Washington Retail Association (Crystal Leatherman)

Please find attached a letter with a high-level overview of WR's feedback as well as the draft rulemaking language with comments and questions.

WASHINGTON RETAIL ASSOCIATION

June 24, 2026

Washington State Department of Ecology
Solid Waste Management Program
Attn: Recycling Reform Act
P.O. Box 47600
Olympia, WA 98504-7600
recyclingreform@ecy.wa.gov

Re: Washington Retail Association Comments on Draft Rule Language, Chapter 173-950 WAC (Recycling Reform Act, Chapter 70A.208 RCW)

To the Recycling Reform Act Rulemaking Team:

The Washington Retail Association (WR) appreciates the opportunity to comment on the Department of Ecology's (Department) draft rules implementing the Recycling Reform Act, Chapter 70A.208 RCW, set out in draft Chapter 173-950 WAC. WR represents retailers of all sizes across Washington State, from small, locally owned stores to national brands. Our members sell and distribute covered materials throughout the state, fill service packaging at the point of sale, and in some cases offer private label or store-brand products. As a result, the rules adopted under this chapter will directly shape retailers' compliance obligations, costs, and day-to-day operations.

Below is a high-level overview of WR's concerns. However, accompanying this letter will be detailed, specific comments, questions, and suggested edits as inline comments within the marked-up copy of the draft rule language. We respectfully ask the Department to review that markup together with this letter.

High-Level Concerns

1. **Producer status for private-label and imported goods:** The draft does not address how producer responsibility is allocated for private-label and store-brand products, or for imported and foreign-brand goods, where a retailer can become the responsible producer by default. WR asks that the rule provide this specificity, including the documentation needed to allocate or confirm obligation. (RCW 70A.208.020(29) and (29)(vi)(A); WAC 173-950-010, -020.)
2. **Scope clarity — define "consumer market" and confirm B2C-only coverage:** "Consumer market" is undefined; the program is residential and should not reach business-to-business or transport packaging the statute does not cover. The Department should also confirm who is the responsible producer for point-of-sale service packaging. (WAC 173-950-030(a)(i) and (a)(iii).)
3. **Narrow the market-prohibition trigger to the statutory standard:** As drafted, a producer "not compliant with this chapter" could be barred from introducing covered materials — far broader than the statutory standard, which reserves that consequence for a producer that is not a member in good standing or has not submitted an individual plan. WR treats this as a high-priority concern. (WAC 173-950-100(4); RCW 70A.208.040.)

4. **Preserve producer choice among compliance pathways:** Approval of an alternative collection program should not compel producers of a material category into a single, potentially competitor-controlled program; the PRO and individual-plan pathways should remain available. (WAC 173-950-2XX(3)(a).)
5. **Preserve compliance already completed:** The final rule should expressly credit actions producers have already taken under the statute (PRO appointment, membership, and 2026 reporting) and avoid conflicting, duplicative, or retroactive dates. (WAC 173-950-100(1).)
6. **Definitional Alignment Between the Draft Rule and the Statute:** The rule introduces several undefined-in-statute terms — including "primary packaging," "secondary packaging," "tertiary packaging," and "alternative collection program" — and expands "covered material" with a new 50% paper-by-volume threshold not found in the law. It also renames the statutory term "individual plan" as "individual program plan," creating unnecessary inconsistency between the rule and the RCW.

Provisions WR Supports

WR would also like to communicate our support for several provisions and urges their retention:

- Use of prorated national data where state-specific data is not feasible (WAC 173-950-100(1)(a)(ii))
- The voluntary, compensated model for retail host sites (WAC 173-950-2XX(4) and (5))
- The health-and-safety exclusion pathway (WAC 173-950-510)
- The single-PRO program structure, which reduces fragmentation for multistate retailers.

WR appreciates the Department's work implementing the Recycling Reform Act and welcomes the opportunity to discuss the feedback provided in greater detail, answer any questions you may have, and to serve as a resource as the rulemaking proceeds.

Sincerely,

Crystal Leatherman
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Washington Retail Association
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May 27, 2026 - Recycling Reform Act rule committee meeting

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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.

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.

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.

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.

(2) 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;
(3) Upon request of the department, a producer must submit documents or records to substantiate their exempt or de minimis status.
(4) Beginning March 1, 2029, a producer that is not compliant with this chapter may not introduce covered materials into the state.

Statute	**Draft rule language**
(1) A producer must: (a) After July 1, 2026, be a member of a producer responsibility organization registered in this state or register as a producer responsibility organization that will implement an individual plan; (b) Through a producer responsibility organization, implement and finance a statewide program for packaging and paper products 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; (c) Maintain membership with and pay fees to the producer responsibility	(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 under which they are registered; and (d) Comply with all other applicable requirements under this chapter. (2) Beginning March 1, 2029, a producer that is not a member in good standing with a registered producer responsibility organization or has not submitted an individual plan may not introduce covered materials into the state.	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. (2) 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; (3) Upon request of the department, a producer must submit documents or records to substantiate their exempt or de minimis status. (4) Beginning March 1, 2029, a producer that is not compliant with this chapter may not introduce covered materials into the state.

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.

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.

Statute	**Draft rule language**
(2) An alternative collection program or programs for each covered material included on the alternative collection list must be provided under a plan. For purposes of the first plan implementation period, an alternative collection program may be proposed by a producer responsibility organization, 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. A proposal under this subsection must be submitted at the same time as the plan, and is subject to the same approval process as the plan. An alternative collection program must: (a) Provide year-round, convenient, statewide collection opportunities, including at least one drop-off collection site located in each county; (b) Provide tiers of service for collection, convenience, number of drop-off collection sites, and additional collection systems based on:	(1) An alternative collection program must: (a) Be provided for each 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;

(i) County population size; (ii) County population density; and (iii) Each class of city or town under chapter 35.01 RCW; (c) Ensure materials are sent to responsible markets; (d) Use education and outreach strategies that can be expected to significantly increase consumer awareness of the program throughout the state; and (e) Accurately measure the amount of each covered material collected and the applicable performance target and statewide requirement. (3) A plan for an alternative collection program must include: (a) The number, type, and location of each collection opportunity; (b) A description of how each of the program requirements in (a) of this subsection will be met; and (c) Performance targets for each covered material, as applicable, to be managed through an alternative collection program. (4) Every subsequent needs assessment after the first needs assessment must include a review of alternative collection programs for each covered material on the statewide alternative collection list to determine if the program is meeting the criteria established in subsection (2) of this section. (5) A retail establishment may choose to serve as a drop-off location or collection event as part of an	(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.

alternative collection program, through mutual agreement with a producer responsibility organization or group of producers implementing an alternative collection program. (6) Any group of producers, other than the producer responsibility organization registered with the department, that manages an approved alternative collection plan during the first plan implementation period must: (a) Be exclusively responsible for management of the distinct material, packaging, or product type covered by that plan and may thereby wholly or partially offset the producers' payment obligations under this chapter with respect to the distinct material, packaging, or product type only; and (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 group of producers as a result of the producers' need to only manage a distinct material, packaging, or product type rather than multiple types of materials, packaging, or product types.	(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.

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.

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
Attn Recycling Reform Act
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.