



June 30, 2023

Solid Waste Management Program
WA Department of Ecology
PO Box 47600
Olympia, WA 98504

RE: Public Comments on Proposed Rule WAC 173-925, Post-Consumer Recycled Content

Dear Shannon Jones:

Thank you for the opportunity to comment on the proposed rules WAC Chapter 173-925 related to postconsumer recycled content regulations.

The Consumer Brands Association (Consumer Brands) represents the world's leading CPG companies. From household and personal care items to food and beverage products, the CPG industry plays a vital role in powering Washington's economy, contributing \$26.8 billion to the state's GDP, and supporting more than 454,000 jobs.

Manufacturers, distributors, retailers, environmental stakeholders, and others came together to help finalize SB 5022, the legislation which became the PCRC law. We worked with the Washington Department of Ecology (the Department) as these rules were drafted, from the concepts begun in 2022 to the proposed CR 102 now in review. Based on the final rule, Consumer Brands is concerned the Department has determined it has the authority to rewrite definitions which are codified in statute, including the definition of producer. We respectfully ask that these rules be redrafted to reflect underlying law.

The Department appears to be setting a highly concerning precedent by changing the statutory definitions in this instance, and we have serious concerns with the implications this may have on other policy matters before the Department going forward. We note several changes that appear statutory in nature. The Department declares on its recycled content minimums website that the producer is the brand owner "[unless] provided with evidence otherwise". This language does not exist in RCW 70A Chapter, which clearly defines producer contrary to this statement. The proposed rules (WAC 173-95-030 (22)) state that the producer "is the entity that affixes its brand, or specifies that its brand be affixed, to the covered product container or retail packaging" then provides exemptions. This is contrary to the RCWs which state that the producer is the person who is the licensee of a brand or trademark, NOT the entity that affixes the brand. The proposed rules create a definition "brand licensor" – this term is new to the rule and does not exist in RCW 70A.245. Finally, in (22)(ii) the proposed rule states that 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 RCWs state the producer in this scenario would be the person who manufactures the covered product NOT the packaging.

Consumer Brands Association
1001 19th Street North, 7th Floor
Arlington, VA 22209

Powering every day.



The definition of producer was heavily negotiated for months among all stakeholders and purposefully mirrors the approach taken in neighboring Oregon to facilitate regional collaboration and support performance goals. The definition was also reviewed and included in the final legislation, voted on by House and Senate members, and signed by the Governor. It is aberrant for an agency to change definitions via rulemaking by changing words, adding additional defined terms not found in the law, and to redefine responsible parties in contradiction to the RCW.

The Consumer Brands Association would ask that the Washington Department of Ecology review its definition of producer to correctly align the proposed rule definitions with those in the law. The precedent this sets is extremely concerning especially to stakeholders who worked in good faith with all parties to create these definitions. Should the Department wish to change the definitions or if the agency determines that the definitions are not workable, legislation should be introduced.

We request your attention to this matter.

Respectfully,

A handwritten signature in black ink that reads "Brendan Flanagan". The signature is written in a cursive, flowing style.

Brendan Flanagan
Senior Director, State Affairs
Consumer Brands Association