



Washington Food Industry Association

Washington Food Industry Association (WFIA) supports and represents the neighborhood grocers, convenience and specialty retail stores, suppliers and distributors that make up the fabric of our communities in Washington State.

June 29, 2023

TO: Shannon Jones
CC: Department of Ecology
FR: Washington Food Industry Association
RE: Washington Food Industry Association Comments on PCRC Rule (CR 102)

On behalf of Washington Food Industry Association (WFIA) and our independent grocery and convenience store industry members, we offer the following comments on the PCRC Rule (CR 102).

Our Association is deeply disappointed in the failure of the department to address the concerns we highlighted in October 2022 regarding the definition of producer. Once again, we find it necessary to demonstrate the differences in the proposed WAC 173-925 vs. RCW 70A.245.010.

In the rule, producer is defined more broadly, potentially 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
- 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

We continue to request the rule language mirror the statute to eliminate confusion and allow the explanations in the following subsections to clarify the definition of producer.

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.

We request the language "unless the manufacturer or brand owner of the covered product has agreed to accept responsibility" be added to the rule to account for contracts or agreements made between brand owners and manufacturers and licensees on producer responsibility.

The proposed definition would make more retailers responsible for the contents of plastic packaging in situations where the retailer has no control. This goes against the negotiated definition in statute and will make many retailers liable without any ability to affect change. The definition of “producer” was a significant discussion point during negotiations on 5022 when it was moving through the Legislature. Our groups all negotiated this definition in good faith with others at the table, including Ecology. The final language was agreed to and WFIA did not oppose the bill when it passed. Disregarding this carefully negotiated definition in an attempt to “clarify” the language is simply unacceptable.

Additionally, the Department acknowledges the “disproportionate impacts on small businesses” in Chapter 7 of the preliminary regulatory analyses. Some of these impacts could be mitigated by using the definition of producer in statute instead of substantially changing it in rule.

WFIA continues to be supportive of the concept of PCRC. We are looking forward to the completion of rulemaking and seeing the full implementation of 5022. However, the original definition of producer is key towards successful implementation of the policy. We sincerely hope we can continue to support policies like this, however, the lack of adherence to following the statute creates significant concern for future rulemaking.

We are grateful for the opportunity to present these comments. We urge the Department to reassess the producer definition and align with state statute.

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