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Re: Recycling Reform Act Proposed Rulemaking – Comment Period #1

Dear Chris Fredley:

Thank you for the opportunity to provide public comments on the first portion of the Recycling Reform Act (“Act”) draft rulemaking. We look forward to continued engagement with the Washington Department of Ecology (“Ecology”) throughout the implementation of the Act.

We are submitting these comments on behalf of a client in the retail industry and request that Ecology take these comments into consideration in the final rule.

A. The Definition of “Covered Material” Should be Revised to Address Inconsistencies and Ambiguities

The growing patchwork of extended producer responsibility (“EPR”) laws has created challenges for producers who must closely track and monitor various state definitions to accurately report their covered materials. We request the following clarifications to the definitions of covered materials in order to resolve potential ambiguities in the regulations and inconsistencies with prior guidance.

1. Labels Affixed to Products and Packaging Should be Excluded

The draft rule appears to be inconsistent with Ecology’s past guidance regarding stickers and labels. In its responses to questions from the Recycling Reform Act webinar held in September and October 2025, Ecology clarified that “produce stickers are not considered packaging, as they do not protect, contain, transport, serve, or facilitate delivery of a product.”¹ This guidance implies that all labels or stickers on products or packaging are not covered materials as they do not serve a packaging function under the statute’s definition of “packaging.”²

However, section 173-950-030(a)(ii) of the proposed rule defines covered materials to include packaging components that “facilitate the delivery including through identification of the product.” This language is

¹ Recycling Reform Act Webinar Q&A at 11, <https://app.box.com/s/cldcv476fh4w9sxxw80op4i9uro3khgm5>.

² RCW § 70A.208.020(25)(a).

broad enough to encompass produce stickers, consumer warnings on packages of raw meat, poultry and fish, and other product labels and appears to be inconsistent with prior guidance from Ecology.

Labels affixed to products should be explicitly excluded from the definition of “covered material” consistent with Ecology’s prior guidance. The inclusion of labels is inconsistent with the core definition of “packaging” in the statute, which focuses on materials used to “protect, contain, transport, serve, or facilitate the delivery of a product.”³ Labels do not accomplish any of these objectives.

2. The Scope of Covered Beverage Containers Needs to be Limited

The draft rule includes the term “beverage containers” in the scope of covered materials,⁴ but the statute expressly excludes from the definition of “beverage”: “(i) A drug regulated under the federal food, drug, and cosmetic act, 21 U.S.C. Sec. 301 et seq.; (ii) 100 percent fluid milk; (iii) infant formula; or (iv) a meal replacement liquid.”⁵

The exclusions to “covered materials” under Section 173-950-030(b) should be revised to include packaging for items excluded from the definition of “beverage” under the statute, including packaging for 100 percent fluid milk and meal replacement liquids. The regulations should also define “100 percent fluid milk” and clarify that “100 percent fluid milk” means both flavored and unflavored fluid dairy and plant-based milks and define “meal replacement liquids” to include beverages typically used as meal replacements such as protein shakes.

3. Packaging for Reuse or Refill Should be Excluded to Encourage Producers to Shift to More Sustainable Solutions

The inclusion of reusable and refillable packaging within the scope of covered materials is inconsistent with the purpose of the Act, which is to reduce the generation of covered material waste through waste reduction, refill, reuse, recycling, and composting,⁶ and is unlike other state EPR programs that exclude reusable and refillable items. Requiring producers to report and pay fees on reusable materials discourages producers from switching to reusable or refillable options and only deepens the divide between the older and newer EPR laws. For example, California only covers single use packaging,⁷ and Colorado only covers packaging “that is intended for single or short-term use.”⁸ In these states producers may reduce their reportable covered materials by switching to reusable or refillable packaging.

³ RCW § 70A.208.020(25)(a).

⁴ Section 173-950-030(a)(iv).

⁵ RCW § 70A.208.020(3)(b).

⁶ RCW § 70A.208.040(1)(b).

⁷ PRC § 42041(e)(1).

⁸ CRS § 25-17-703(25)(a)(I).

4. Secondary and Tertiary Packaging for Exempt Items Should be Excluded to Avoid Conflicts with Federal Laws

Section 173-950-030(a)(vi) of the proposed rule creates federal preemption issues by including all secondary or tertiary packaging associated with exempt primary packaging in the definition of covered materials. Neither the Act, nor any other state EPR statute includes a blanket statement that all secondary and tertiary packaging for exempt products are “covered materials.” Even Maryland struck the language in its draft rulemaking that included all secondary and tertiary packaging associated with exempt products in the scope of covered packaging because it recognized that a blanket inclusion “may not be appropriate in specific cases.”⁹

As proposed, drug manufacturers would be required to report secondary packaging provided to customers for their medications and other medical devices, which frequently includes necessary information required by federal law. Similarly, producers would be responsible for reporting specialized and regulated packaging designed to ensure product quality that is used for shipping medications and medical devices. There is no legitimate purpose to be served by including all secondary and tertiary packaging for exempt products and including these materials as covered materials will create regulatory conflicts with federal law. Accordingly, we request that Ecology remove Section 173-950-030(a)(vi) and clarify under Section 173-950-030(b) that secondary and tertiary packaging for exempt items is also exempt.

5. Paper Packaging and Paper Food Service Ware Sold Empty to Consumers Should be Excluded

Section 173-950-030(a)(viii) includes “Multimaterial products that are composed of at least 50% paper by volume,” which could encompass a wide variety of paper-based products including paper-based packaging sold empty; gift bags, gift boxes and gift wrap; paper-based food service ware; and paper gift cards. There is nothing in the Act which supports Ecology’s expansive definition of “paper products.”

It would be counterintuitive to the goals of the Act to require producers to report and pay fees for empty paper packaging and food service ware but not empty plastic packaging and food service ware. If plastic packaging sold empty is excluded but paper packaging sold empty is not, it would disincentivize manufacturers from making fiber-based options that are easier to compost and recycle. Producers may also be discouraged from transitioning their products to more easily recyclable alternatives because of the higher associated costs and fees.

In particular, the regulations should also explicitly exclude paper products such as paper gift bags, gift boxes, gift wrap and gift cards from the definition of “paper products” to avoid any ambiguity and encourage producers to shift to more easily recyclable and compostable paper alternatives. The exclusion of gift wrap is consistent with Oregon’s EPR law that does not consider gift wrap covered

⁹ See Maryland Department of the Environment, Response to Comments on the Proposed Action to Adopt New Regulations .01—.12 under COMAR 26.04.14 Producer Responsibility - Packaging and Paper Products at 52.



packaging or paper products.¹⁰ Paper “gift cards” should also be excluded from the definition. Due to the lack of recyclable materials in plastic gift cards, manufacturers and retailers have started shifting to paper gift cards even though, in some cases, a paper gift card costs more to produce than a plastic gift card. Including paper gift cards as covered materials could potentially result in manufacturers and retailers switching back to plastic gift cards, contributing to more plastic waste.

Accordingly, we request that Ecology remove Section 173-950-030(a)(viii) from the definition of “covered material.”

B. Ecology Should Include Guardrails on Early Reporting Under the Producer Duties Section

Section 173-950-100 outlines reporting and registration requirements for producers but does not include any guardrails on what a producer responsibility organization (“PRO”) can require producers to do before its plan is approved. Indeed, Circular Action Alliance has already required producers to report the amounts of covered materials sold in or into Washington. Given that the Washington statute allows the PRO to charge its producers fees before the formal start of the program, Ecology should clearly outline in its regulations that the PRO is only allowed to require pre-plan reporting once a year and reserve the right to review and approve the “initial producer plan fee structure” under RCW 70A.208.040(3)(b). Ecology should also specify that the initial fees may only be used for administrative costs relating to “the initial implementation of the program.”¹¹

C. Conclusion

Thank you for the opportunity to comment on the first set of the draft Recycling Reform Act Regulations, and we appreciate Ecology’s consideration of these comments. We look forward to continuing to work with Ecology to address these issues.

Sincerely,

A handwritten signature in blue ink that reads "Ashley Walter".

Ashley Walter

¹⁰ See Circular Action Alliance, Oregon Reporting Category Definitions (March 2026) at 21, <https://static1.squarespace.com/static/64260ed078c36925b1cf3385/t/69c7173412e4346bafdaf331/1774655284613/Oregon+Report+Category+Definitions+2026.pdf>.

¹¹ RCW 70A.208.040(3)(b).