September 2, 2026

Chris Fredley
SWM Program Rule Coordinator
chris.fredley@ecy.wa.gov | 564-233-1615
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Re: Chapter 173-950 WAC – Recycling Reform Rulemaking, Comment Period #2

Dear Mr. Fredley:

Brady Industries, LLC d/b/a BradyPLUS ("BradyPLUS") appreciates the opportunity to submit comments on the Washington State Department of Ecology ("Ecology")'s updated draft rule language for Chapter 173-950 WAC ("Draft Rule #2"), released in connection with the August 19, 2026 Recycling Reform Rule Committee meeting and Comment Period #2 (August 5 through September 2, 2026).

BradyPLUS is a distributor of foodservice, janitorial, sanitation, office supply, packaging, and related products. As an intermediary distributor operating in complex, multi-state supply chains, BradyPLUS has a direct interest in ensuring that Washington's implementing regulations are clear, administrable, harmonized with other state EPR programs, and workable for producers that occupy intermediary positions in multi-party distribution networks.

BradyPLUS generally supports Washington's recycling and extended producer responsibility ("EPR") objectives. To ensure the Recycling Reform Act is implemented effectively, BradyPLUS respectfully requests that Ecology address the following areas in the next round of draft rule language.

1. Ecology Should Distinguish Statutory Restatement from New Regulatory Obligations and Avoid Creating Ambiguity Through Partial Statutory Repetition

BradyPLUS requests that Ecology clearly distinguish between draft rule provisions that restate statutory requirements and those that create new or additional regulatory obligations. Draft Rule #2 restates selected definitions and duties from the Recycling Reform Act (RCW 70A.208). Where the rule selectively reproduces only portions of a statutory provision, it risks creating ambiguity about whether omitted statutory language still applies or whether the rule narrows the statute.

BradyPLUS respectfully requests that Ecology either: (a) include a clear statement that the rule is intended to restate and not limit applicable statutory provisions; or (b) identify each provision where the rule is intended to impose requirements beyond those in the statute, so that stakeholders can distinguish regulatory implementation from statutory compliance.

2. Ecology Should Clarify Applicability for Covered Materials, Exempt Materials, Excluded Materials, and Business-to-Business/Commercial Packaging Scenarios

Draft Rule #2 (proposed WAC 173-950-020) states that the chapter applies to "covered materials" and excludes "exempt materials," "temporarily excluded materials," "de minimis producers," "government and charitable entities," and certain covered services except regarding contamination.[1] BradyPLUS requests that the rule provide additional clarity regarding the boundary between covered and non-covered materials, particularly for packaging used in business-to-business, institutional, and commercial channels.

Ecology has previously acknowledged that business-to-business ("B2B") construction/remodel packaging hauled away by an installer is not included in the residential-focused program.[2] BradyPLUS requests that the rule or accompanying guidance expressly address common commercial and institutional packaging scenarios (e.g., foodservice disposables sold to restaurants, janitorial products sold to commercial facilities, shipping packaging used exclusively in B2B logistics) so that producers can more easily determine whether their materials are "covered materials" requiring producer responsibility organization ("PRO") membership and fee payment.

3. Ecology Should Provide Practical Producer-Responsibility Guidance for Distributor, Private-Label, E-Commerce, Shipping-Packaging, and Contractual-Assignment Scenarios

Draft Rule #2 restates the statutory producer priority structure, including the first-distributor, e-commerce direct-packaging, shipping-packaging, paper-products, and contractual-assignment provisions.[3] BradyPLUS requests that Ecology provide practical guidance addressing common scenarios in which multiple entities in the supply chain may have overlapping potential responsibility.

Specifically, BradyPLUS requests that the rule or published guidance address: (a) the documentation sufficient to demonstrate that a higher-priority party exists or has contractually assumed responsibility; (b) the process by which a private-label owner and its contract manufacturer or distributor allocate responsibility and report that allocation to the PRO; (c) the treatment of e-commerce packaging where an intermediary distributor fulfills direct-to-consumer orders on behalf of a brand owner; and (d) the extent to which reliance on an upstream party's

[1] Proposed WAC § 173-950-020(2)(3).
[2] *See* Wash. Dep't of Ecology, [Recycling Reform Act Q&A]() at 11.
[3] Proposed WAC § 173-950-030(29); RCW 70A.208.020(29)(b) (producer priority structure); RCW 70A.208.020(29)(b)(v) (contractual assignment).

written certification of contractual assignment protects a downstream distributor from duplicative obligations.

4. "Good Standing" Should Be Objective, Limited to Reasonable Statutory/Plan Requirements, and Paired with Notice, Cure, and Transparent Escalation

Draft Rule #2 defines "good standing with a producer responsibility organization" as "compliance with all reasonable and necessary terms of the producer's agreement with the producer responsibility organization."[4] While BradyPLUS appreciates the addition of the "reasonable and necessary" qualifier, this definition still delegates the substantive content of "good standing" entirely to the PRO agreement. Because loss of good standing can prohibit a producer from introducing covered materials into Washington,[5] the regulatory definition should provide additional clarity and objective guardrails on what constitutes "good standing".

Additionally, consistent with the statute's enforcement framework—which requires written notification, a certified notice of violation, and at least 60 days before Ecology imposes penalties[6]— BradyPLUS requests that Ecology require in the next round of draft rulemaking language that: (a) "good standing" criteria be limited to requirements arising from the statute, Ecology-approved plan, or rule; (b) a producer receive written notice identifying the specific deficiency before any loss of good standing; (c) the producer have a defined cure period of at least 60 days; and (d) escalation to public noncompliance designation or market-access consequences follow a transparent, graduated process.

5. Producer Recordkeeping and 15-Business-Day Production Requirements Should Be Limited to Reasonably Necessary Compliance Records and Expressly Protect Confidential Information

Draft Rule #2 (proposed WAC 173-950-110) would require producers to "maintain all documents and records necessary to ensure compliance" for at least seven years and "provide all documents and records necessary to ensure compliance within 15 business days or the specified timeline…whichever is later." BradyPLUS raises two concerns with this language.

First, the scope of "all documents and records necessary to ensure compliance" is undefined, which creates uncertainty about what producers must retain and produce. BradyPLUS requests that Ecology clarify that the obligation extends only to records reasonably necessary to demonstrate the producer's compliance with its reporting, fee payment, and PRO membership obligations. This requirement should not extend, for example, to all business records that might theoretically relate to packaging volumes.

---

[4] Proposed WAC § 173-950-110(2) (Wash. Dep't of Ecology, updated Aug. 19, 2026) (defining "good standing" as compliance with all reasonable and necessary terms of [the producer's] agreement with the PRO).
[5] RCW 70A.208.040(2).
[6] RCW 70A.208.230(1)(b).

Second, neither proposed WAC 173-950-110 nor proposed WAC 173-950-210 (PRO duties) incorporate the confidentiality protections in the Recycling Reform Act.[7] BradyPLUS requests that the rule expressly state that producers may designate responsive records as confidential business information under RCW 70A.208.220 and that Ecology will follow the statutory process for protecting such information before any public disclosure.

6. Individual Producer Plan Requirements Should Include Clear Transition Mechanics, Fee Transparency, and Protection Against Duplicative PRO and Individual-Plan Payments

Draft Rule #2 (proposed WAC 173-950-120) establishes detailed requirements for a producer intending to implement an individual producer plan, including notification timelines, registration as a PRO, submission of extensive documentation, payment of a base fee and additional per-hour review costs, and continued PRO membership until plan approval. BradyPLUS requests that Ecology address three issues to ensure this pathway is workable:

a) **Transition mechanics:** The requirement that a producer remain a member of its current PRO until its individual plan is approved creates a period of overlapping obligations. The rule should clarify how fees paid to the current PRO during this transition period will be credited against the individual plan's costs and should expressly not require the producer to owe duplicative fees to both the current PRO and Ecology during the review period. This should include expressly prohibiting the PRO from charging the producer with duplicative fees during this process.

b) **Fee transparency:** The rule authorizes Ecology to charge a "one-time plan review base fee" plus "additional per-hour review costs if actual review exceeds the base fee."[8] Ecology should publish the base fee amount and hourly rate in the rule or by rule-referenced guidance, so producers can evaluate costs before committing to the individual plan pathway.

c) **Proportionality:** The documentation requirements for an individual plan are extensive (covered material types, performance targets, collection methods, measurement methodology, certifications, service-provider reimbursement processes, etc.). For producers of limited scale or scope, these requirements may effectively preclude the individual plan option. Ecology should consider whether streamlined requirements are appropriate for lower volume individual producers, consistent with the statutory provision allowing individual plans under the Recycling Reform Act.[9]

---

[7] *See* RCW 70A.208.220 (allowing entities to request confidential treatment for data related to business profits, service rates, fees, business expenses, or private individual data).
[8] Proposed WAC 173-950-120(1)(c).
[9] RCW 70A.208.060(5).

7. PRO Registration, Initial Fee Setting, and Annual Reporting Rules Should Require Producer-Facing Transparency and Meaningful Input Before Fees and Data Obligations Are Finalized

Draft Rule #2 (proposed WAC 173-950-210(1)) requires PRO registration materials to include "total volume of covered materials introduced into Washington by member producers during the previous calendar year" and requires the PRO to retain compliance records for seven years. The annual reporting provisions incorporate Recycling Reform Act requirements including costs, expenditures, producer fees collected, and infrastructure investments.[10]

BradyPLUS requests that the rule require the PRO to provide producers with meaningful advance notice of, and opportunity to comment on, fee methodology and fee-level changes before they take effect. The statute requires fees before an approved plan to be set "according to market share or another equitable method" sufficient to cover PRO costs, and after plan approval to reflect program costs by material type, discourage materials not on statewide lists, and incentivize beneficial design attributes.[11] These are significant obligations with direct financial impact on producers. The rule should require the PRO to: (a) publish proposed fee structures with supporting methodology at least 60 days before the PRO formally adopts the fee structure as binding; (b) accept and respond to producer comments on proposed fees and methodology; and (c) provide annual fee reconciliation statements showing how individual producer fees relate to program costs.

8. The Coordinating Body Provisions Should Prevent Conflicting Producer Obligations and Provide Clear Allocation and Dispute-Resolution Rules if Multiple PROs Operate

Draft Rule #2 (proposed WAC 173-950-220) addresses the coordinating body required if more than one PRO registers, including requirements for dispute resolution processes and provisions addressing the assumption of responsibilities if the coordinating body cannot implement its plan. Draft Rule #2 also provides that the coordinated plan prevails if it conflicts with an approved program plan.

While the current program period is expected to involve only one PRO (Circular Action Alliance), BradyPLUS requests that Ecology address producer-facing consequences of coordinating body governance. Specifically: (a) a producer should not face conflicting obligations from multiple PROs where the coordinating body has not resolved an inter-PRO dispute; (b) if the coordinated plan prevails over an individual PRO plan, producers who relied on the terms of their PRO's approved plan should receive a reasonable transition period; and (c) the rule should clarify that a producer in good standing with its PRO is in compliance with the coordinated plan absent notice of a specific conflict and opportunity to cure.

---

[10] *See* RCW 70A.208.200.
[11] RCW 70A.208.160.

9. The Reuse Financial Assistance Program Should Include Transparent Criteria, Producer Input, Outcome Metrics, and Cost Controls

Draft Rule #2 (proposed WAC 173-950-230) requires PROs "collectively" to "annually fund and implement the reuse financial assistance program" and consult with Ecology on selection criteria, evaluation and selection, administration, and review of results. The statute requires the reuse financial assistance program to be at least $5 million beginning in 2029, adjusted annually for inflation.

Because producers ultimately fund this program through fees, BradyPLUS requests that the rule ensure: (a) transparent, published criteria for selection and fund allocation under the reuse financial assistance program; (b) meaningful producer input on selection criteria before finalization; (c) public reporting of program outcomes, including reuse rates achieved and cost-per-unit-of-impact metrics; and (d) cost controls or caps to ensure the program does not grow beyond what is necessary to achieve statutory reuse targets.

10. Ecology Should Integrate Alternative Collection and Statewide List Processes into the Rule so Producers Can Understand Fee and Operational Consequences

Draft Rule #2 addresses producer duties, PRO duties, individual plans, coordinating bodies, and the reuse financial assistance program, but does not integrate the statewide collection list process or alternative collection program requirements into the regulatory framework.[12] The statewide collection lists carry direct fee and operational consequences under the Recycling Reform Act.[13]

BradyPLUS requests that future rulemaking iterations address: (a) how list placement interacts with producer fee calculations; (b) the process for producers to understand and comment on list modifications; (c) the timeline and criteria for alternative collection program approvals; and (d) how a producer's fee offset for participating in an approved alternative collection program will be calculated and communicated. BradyPLUS asks that the rule provide procedural framework connecting list decisions to producer obligations.

11. Ecology Should Harmonize Reporting Categories, Guidance, and Timelines with Other EPR States and Publish Washington-Specific Guidance Before the Next Reporting Cycle

Washington's statute directs Ecology to "seek to adopt rules that are harmonized to the extent practicable with other programs in other states."[14] CAA is currently using simplified reporting

[12] *See* Wash. Dep't of Ecology, Preliminary Statewide Collections Lists (comment period Aug. 5–29, 2026).

[13] *See* RCW 70A.208.160(2)(b)(ii) (fees must discourage materials not on statewide lists); RCW 70A.208.100 (alternative collection requirements).

[14] RCW 70A.208.060(2)(j).

categories for Washington 2026 interim supply reports covering 2025 data,[15] but Washington has not yet adopted full covered material categories for future reporting cycles.

BradyPLUS requests that Ecology: (a) publish Washington-specific reporting category definitions, examples, and mapping guidance well in advance of the next producer reporting cycle; (b) coordinate with CAA to ensure that reporting categories adopted for Washington align with categories used in other EPR states to the extent practicable; (c) provide at least 90 days of advance notice before reporting deadlines so producers can implement system changes; and (d) offer a grace period or safe-harbor for good-faith reporting in the first cycle after new categories are adopted.

12. Ecology Should Clarify That Producer Compliance Consequences Will Account for PRO-Level Failures Outside the Producer's Control

BradyPLUS requests that the rule expressly address the relationship between PRO-level noncompliance and individual producer liability. A producer that has timely registered, submitted required reports, paid required fees, and cooperated with PRO processes should not lose good standing or face enforcement consequences resulting from failures by the PRO itself (e.g., failure to submit a timely plan, failure to implement the plan on schedule, or coordinating-body disputes).

The statute provides that penalties may be assessed only after written notification and at least 60 days following notice,[16] which supports a principle of individualized accountability. BradyPLUS requests that the rule confirm that Ecology will evaluate producer compliance based on the producer's own conduct and will not impute PRO-level failures to individual producers who have fulfilled their own obligations in good faith.

Conclusion

BradyPLUS appreciates Ecology's continued work to develop rules implementing the Recycling Reform Act and supports the goal of building a more effective recycling system in Washington. BradyPLUS respectfully requests that Ecology revise the draft rule language to address the areas described above, with particular attention to objective good-standing definitions, producer-facing transparency in fee setting, confidentiality protections, and workable compliance processes for intermediary distributors operating in complex supply chains.

BradyPLUS' comments are intended to promote targeted revisions that will make the Washington rules more administrable, more transparent, more harmonized with other state EPR programs, and more consistent with the statutory framework. BradyPLUS encourages Ecology to draw from

---

[15] *See* Circular Action Alliance ("CAA"), *Simplified Reporting Category Definitions: Maryland, Minnesota, and Washington* (May 2026) (using eight consolidated categories for 2026 interim reporting).
[16] *See* RCW 70A.208.230(1)(b).

features of programs in Colorado and other states that have been workable in practice for producers.

Thank you for considering these comments. BradyPLUS looks forward to continued engagement with Ecology and other stakeholders as the Chapter 173-950 WAC rulemaking proceeds.

Sincerely yours,

Mark Allen
Chief Merchandising Officer
BradyPLUS
mark.allen@bradyplus.com