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via electronic submission

Subject: HCPA Comments on Washington Request for Information to Develop Statewide Recycling Lists and Needs Assessments

The Household & Commercial Products Association (HCPA)[1] appreciates the opportunity to provide input on the first draft rule concept for implementation of Washington's 2025 Recycling Reform Act[2] put forth by the Washington Department of Ecology (Ecology). We look forward to working with Ecology to support a strong waste management system and a more circular economy in Washington.

Background

HCPA represents approximately 240 member companies engaged in the manufacture, formulation, packaging, distribution, and sale of products for household, commercial, institutional, and industrial use. HCPA members are continuously working to improve products and packaging in line with the principles of a circular economy to decrease waste and enable economic growth without greater resource use. Companies utilize several different materials for packing and shipping their products to ensure that products arrive undamaged, uncontaminated, safe for use, meet user expectations, have a lower environmental footprint, and generally enhance the quality of life of the consumers and workers who depend on these products daily. We have many members who sell products into Washington or otherwise have a presence in the state and are committed to ensuring that all residents have access to high-quality products with reduced environmental impacts.

[1] The HCPA is the premier trade association representing companies that manufacture and sell $227 billion annually of trusted and familiar products used for cleaning, protecting, maintaining, and disinfecting homes and commercial environments. HCPA member companies employ 308,000 people in the U.S. whose work helps consumers and workers to create cleaner, healthier and more productive lives.
[2] Chapter 70A.208 RCW

In addition to representing various categories of formulated products, HCPA represents products packaged in the aerosol delivery form. The aerosol delivery form is used to dispense a wide range of products, including but not limited to adhesives, air fresheners, antiperspirant, asthma inhalers, body spray, cleaners, degreasers, deodorant, disinfectants, dry shampoo, hair spray, insect repellant, insecticides, lubricants, paints, pan sprays, sealant, shaving creams and gels, sunscreen, and whipped cream. HCPA has represented the U.S. aerosol products industry since 1950 through its Aerosol Products Division, which includes companies that manufacture, formulate, supply, market, and recycle a variety of products packaged in an aerosol form.

173-950-030 Selected Definitions

HCPA is concerned by Ecology's proposal to limit exemptions to primary packaging. Nearly all other states which have exempted products in packaging EPR laws and created implementing regulations to date have included secondary and tertiary packaging as well as primary in the definition of which packaging forms are exempt.[3] The supply chains for these products, particularly those which are highly regulated at the federal level and/or may be too hazardous for the curbside system, are complex and all of their packaging is carefully selected to ensure product protection. These industries have generally been fully out of scope in all other EPR laws to date and are not prepared to respond to EPR registration and reporting requirements and packaging change incentives. Many of these producers, if they sell only exempt products (for example, a pesticide product company), have never have previously registered with a packaging PRO or been able to collect packaging data from their suppliers in line with EPR requirements.

The Department's proposed inclusion of secondary and tertiary packaging is inconsistent with exemptions in other states and would be substantively disruptive to industries with products which require specialized packaging to maintain health, safety, and quality. This would contribute to the lack of harmonization of packaging EPR programs across the U.S. and could lead to producers choosing to no longer supply these types of products to Washington, ultimately increasing implementation challenges for the state and its residents. HCPA recommends that Ecology clarify that primary, secondary, and tertiary packaging for exempt product types are all considered "exempt material."

173-950-100 Producer Duties

HCPA supports Ecology allowing for the use of prorated national sales data if state-specific data is not available or feasible to generate.

[3] California, Colorado, Maine, and Oregon have all considered exempt covered material to encompass all packaging associated with the exempt product (primary, secondary, and tertiary).

HCPA believes there may be a missing word in Ecology's proposed provision in 1(a)(iii) and 1(b)(iii):

"(iii) Upon request of the department, each producer must make available all data, documents, and records related to the calculation and payment of fees, recycling rates, collection rates, postconsumer-recycled-content rates, and any other materials necessary for the department to determine compliance with this chapter;"

Additionally, HCPA urges Ecology to specify the timeframe that producers have to respond to records requests, as it is not feasible to expect producers to immediately produce all records on request. HCPA suggests allowing for ten business days or the timeline specified by Ecology, whichever is later. HCPA also suggests clarifying Ecology's expected retention policy for records and compliance documentation to avoid a costly administrative burden on producers and/or confusion about how long to retain documentation. HCPA recommends a records retention policy of five years for consistency with other EPR states.

173-950-2XX Alternative Collection Program Requirements

HCPA is concerned that the proposed language does not appear to contemplate a mechanism for resolving disputes and appropriately coordinating between an alternative collection program vs. a producer responsibility organization (PRO). Ecology has already approved the Lubricant Packaging Management Association (LPMA) as an alternative collection program to operate in Washington from the start of EPR implementation along with Circular Action Alliance (CAA), the approved PRO. It is essential to have corresponding clear coordination and dispute resolution language from the start of implementation or the program's success and producer participation will be harmed by confusion about obligations and which entity to engage with. For example, in Colorado, the only other state currently implementing EPR where both LPMA and CAA are approved to operate, LPMA and CAA claim overlapping product scopes. In the absence of a state mechanism to coordinate and resolve disputes between the PRO and LPMA (operating under an individual program plan), producers are potentially subject to duplicative reporting and fee payment obligations.

Additionally, it is unclear to HCPA whether the alternative collection program is simply responsible for the management of the material category it is approved for, or whether producers are required to register and report directly to the alternative collection program along with the PRO. HCPA notes that the presence of a second registration and reporting entity from the start of EPR implementation without a clear mechanism for the state to drive coordination and alignment creates significant confusion. When LPMA attempted to set up a separate program in California to manage a subset of materials outside of SB 54, California's packaging EPR framework, stakeholder concerns about the feasibility of implementation caused the effort (California AB 2245) to fail.

The Recycling Reform Act contemplates the need for a coordination body if more than one PRO is established to prevent redundancy. HCPA recommends that Ecology introduce a similar coordination mechanism, overseen by Ecology, and have producer registration and reporting go through just one organization to prevent duplicative efforts between a PRO and an alternative collection program. HCPA reiterates that this is urgent to include in the first rulemaking due to Ecology's approval of an alternative collection program starting in the first program plan period.

510 Exclusion Petition

HCPA recommends that Ecology add language that allows companies to apply for a temporary exclusion for the following: "plastic packaging containers that are used to contain and ship products that are classified for transportation as dangerous goods or hazardous materials under Part 178 (commencing with Section 178.0) of Subchapter C of Chapter I of Subtitle B of Title 49 of the Code of Federal Regulations." These containers are subject to specific design requirements to ensure product safety under the U.S. Department of Transportation and their exclusion would be consistent with California's packaging EPR program.

HCPA is confused by the language requiring producers of covered materials that are temporarily excluded to report to Ecology the same information that PROs must report under RCW 70A.208.030 and 70A.208.200. Much of the information required to be reported under these sections of the statute concern financial information and performance targets, which are not relevant for temporarily excluded materials. HCPA suggests Ecology carefully consider what, if any, annual reporting is necessary for temporarily excluded materials rather than requiring the same level of reporting as a PRO does for covered materials.

HCPA agrees with the proposal to require a resubmission of the temporary exclusion petition one year prior to any program plan revision with an anticipated frequency of every five years. This is reasonable for helping both producers and the PRO plan for the future.

HCPA requests clarity on Ecology's process for determining which materials would qualify for the exemption described in RCW 70A.208.020(19)(j),"…hazardous or flammable products regulated under the federal Occupational Safety and Health Administration (OSHA) Hazard Communication Standard that prevent the packaging from being waste reduced or made reusable, recyclable, or compostable, as determined by the department." It is unclear to HCPA whether Ecology intends for producers to also utilize the temporary exclusion process to apply for the OSHA exemption or if Ecology envisions a different mechanism. As this provision is dependent on Ecology's review, it is crucial that Ecology define and develop a process for how Ecology will determine which materials qualify for this exemption.

Conclusion

HCPA appreciates the opportunity to provide input on Ecology's first draft rule concept for Washington's packaging and paper EPR program. We appreciate the care that Ecology is taking to solicit and incorporate stakeholder input. HCPA looks forward to continuing to engage with Ecology to support successful implementation of Washington's Recycling Reform Act. We invite any questions about this submission and look forward to Ecology's response.

Sincerely,

Molly R. Blessing
Vice President, Sustainability & Product Stewardship