June 24, 2026

Mr. Casey Sixkiller
Director
Washington State Department of Ecology ("Ecology")
300 Desmond Drive SE
Lacey, WA 98504-7600
Submitted via online portal at - Recycling Reform Rulemaking - Chapter 173-950 WAC - Comment Period #1

Re: Consumer Brands Association Comments on Draft Rule Language for Sections of Chapter 173-950 WAC

Dear Mr. Sixkiller,

Consumer Brands Association ("Consumer Brands") is appreciative of the opportunity to submit comments regarding Ecology's draft rule language for sections of chapter 173-950 WAC to guide the implementation of Washington's Recycling Reform Act ("RRA"). We are committed to supporting the goals of the RRA and welcome Ecology's stakeholder engagement in this initial rulemaking process. Our comments focus on ensuring that the regulations are administrable, aligned with statutory intent, and harmonized with other state EPR programs to support efficient multi-state compliance.

The Consumer Brands Association champions the industry that makes the products consumers choose and the brands they trust. From household and personal care to food and beverage products, the consumer packaged goods (CPG) industry plays a vital role in powering the U.S. economy, contributing $2.5 trillion to U.S. GDP and supporting 22.3 million American jobs. The CPG industry's number one priority is delivering safe, affordable, and convenient products to consumers every day. But the industry also plays a crucial role in reducing packaging waste and increasing recycling in the U.S. According to recent data, industry-led source reduction efforts have decreased U.S. packaging volume by about five million metric tons between 2019 and 2024. Consumer Brands is also leading a broad-based coalition, the Recycling Leadership Council, committed to modernizing recycling standards and reducing plastic waste. Driven by innovation and collaboration, CPG companies are full-speed ahead on working towards a zero-waste, circular economy.

While Consumer Brands is appreciative of many provisions outlined in the draft rule language, we believe the following are opportunities for improvements to ensure the successful implementation of the RRA:

1. <u>Excessively Broad Definition of Packaging Components</u>

Issue:

Accurately defining covered materials in rule, ensuring the definition aligns with statutory intent and provides appropriate exemptions, is paramount to ensuring the program is practicable and feasibly implementable. As written, Consumer Brands has concerns regarding subparagraph (ii) in paragraph (a) of the definition of "covered material" in section 173-950-030 of the proposed rule text. Specifically, our concerns stem from the last sentence in subparagraph (ii), which includes "materials used to affix packaging components to one another" in the definition of covered material. The inclusion of materials used to affix packaging components to one another in the definition of covered material is problematic for several reasons, but at face value, the coverage of these materials will require producers to track trace amounts of adhesive materials, creating administrative reporting burdens while providing very little environmental benefit.

The definition of covered materials should not be so broad that it parses packaging components to a greater degree than what would be customarily required for recycling acceptance. For example, a cardboard box is accepted for recycling regardless of whether it includes adhesives or inks. Further, there wouldn't be a means to separate the adhesive from the cardboard box and recycling it separately. Similarly, materials that are accepted for recycling with their labels intact should be classified by their base packaging material.

As well, it is critical that the definition of covered materials does not apply to a material affixed to a packaging component that serves as a function barrier. It is crucial that Ecology clarify that function barrier layers, coatings, or similar affixed or integrated packaging materials are treated as part of the overarching packaging and are not treated as a separate covered material. This clarification is critical in situations where minor interior functional barriers may be necessary to protect product integrity and food safety, but said minor barriers should not override the classification of a package whose recyclability and market identify are determined by the overarching packaging material.

Finally, precise weight data on packaging components, particularly adhesives, may not exist, requiring producers to conduct extensive estimates to comply with reporting requirements. No other packaging EPR law explicitly calls out "materials used to affix packaging components to one another" as a covered material, recognizing that the benefit of covering these materials is minimal compared to the increased compliance complexity it introduces.

> **Recommended Solution:**
> Consumer Brands encourages Ecology to remove the final sentence in subparagraph (ii) of paragraph (a) in the definition of "covered material" in section 173-950-030, which includes "materials used to affix packaging components to one another" as a covered material.

2. **<u>Coverage of Secondary and Tertiary Packaging Associated with Exempt Primary Packaging Conflicts with Current Best Practices</u>**

Issue:
The definition of "Covered Material," as written in section 173-950-030, is concerning to Consumer Brands, specifically the language in subparagraph (vi) of paragraph (a), which includes secondary and tertiary packaging associated with exempt primary packaging as covered materials. Limiting exemptions to only apply to primary packaging does not align with current best practices in other states' EPR programs, such as California's, which explicitly exempts primary, secondary, and tertiary packaging associated with their identified excluded products. If a

product is exempt because of health, safety, federal regulations, or other concerns, the exemption should apply to all of the packaging associated with that product.

Recommended Solution:
Consumer Brands recommends that Ecology remove subparagraph (vi) of paragraph (a) in the definition of "Covered Material" in section 173-950-030 of the proposed rules to align with current best practice followed in other states with packaging EPR programs.

3. Severe Lack of Clarity on Covered Paper Products

Issues:
As written, there is a significant lack of clarity on what constitutes a covered paper product. Subparagraph (vii) in paragraph (a) in section 173-950-030, includes "paper products sold, distributed to or intended for use by a consumer for noncommercial purpose" as a covered material, with no further guidance on what consumer-facing paper products are considered covered materials. In its current form, paper products such as napkins and paper towels would count as a covered material, even though, once used, these products are generally not accepted at recycling or composting facilities. Given that these products are generally considered unsafe or unsanitary for recycling or composting facilities to process, they should not be considered a covered material. In addition, to further clarify the coverage of paper products and reduce contamination in the recycling and composting streams, covered materials should not include any paper products that are not primarily disposed of through the solid waste curbside system, for example, toilet paper.

Recommended Solution:
Consumer Brands recommends Ecology narrow the coverage of paper products in the definition of covered materials in subparagraph (vii) of paragraph (a) of section 173-950-030 to only include traditional printing or writing paper. This clarification will help align the RRA with other EPR laws and ensure absorbative paper products that are unsafe or unsanitary to handle at recycling and composting facilities are not unintentionally included in the program.

4. Burdensome Standards for Alternative Collection Programs

Issue:
Although Consumer Brands is supportive of the allowance of alternative collection programs to effectively manage packaging materials that are poorly suited for curbside recycling systems, the requirements for these programs outlined in subparagraphs (i) and (ii) of paragraph (c) of subsection 1 of section 173-950-2XX, are of particular concern. As written, subparagraph (i) would require any approved alternative collection programs to provide at least one drop-off collection site in every county of the state. Alternative collection programs are meant to be tailored for unique materials not suitable for curbside collection programs; requiring infrastructure in every county regardless of the actual material generation or recycling service demand creates inefficiencies by directing resources away from where they are most needed, ultimately diminishing environmental outcomes. Requiring alternative collection programs to

establish a drop-off site in each county in Washington risks increasing program expenditures without any corresponding increase in collection or recycling.

Recommended Solution:
Consumer Brands recommends that Ecology reevaluate the infrastructure requirements for alternative collection programs in subparagraphs (i) and (ii) of paragraph (c) of subsection (1) of section 173-950-2XX, and, instead, consider performance-based requirements for alternative collection programs. Obligated producers should have the flexibility to design systems that maximize actual collection and environmental outcomes for each material category, rather than being required to blindly establish collection sites that will only marginally increase the collection of materials not suited for curbside recycling. Alternatively, Consumer Brands would encourage Ecology to provide flexibility in permitting mail-back, retail-based collection systems, or other reverse logistics systems to count towards collection site requirements.

5. Additional Clarity Needed on Ensuring Cost Savings are Passed on to Consumers

Issue:
Consumer Brands requests Ecology to clarify the language in paragraph (g) of subsection (1) of section 173-950-300, that states that service providers must "pass along savings to customers." As written, it is unclear what constitutes "savings" and who is considered a "customer." For example, if a service provider is reimbursed $100,000 for their covered services but incurs additional expenses from reporting obligations or contamination management, is the entirety of the $100,000 considered the "savings" or is it the net amount after those additional expenses are accounted for? Further, it is unclear what entity will oversee that service providers cost savings are passed on to the customer; if Ecology intends to assume this role, this will drastically increase the level of administrative oversight required, which inherently increases program costs and subsequently producer fees.

Recommended Solution:
Consumer Brands recommends that Ecology clarify the language in paragraph (g) of subsection (1) of section 173-950-300 to ensure feasible implementation and enforcement pertaining to service providers passing along cost savings to customers.

6. Prohibitively Onerous Process to Justify Temporary Exclusion

Issue:
Although Consumer Brands is appreciative of Ecology's inclusion of an exclusion process for covered materials that present public health or safety concerns, the petition process outlined in section 173-950-510 of the proposed rule text is unreasonably onerous for producers to justify an exclusion and includes justification criteria not found other state's EPR laws. Specifically, paragraph (c) of subsection (2) of section 173-950-510, would require a producer applying for a temporary exclusion to provide supporting documents with "validated testing data or the sworn declaration of a qualified engineer." No other packaging EPR law requires the sworn declaration of a qualified engineer to justify a temporary exclusion as it could require a formal engineering assessment, which for complex packaging formats, could require significant time and effort, and

it introduces avoidable professional risks. Further, the requirements for producers to provide information regarding their progress toward achieving the RRA's performance goals in the petition process, outlined in paragraph (f) of subsection 2 of section 173-950-510, appears misaligned with the purpose of the exclusion petition process. The temporary exclusion process is available where the inclusion of a covered material would raise public health or safety concerns or would conflict with federal laws. Whether a producer has source reduced their packaging, increased recycled content, or improved the recyclability of their packaging, does not appear directly relevant to determining whether such concerns justify a temporary exclusion.

Overall, Consumer Brands' issue with the proposed exclusion petition process stems from concerns that its onerous nature may create a burden that effectively prevents producers from making legitimate exclusion requests necessary to protect public health and safety or to comply with federal law. Ultimately, the more onerous the process for filing an exclusion petition, the more it hinders small- to mid-sized obligated producers, who do not have the capital or capacity to undertake such a process. Further, the process may prevent producers of any size from timely and successfully submitting an exclusion request and receiving a response in a timely fashion.

Recommended Solution:
Although Consumer Brands supports a petition process for producers to request a temporary exclusion for their covered materials, we encourage Ecology to streamline the process and limit the required information to that which is directly necessary to evaluate the basis for the requested exclusion. Hence, we would recommend Ecology consider removing the language requiring validated testing data or the sworn declaration of a qualified engineer to support the temporary exclusion request in paragraph (c) of subsection (2) of section 173-950-510, and we recommend Ecology specifically revisit the requirements outlined in paragraphs (d), (e) and (f) of subsection (2) of section 173-950-510, ensuring that these requirements for an exclusion petition are germane to evaluating the justification for a temporary exclusion.

7. <u>Ensure Confidential Business Information is Protected</u>

Issue:
Consumer Brands is concerned with the current lack of assurance that proprietary business information associated with producer registration and reporting will be protected from public disclosure. Producer reporting under packaging EPR programs inherently involves the sharing of commercially sensitive data; ensuring this data remains confidential is utterly essential. Further, the EPR laws in Oregon, Colorado and California, all of whom have wrapped up their rulemaking processes, explicitly include confidentiality safeguards to ensure proprietary data and information collected as part of the program remain confidential.

Recommended Solution:
Consumer Brands strongly encourages Ecology to include language in section 173-950-100 of the draft regulations that explicitly protects confidential business information from public disclosure.

Thank you for the opportunity to comment on Ecology's draft rule language for sections of chapter 173-950 WAC to guide the implementation of the RRA. Please do not hesitate to contact me if you have any questions regarding this request. I can be reached at ERaden@consumerbrandsassociation.org.

Sincerely,

Erin Raden

Senior Director of State Affairs
Consumer Brands Association