`

June 24, 2026

Via Electronic Submission

Chris Fredley
Washington Department of Ecology
SWM Program Rule Coordinator

Subject: Comment on Proposed Washington Extended Producer Responsibility Rulemaking (WAC 173-950)

Dear Mr. Fredley and Department of Ecology,

James Hardie Building Products Inc. ("James Hardie"), a leading national building-materials manufacturer with operations in Tacoma, appreciates the opportunity to comment on the Department's draft rule implementing Washington's Extended Producer Responsibility (EPR) program. We write to recommend a targeted clarification to **WAC 173-950-030** to ensure the rule aligns with statutory intent and avoids unintended expansion beyond the consumer marketplace.

1. Clarification of Scope of Proposed Regulations

As stated in the Recycling Reform Act, the intent of the statute is to require extended producer responsibility programs for consumer packaging.[1] Regulated packaging is limited to "a material, substance, or object that is used to protect, contain, transport, serve, or facilitate delivery of a product and is sold or supplied with the product to the consumer for personal, noncommercial use."[2] Further, exempt materials exclude those that are generally involved in business-to-business transactions that meet the requirements listed in RCW § 70A.208.020(19)(o).

As drafted, the definition of covered products incorporated into the proposed regulations may be interpreted to extend beyond consumer-facing goods and regulate packaging in commercial or industrial channels. This interpretation would impermissibly expand the scope of the underlying statute and may introduce significant compliance uncertainty for regulated entities.

To address this, we recommend revising WAC 173-950-030 to clearly limit applicability to **packaging for products placed into the market for personal, noncommercial use**, consistent with Washington statutory language and with established EPR frameworks in other jurisdictions, including Colorado, Maryland and Maine.

---

[1] RCW § 70A.208.010(2)(a).
[2] RCW § 70A.208.020(25)(a)(emphasis added).

We propose making the following minor modifications to the definition section of **WAC 173-950-030**:

> *"Covered material" means packaging and paper products introduced into the state.*
>
> *(a) Covered material includes:*
>
> *(i) Primary, secondary, and tertiary packaging on products intended for the consumer ~~market~~ for personal, noncommercial use.*
>
> *(ii) Components and elements that are supplemental, auxiliary, or subordinate and integrated into packaging on products intended for the consumer for personal, noncommercial use, including those components and elements that are directly attached to a product and are part of the packaging design functionally or aesthetically, facilitate the packaging function, or facilitate the delivery including through identification of the product.*

2. Avoidance of Unintended Regulatory Expansion and Uncertainty

Absent these clarifications, the rule could capture packaging for products not designed, marketed, or distributed for noncommercial use and impose obligations on entities outside the intended regulatory scope. A narrowly tailored clarification as proposed above will preserve program integrity and maintain consistency with the enabling legislation while ensuring administrability.

Most states that have adopted EPR regulations have also enacted business-to-business exemptions.[3] Colorado has noted the difficulties in regulating packaging associated with the construction industry, and have exempted such companies from reporting requirements.[4] Washington has enacted a similar (although more limited) exemption.[5] A clarification that aligns with the approach taken in other EPR states would promote regulatory harmonization and reduce unnecessary compliance burdens for both Washington DOE and regulated producers.

This approach would also align with other state EPR laws that focus on packaging that is disposed of by the end consumer. For example, Maryland's proposed guidance explains that "packaging" subject to regulation is "supplied with the product to the consumer for personal, non-commercial use."[6] These clarifications provide a clean, administrable boundary and align with both statutory purpose and national EPR precedent. Enhancing consistency and harmony between state EPR statutes will significantly reduce

---

[3] **(1)** Colorado (C.R.S. § 25-17-703(25)(b)(I)-(III)(excluding from "covered material" packaging material used solely in transportation or distribution to non-consumers, packaging materials used solely in business-to-business transactions where a covered material is not intended to be distributed to the end consumer, and packaging materials that are not distributed to covered entities); **(2)** Maine (38 M.R.S. § 2146(1)(C-1)(excluding packaging material sent to a non-consumer); **(3)** Maryland (Md. Envir. § 9-2501(l)(13)(exempting from "covered material" material that a producer distributes to another producer that is "subsequently used to contain a product, and the product is distributed to a commercial business or entity" and "not introduced to a person other than the commercial or business entity that first received the product"),

[4] C.R.S. § 25-17-713; 6 CCR § 1007-2:1-1.8 (exempting builders, construction companies, and construction contractors from the definition of "producer").

[5] RCW § 70A.208.020(19)(n).

[6] Md. Envir. § 9-2501(n).

the regulatory burden on national companies, like James Hardie, as they seek to achieve compliance with a complicated regulatory landscape.

We appreciate the Department's consideration of these comments and would welcome the opportunity to discuss further. Thank you for your time and consideration.

Sincerely,

Marcus Kuizenga

Legal & Regulatory Affairs
James Hardie Building Products Inc.
Marcus.Kuizenga@jameshardie.com
909 561 1650