

Clark County Solid Waste & Recycling (Bethanie Velasco)

See attached file.



Recycling Reform Rulemaking - Chapter 173-950 WAC - Comment Period #1

173-950-010 Purpose

(1) Chapter [70A.208](#) RCW establishes an extended producer responsibility **program** for consumer packaging and paper products in Washington state. The **program** increases access to convenient and affordable recycling services, minimizes negative impacts to the environment, public health, and worker health and safety, and builds and expands on existing waste and recycling infrastructure.

(2) This chapter implements chapter [70A.208](#) RCW, Solid Waste—Packaging and Paper Products—Producer Responsibility. This chapter establishes:

- (a) Procedures that the department and producer responsibility organizations use to oversee and administer the program;
- (b) Fees to be paid to the department to cover the agency's full costs of providing oversight of the implementation and administration of the program and enforcing chapter [70A.208](#) RCW and this chapter;
- (c) Requirements to maintain public-private partnership between state, local government, and solid waste and recycling service providers.

“Purpose” comments:

Change “program” to “programs” to align with RCW language.

RCW 70A.208.010(2)(c) clearly states the legislature does not intend to displace the primary role of local governments or UTC-regulated haulers. Include mention of reliance on local government and UTC authority.

173-950-020 Applicability

This chapter applies to the following, as defined in this chapter and in chapter [70A.208](#) RCW :

- (1) Any producer of covered materials;
- (2) Any producer responsibility organization;
- (3) Any service provider who collects, transfers, transports, sorts, processes,



recovers, prepares, or otherwise manages covered materials for an approved plan;

(4) Any entity that sells, offers for sale, distributes, or makes available for sale covered materials in Washington state; or

(5) Any entity that chooses to serve as a covered material drop-off location or collection site, or offers to host a collection event

(6) Any group of producers that manages an alternative collection plan.

“Applicability” comments:

RCW 70A.208.020(43) explicitly states that a government entity that contracts for covered services is a service provider, but the draft rule language limits service providers to those that directly collect, transport, process, etc.

Clarify whether government entities must register as service providers only when seeking reimbursement, consistent with RCW 70A.208.070(1).

173-950-030 Selected Definitions

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

“Alternative collection program” means a program that provides for the collection of a distinct material, packaging, or product type through collection methods other than **commingled** residential collection or public place collection.

“Individual program plan” means a plan submitted by a producer that registers with the department as a producer responsibility organization to address the covered materials of the producer.

“Primary packaging” means packaging that is most closely containing the product, food or beverage.

“Secondary packaging” means any packaging intended to bundle, sell in bulk, brand, or display the product or that is not primary packaging or tertiary packaging.

“Tertiary packaging” means packaging intended to protect or facilitate the delivery of the product during transportation.

“Covered material” means packaging and paper products introduced into the state.

(a) Covered material includes:

(i) Primary, secondary, and tertiary packaging intended for the consumer



market;

- (ii) Components and elements that are supplemental, auxiliary, or subordinate and integrated into packaging, 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. This includes materials used to affix packaging components to one another;
 - (iii) Service packaging designed and intended to be filled at the point of sale, including:
 - (A) Carry-out bags;
 - (B) Bulk food bags; and
 - (C) Take-out and home delivery food service packaging;
 - (iv) Beverage containers
 - (v) Packaging for reuse or refill, as defined in this chapter;
 - (vi) Secondary and tertiary packaging associated with exempt primary packaging.
 - (vii) Paper products sold, distributed to or intended for use by a consumer for noncommercial purposes; and
 - (viii) Multimaterial products that are composed of at least 50% paper by volume.
- (b) "Covered material" does not include exempt or excluded materials.

"Selected definitions" comments:

Alternative collection program definition should reference "residential collection" rather than "commingled residential collection" to align with RCW 70A.208.090(1)(a).

173-950-100 Producer Duties

This section applies to producers of covered materials.

(1) Beginning July 1, 2026, each producer must:

- (a) Be a member of a producer responsibility organization registered in this state;
 - (i) Each producer must be a member in good standing with the producer responsibility organization under which they are registered by:



- (A) Fulfilling the membership requirements;
- (B) Paying the required fees;
- (C) Providing all required information and data; and
- (D) Meeting the producer responsibility organization timelines;
- (ii) Each producer must report the data necessary to meet its plan obligations to the producer responsibility organization. The producer may use prorated national data if state-specific data is not available or feasible to generate;
- (iii) Upon request of the department, each producer **must make 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;** and
- (iv) Any producer intending to cease participation in a producer responsibility organization shall provide written notice to their producer responsibility organization and the department no later than 60 days before ceasing participation. This notice must include:
 - (A) The producer's name and any associated brands;
 - (B) The date the producer will cease participation; and
 - (C) The reason for ceasing participation.
- (b) Be a member of a group of producers registered in this state to manage an alternative collection program during the first plan implementation period;
 - (i) Each producer must be a member in good standing with the group of producers implementing an alternative collection plan under which they are registered by:
 - (A) Fulfilling the membership requirements;
 - (B) Paying the required fees;
 - (C) Providing all required information and data; and
 - (D) Meeting the producer responsibility organization timelines;
 - (ii) Each producer must report the data necessary to meet its plan obligations to the group of producers implementing an alternative collection plan. The producer may use prorated national data if state-specific data is not available or feasible to generate;
 - (iii) Upon request of the department, each producer must make 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; and



(iv) Any producer intending to cease participation in an alternative collection program shall provide written notice to the group of producers implementing an alternative collection program and the department no later than 60 days before ceasing participation. This notice must include:

- (A) The producer's name and any associated brands;
- (B) The date the producer will cease participation; and
- (C) The reason for ceasing participation; or

(c) Register as an **individual producer** responsibility organization that will implement an individual program plan under **Section 110**.

Through (a), (b), or (c) of subsection (1) of this section, each producer must implement and finance a statewide program for their covered materials in accordance with this chapter that encourages redesign to reduce environmental impacts and human health impacts and that reduces generation of covered material waste through waste reduction, refill, reuse, recycling, and composting and by providing for the collection, transportation, and processing of used covered materials for reuse, recycling, and composting;

(2) Upon request of the department, a producer must submit documents or records to substantiate their exempt or de minimis status.

(3) **Beginning March 1, 2029, a producer that is not compliant with this chapter may not introduce covered materials into the state.**

“Producer duties” comments:

RCW 70A.208.040(1)(a) requires producer PRO membership after July 1, 2026, not beginning on July 1, 2026, as the draft rule states.

RCW 70A.208.220 provides an option for service providers or others providing requested data to ecology to request the data remain confidential, should see that language here.

Section (iii) lacks a verb, “must make 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 available to determine compliance with this chapter...”

RCW 70A.208.020(21) defines “individual plan” but the draft uses “individual PRO” – should align with RCW language.

RCW 70A.208.040(2) doesn't allow for the introduction of covered materials after March 1,



2029 if the producer is not a PRO in good standing or has not submitted an individual plan. Draft rule changes this standard to “not compliant with this chapter,” at large which broadens enforcement capabilities beyond RCW language.

173-950-110 Individual Producer Plan Requirements

This section applies to individual producers proposing to operate under an individual program plan.

- (1) A producer intending to operate under an individual program plan must:
 - (a) By **January 1 of 2028**, and every five years thereafter, notify the department in writing of its intent to submit an individual program plan. The notification must include the producer name, producer brands, primary contact, contact information, and the total annual volume of covered materials introduced;
 - (b) By March 1 of **that** year, register with the department as a producer responsibility organization as required in Section XXX;
 - (c) By September 1 of **that** year, pay a one-time administrative and plan review fee as determined by the department in Section XXX.
- (2) Through the coordinating body established under SECTION XXX, the producer must:
 - (a) Submit an individual program plan following the same requirements of Section XXX,
 - (b) Submit annual reports following the same requirements of Section XXX, and
 - (c) Pay their equitable producer responsibility organization fees to the department following the same requirements of Section XXX.

Individual producer plan requirements comments:

RCW 70A.208.210 references Ecology will hire a consultant to review an analysis of draft plans submitted by producers (with the submission deadline of Oct 1, 2028) – cannot locate any other mention of the draft rule language Jan 1, 2028 individual producer plan requirement in RCW.

Replace “that year” language with specific dates.

Clarify whether individual producers are responsible for annual registration fees (like PROs).

173-950-2XX Alternative Collection Program Requirements.

This section applies to groups of producers that develop and operate an alternative



collection program during the first plan implementation period and producer responsibility organizations that develop and operate an alternative collection program.

(1) An alternative collection program must:

- (a) **Provide for** a covered material included on the statewide collection list for alternative collection developed under RCW 70A.208.090;
- (b) Be proposed by a producer responsibility organization, or during the first plan implementation by a group of producers with a petition granted by the department under RCW 70A.208.090(5) or a majority of producers of a unique product type whose packaging is designated for alternative collection;
- (c) Meet the following level of convenience:
 - (i) Provide year-round, convenient, statewide collection opportunities, including at least one drop-off collection site located in each county;
 - (ii) Provide tiers of service for collection, convenience, number of drop-off collection sites, and additional collection systems based on:
 - (A) County population size;
 - (B) County population density; and
 - (C) Each class of city or town under chapter [35.01](#) RCW;
- (d) **Certify** that materials are sent to responsible markets;
- (e) Use education and outreach strategies that can be expected to significantly increase consumer awareness of the program throughout the state; and
- (f) Accurately measure the amount of each covered material collected and the applicable performance target and statewide requirement.

(2) An alternative collection program plan must include:

- (a) The number, type, and location of each collection opportunity, including a list of collection sites which may include special events, private sites, curbside, mail back, or backhauling must be provided to the department and posted on a publicly accessible website;
- (b) A description of how each of the program requirements in this subsection will be met;
- (c) Performance targets for each covered material, as applicable, to be managed through an alternative collection program;
- (d) Identification of alternative collection program siting for any program operations, including training, education and educational materials specific to that site, transportation, equipment, and reporting, with contractual approval



between all parties; and

(e) Other requirements identified by the department.

(3) A producer responsibility organization or group of producers registered with the department to manage an approved alternative collection plan must:

(a) Be exclusively responsible for management of the covered material covered by that plan;

(b) Comply with all requirements applicable to a producer responsibility organization under this chapter, other than requirements determined by the department not to be relevant to the management of the covered materials identified for alternative collection.

(4) The producer responsibility organization or group of producers implementing an alternative collection program must provide compensation for alternative collection program siting for any program operations, including training, education and educational materials specific to that site, transportation, equipment, and reporting, with contractual approval between all parties;

(5) A retail establishment may choose to serve as a drop-off location or collection event as part of an alternative collection program, through mutual agreement with a producer responsibility organization or group of producers implementing an alternative collection program.

“Alternative collection program requirements” comments:

Clarify the process for “certifying” responsible end markets, RCW dictates MRFs must submit certification of REM’s beginning in 2031.

ADDING more sections if the Rule Committee has time:

300 Service Provider Duties

(1) Service providers receiving reimbursement from a producer responsibility organization or operating under an approved plan must:

(a) Register annually with the department as required by 70A.208.070;

(b) Provide services as detailed in the approved producer responsibility organization plan for the covered materials on the statewide collection lists;

(c) Provide refill or reuse services for covered materials as detailed in the approved producer responsibility organization plan;



- (d) Comply with the performance standards in the approved producer responsibility organization plan;
- (e) Ensure covered materials are delivered to responsible markets;
- (f) Report required information to the producer responsibility organization and department required by chapter 70A.208 RCW and the approved plan; and
- (g) Receive producer responsibility organization reimbursement for services and pass along savings to customers.

“Service provider duties” comments:

RCW 70A.208.080 applies only to service providers receiving reimbursement but the draft rule applies requirements to service providers “receiving reimbursement or operating under an approved plan”

Clarify the definition of “savings” passed to customers.

Clarify reimbursement eligibility if a jurisdiction cannot accept a particular material (e.g. compostable packaging is not accepted in Clark County organics/yard waste carts).

510 Exclusion Petition

This section clarifies the petition process for producers to request a temporary exclusion for their covered material as allowed under RCW 70A.208.260 for reasons of public health or safety.

- (1) Producers, a group of producers, or a producer responsibility organization may submit a petition to the department for temporary exclusion of covered materials in specific packaging uses for reasons of health or safety for any of the following:
 - (a) Raw meat products that are demonstrated to transfer pathogens to direct contact packaging;
 - (b) Products regulated under the poison prevention packaging act of 1970; and
 - (c) Products subject to requirements under federal laws that make their inclusion in the requirements of this chapter infeasible or inadvisable.
- (2) Temporary exclusion petitions delivered through the mail or in an email must be submitted to the department one year prior to the submission of a plan and include:
 - (a) Producer name, mailing address, and contact information;
 - (b) Products, brand names, and covered material categories and types for which the temporary exclusion is requested;
 - (c) Documents that convincingly support, with validated testing data or the sworn declaration of a qualified engineer, as appropriate, the request for temporary



exclusion;

(d) Information necessary and sufficient for the department to make a determination of the technical feasibility of including the category of product, subcategory of product, or individual product in the program created by this chapter, and in recycling the packaging of the product or products;

(e) An analysis of any potential risks to public health and safety associated with the inclusion of a category of product, subcategory of product, or individual product in the program created by this chapter, and in recycling the packaging of the product or products;

(f) The progress made by producers in achieving the goals of this chapter, including by reducing the amount of packaging used with the products, increasing the recycled content of the product packaging, and increasing the ability of the products' packaging to be reused, composted, or recycled if appropriate; and

(g) Any supplemental information or data requested by the department during review of the temporary exclusion petition.

(3) Each petition must include the following statement signed by the petitioner or an authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(a) Each petition submitted:

(i) by mail must be delivered to:

Department of Ecology
Solid Waste Management Program
P.O. Box 47600
Olympia, WA 98504-7600; or

(ii) by email must be addressed to: recyclingreform@ecy.wa.gov

(b) After receiving a petition, the department may request any additional information that reasonably may be required to evaluate the petition.

(4) The department will make a determination on complete submitted temporary exclusion petition within 90 days.

(5) The producer of a covered material that is temporarily excluded from the requirements of this chapter under this section must:

(a) report, directly to the department in a form created by the department, the information related to the temporarily excluded product that is required to be reported



to the department by producer responsibility organizations under RCW [70A.208.030](#) and [70A.208.200](#); and

- (b) Resubmit the temporary exclusion petition to the department one year prior to any plan revision, generally every five years

“Exclusion petition” section comments:

Remove “delivered through the mail or in an email” because it implies that petitions submitted by other methods may not be subject to the stated requirements. Subsection (3) already lists acceptable submission methods clearly 1.

Update the required declaration to cite the specific statute describing penalties for false information.

Clarify whether Ecology’s 90-day “determination” refers to completeness review or to the final decision on whether a petition is granted.