

AMERIPEN (Gregory Melkonian)

June 24, 2026

Submitted via public comment form at <https://ecology.commentinput.com/?id=HBuQZ3h6t>

Washington State Department of Ecology

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

Dear Washington State Department of Ecology,

AMERIPEN – the American Institute for Packaging and the Environment – is providing feedback to the Washington State Department of Ecology ("the Department" or "Ecology") regarding the regulatory topics presented at the May 27, 2026, meeting of the Rulemaking Advisory Committee ("RAC") as part of the rulemaking for the Recycling Reform Act ("RMA" or "the Act").

AMERIPEN respectfully submits this comment letter for the Department's consideration as it prepares and refines rulemaking concepts.

AMERIPEN represents the entire packaging value chain, advocating for responsible packaging policies that drive meaningful progress in packaging sustainability while supporting industry growth and consumer needs. Our membership includes materials suppliers, packaging manufacturers, retailers, consumer packaged goods companies, and end-of-life materials managers. This cross-sectional membership gives AMERIPEN a perspective on packaging policy that no single-sector commenter can offer, and it informs the technical and regulatory analysis that follows.

In this letter, AMERIPEN offers feedback and suggested improvements on eight topics relevant to the rule concepts presented during this comment period. The comments below are organized according to the same order as in the draft rule language document.

Item One: Alternative Collection Programs should not be limited to one material type.

Under section 173-950-030 (Selected Definitions), "alternative collection program" is defined as "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." This definition constrains each alternative collection program ("ACP") to a single material, packaging, or product type. Even at the broader "material type" level, this could lead to unnecessary restrictions on collection in the same ACP; for example, if colored glass is a separate category from transparent glass, those two material types could not share an ACP. The rules should not force separate ACPs for each material when they are similar enough to be collected together. Also, statute appears to allow for multiple materials to be collected: "A plan for an alternative collection program must include[...]performance targets for each covered material, as applicable, to be managed through an alternative collection program" (emphasis added). Therefore, AMERIPEN recommends allowing the scope of an ACP to encompass multiple materials, consistent with the statute, by modifying the proposed definition as follows: "[...]or product type or types through[...]."

Item Two: De minimis materials should not be treated as "covered material."

Under section 173-950-030 (Selected Definitions), "covered material" is defined to include "[c]omponents 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." This provision would expand the statutory definition to explicitly cover items (such as adhesives and sealants) that are so de minimis as to be of little or no impact on the recycling and composting systems, but this would force producers to

track and pay fees on them. This creates a huge compliance burden for negligible benefit for the Act's program. California's packaging extended producer responsibility ("EPR") program offers an alternative approach to dealing with this issue by allowing a producer responsibility organization to identify materials that are "de minimis" and therefore should not be subject to program regulation. Accordingly, AMERIPEN recommends deleting the last sentence in the definition and instead replacing it with the following sentence: "However, an element of packaging with a de minimis weight or volume, as determined by the Producer Responsibility Organization, shall not be considered 'covered packaging.'"

Item Three: Secondary and tertiary packaging for exempt materials should not be treated as "covered material."

Under section 173-950-030 (Selected Definitions), "covered material" is defined in subparagraph (vi) to include "[s]econdary and tertiary packaging associated with exempt primary packaging." However, the Act refers only to "packaging" when describing "exempt materials," without distinguishing primary, secondary, or tertiary. Likewise, the Act's definition of "packaging" does not make such distinctions, so there is no basis for parsing exempt materials by which level of packaging they use. Furthermore, statute excludes exempt materials from reimbursement, thereby avoiding system cost free-riding concerns even if secondary and tertiary packaging is treated as exempt. Finally, other states with packaging EPR program have extended exemptions to the secondary and tertiary level, such as in California. Therefore, AMERIPEN recommends deleting subparagraph (vi). Additionally, AMERIPEN recommends revising paragraph (b) of the definition as follows to provide technical consistency: "Notwithstanding (a), 'cCovered material' does[...]."

Item Four: Support allowance for prorated national data.

Subparagraph (1)(a)(ii) of Section 173-950-100 (Producer Duties) allows a producer to "use prorated national data if state-specific data is not available or feasible to generate." AMERIPEN supports this provision as a reasonable accommodation for producers to report supply data when they may not have the technical means or resources to perform specific reporting.

Item Five: Records retention requirement is uncapped.

Subparagraph (1)(a)(ii) of Section 173-950-100 (Producer Duties) requires producers to make records and other compliance information available to the Department. However, it lacks a time-based cap on the length of records retention that is in place in other states' EPR programs such as Maryland. As such, it would obligate producers to maintain records in perpetuity, which would be costly and unreasonable. Moreover, the regulations would benefit from the inclusion of a specific deadline for producers to respond to a records request. AMERIPEN therefore recommends that this requirement be capped at five years and a response deadline be set, consistent with language in the Maryland regulations, by adding the following sentences to the end of the subparagraph: "All documents and records necessary to ensure compliance must be maintained for a minimum period of 5 years. Documents and records must be available within 15 business days or the specified timeline provided by the Department, whichever is later."

Item Seven: Alternative Collection Program requirements are open ended.

Subparagraph (2)(e) of Section 173-950-2XX (Alternative Collection Program Requirements) provides that an ACP plan must include "[o]ther requirements identified by the department." Such additional information is not authorized in statute. This provision inappropriately expands the scope of ACP program plan requirements, and producers should not be subject to requirements promulgated outside of statute and regulations. Any expectations of an ACP should be authorized in the Act. AMERIPEN therefore recommends deleting subparagraph (2)(e) or, alternatively, replacing it with the following language: "Other requirements agreed to between the Department and the producers proposing the alternative collection program."

Item Eight: Excessive scope for exclusion petition.

Subparagraph (1)(g) of Section 510 (Exclusion Petition) states that temporary exclusion petitions must include "[a]ny supplemental information or data requested by the department during review of the temporary exclusion petition." The Act specifies what must be included in the exclusion petitions "at a minimum," which the proposed rule largely mirrors. However, subparagraph (1)(g) adds an open-ended authority for Ecology to ask for anything else. The Department may have authority to request additional information as part of rulemaking, but the construction of this provision is far too broad and may extend beyond relevant information. AMERIPEN therefore recommends constraining subparagraph (1)(g) by revising it as follows: "(g) Any supplemental information or data requested by the department during review of the temporary exclusion petition that is relevant to the content of the petition."

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AMERIPEN thanks the Department for its consideration of this written feedback regarding the rule concepts discussed at the first RAC meeting and welcomes the opportunity to meet with Department staff and to provide technical assistance with any of the items raised in these comments. AMERIPEN respectfully requests that the Department adopt the foregoing recommendations as it refines the rulemaking proposal. Please contact me (daniellew@ameripen.org) or Gregory Melkonian by email (gmelkonian@serlinhaley.com) with any questions on the input AMERIPEN provided in this letter.

Sincerely,

Danielle F. Waterfield, Esq.
Policy Director and General Counsel



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¹ Revised Code of Washington (“RCW”) 70A.208.100(3)(c).

Item Two: De minimis materials should not be treated as “covered material.”

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² California Public Resources Code section 42041(s)(4)(A).

³ RCW 70A.208.020(19).

⁴ RCW 70A.208.020(25).

⁵ RCW 70A.208.170(2)(a).

⁶ California Code of Regulations Title 14 Section 18980.2(b).

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Subparagraph (2)(e) of Section 173-950-2XX (Alternative Collection Program Requirements) provides that an ACP plan must include "[o]ther requirements identified by the department." Such additional information is not authorized in statute.⁸ This provision inappropriately expands the scope of ACP program plan requirements, and producers should not be subject to requirements promulgated outside of statute and regulations. Any expectations of an ACP should be authorized in the Act. AMERIPEN therefore recommends deleting subparagraph (2)(e) or, alternatively, replacing it with the following language: "Other requirements agreed to between the Department and the producers proposing the alternative collection program."

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⁷ Code of Maryland Regulations 26.04.14.09(B).

⁸ RCW 70A.208.100.

⁹ RCW 70A.208.260(2).

reduce environmental impact by increasing packaging circularity, our members continue to recognize the value of collaboration and the importance of working across the packaging value chain.

AMERIPEN thanks the Department for its consideration of this written feedback regarding the rule concepts discussed at the first RAC meeting and welcomes the opportunity to meet with Department staff and to provide technical assistance with any of the items raised in these comments. AMERIPEN respectfully requests that the Department adopt the foregoing recommendations as it refines the rulemaking proposal. Please contact me (daniellew@ameripen.org) or Gregory Melkonian by email (gmelkonian@serlinhaley.com) with any questions on the input AMERIPEN provided in this letter.

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Policy Director and General Counsel