



September 2, 2026

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VIA RULEMAKING PORTAL

Chris Fredley
SWM Program Rule Coordinator
Washington State Department of Ecology
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Re: Comments on Draft Recycling Reform Rule, Chapter 173-950 WAC

Dear Mr. Fredley and Washington Department of Ecology:

Thank you for providing the opportunity to comment on the Washington Department of Ecology's ("Ecology") August 19, 2026, Draft Recycling Reform Rule, Chapter 173-950 WAC (the "Draft Rule"). We submit these comments on behalf of a client in the consumer goods and household products sector.

We respectfully request that Ecology revise the Draft Rule to clarify that unfilled food and beverage packaging, containers, and service items sold as empty products at the time of sale (referred to as "unfilled food and beverage packaging") are not covered materials under chapter 70A.208 RCW. This clarification is necessary to ensure consistency with the statutory scope of Washington's Recycling Reform Act (the "Act") and to provide producers with clear direction regarding reporting obligations.

The Act defines "covered material"¹ as "packaging and paper products introduced into the state." As explained below, unfilled food and beverage packaging sold empty to consumers, including plates, bowls, cups, trays, utensils, straws, food storage bags, freezer bags, and similar items, do not fall within this definition as either packaging or paper products.

1. Unfilled Food and Beverage Packaging Sold Empty or Unused at the Time of Sale are Not Packaging under the Act

The Act defines "covered material"² as "packaging and paper products introduced into the state" and defines "packaging"³ as "a material, substance, or object used to protect, contain, transport, serve, or facilitate delivery of a product *and sold or supplied with the product to the consumer for personal, noncommercial use.*"⁴ The statutory requirement that packaging be "sold or supplied

¹ RCW 70A.208.020(13).

² RCW 70A.208.020(13).

³ RCW 70A.208.020(25).

⁴ RCW 70A.208.020(25)(a) (emphasis added).

with the product” is critical. Packaging is covered only when it accompanies another product being sold to the consumer. Products sold empty to consumers, including plates, bowls, cups, trays, utensils, straws, food storage bags, freezer bags, and similar items, do not satisfy this definition as either packaging or paper products. These items are not “sold or supplied with” another product. Rather, they are themselves the product being purchased by the consumer. Because such products are not sold or supplied with a product to the consumer, they do not constitute “packaging” as defined by chapter 70A.208 RCW and therefore cannot be covered materials.

2. Unfilled Food and Beverage Packaging Sold Empty or Unused at the Time of Sale are Not Paper Products under the Act

Similarly, unfilled food and beverage packaging sold empty do not fall within the statutory definition of “paper product.” Under the Act, “‘paper product’ means paper sold or supplied to a consumer for personal, noncommercial use, including flyers, brochures, booklets, catalogs, magazines, printed paper, and all other paper materials.”⁵ The enumerated items (flyers, brochures, booklets, catalogs, magazines, and printed paper) each share the common characteristic of being a printed, written, or published paper medium whose function is to convey information to be read. Under the canon of *ejusdem generis*, the general term “all other paper materials” embraces only things of the same class as those enumerated. Paper plates, cups, trays, and empty storage containers are categorically different; their function is not to communicate, inform, or be read, but to hold or store physical contents. This places them in the class of functional or food-service articles rather than reading, writing, and publishing materials.⁶

The Act’s producer-assignment scheme reinforces this conclusion. The Act assigns producer responsibility for paper products to “the publisher” of “magazines, catalogs, telephone directories, or similar publications”⁷—a framework that presupposes printed media, not functional food and kitchen items. Because “paper product” carries that meaning in the operative provision, it should carry the same meaning in the definition.

3. The Draft Rule Should Clarify That Unfilled Food and Beverage Packaging Sold Empty Are Not Covered Materials

Ecology’s August 3, 2026, Preliminary Statewide Collection Lists identify certain items as reportable “food serviceware,” but neither the statute nor the Draft Rule defines that term. The absence of a definition creates uncertainty regarding the treatment of unfilled food and beverage packaging sold empty to consumers and raises concerns that materials outside the statutory definition of packaging could be interpreted as covered materials. Ecology should clarify that

⁵ RCW 70A.208.020(26).

⁶ When a general term follows a list of specific items, it embraces only things of the same class as those enumerated; as the Washington Supreme Court has repeatedly explained, “the meaning of words may be indicated or controlled by those with which they are associated.” *Green v. Pierce County*, 197 Wn.2d 841, 853 (2021) (quoting *State v. Roggenkamp*, 153 Wn.2d 614, 623 (2005)).

⁷ RCW 70A.208.020(29)(a)(iv).

standalone consumer products sold empty are not covered materials, regardless of whether they may be described elsewhere as “food serviceware.”

Other EPR programs recognize this distinction. For example, Maryland’s regulations expressly provide that regulated packaging does not include packaging sold as a product that is empty at the time of sale.⁸ Maryland’s implementation guidance⁹ further explains that a stack of plastic plates sold empty to consumers is considered the product being purchased rather than packaging, while the packaging surrounding those plates remains packaging.¹⁰ The guidance similarly distinguishes products such as food storage bags sold or distributed empty to consumers, from packaging used to distribute another product to a consumer.¹¹ Ecology should adopt a similar approach to ensure consistency with the statutory definitions and to provide producers with clear, administrable compliance obligations.¹²

We are not requesting creation of a new exemption. Rather, we request clarification that products sold empty to consumers fall outside the statutory definitions of “packaging” and “paper product” and therefore are not covered materials under chapter 70A.208 RCW.

Accordingly, we request that Ecology revise the Draft Rule to include language substantially similar to the following:

Food and beverage packaging sold empty or unfilled to consumers as a standalone product, including plates, bowls, cups, trays, utensils, straws, food storage bags, freezer bags, and similar items, is not a covered material because it is the product being purchased and is not packaging sold or supplied with another product to the consumer. Such items are also not covered materials as “paper products” because they are functional food storage and service articles, not printed or published paper media used to communicate information. Packaging that surrounds, contains, bundles, transports, markets, or otherwise accompanies such products remains subject to chapter 70A.208 RCW if it otherwise meets the definition of covered material.

This clarification would align the Draft Rule with the statutory definitions of packaging and paper product and provide producers with clear direction regarding reporting obligations.

⁸ Code of Maryland Regulations (COMAR) 26.04.14: Packaging and Paper Products – Producer Responsibility, §02B.21(c).

⁹ [Maryland Department of the Environment \(MDE\) Compliance Guide for Regulations COMAR 26.04.14.](#)

¹⁰ MDE Compliance Guide for Regulations COMAR 26.04.14: “Excluded and Exempt Materials,” #15, page 17.

¹¹ MDE Compliance Guide for Regulations COMAR 26.04.14: “Frequently Asked Questions,” #10, pages 30-31.

¹² “The department shall seek to adopt rules that are harmonized with other states.” RCW 70A.208.060(2)(j).

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Very truly yours,

A handwritten signature in black ink that reads "Luke A. Sanders". The signature is written in a cursive style with a large, stylized "L" and "A".

Luke A. Sanders
Alia S. Miles