

**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.

[Statutory Authority: Chapter 70A.245 RCW. WSR 23-22-102 (Order 21-09), § 173-925-070, filed 10/31/23, effective 12/1/23.]