

• Exterior cleaning

Federal Exemptions for Covered Products

#### Language:



• 70A.245.010(4)(b): (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.

**Considerations:** 

- Pesticides (FIFRA)
- Plastic aerosols
- Child resistant packaging



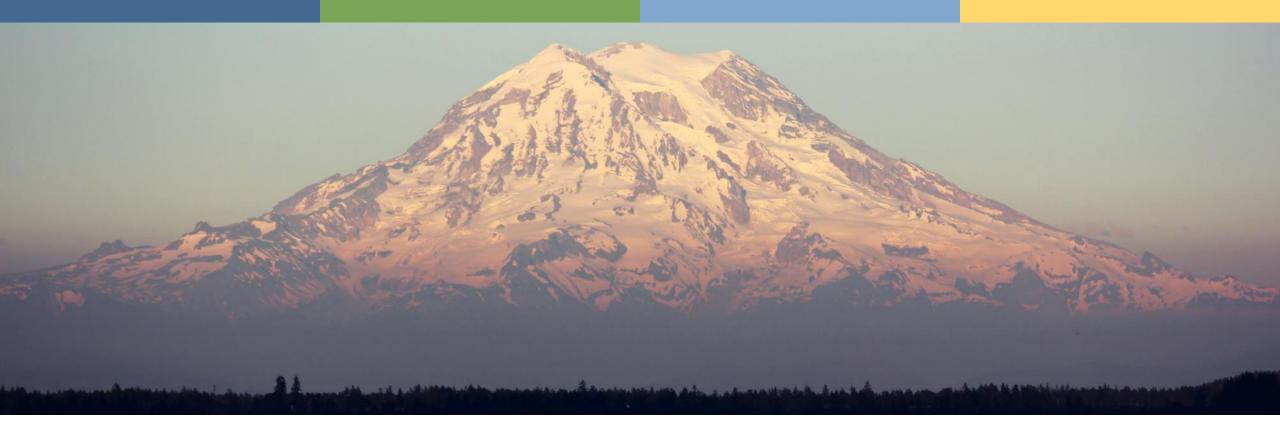
"Plastic household cleaning container and plastic personal care product container"

#### Original language

- (15)(a) "Plastic household cleaning and personal care product container" means a bottle, jug, or other rigid container with a neck or mouth narrower than the base, and:...
- (b)"Plastic household cleaning and personal care product container" does not include:...

#### Draft change

- Added "tube" and "tub" to (15)(a)
- Added to those items not included in the definition requirements in (b):
  - "(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."









DEPARTMENT OF ECOLOGY State of Washington

#### Coming Up

- Ongoing input from advisory committee
- Meeting agenda, notes, and revised draft to be posted online
- eComments open to everyone
- Draft Part B sent to committee for review 5/26
- 2<sup>nd</sup> Committee Meeting 6/9, 9:00 12:00 PST

#### Homework

- Share info with stakeholders and partners
- Send in written questions, revisions, and feedback

Next Steps



Next meeting: June 9<sup>th</sup>, 9:00 – 12:00 (PST) Rulemaking Questions: Shannon.jones@ecy.wa.gov PCR Content Questions: <u>Recycledcontent@ecy.wa.gov</u> Join the PCR content e-mail subscriber list

> Ecology PCR Rulemaking Website Ecology Recycled Content Minimums Website Ecology PCR Registration & Reporting Website