

# Samantha Louderback

June 30th, 2023

Washington State Department of Ecology

Attn: Post Consumer Recycled Content Rulemaking Team

Via: Shannon Jones

Subject: Post Consumer Recycled Content Rulemaking

On behalf of the Washington Hospitality Association and the more than 6500 restaurants, hotels and local hospitality businesses we represent state-wide, we would like to thank the Department of Ecology for the opportunity to comment on the proposed PCRC rule.

We respectfully ask that the Department to thoughtfully consider the following comments and suggestions:

The Washington Hospitality Association is proud to have been at the table when important policy issues, like PCRC, have been brought before the legislature. In fact, we were a part of the key negotiations of the producer definition in SB 5022, along with the Department of Ecology and other stakeholders when it was discussed during the 2021 legislative session. With that being said, we would like to respectfully ask that the Department pause on the proposed changes to the producer definition and punt the issue back to the legislature where state statute should be amended.

While it is our understanding that the current version has proven to be difficult for the Department to work with, we believe that any changes to state statute need to be proposed and agreed to by the legislature. Not only does the current proposed producer definition ultimately make sweeping changes to current state statute, but it also changes the intent of the legislature when they voted on this passing SB 5022.

In the proposed rule, producer is defined more broadly, capturing additional producers regardless of the clarifications laid out in the sequential subsections. These differences are outlined below.

- 19 (a) in statute: "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:
  - o (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;

o (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 .

- 22 (a) in rule: 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

o (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.

The changes outlined above completely change who is responsible for compliance obligations, shifting it from a few big businesses who manufacture and control the make-up the products, down to small businesses who do not make the product and therefore do not know the make-up.

As noted in the Departments small business impact statement, this change “ has disproportionate impacts on small businesses”. Most of these impacts would be mitigated by pausing on changes to the definition of producer through rule, and bringing this issue before the legislature.

Additionally, the rule fails to include language allowing manufacturers or brand owners to accept responsibility which is addressed in statute. .

- 19 (a) (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
- 22 (a) (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.

The way the new language is drafted, those who have entered into a franchisee business model are disproportionately impacted at no fault to themselves. Franchisees are “licensed” under a brand but make no packaging decisions or get to choose from whom they purchase products. This language assumes all responsibility to a franchisee, yet purchasing and manufacturing agreements and decisions are made at the franchisor level. We ask that this language not be changed, and that state statute remains.

The Washington Hospitality Association appreciates the opportunity to share our comments and concerns and would again ask the Department to pause and reconsider the proposed CR-102 for Post Consumer Recycled Content, specifically the definition of producer.

Thank you for your consideration.

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