

Orrick, Herrington & Sutcliffe LLP (Ashley Walter)

Please see the attached comment. Thank you.



September 2, 2026

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Re: Recycling Reform Act Proposed Rulemaking – Comment Period #2

Dear Chris Fredley:

Thank you for the opportunity to provide public comments on the second portion of the Recycling Reform Act ("Act") draft rulemaking. We look forward to continued engagement with the Washington Department of Ecology ("Ecology") throughout the implementation of the Act.

We are submitting these comments on behalf of a client in the retail industry and request that Ecology take these comments into consideration in the final rule.

A. The Definition of "Covered Material" Should Be Revised to Address Inconsistencies and Ambiguities

The growing patchwork of extended producer responsibility ("EPR") laws has created challenges for producers who must closely track and monitor various state definitions to accurately report their covered materials. We request the following clarifications to the definitions of covered materials in order to resolve potential ambiguities in the regulations and inconsistencies with prior guidance.

1. Labels Affixed to Products and Packaging Should Be Exempted

In its responses to questions from the Recycling Reform Act webinar held in September and October 2025, Ecology clarified that "produce stickers are not considered packaging, as they do not protect, contain, transport, serve, or facilitate delivery of a product."¹ This guidance implies that all labels or stickers on products or packaging are not covered materials as they do not serve a packaging function under the statute's definition of "packaging."²

However, Section 173-950-030(19) of the proposed rule does not include an exemption for labels affixed to products. Labels affixed to products should be explicitly exempted from the definition of "covered material" consistent with Ecology's prior guidance. Including labels would be inconsistent with the core

¹ Recycling Reform Act Webinar Q&A at 11, <https://app.box.com/s/cldcv476fh4w9sxxw80op4i9uro3khgm5>.

² RCW § 70A.208.020(25)(a).

definition of “packaging” in the statute, which focuses on materials used to “protect, contain, transport, serve, or facilitate the delivery of a product.”³ Labels do not accomplish any of these objectives.

2. The Scope of Covered Beverage Containers Needs To Be Limited

Section 173-950-020(19) of the proposed rule should be revised to exempt packaging for items excluded from the definition of “beverage” under the statute,⁴ including packaging for 100 percent fluid milk and meal replacement liquids. The regulations should also define “100 percent fluid milk” and clarify that “100 percent fluid milk” means both flavored and unflavored fluid dairy and plant-based milks and define “meal replacement liquids” to include beverages typically used as meal replacements such as protein shakes.

3. Packaging for Reuse or Refill Should Be Exempted to Encourage Producers to Shift to More Sustainable Solutions

Including reusable and refillable packaging within the scope of covered materials would be inconsistent with the purpose of the Act, which is to reduce the generation of covered material waste through waste reduction, refill, reuse, recycling, and composting,⁵ and is unlike other state EPR programs that exclude reusable and refillable items. Requiring producers to report and pay fees on reusable materials discourages producers from switching to reusable or refillable options and only deepens the divide between the older and newer EPR laws. For example, California only covers single use packaging,⁶ and Colorado only covers packaging “that is intended for single or short-term use.”⁷ In these states producers may reduce their reportable covered materials by switching to reusable or refillable packaging. Accordingly, we request that Ecology clarify under Section 173-950-030(19) of the proposed rule that reusable and refillable packaging is exempt.

4. Secondary and Tertiary Packaging Associated with Exempt Primary Packaging Should Be Exempted to Avoid Conflicts with Federal Laws

Secondary and tertiary packaging associated with exempt primary packaging should not be “covered materials.” If not exempted, drug manufacturers would be required to report secondary packaging provided to customers for their medications and other medical devices, which frequently includes necessary information required by federal law. Similarly, producers would be responsible for reporting specialized and regulated packaging designed to ensure product quality that is used for shipping medications and medical devices. There is no legitimate purpose to be served by including all secondary and tertiary packaging associated with exempt primary packaging and including these materials as covered materials will create regulatory conflicts with federal law. Accordingly, we request that Ecology clarify under Section 173-950-030(19) of the proposed rule that secondary and tertiary packaging associated with exempt primary packaging is also exempt.

³ RCW § 70A.208.020(25)(a).

⁴ RCW § 70A.208.020(3)(b).

⁵ RCW § 70A.208.040(1)(b).

⁶ PRC § 42041(e)(1).

⁷ CRS § 25-17-703(25)(a)(I).

5. Paper Packaging and Paper Food Service Ware Sold Empty to Consumers Should be Exempted

It would be counterproductive to the goals of the Act to require producers to report and pay fees for empty paper packaging and food service ware but not empty plastic packaging and food service ware. If plastic packaging sold empty is excluded but paper packaging sold empty is not, it would disincentivize manufacturers from making fiber-based options that are easier to compost and recycle. Producers may also be discouraged from transitioning their products to more easily recyclable alternatives because of the higher associated costs and fees.

In particular, the regulations should also explicitly exempt paper products such as paper gift bags, gift boxes, gift wrap and gift cards from the definition of “paper products” to avoid any ambiguity and encourage producers to shift to more easily recyclable and compostable paper alternatives. The exclusion of gift wrap is consistent with Oregon’s EPR law that does not consider gift wrap covered packaging or paper products.⁸ Paper “gift cards” should also be exempted from the definition. Due to the lack of recyclable materials in plastic gift cards, manufacturers and retailers have started shifting to paper gift cards even though, in some cases, a paper gift card costs more to produce than a plastic gift card. Including paper gift cards as covered materials could potentially result in manufacturers and retailers switching back to plastic gift cards, contributing to more plastic waste.

Accordingly, we request that Ecology clarify under Section 173-950-030(19) of the proposed rule that paper products such as paper gift bags, gift boxes, gift wrap and gift cards are exempt.

B. The General Applicability of the Rule Should Be Clarified

Section 173-950-020(1)(a) of the proposed rule indicates that the chapter applies to “A producer who introduces covered materials into the State of Washington.” However, a producer is not responsible for all covered material it introduces into the State Washington – it is only responsible for covered material for which it is the producer. Accordingly, we request that Ecology revise Section 173-950-020(1)(a) of the proposed rule to read “A producer who introduces covered materials into the state of Washington *for which it is the producer.*”

In addition, Section 173-950-020(1)(d) of the proposed rule refers to an “alternative collection plan.” While this term is used in RCW 70A.208.100, it is not defined in the statute or in the proposed rule. We request that Ecology make clear in Section 173-950-020(1)(d) of the proposed rule that the reference to “alternative collection plan” refers to the plan contemplated by RCW 70A.208.100.

C. Certain Changes Should Be Made to the Producer Duties Section

Section 173-950-110(1)(b) of the proposed rule requires that all documents and records necessary to ensure compliance must be maintained for a minimum of seven years. This is an overly lengthy period of time that (i) is atypical among other document retention periods and (ii) will result in unnecessary burden

⁸ See Circular Action Alliance, Oregon Reporting Category Definitions (March 2026) at 21, <https://static1.squarespace.com/static/64260ed078c36925b1cf3385/t/69c7173412e4346bafdaf331/1774655284613/Oregon+Report+Category+Definitions+2026.pdf>.



for producers. For example, the California EPR law requires that the California Program Plan include record maintenance protocols requiring the producer responsibility organization to maintain records for at least the previous three years. We request that Ecology reduce this period to three years.

In addition, Section 173-950-110(1)(c) of the proposed rule requires that a producer must, upon request, provide all documents and records necessary to ensure compliance to Ecology within 15 business days or the specified timeline provided by Ecology, whichever is later. This provision is not subject to a reasonableness requirement, and 15 business days is a short period of time. We therefore request that Section 173-950-110(1)(c) of the proposed rule be revised so that producers are only required to provide the documents and records described in the provision upon reasonable request, and we also request that the relevant time period be extended to 30 business days.

D. Ecology Should Determine When a Producer Is Not in Compliance with All Reasonable and Necessary Terms of Its Agreement with the Producer Responsibility Organization

Section 173-950-110(2) of the proposed rule indicates that, to be a member in good standing with a registered producer responsibility organization, a producer must be in compliance with all reasonable and necessary terms of its agreement with the producer responsibility organization. However, it is unclear how this determination is made. We request that the proposed rule be revised to make clear that only Ecology can make the determination that a producer is not in compliance with all reasonable and necessary terms of its agreement with the producer responsibility organization.

E. The Total Volume of Covered Materials Should Be Provided on an Aggregate Basis Only

Section 173-950-210(1) of the proposed rule indicates that a registration submission by a producer responsibility organization must include the total volume of covered materials introduced into Washington by member producers during the previous calendar year. However, it is unclear whether this section requires the producer responsibility organization to submit this information on an aggregate or disaggregated basis. We request that Ecology clarify that this information shall be submitted on an aggregate basis only.

F. Guardrails on Early Reporting Should Be Included in the Rule

Section 173-950-100 of the proposed rule addresses producer responsibilities but does not include any guardrails on what a producer responsibility organization can require producers to do before its plan is approved. Indeed, Circular Action Alliance has already required producers to report the amounts of covered materials sold in or into Washington. Given that the Washington statute allows the producer responsibility organization to charge its producers fees before the formal start of the program, Ecology should clearly outline in its regulations that the producer responsibility organization is only allowed to require pre-plan reporting once a year and reserve the right to review and approve the “initial producer plan fee structure” under RCW 70A.208.040(3)(b). Ecology should also specify that the initial fees may only be used for administrative costs relating to “the initial implementation of the program.”⁹

⁹ RCW 70A.208.040(3)(b).

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G. Conclusion

Thank you for the opportunity to comment on the second set of the draft Recycling Reform Act Regulations, and we appreciate Ecology's consideration of these comments. We look forward to continuing to work with Ecology to address these issues.

Sincerely,

A handwritten signature in blue ink that reads "Ashley Walter". The signature is written in a cursive, flowing style.

Ashley Walter