



State of Oregon Department of Environmental Quality

Written Comments- Part 2

Plastic Pollution and Recycling Modernization Act Rulemaking 1

This document is a compilation of written comments received during the formal public comment period for the Plastic Pollution and Recycling Modernization Act 2023 Rulemaking.

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American Forest & Paper Association

July 28, 2023

Roxann Nayar/Materials Management
Oregon Department of Environmental Quality (DEQ)
700 NE Multnomah Street, Suite 600
Portland, Oregon 97232-4100

RE: Plastic Pollution and Recycling Modernization Act – Rule #1

Dear Ms. Nayar,

The American Forest & Paper Association (AF&PA) appreciates the opportunities afforded by the Oregon Department of Environmental Quality (“DEQ” or the “Department”) to submit public comments and dialog with other stakeholders on the establishment and implementation of Oregon’s Plastic Pollution and Recycling Modernization Act (RMA) of 2021. The Act requires producers of packaging, paper products and food service ware to support and expand recycling services in Oregon for their products in a shared model of extended producer responsibility (EPR). AF&PA looks forward to continuing to work with DEQ on the implementation of this law.

AF&PA serves to advance a sustainable U.S. pulp, paper, packaging, tissue and wood products manufacturing industry through fact-based public policy and marketplace advocacy. AF&PA member companies make products essential for everyday life from renewable and recyclable resources and are committed to continuous improvement through the industry’s sustainability initiative — [Better Practices, Better Planet 2030](#). The forest products industry accounts for approximately four percent of the total U.S. manufacturing GDP, manufactures nearly \$300 billion in products annually and employs approximately 950,000 men and women. The industry meets a payroll of approximately \$55 billion annually and is among the top 10 manufacturing sector employers in 45 states.

In Oregon, the forest products sector employs over 38,000 individuals, produces over \$11 billion in annual manufacturing output and generates \$264 million in tax revenue for the state. The forest products sector is committed to sustainability and improvements in the recycling system. Investments made by the paper industry support widely accessible recycling programs. Nearly \$7 billion in manufacturing infrastructure investments have been completed or announced from 2019-2025 to continue the best use of recycled fiber in manufacturing our products.

AF&PA supports data-driven policy solutions, including packaging producer/stewardship responsibility, that are:

- **Data & Results Based:** Designed to achieve the recycling and recovery results needed to create a circular economy.

- **Effective and Efficient:** Focused on best practices and data-driven solutions that improve consumer education, increase recycling access, and limit administrative costs.
- **Equitable and Fair:** Focused on preventing cross-material subsidization, while acknowledging the investments and voluntary improvements historically taken by each material type to achieve their material-specific recycling rates.

Following are several topics within the Rule #1 draft language that AF&PA is providing comments, requesting additional information, and offering suggestions.

1. **Local Government Recycling Acceptance Lists and the PRO Recycling Acceptance List (OAR 340-090-0630)** – The Consolidated Recycling Acceptance Lists omit two widely recyclable categories of paper-based packaging: paperboard with poly coating; and, refrigerated and frozen food cartons.

Paperboard packaging with poly coating is a category consisting of rigid paperboard that is coated with a layer of polyethylene (PE) to provide improved barrier properties. This single surface PE coated board is widely used for many foods with a short shelf life, and over a wide temperature range (ambient to frozen). Examples include bakery boxes and refrigerated food containers. Findings from the 2021 AF&PA Access to Recycling Study show that 60% of consumers nationwide have access to a community curbside or drop-off recycling program that accepts paperboard packaging with poly coating.

Refrigerated and frozen food paperboard containers are designed to keep foods fresh in cold temperatures. Examples include cartons for frozen foods, microwavable foods, bacon, and other refrigerated foods. This category does not include primary frozen food packaging like ice cream tubs or bricks. Research conducted in 2019 by the Paperboard Packaging Council found that 70% of the paperboard cartons in this category are uncoated, which means they present no challenge to recycling.

In terms of existing end markets, AF&PA research reported in the 2021 Design Guidance for Recyclability showed that polymer barriers were identified as “easier to recycle” by mills that consume both bleached paperboard cartons and recycled/unbleached boxboard cartons to manufacture new paperboard products. AF&PA members in the region report accepting paperboard packaging with polymer barrier coatings in their mills.

Because these two categories are both widely recyclable and have existing end markets in the region, AF&PA requests that they be added to the Required for On-Site Collection and Suitable for commingled Collection (USCL) lists.

AF&PA appreciates and understands the importance of decisions regarding the Local Government and PRO Recycling Acceptance lists. Given the importance of being accepted statewide within existing curbside recycling programs, we recognize the urgency that many companies feel to have their packaging materials included on the Local Government Recycling

Acceptance Lists – particularly the Uniform Statewide Collection List (USCL). However, we also recognize that the Local Government Recycling Acceptance Lists must be feasible and practical as the RMA is implemented, and as initial program plans are created.

To reduce pressure on these lists, AF&PA recommends DEQ establish a formal mechanism for producers and/or the producer responsibility organization (PRO) to request the addition of materials on the Local Government and PRO Recycling Acceptance Lists. This would provide a clear process for these decisions, on a recommended annual basis.

- 2. Convenience Standards (OAR 340-090-0640)** – AF&PA appreciates that the convenience standards section in OAR 340-090-0640(1)(a) (C) and (D) provide for reasonable constraints on costs that would be covered for recycling collection at depots. We also appreciate the work that has gone into stipulating appropriate collection point convenience standards in this section and that it provides for alternative compliance plans. However, we request that the rule provide the PRO with the opportunity to request a temporary variance in convenience standards if market factors, staffing shortages, technological issues or other circumstances warrant a variance from the strict stipulations of these requirements.
- 3. Performance Standards (OAR 340-090-0650)** – AF&PA appreciates that this section stipulates how the PRO will propose its approach and develop services to meet the requirements of the RMA. We request that the proposed rule provides clearer authority that the PRO can establish performance standards for depots and other service providers that it contracts with to provide service under the Act. Establishing this endorsement in rule will provide the ability for the PRO to ensure greater uniformity and work toward greater ability to assess recycling service providers and certain end markets.
- 4. Collection Targets (OAR 340-093-0660)** – AF&PA appreciates the deference that OAR 340-093-0660(2)(c) provides to the PRO to propose collection targets when the PRO submits a program plan for approval and believes that this approach is justified in contrast to setting arbitrary numbers in regulatory code.
- 5. Responsible End Markets (OAR 340-090-0670)** – AF&PA believes that it will be difficult, particularly in the beginning stages of implementation, for the PRO to ensure a detailed assessment of each intermediary and supply chain entity to confirm it meets the responsible end market standard under the proposed rule. This is true as the PRO will have little control over, or knowledge of, or contracts throughout the recycling supply chain. This is particularly true for materials that are classified on the Local Government Recycling Acceptance Lists, where the PRO will not have a direct relationship with entities in that recycling system. There is no specific mandate that local governments and other partners must provide the necessary information to the PRO – this may lead to delays or resistance to providing useful and accurate information to PROs or third parties to audit or validate a responsible end market and verify the criteria in OAR 340-090-0670(3).

The responsible end market characteristics listed in the proposed rule are also very prescriptive and might be particularly hard to validate, especially for the “Environmentally-Sound” requirement. It is unclear who would do the monitoring and what entities would be appropriate to validate the characteristics of “Environmentally-Sound” and what would be considered “adequate emergency response” or what would qualify as “managing inputs sustainably.” These terms either need greater specificity or should be removed.

Recycling yields might also prove challenging for the PRO to validate unless the rule provides clear authority for the PRO to solicit and obligate this information from entities in the recycling system. AF&PA anticipates significant resistance from recycling entities to provide yield information to producers/the PRO unless the rule creates a clear obligation for those entities to respond and make a good faith effort to provide this information to the PRO.

Additionally, DEQ has stated that there are unknown compliance costs associated with the joint obligation for PRO(s) and commingled recycling processing facilities to ensure materials reach responsible end markets. This is a significant area of concern. While we understand the desire to have recyclable materials collected under the RMA to be processed in safe and environmentally protective facilities. However, there must be a clearer understanding of the total compliance cost of the complex structure that has been proposed in this draft rule.

At a minimum, the rule must provide clear legal authority to the PRO to conduct the activities under this section. Equally, it must also clearly and legally obligate local governments, and the entities with which they contract to process recyclables, to provide the information and provide PROs access to facilities to conduct the audits required under this section.

6. **Producer Responsibility Organization Fees (OAR 340-090-0690)** – AF&PA appreciates that DEQ has performed significant analysis of the administrative costs as it has established the Program Plan Review fee of \$150,000 and the Annual Administration Fee of \$4 million (2025-28) and \$3 million from 2028 forward. While acknowledging that DEQ has the discretion to reduce the annual administration fee, we request that the rule stipulates that the DEQ will provide administrative fee costs accounting data to all PROs to support these costs with the invoicing stipulated in OAR 340-090-0690 (2)(a). These administrative costs currently represent the highest fees proposed in any packaging producer responsibility system in the nation, and appropriate justification and documentation must be provided to PROs on an annual basis. We believe this system would be further strengthened if the rule were to be amended so that a PRO can petition DEQ to adjust administrative fees under OAR 340-090-0690(2)(b).

7. **Market Share (OAR 340-090-700)**

AF&PA recognizes the need to establish a methodology for calculating market share for all covered products sold into the state, as well as the Department’s interest in incentivizing producers to continually reduce the environmental and human health impacts of covered products. However, the fee adjustments developed under ORS 459A.884(4) fail to optimize the environmental benefit of some material in (a).

ORS 459A.884(4)(a) establishes an incentivizing fee factor for using “post-consumer” content in products but fails to recognize that the use of all recovered material has economic and environmental benefits. AF&PA believes the distinction between “pre-“and “post-consumer” content is not meaningful and incentivizing the use of only “post-consumer” material limits the beneficial use of other (“pre-consumer”) recovered material. Therefore, AF&PA requests that all recovered material used in manufacturing covered products be recognized in the fee adjustment factor.

- 8. Expansion of Service, Service Funding and Needs Assessment (OAR 340-090-0790 to 0800) –** AF&PA appreciates that the PRO will establish the proposed schedule, scope, and estimate of total amount of funds for recycling service expansion in the program plan, under OAR 340-090-0790. This approach provides appropriate control to the PRO to manage the plan and budget for these program expansions. Furthermore, that the PRO will not be obligated to provide funds under section 340-090-0800 for activities that are inconsistent with the terms of expansion between the PRO and local government service providers. We believe that this section should also stipulate that the PRO can require local government service providers to provide periodic and regular information on the use of funds to the PRO and must submit to audits of the use of these funds to ensure that they are appropriately used for the terms of the recycling service expansion.

Thank you for considering our views and the continued opportunities to provide comments regarding the establishment of the packaging producer responsibility program in Oregon. Please feel free to contact Erin Hall, Manager, Government Affairs at erin_hall@afandpa.org, or Brian Hawkinson, Executive Director, Recovered Fiber at brian_hawkinson@afandpa.org for further information.

Sincerely,



Terry Webber
Vice President, Industry Affairs
American Forest & Paper Association



1111 19th Street NW > Suite 402 > Washington, DC 20036
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July 28, 2023

Submitted via: recycling.2023@deq.oregon.gov

Oregon DEQ
Attn: Roxann Nayar/Materials Management
700 NE Multnomah Street, Suite 600
Portland, Oregon 97232-4100

Dear Roxann Nayar:

The Association of Home Appliance Manufacturers (AHAM) appreciates the opportunity to comment on the Department of Environmental Quality's (DEQ) proposed rule, which seeks to clarify and implement the Plastic Pollution and Recycling Modernization Act (RMA) (SB582, 2021). AHAM wishes to comment on the proposed Producer Responsibility Organization obligations, the statewide recycling materials list, the Local Government Recycling Acceptance List and the PRO Recycling Acceptance List.

AHAM represents more than 150 member companies that manufacture 90% of the major, portable and floor care appliances shipped for sale in the U.S. Home appliances are the heart of the home, and AHAM members provide safe, innovative, sustainable and efficient products that enhance consumers' lives.

The home appliance industry, through its products and innovation, is essential to consumer lifestyle, health, safety and convenience. Home appliances are also a success story in terms of energy efficiency and environmental protection. The home appliance industry is a significant segment of the economy, measured by the contributions of home appliance manufacturers, wholesalers, and retailers to the U.S. economy. In all, the industry drives nearly \$200 billion in economic output throughout the U.S. and manufactures products with a factory shipment value of more than \$50 billion.

Statewide Recycling Materials List; Local Government & PRO Recycling Acceptance List

AHAM appreciates DEQ's inclusion of expanded polystyrene (EPS) and clear polyethylene (PE) film in the PRO Recycling Acceptance List. Appliance packaging is used to protect the appliance and factory personnel during storage, transport and delivery. The safest and most effective materials for this use are lightweight, can withstand multiple impacts, and maintain their integrity in humid conditions. Unlike smaller, fast-moving consumer goods, packaging for heavy durable goods have different requirements and must be able to ensure the protection of workers during transportation and at distribution centers. Large appliances such as refrigerators, freezers, dishwashers, cooking ranges, washers and dryers are stacked as high as 30 feet and packaging cannot fail while products are warehoused, regardless of environmental or climate conditions.



Worker safety in warehouses, distribution centers or during transportation/delivery must be considered, especially when dealing with large appliances such as refrigerators, freezers, dishwashers, cooking ranges, washers and dryers. Once assembled, major appliances are often packaged, stored and moved in very large warehouses or distribution centers. These facilities often have limited climate control and can experience extreme temperature and humidity changes. Low temperatures can cause packaging materials to become brittle while humidity and heat can affect the packaging's structural integrity and limit the effectiveness of adhesives or the strength of products that are made from fiber.

For safety purposes, it is vital to maintain the structural strength of packaging materials, particularly with respect to major appliances that are regularly stacked vertically with multiple units above ground. Furthermore, these appliances are often moved around by clamp truck and the packaging must withstand the force of the clamps to be moved efficiently. Other paper alternatives such as cardboard, molded pulp or honeycomb can only handle a single impact and lose structural integrity in hot and humid environments.

A fiber-based alternative would be larger and heavier, which leads to more truck loads and more warehouse space. It is estimated that there would be an increase of 5-10% in all directions of the packaging, which equates to an increase of about 20-30% more trucks needed to deliver large appliances.

Additionally, thin plastic film (PE) is used to protect the finish of appliances as well as the display screen. Fiber alternatives, such as paper, are like sandpaper and would scratch the product and would lead to consumers either accepting a damaged product or refusing delivery and the distributor returning the product to the warehouse. There is no alternative to the use of plastic film to protect the finish of appliances or the display screen.



The “responsible end market criteria” for plastics, which includes EPS and PE, will ensure that these materials are reused. EPS can be responsibly processed and recycled into a new product either by placing it into a mold or through extrusion or thermoforming. Continued use of these materials will provide assurance that appliances will be delivered undamaged and safe for consumer use.

Appliance packaging materials, including EPS and PE, may ultimately not enter the residential recycling stream. Large appliances are delivered to a consumer's home and, as part of the installation, the packaging material is removed by the installer and not left in the home. The installers load the packaging into the delivery truck and return those materials to be recycled through commercial (non-residential) recycling systems. A shipment of portable and floor care appliances would include hundreds of products placed in multiple master cartons that are secured

to a pallet. The pallet of product goes to a distribution center and either separated by units or delivered to the final seller. Like major appliances, packaging materials that are used for the shipping and distribution of multiple portable and floor care units are commercially recycled and do not enter the residential recycling stream. As written in the Plastic Pollution and Recycling Modernization Act (RMA) (SB582, 2021), covered packaging materials are exempt, if the producer can demonstrate that their packaging is recovered as a function of the distribution chain and is recycled at a responsible end market.

Ontario, Canada takes a similar approach with a revised regulation that allows for two deductions and home delivered appliances are one of them. This is a common deduction in Canada.

*Allowable deductions are those Blue Box materials that are:
Collected from an eligible source at the time a related product was installed or delivered. For example, packaging that is supplied with a new appliance and is removed from the household by a technician installing the new appliance.¹*

AHAM appreciates the DEQ's acceptance that EPS is recyclable and that packaging that is recovered as a function of the distribution chain and is recycled at a responsible end market is exempt.

PRO(s) Annual Administration Fee and Market Share Determination

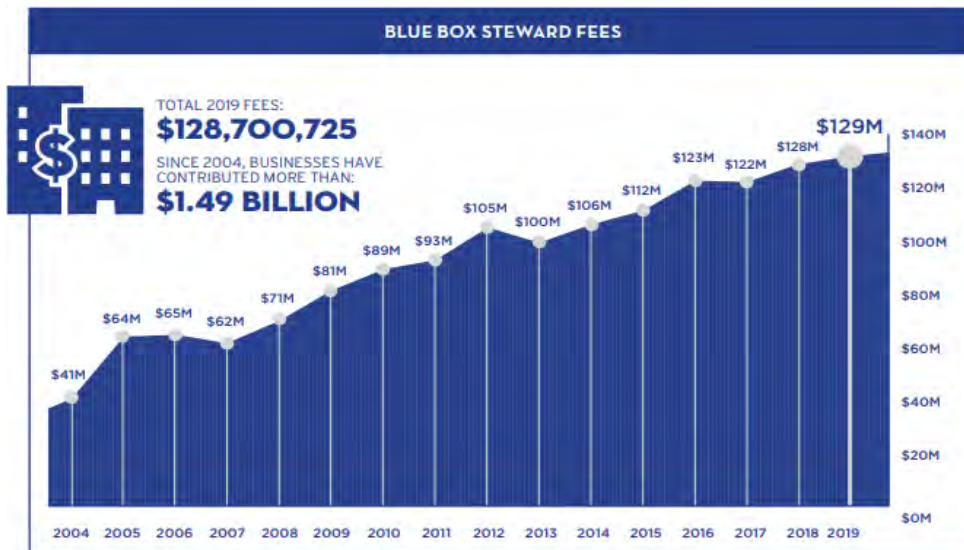
To prevent less environmentally impactful materials from subsidizing more environmentally impactful materials, DEQ should require PRO(s) to apply the minimal annual administration fee feasible. Producers should pay packaging material fees or "eco fees" that take into account the life-cycle impact of the material. Alternatives to existing packaging materials or material source reduction involve tradeoffs. For example, plastic-based products will generally be lighter and less volume than fiber-based packaging. In addition, there are already inherent financial incentives for manufacturers to reduce costs and amounts of packaging, especially for home appliances that have non-consumer facing packaging, since the packaging is not used for marketing purposes. It is purely an additional cost to the product to ensure the product arrives at the home without being damaged. The methodology used to set fees should be consistent with established practices to determine fair allocation of costs based on the complexity required to collect and recycle certain material. Requiring a minimal annual administration fee would incentivize producers to use less environmentally impactful packaging materials.

Current EPR Programs – Program Fees Increase and Recovery Rates Decrease

In Canada, packaging EPR programs exist in various provinces, with manufacturers having to comply with each program that varies in scope. This is very costly to both manufacturers and to residents and has shown to be ineffective in improving recycling rates or achieving any of the recycling targets that are set. Ontario and British Columbia (B.C.) have two of the more recognized programs. In Ontario, program costs have increased on average 8% per year and

¹ <https://www.circularmaterials.ca/faq/>

have tripled since its inception (see below).² In B.C., the program costs are 28.5 percent higher since 2014 (average annual increase of 5.2 percent).³



-Stewardship Ontario 2020 Report

While the program costs skyrocket, the recovery rate is worse. Ontario’s program materials recovery rate decreased from 68 percent to 60 percent (see below) and B.C’s has decreased by 2.4 percent. And to be clear, this is not even “recycling rate,” but “recovery rate,” which measures the reported amount of materials into the system compared to the amount collected.

Recovery Rate **decreased** from 68% in 2010 to 60.2% in 2018



RECYCLING PERFORMANCE			
METRIC	2018	2017	YOY VARIANCE %
Recycled Tonnes	780,555	822,979	-5.2%
Generated Tonnes	1,296,260	1,342,017	-3.4%
Recycling Rate	60.2%	61.3%	-1.8%
Provincial Recycling Target	60.0%	60.0%	—
Population Served by Program	13,078,155	12,962,740	0.9%
Recycled kg per Capita	59.7	63.49	-6.0%

Recycle BC and Stewardship Ontario are the only package recycling programs approved by each province’s Government, and as a result all obligated parties must adhere to their strict rules and regulations. This includes local processors and recyclers of materials, which if these programs choose not to do business with them, they will be out of business.⁴

² Stewardship Ontario. (2019). 2019 Annual Report. Stewardshpontario.ca

³ Recycle BC. (2019) Annual Report 2019. Recyclebc.ca

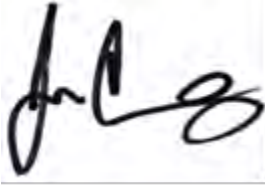
⁴ Note, Stewardship Ontario is currently winding down its program to restart under a new Ontario Authority, which aims to shift program costs completely to obligated parties

With respect to determining market share, producers may not have data on where products are ultimately sold or used. Producers of products that are sold through national and even US-Canada distribution chains do not have control or information pertaining to how products move through various distribution and retail networks. For example, an appliance manufacturer that ships products to a distribution center likely is unable to determine the location of final product sale and use. In such situations, a producer would only be able to report on products shipped to a distribution center, which could be regionally based inside or outside of Oregon. This also would be a major disincentive for maintaining and locating new distribution facilities in Oregon and could lead to sales data that does not accurately reflect what is sold to Oregon consumers.

Conclusion

AHAM appreciates the opportunity to provide comments to DEQ on the proposed rule to implement the Plastic Pollution and Recycling Modernization Act (RMA) (SB582, 2021). Manufacturers of consumer products need flexibility in choosing appropriate materials for packaging their products to avoid situations that cause product breakage and damage during transport (which ultimately increases the lifecycle impact of the product) as well as to deter theft of smaller, high value electronics from retail establishments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jacob Cassady', is enclosed in a thin black rectangular border.

Jacob Cassady
Director, Government Relations

Submitted via email to recycling.2023@deq.oregon.gov

July 28, 2023

Oregon DEQ
Attn: Roxann Nayar/Materials Management
700 NE Multnomah Street, Suite 600
Portland, Oregon 97232-4100

RE: Plastic Pollution and Recycling Modernization Act, Rulemaking 1

Dear Roxann:

The Aluminum Association appreciates the opportunity to provide comment on the Oregon DEQ's recent proposed revision to *OAR 340 Division 90 - Recycling and Waste Reduction* regulations to implement the provisions of the 2021 Plastic Pollution and Recycling Modernization Act (SB 582) as noticed on May 25, 2023.

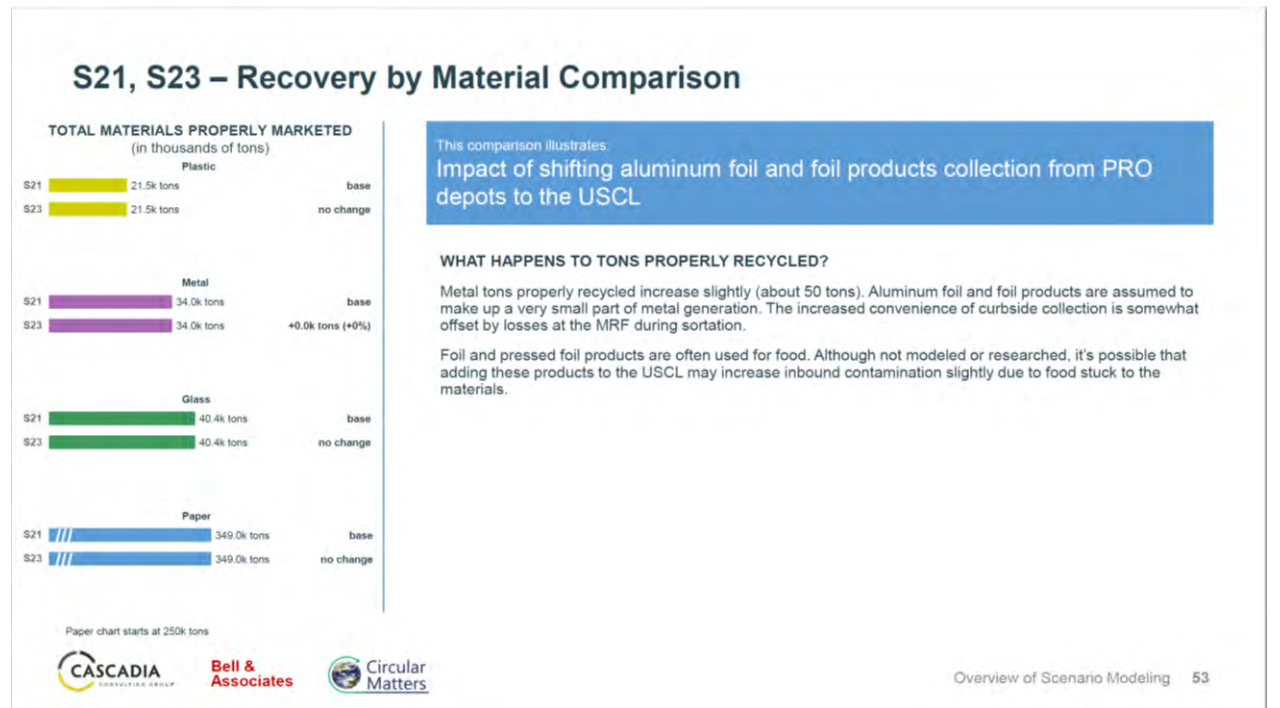
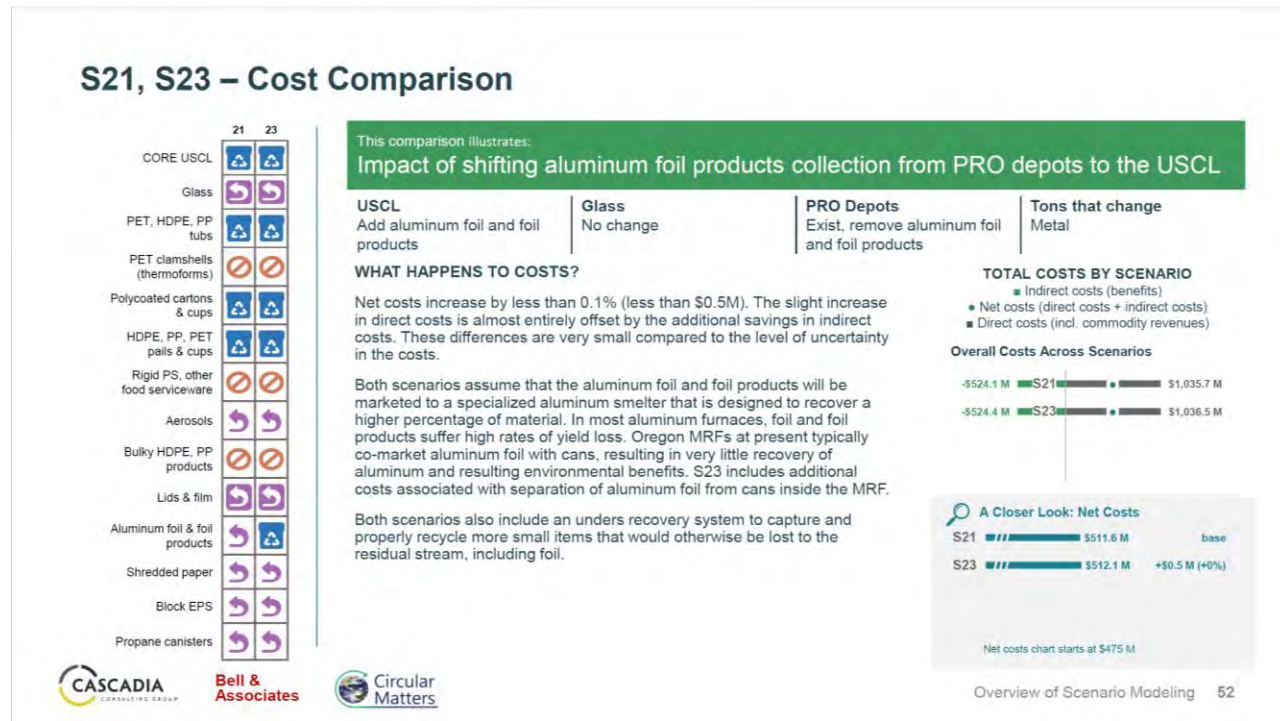
The Aluminum Association (the "Association"), based in Arlington, VA, represents U.S. suppliers of primary aluminum, aluminum recyclers, and producers of fabricated aluminum products, as well as industry related businesses. In the packaging market, the Association's member companies represent all US production of the aluminum sheet used to manufacture aluminum cans, all US production of aluminum foil, and the significant majority of US reclamation facilities that remelt scrap aluminum for its subsequent manufacture into new aluminum products.

Broadly, the Association and its members support efforts being undertaken by Oregon to update consumer facing recycling systems in the state and to provide additional clarity to residents regarding recyclability of packaging, printed paper, and foodservice ware under the legislation. However, the Association has concerns as articulated below regarding the planned implementation of requirements for recycling of aluminum foil and products made of pressed aluminum foil.

OAR-340-090-0630 Recycling Acceptance Lists

As proposed, aluminum foil and products made of pressed aluminum foil are included in *OAR-340-090-630 (3) Producer Responsibility Organization Recycling Acceptance List* rather than *OAR-340-090-630 (2) Local Government Recycling Acceptance List*. This distinction would remove these products from curbside programs and place them into recycling depot and mobile event collection. The Association believes that this is an ineffective way to maximize recycling of these materials and that they should continue to have collection managed through curbside programs.

On March 14, 2023, Oregon DEQ released an Overview of Scenario Modeling¹ to support implementation of the Recycling Modernization Act and that modeling included several scenarios related to recycling of aluminum foil and products made of pressed aluminum foil through both the PRO (depots and mobile events) and the Local Government (curbside) options (Scenarios 21 and 23) and the summary slides of that modeling are shown below for ease of reference.



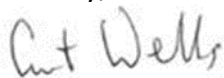
¹ <https://www.oregon.gov/deq/recycling/Documents/RMAModeling.pdf> (Accessed July 20, 2023)

The modeling shows that additional tons can be collected through curbside programs for a slight additional cost which reflects the separation from these products from aluminum cans at MRF's. Once these systems are in place, the Association believes that collection of aluminum foil and products made from pressed aluminum foil through curbside programs will have a higher consumer acceptance and utilization rate, and consequentially a higher recycling rate, than what could be achieved for these materials through depot and mobile event collection. It is simply not realistic to expect that consumers will retain their aluminum foil and products made from pressed aluminum foil and then bring them to depot locations and mobile events. Rather, without the opportunity for curbside recycling, they will end up in the trash destined for landfill disposal. Therefore, whatever structure and associated funding that is made available through the implementing regulations should go toward making the curbside recycling framework for aluminum foil and products made from pressed aluminum foil more efficient and financially viable, rather than redirecting those materials into new systems that are unlikely to be accepted by the public and result in lower aluminum recycling rates overall.

The Association recognizes the challenges associated with recycling and reclaiming aluminum foil and related products made from pressed aluminum foil as a material stream separate from the much more prevalent aluminum used beverage can stream, and this is an area that the Association's Foil Committee is happy to work with Oregon DEQ and other stakeholders on in the future toward achieving optimal recycling rates for aluminum foil-related materials.

As Oregon DEQ considers its revisions to the OAR-340-090 regulations, the Association appreciates the opportunity to provide these comments and if you have any questions or would like to discuss any of these issues in greater detail, please do not hesitate to contact me at 703.358.2976, 804.385.6351 or cwells@aluminum.org.

Sincerely,

A handwritten signature in blue ink that reads "Curt Wells".

Curt Wells
Senior Director of Regulatory Affairs and Corporate Stewardship
The Aluminum Association



Submitted via email to recycling.2023@deq.oregon.gov

July 28, 2023

Oregon DEQ
Attn: Roxann Nayar/Materials Management
700 NE Multnomah Street, Suite 600
Portland, Oregon 97232-4100

RE: Plastic Pollution and Recycling Modernization Act, Rulemaking 1

Dear Roxann:

The Aluminum Foil Container Manufacturers Association (AFCMA) appreciates the opportunity to provide comment on the Oregon DEQ's recent proposed revision to *OAR 340 Division 90 - Recycling and Waste Reduction* regulations to implement the provisions of the 2021 Plastic Pollution and Recycling Modernization Act (SB 582) as noticed on May 25, 2023.

AFCMA (the "Association"), with primary offices located in Lexington, KY, represents U.S. producers of fabricated aluminum products (containers/lids and roll foil) for packaged retail food offerings, restaurant take-out, home food preparation and storage. Our membership also includes suppliers of primary aluminum used to manufacture our products, as well as other industry-related businesses. The markets we serve include:

- Packer/Processors/Bakeries
- Restaurants – Take-Out Food
- Club Store Merchandizing
- Food Service Distribution
- Home Meal Preparation

In the packaging market, the Association's member companies represent the majority of U.S. producers of single-use aluminum containers, lids and foil rolls used by global consumer products companies to prepare and distribute such products as lasagnas, pies, ready-to-bake fresh foods, displayed in the frozen and chilled food aisles of every U.S. grocery chain. What's more our products are used to facilitate the preparation of countless meals in homes, restaurants (take-out), schools, senior living facilities and churches too. In short our aluminum products are widely used by a variety of consumers who value their strength and durability, ease of use and the fact that our products can be easily cleaned prior to disposal.

Broadly, the Association and its members support efforts being undertaken by Oregon to update consumer facing recycling systems in the state and to provide additional clarity to residents regarding recyclability of packaging, printed paper, and foodservice ware under the legislation. However, the Association has concerns as articulated below regarding the planned implementation of requirements for recycling of fabricated aluminum products (containers/lids and roll foil)

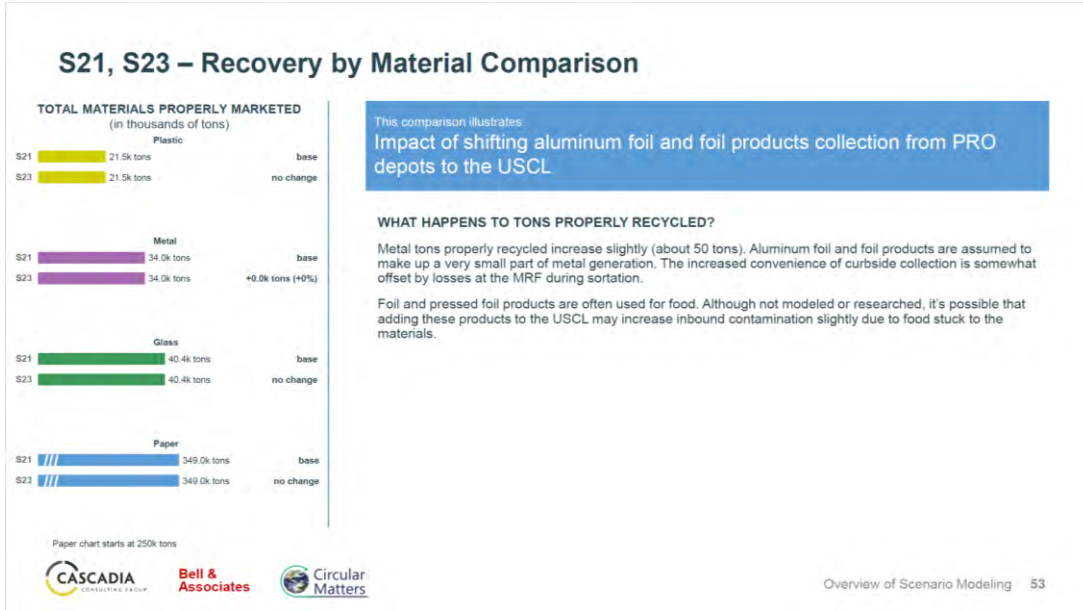
OAR-340-090-0630 Recycling Acceptance Lists

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On March 14, 2023, Oregon DEQ released an Overview of Scenario Modeling¹ to support implementation of the Recycling Modernization Act and that modeling included several scenarios related to recycling of fabricated aluminum products (containers/lids and roll foil) through both the PRO (depots and mobile events) and the Local Government (curbside) options (Scenarios 21 and 23) and the summary slides of that modeling are shown below for ease of reference.



¹ <https://www.oregon.gov/deq/recycling/Documents/RMAModeling.pdf> (Accessed July 20, 2023)



The modeling shows that additional tons can be collected through curbside programs for a slight additional cost which reflects the separation from these products from aluminum cans at MRF's. Once these systems are in place, the Association believes that collection of fabricated aluminum products (containers/lids and roll foil) through curbside programs will have a higher consumer acceptance and utilization rate, and consequentially a higher recycling rate, than what could be achieved for these materials through depot and mobile event collection. It is simply not realistic to expect that consumers will retain their fabricated aluminum products (containers/lids and roll foil) and then bring them to depot locations and mobile events. Rather, without the opportunity for curbside recycling, they will end up in the trash destined for landfill disposal. Therefore, whatever structure and associated funding that is made available through the implementing regulations should go toward making the curbside recycling framework fabricated aluminum products (containers/lids and roll foil) more efficient and financially viable, rather than redirecting those materials into new systems that are unlikely to be accepted by the public and result in lower aluminum recycling rates overall.

As Oregon DEQ considers its revisions to the OAR-340-090 regulations, the Association appreciates the opportunity to provide these comments and if you have any questions or would like to discuss any of these issues in greater detail, please do not hesitate to contact me at 440.781.5819, or jcokewilliams@aol.com



Sincerely,

Coke Williams

Coke Williams
Secretary and Board Member
Aluminum Foil Manufacturers Association (AFCMA)

July 28, 2023

Electronic Delivery

Director Leah Feldon
Department of Environmental Quality
State of Oregon
recycling.2023@deq.oregon.gov

In re: Public Comments: Notice of Proposed Rulemaking: Plastic Pollution and Recycling Modernization Act, Rulemaking 1 (May 25, 2023)

Dear Director Feldon,

On behalf of the American Chemistry Council's (ACC) Plastics Division members, thank you for this opportunity to provide public comments to the May 31, 2023 workshop and related documents.

ACC urges two key improvements to the proposed rule:

- **Attribution:** The output attributable to plastic feedstocks should be used to calculate the minimum recycling yield.
- **Certification:** Recycled plastics verified by accepted third party certification bodies should be determined compliant with responsible end market requirements.

Including these suggestions would better align the proposed rule with Oregon's waste hierarchy and the act emphasizes choosing actions that reduce environmental impact. Specific language is found in the appendix.

ACC and our members support a more circular economy for plastics. ACC and its Plastic Division members were among the first to establish ambitious, forward-thinking goals that all plastic packaging in the United States is reused, recycled, or recovered by 2040 and that all U.S. plastic packaging is recyclable or recoverable by 2030.¹ Achieving these goals will require industry, manufacturers, brands, and retailers; recyclers and waste haulers; as well as citizens, communities, non-profits, and academics; and federal, state, and local governments to come together to support policies and programs to increase the supply of and the demand for recycled materials, to create the circular economy we all want.

The proposed rule limits end markets. A vital element of the act is that recyclables are sent to a "*responsible end market*." The act defines that term as "...a materials market in which the recycling or recovery of materials or the disposal of contaminants is conducted in a way that benefits the environment and minimizes risks to public health and worker

¹ "U.S. Plastics Resin Producers Set Circular Economy Goals to Recycle or Recover 100% of Plastic Packaging by 2040," Media release (American Chemistry Council, May 9, 2018), <https://www.americanchemistry.com/chemistry-in-america/news-trends/press-release/2018/us-plastics-resin-producers-set-circular-economy-goals-to-recycle-or-recover-100-of-plastic-packaging-by-2040>.

health and safety.” A responsible end market for plastics is clarified in the proposed rule in two ways:

- **Plastics end market:** For plastics, the end market is the entity that molds, extrudes, or thermoforms recycled plastic.
- **Minimum recycling yield:** For all materials, a responsible end market has at least a 60 percent recycling yield (i.e., the ratio of material reaching a responsible end market).

However, there are several outputs of *advanced recycling*. Advanced recycling is a manufacturing process that leverages chemistry to convert used plastic into alternative raw materials that displace virgin fossil materials such as crude oil and natural gas. Advanced recycling leverages our extremely efficient and existing petrochemical facilities that produce a wide range of chemicals and plastic products. In addition to materials used to create new plastic products, some advanced recycling outputs are chemical building blocks for other materials, industrial waxes, coatings, and other products.²

Because advanced recycling is unique in its eventual use of existing large-scale assets, the proposed rule should be clarified that the output attributed, and verified by recognized third party certification bodies to new plastics should be included when determining a responsible end market. Without clarification, the language potentially and unintentionally excludes advanced recycling. Recognizing advanced recycling will be critical because these technologies can greatly expand the amounts and types of plastics that can be recycled in Oregon.

Many more types of plastics (such as films, pouches, and tubes) can be recycled using advanced recycling compared to traditional recycling. Even more complexly engineered multi-layered plastics can often be remade into new plastics approved for use in food, pharmaceutical, and medical contact applications. This can lead to reduced environmental impact. For example, instead of landfilling or incinerating mixed plastics that cannot be mechanically recycled, advanced recycling offers new end market opportunities.

A responsible end market should consider the overall environmental impact.

Oregon's waste hierarchy and the act emphasize choosing actions that reduce environmental impact – a goal ACC fully supports. Advanced recycling can play an important role in reducing climate change compared to common alternatives and ACC urges the department to include this factor in determining what constitutes a responsible end market. In July of 2022, Argonne National Laboratory, which developed its Greenhouse Gasses, Regulated Emissions and Energy use in Technology (GREET) model released a new report showing that pyrolysis oil derived from post-use plastics at commercial scale plants would have a 29, 73, and 83 percent lower GHG emissions, fossil energy use, and water

² Plastic Division, “The Potential Economic Impact of Advanced Recycling and Recovery Facilities in the United States,” Industry report (American Chemistry Council, April 2022), <https://www.americanchemistry.com/content/download/10845/file/Potential-Economic-Impact-of-Advanced-Recycling-Recovery-Facilities-in-the-US.pdf>; Zhou Peng et al., “Advanced Recycling: Opportunities for Growth,” Consultant report, May 2022, <https://perma.cc/6R3L-X3JY>, https://www.mckinsey.com/industries/chemicals/our-insights/advanced-recycling-opportunities-for-growth#.

consumption compared to naphtha derived from crude oil.³ These are real and quantifiable environmental benefits that are passed on to the plastics derived from this alternative raw material. Additionally, another recent report by the City College of New York's Grove School of Engineering looked at the universe of recent life cycle studies focused on advanced recycling and found significant environmental benefits of advanced recycling:⁴

- Advanced recycling technologies produce plastic and chemical products with reduced global warming potential compared to products made from virgin resources, and
- Advanced recycling can reduce fossil energy use by up to 97 percent compared to landfilling.

Third Party Certification supports compliance and transparency. Third party certification provides two key benefits. First, certifiers provide assurance, credibility, and extensive technical experience with recycled content. For example, their methodologies can support increased understanding on how to count recycled content from advanced recycling as well as renewable sourced content and how recycled or renewable content should be attributed. Certifying bodies maintain deep knowledge of not only recycled content attribution, but also how to account for and trace content through a system sending content to many markets.

Secondly, the benefits of inspections, audits, and monitoring are part of the certification process. Certifiers review the process for creating recycled content. This affords them a broader perspective on the sources and allocation of content. This is especially pertinent since recycled content will likely be generated outside the state where different expectations and approaches may be in place. These standards and accounting methods established by accredited organizations help ensure transparency, consistency, and that recycled content is not double counted.

The public recognizes advanced recycling as recycling. ACC supports the department's goal of increasing public confidence in recycling. Consumer behavior is critical to increasing circularity. Consumer confidence that used products can be transformed into new ones helps public participation in recycling. Recent consumer perception research conducted by Hearts and Minds found that 88 percent of polled U.S. residents agreed that advanced recycling is recycling.⁵ Consumers support different recycling processes to recycle post-use plastics – mechanical and advanced recycling are considered equally acceptable methods to increase recycling rates and reduce waste.

Again, thank you for this opportunity to provide the department with these comments. If you have any questions, please feel free to contact Tim Shestek, Senior Director, State Affairs, at (916) 448-2581 or Tim_Shestek@AmericanChemistry.com

³ Pahola Benavides et al., "Life-Cycle Analysis of Conversion of Post-Use Plastic via Pyrolysis with the GREET Model," July 1, 2022, <https://doi.org/10.2172/1885570>.

⁴ Lauren T Creadore and Marco J Castaldi, "Quantitative Comparison of LCAs on the Current State of Advanced Recycling Technologies" (New York, NY: City University of New York, October 2022), <https://ccnyeec.org/wp-content/uploads/2022/10/comparisonOfAdvRecyclingLCAs.pdf>.

⁵ Plastic Division, "Advanced Recycling Is Recycling, 88% of Americans Say in Survey," Media release (American Chemistry Council, April 20, 2023), <https://www.americanchemistry.com/chemistry-in-america/news-trends/press-release/2023/advanced-recycling-is-recycling-88-of-americans-say-in-survey>.

Sincerely,

A handwritten signature in black ink, appearing to read 'AS Peer', with a stylized flourish at the end.

Adam S. Peer, Senior Director
American Chemistry Council

Appendix

Executive Summary

Under current law, the Plastic Pollution and Recycling Modernization Act (2021 Ch. 681) creates an extended producer recycling system for packaging, paper products, and food service. A critical aspect of the act requires *responsible end markets* for recycled materials. That is, "a materials market in which the recycling or recovery of materials or the disposal of contaminants is conducted in a way that benefits the environment and minimizes risks to public health and worker health and safety."

Under this proposed rule, a responsible end market is further clarified in two ways for plastics. First, the end market is the entity that molds, extrudes, or thermoforms recycled plastic. No other end-use is anticipated. Second, a 60 percent recycling yield (i.e., the ratio of material reaching responsible end markets).

Under this suggestion, the proposed rule is clarified to specify that for plastics, the responsible end market is the market that is attributable to plastics. This clarification recognizes that used plastics recycled by some recycling technologies become products other than plastics. Additionally, this suggestion deems recycled plastics certified by certain certification organizations compliant with this section.

Amend OAR 340-090-0670 (as proposed) to read:

(1)

[...]

(d) For plastic, except for plastic that is recycled to produce packaging for food or beverage applications or for production of children's products, the end market is the [attributable] entity that last handles flake or pellet containing recycled plastic prior to sale or transfer to another person that creates a new product either by placing it into a mold or through extrusion or thermoforming.

(e) For plastic that is recycled to produce packaging for food and beverage applications or for production of children's products, the end market is the [attributable] entity that places it into a mold for the manufacturer of such packaging or product.

[...]

[(6) Recycled plastic as certified by the International Sustainability & Carbon Certification; Underwriter Laboratories; SCS Recycled Content; Roundtable on Sustainable biomaterials; EcoLoop; and REDcert2 or another certification system approved by the department shall be deemed compliant with this section OAR 340-090-0670 (Responsible End Markets).]

(End)



american cleaning institute®

July 28, 2023

Oregon Department of Environmental Quality
Attn: Roxann Nayar/Materials Management
700 NE Multnomah Street, Suite 600
Portland, Oregon 97232-4100

RE: Plastic Pollution and Recycling Modernization Act, Rulemaking 1

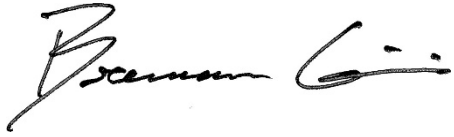
ACI appreciates the opportunity to provide feedback on the proposed new rule for the Plastic Pollution and Recycling Modernization Act (RMA). The American Cleaning Institute (ACI) – the association for detergent and cleaning product manufacturers – has a vested interest in ensuring packaging such as that which is encompassed by this law does not become waste. That is why we have a goal to eliminate all cleaning product packaging waste by 2040 and are already making great strides in creating more recyclable packaging, reducing our packaging usage, and incorporating more recycled content into the packaging we do introduce to market.

We commend the thorough and thoughtful process that has been established by the Department for stakeholder input to implement this law. Our comments focus on a few issues that pertain to the Local Government Recycling Acceptance List. The Local Government Recycling Acceptance List is very prescriptive and does a good job identifying the various packaging formats and substrates that are used in the market. We appreciate that the list has incorporated images to help clearly identify which packages are referenced. This list will be critical to how the RMA is implemented and how producers determine their responsibilities. These are a few changes that we ask to be incorporated.

1. We ask that the reference to plastic “bottles and jugs” be changed to “containers” or “packages” which are broader terms that are more inclusive of packaging types like canisters and tubes as well. Likewise, the “polycoated cartons” listing may not be broad enough to cover certain packages and we recommend “polycoated paperboard” instead.
2. Certain plastic items are restricted by net contents (e.g., “6 ounces and larger”), but we recommend making the list consistent with the Association of Plastic Recyclers Design Guide. For example, the guidance for HDPE refers to dimensions 2” by 2” versus net contents. PET and PP guidance on dimensions are the same as for HDPE. Many cleaning product producers design against these guides and using a different standard is likely to eliminate a lot of viable materials from being collected.

We would like to reiterate that ACI members are already dedicating significant resources to comply with the RMA. We hope the Department will contemplate ACI input on this rulemaking and related issues. ACI looks forward to providing necessary input regarding the performance of our products and packaging to achieve desired policy goals.

Sincerely,

A handwritten signature in black ink, appearing to read "Brennan G.", with a stylized flourish at the end.

Brennan Georgianni

Director, State Government Affairs

BGeorgianni@cleaninginstitute.org

July 28, 2023

Via electronic submission: recycling.2023@deq.oregon.gov

Roxann Nayar/Materials Management
Oregon Department of Environmental Quality (DEQ)
700 NE Multnomah Street, Suite 600
Portland, Oregon 97232-4100

RE: Plastic Pollution and Recycling Modernization Act – Rule #1

Dear Ms. Nayar,

AMERIPEN – the American Institute for Packaging and the Environment – appreciates the opportunities afforded by the Oregon Department of Environmental Quality (“DEQ” or the “Department”) to submit public comments and dialog with other stakeholders on the establishment and implementation of Oregon’s Plastic Pollution and Recycling Modernization Act (RMA) of 2021. The Act requires producers of packaging, paper products and food service ware to support and expand recycling services in Oregon for their products in a shared model of extended producer responsibility (EPR). AMERIPEN looks forward to continuing to work with DEQ on the implementation of this landmark law.

AMERIPEN is a coalition of stakeholders dedicated to improving packaging and the environment. We are the only material neutral packaging association in the United States representing the entire packaging supply chain, including materials suppliers, packaging producers, consumer packaged goods companies and end-of-life materials managers. We focus on science and data to define and support our public policy positions, and our advocacy is based on this rigorous research rooted in our commitment to achieve sustainable packaging, and effective and efficient recycling policies. We have several member companies with a presence in Oregon, and many more who import packaging materials and products into the state, and we want to see the RMA be successful as a shared producer responsibility model for packaging producer responsibility.

AMERIPEN supports policy solutions, including packaging producer/stewardship responsibility, that are:

- **Results Based:** Designed to achieve the recycling and recovery results needed to create a circular economy.
- **Effective and Efficient:** Focused on best practices and solutions that spur positive behaviors, increase packaging recovery, recapture material values and limit administrative costs.

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- **Equitable and Fair:** Focused on all material types and funded by shared cost allocations that are scaled to make the system work and perceived as fair among all contributors and stakeholders.

Following below are several topics within the Rule #1 draft language for which AMERIPEN is providing comments, requesting additional information, and requesting changes to the draft rule.

1. **Local Government Recycling Acceptance Lists and the PRO Recycling Acceptance List (OAR 340-090-0630)** – AMERIPEN appreciates and understands the importance of decisions regarding the Local Government and PRO Recycling Acceptance lists. Given the importance of being accepted statewide within existing curbside recycling programs, we recognize the urgency that many companies feel to have their packaging materials included on the Local Government Recycling Acceptance Lists – particularly the Uniform Statewide Collection List (USCL). However, we also recognize that the Local Government Recycling Acceptance Lists must be feasible and practical as the RMA is implemented, and as initial program plans are created.

To reduce pressure on these lists, AMERIPEN requests DEQ establish a formal mechanism for producers and/or the producer responsibility organization (PRO) to request the addition of materials on the Local Government and PRO Recycling Acceptance Lists. This would provide a clear process for these decisions, and we recommend this occur on an annual basis.

AMERIPEN requests DEQ give serious consideration to amending the proposed rules before they are finalized to include polyethylene terephthalate (PET) thermoform containers (e.g., clear plastic clamshells, trays, etc.) on the USCL. Recent thermoform-specific reclamation investments in the Western United States and nearby (i.e., Canada and Mexico) strongly indicate that the market for PET thermoforms is growing in North America – often separate from PET bottles and sometimes even alongside those bottles. It is our understanding that PET thermoforms are already accepted in a meaningful number of standard and specialized collection systems in Oregon, indicating that PET thermoform collection is already compatible with the state’s collection infrastructure. Further expansion of this infrastructure is entirely possible – and realistic – through various elements of the RMA, including consumer education and facility equipment and technology upgrades funded by producer responsibility organizations (PROs) in the state. We also note that the Institute of Scrap Recycling Industries (ISRI) has a PET thermoform bale specification in its Scrap Specifications Circular (<http://www.scrap2.org/specs/40/>),

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and it's our understanding that an entrepreneurial collector in Oregon is already in fact producing and marketing PET thermoform bales. Pending performance standards for commingled facilities that will be developed through the second major rulemaking for the RMA can also encourage proper sortation for PET thermoform bales. We know that industry stakeholders are working to address technical and other issues that may pose recycling challenges (i.e., labels) for PET thermoforms, and these actions can be further fueled by various fee protocols (i.e., eco-modulation) under the RMA. PET thermoforms are an established packaging format with recycling market demand that has grown and is expected to continue to grow, therefore being valuable material that can support increases in recycled content in new products. There are solid indications from the reclamation industry and from producers who will be funding the RMA that PET thermoforms are a distinct recyclable commodity and that there is baseline return-on investment in their reclamation. Inclusion on the USCL will help create a predictable supply that will fuel further domestic market investment. For all these reasons, we again strongly encourage DEQ to consider amending these proposed rules before they are finalized to include PET thermoform containers on the USCL.

AMERIPEN requests additional information as to why clear plastic cups made of PET (#1) or polypropylene (PP) (#5) will be collected on the USCL, but not foodservice containers made of the same material. This seems counter intuitive.

AMERIPEN is also requesting additional information on why molded-fiber foodservice ware, which we understand has viable end markets, is not included on the USCL when other molded fiber containers (e.g., egg cartons) are considered acceptable for this list. This also seems counter intuitive.

AMERIPEN appreciates that PET (#1) and PP (#5) containers, other than PET thermoforms as noted above, generally are included on the USCL. However, we request clarification as to why caps and lids for these types of containers with plastic lids are generally not included on the USCL, instead appearing on the PRO Acceptance List. This is confusing to AMERIPEN, as whether a cap or lid is attached to its container is determined by consumer behavior, not by the design of the product or anything within control of a producer.

Finally, AMERIPEN notes that the current proposed USLC under Rule #1 as drafted limits the inclusion of most plastic bottles, jugs, and tubs to those that are six (6) ounces and larger. While it is our understanding that this threshold has been used in some local governments in Oregon, we encourage DEP to modify this size requirement to align with industry best practices established by the Association of Plastic Recyclers (APR) through

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their *Design® Guide* size sortation protocol that sets a minimum size threshold of two (2) inches in at least two (2) dimensions. The packaging industry is very familiar with this size threshold, and inclusion of it for packaging materials and formats on the USCL would allow them to base future packaging decisions on a more common national standard. Furthermore, the current proposed six (6) ounce size threshold for the USCL would disallow several very common packaging formats (i.e., lotion bottles, cottage cheese tubs, yogurt cups), thereby limiting the ability for valuable recycled material feedstocks to be returned to responsible end markets. In some cases, a package containing less than six (6) ounces of product can be dimensionally larger than a package containing six (6) or more ounces of product. While DEQ has noted that the current proposed six (6) ounce threshold may be easier for residents to understand, we believe a size threshold parameter can be effectively communicated to residents, including through PRO funded education, thereby allowing highly recyclable items under six (6) ounces to be effectively recycled.

2. **Convenience Standards (OAR 340-090-0640)** – AMERIPEN appreciates that the convenience standards section in OAR 340-090-0640(1)(a) (C) and (D) provide for reasonable constraints on costs that would be covered for recycling collection at depots. We also appreciate the work that has gone into stipulating appropriate collection point convenience standards in this section and that it provides for alternative compliance plans. However, AMERIPEN requests that the rule provides the PRO with the opportunity to request a temporary variance in convenience standards if market factors, staffing shortages, technological issues or other circumstances warrant a variance from the strict stipulations of these requirements.
3. **Performance Standards (OAR 340-090-0650)** – AMERIPEN appreciates that this section stipulates how the PRO will propose its approach and develop services to meet the requirements of the RMA. AMERIPEN requests that the proposed rule provides clearer authority that the PRO can establish performance standards for depots and other service providers that it contracts with to provide service under the Act. Establishing this endorsement in rule will provide the ability for the PRO to ensure greater uniformity and work toward greater ability to assess recycling service providers and certain end markets.
4. **Collection Targets (OAR 340-093-0660)** – AMERIPEN appreciates the deference that OAR 340-093-0660(2)(c) provides to the PRO to propose collection targets for most materials under OAR 340-090-0630(C) – the Producer Responsibility Organization Recycling Acceptance List – when the PRO submits a program plan for approval, and we believe that this approach is justified in contrast to setting arbitrary numbers in regulatory code. However, OAR 340-093-0660(2)(b) does not provide that same level of deference for

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polyethylene (PE) film, with the proposed rule requiring scaled collection targets, beginning at 25% in 2028 and rising to 50% by 2040. While we understand that the targets proposed in OAR 340-093-0660(2)(b) mirror the plastic recycling goals contained in ORS 459A.926 of the RMA, we would appreciate more information as to why PROs are afforded the flexibility to propose collection targets for other plastic materials subject to the goals in ORS 459A.926, but not afforded the same flexibility for PE film. There may be a strong policy reason to support this determination by DEQ, but it is currently unclear to AMERIPEN what that policy reason is. If there is not a strong policy reason to support this, we would encourage DEQ to amend the proposed rule and also allow PE film collection targets to be proposed by the PROs.

- 5. Responsible End Markets (OAR 340-090-0670)** – As noted in previous comments to DEQ, AMERIPEN continues to assert that it will be difficult, particularly in the beginning stages of implementation, for the PRO to ensure a detailed assessment of each intermediary and supply chain entity to confirm it meets the responsible end market standard under the proposed rule. This is true as the PRO will have little control over, or knowledge of, or contracts throughout the recycling supply chain. This is particularly true for materials that are classified on the Local Government Recycling Acceptance Lists, where the PRO will not have a direct relationship with entities in that recycling system. There also is no specific mandate that local governments and other partners must provide the necessary information to the PRO – this may lead to delays or resistance to providing useful and accurate information to PROs or third-parties to audit or validate a responsible end market and verify the criteria in OAR 340-090-0670(3).

Of particular concern to AMERIPEN is the responsible end market definition under OAR 340-090-0670(e) for plastic recycled to produce packaging for food and beverages, whereby the end market is defined as the entity that places flake or pellet containing recycled plastic into a mold for the manufacturer of such packaging. This is in contrast to OAR 340-090-0670(d) where the end market for all other plastic for packaging applications is defined as the entity that last handles flake or pellet containing recycled plastic prior to sale or transfer to another person that creates a new product either by placing it into a mold or through extrusion or thermoforming. We understand DEQ's desire to require accountability further downstream for plastic recycled to produce packaging for food and beverage under their belief that there may be additional environmental and human health impacts associated with the use of post-consumer content during production. However, this definition for only certain applications of the use of recycled plastic appears arbitrary and extends beyond the reach of material recycling and reprocessing into the realm of actual manufacturing. Furthermore, the

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definition appears to ignore processes that already exist whereby the use of recycled content in food contact packaging must be approved by the U.S. Food and Drug Administration (FDA) through a Letter of No Objection (LNO). We therefore strongly encourage DEQ to revise the proposed rule to not separate out plastic packaging for food and beverage with a different responsible end market definition than for all other plastic packaging.

The responsible end market characteristics listed in the proposed rule are also very prescriptive and might be particularly hard to validate, especially for the “Environmentally-Sound” requirement. It is unclear who would do the monitoring and what entities would be appropriate to validate the characteristics of “Environmentally-Sound” and what would be considered “adequate emergency response” or what would qualify as “managing inputs sustainably.” AMERIPEN requests that these terms be given greater definition and specificity or be removed from the rule.

Recycling yields might also prove challenging for the PRO to validate unless the rule provides clear authority for the PRO to solicit and obligate this information from entities in the recycling system. AMERIPEN anticipates significant resistance from recycling entities to provide yield information to producers/the PRO unless the rule creates a clear obligation for those entities to respond and make a good faith effort to provide this information to the PRO.

Additionally, DEQ has stated that there are unknown compliance costs associated with the joint obligation for PRO(s) and commingled recycling processing facilities to ensure materials reach responsible end markets. This is a significant area of concern. AMERIPEN understands the desire to have recyclable materials collected under the RMA to be processed in safe and environmentally protective facilities. However, there must be a clearer understanding of the total compliance cost of the complex structure that has been proposed in this draft rule.

In closing on this topic, AMERIPEN asserts and requests that at a minimum, the rule must provide clear legal authority to the PRO to conduct the activities under this section. Equally, the rule must also clearly and legally obligate local governments, and the entities with which they contract to process recyclables, to provide the information and provide PROs access to facilities to conduct the audits required under this section.

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- 6. Producer Responsibility Organization Fees (OAR 340-090-0690)** – AMERIPEN appreciates that DEQ has performed significant analysis of the administrative costs as it has established the Program Plan Review fee of \$150,000 and the Annual Administration Fee of \$4 million (2025-28) and \$3 million from 2028 forward. AMERIPEN appreciates that DEQ has the discretion to reduce the annual administration fee. However, AMERIPEN requests that the rule stipulates that the DEQ will provide administrative fee costs accounting data to all PROs to support these costs with the invoicing stipulated in OAR 340-090-0690 (2)(a). These administrative costs currently represent the highest fees proposed in any packaging producer responsibility system in the nation, and appropriate justification and documentation must be provided to PROs on an annual basis. AMERIPEN also requests that the rule be amended so that a PRO can petition DEQ to adjust administrative fees under OAR 340-090-0690(2)(b), should actual costs not reflect the proposed fee schedule in the rule.
- 7. Market Share (OAR 340-090-0700)** – there appears to be a typographical error in this section of the proposed rules, with OAR 340-090-0700 (2)(c) twice referencing OAR 340-090-0640 as the rule setting forth coordination plans for multiple PROs. OAR 340-090-0640 does not address coordination plans, instead addressing Convenience Standards. AMERIPEN believes the intended citation is OAR 340-090-0680 Producer Responsibility Organization Coordination.
- 8. Proprietary Information (OAR 340-090-0710)** – While the proposed rules allow for parties providing information to DEQ to designate information as proprietary or confidential, and while the rules specify that the market shares of producer responsibility organizations are not proprietary information, the rules do not appear to directly address the question of how an individual producer may specify, at the time the producer provides information to its PRO, that the information is proprietary or otherwise not subject to disclosure and should not be publicly disclosed by the PRO or DEQ, if that information is not covered by the confidentiality provisions of ORS 459A.887 (3). AMERIPEN requests more clarity on this point and encourage DEQ to provide clear opportunities for producers to designate proprietary information as confidential, consistent with the confidentiality provisions afforded to individual entities required to participate in organizations for other Oregon EPR programs, such as the Drug Take-Back Program (ORS 459A.254) and the Architectural Paint Stewardship Program (ORS 459A.847).
- 9. Transportation Costs (OAR 340-090-0770 to 0780)** – AMERIPEN appreciates that the RMA and the proposed rule does not include all collection and transportation costs in reimbursement to local governments. AMERIPEN also appreciates that the proposed rule

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requires the PRO to reimburse travel costs to transport collected materials to recycling processing facilities or responsible end markets that are 50 miles or further away, per the requirements of the RMA. However, a blanket allowance for reimbursement without appropriate justification may unduly incentivize transportation reimbursement. DEQ should also balance the benefits to the program from this provision against the environmental and workplace safety concerns associated with such long-distance, energy-intensive, vehicular transport. AMERIPEN also appreciates that the PRO is provided the ability to develop the method for calculating transportation costs under 340-090-0780 and the process for receiving feedback in this section.

10. Expansion of Service, Service Funding and Needs Assessment (OAR 340-090-0790 to 0800) – AMERIPEN appreciates that the PRO will establish the proposed schedule, scope and estimate of total amount of funds for recycling service expansion in the program plan, under OAR 340-090-0790. This approach provides appropriate control to the PRO to manage the plan and budget for these program expansions. AMERIPEN also appreciates that the PRO will not be obligated to provide funds under section 340-090-0800 for activities that are inconsistent with the terms of expansion between the PRO and local government service providers. AMERIPEN believes that this section should also stipulate that the PRO can require local government service providers to provide periodic and regular information on the use of funds to the PRO and must submit to audits of the use of these funds to ensure that they are appropriately used for the terms of the recycling service expansion.

11. Products Sold Through Distributors – For producers in a variety of industries subject to the RMA and this rule, sales often occur directly to a distributor or to a warehouse located in or outside of the state. In these instances, the producer does not have visibility into which states the product may then be offered for final sale to the consumer. We recommend the DEQ take this into consideration and add clarification to support both the producers and the PRO(s) as the program is established. AMERIPEN recommends that this could be done in two potential ways:

- a. In the fee model and the market share (OAR 340-090-0700) calculations related to a producer’s percentage of covered products sold in or into the state, a differentiation between products “sold or distributed” could be made (i.e., distributors should be separated and responsible for the share of product they sell into the state based on the scenario where the sales information exists with the distributor and not with the producer).

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July 28, 2023
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- b.** The rule could be modified to include an option to provide producers with a formula to estimate products sold into the state if they are sold through a distributor or require the distributor to disclose point of sale data.

#

AMERIPEN strives to offer a good-faith and proactive approach that supports a packaging producer responsibility program in Oregon that will incentivize recycling growth and build recycling infrastructure to move more packaging materials to greater circularity. AMERIPEN continues to focus on strategies that develop and/or strengthen policies to progress “reduce, reuse, recycle” while at the same time enhancing the value of packaging. Our members are driving innovation, designing better environmental performance to evolve the recycling infrastructure and to create a more circular economy for all packaging. In our efforts to reduce environmental impact by increasing the circularity of packaging, our members continue to recognize the value of collaboration and the importance of working across the packaging value chain.

AMERIPEN looks forward to the continued open dialogue with the DEQ and interested stakeholders while collectively balancing between the myriad of needs for packaging, recycling, and sound solutions to grow a more sustainable future, an effective circular economy, and systems that achieve positive environmental outcomes for everyone, which in the end, will ultimately assist in the success of the RMA. We remain committed to supporting progressive, proactive, and evidence-based strategies for a sustainable program.

As always, AMERIPEN thanks Oregon DEQ for the continued opportunities to provide comments regarding the establishment of the packaging producer responsibility program in Oregon and appreciates its staff’s time and assistance during the rulemaking process. Please feel free to contact me or Andy Hackman, with Serlin Haley, LLP (ahackman@serlinhaley.com) with any questions on AMERIPEN’s position.

Sincerely,



Dan Felton
Executive Director

Oregon Department of Environmental Quality (DEQ)
700 NE Multnomah Street, Suite 600
Portland, OR 97232
recycling.2023@deq.oregon.gov

July 28, 2023

Comments re: Proposed Rules, Plastic Pollution and Recycling Modernization Act of 2021

Dear Roxann Nayar and DEQ rulemaking team,

On behalf of the Association of Plastics Recyclers (APR), I am submitting comment on the proposed rules for the Plastic Pollution and Recycling Modernization Act of 2021. The APR is a U.S.-based, international trade organization focused exclusively on growing and sustaining the plastics recycling industry. APR's membership includes independent recycling companies of all sizes who process numerous plastic resins, as well as consumer product companies, plastic resin producers, packaging producers, equipment manufacturers, testing laboratories, organizations, and others committed to the success of plastics recycling.

We appreciate the rigor of the Oregon DEQ rulemaking process to date and the opportunity to participate in the Technical Workgroup on Material Lists; to provide our perspective on recycled plastic sortation and markets; and to offer detail from our [APR Design® Guide](#) for recycling-compatible design guidance.

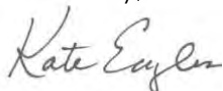
We provide comment on the following proposed Uniform Statewide Collection List item:
Plastic bottles and jugs, 6 ounces and larger, made of clear PET (#1), natural or colored HDPE (#2), or polypropylene (#5) (caps OK if screwed on).

We recommend the inclusion of light blue as in, "Plastic bottles and jugs, 6 ounces and larger, made of clear **or light blue** PET (#1), natural or colored HDPE (#2), or polypropylene (#5) (caps OK if screwed on).

Light blue PET bottles and jugs are commonly processed in with the clear material stream by PET reclaimers. Light blue bottles not only increase the total volume of high-value clear, recycled PET resin, but can improve its quality by acting as a bluing agent and offsetting any yellowing that can occur in the recycling process. We know of no reason why light blue bottles should not be added to this list item description; this is consistent with APR Design® Guide Preferred guidance for PET.

Thank you again for your robust and inclusive rulemaking process and for this opportunity to comment. Please contact me (kate@plasticsrecycling.org) for any clarifications or questions.

Sincerely,



Kate Eagles, APR Program Director

cc: Kate Bailey, APR Chief Policy Officer

July 28, 2023

Attn: Roxann Nayar/Materials Management
Oregon Department of Environmental Quality,
700 NE Multnomah Street, Suite 600, Portland, Oregon 97232-4100
Sent via email: recycling.2023@deq.oregon.gov

**RE: Notice of Proposed Rulemaking: Plastic Pollution and Recycling
Modernization Act, Rulemaking 1**

To whom it may concern,

Circular Action Alliance is pleased to submit comments as Plastic Pollution and Recycling Modernization Act, Rulemaking 1 process.

Circular Action Alliance (CAA) is a U.S., non-profit producer responsibility organization (PRO) established to support the implementation of extended producer responsibility (EPR) laws for paper and packaging. CAA's Founding Members include Keurig Dr Pepper, General Mills, Niagara Bottling, The Coca-Cola Company, Ferrero, L'Oréal, Nestlé, Procter & Gamble, PepsiCo, Unilever, Colgate-Palmolive, The Clorox Company, Mars, Incorporated, SC Johnson, Kraft-Heinz, Walmart, and Target.

The comments included are based on extensive consultation that CAA has undertaken with its members and key considerations, including:

- cost and effectiveness of managing materials;
- simplifying the recycling system for residents;
- accepted for recycling requirements and product "Recyclability" claims;
- allowing for continual improvement in the system; and,
- consideration of the positions of DEQ and other stakeholders.

We look forward to continuing to work closely with Oregon DEQ staff through this process and pleased to discuss any question or concerns you might have.

Sincerely,

Doug Mander, Oregon Program Manager
Circular Action Alliance (CAA)

CAA Comments on Oregon Phase I Rulemaking

Section 1: Material Lists

CAA generally supports the proposed material lists and named inclusions on the Local Government Recycling Acceptance Lists with a few important exceptions. While we do not plan to mention every single item within our comments, absence of comment does not reflect the careful consideration our team has given to every material category.

CAA supports expansion of the Uniform Statewide Collection List (USCL) materials at the outset. Taking this action will provide Oregon residents with greater opportunities to recycle and support producers with meeting the ambitious plastic recycling targets set under the RMA.

CAA recognizes that upfront investments in Oregon processing facilities may be necessary to meet the required criteria for additional materials. We also recognize that the Processor Commodity Risk Fee (PCRF) will include provisions for anticipated costs that will assist recycling facilities in implementing new technologies and processes to accommodate any new materials.

Given the significant environmental benefits to adding additional materials to the USCL, CAA also intends to conduct additional research and stakeholder engagement and review select materials with producers for inclusion on the USCL through CAA's Program Plan submission.

Local Government Recycling Acceptance List OAR 340-090-0630 (2)

CAA would like to provide the following remarks in relation to specific details and omissions from the Local Government Recycling Acceptance lists:

Plastic bottles and jugs OAR 340-090-0630 (2)(k)(A)&(B)

CAA has comments with respect to four issues:

- 1. Size**
- 2. Resins**
- 3. Color**
- 4. Lids**

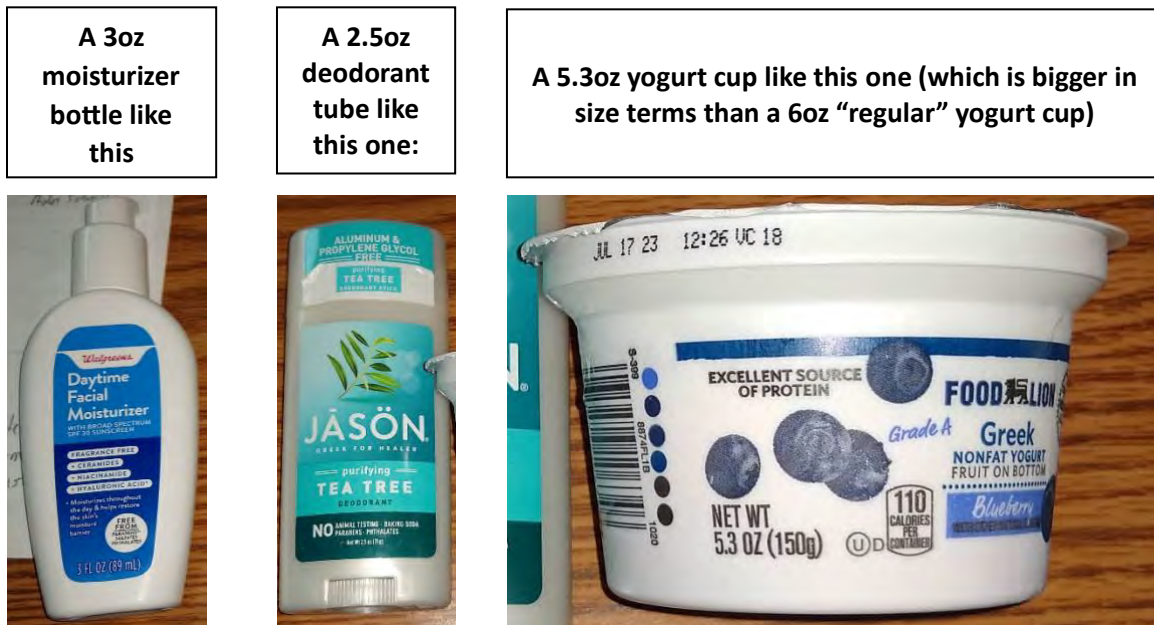
- 1. Size:** the stated minimum threshold is volume based at 6oz. As other stakeholders have acknowledged during the rulemaking process, the minimum threshold should align with industry best practices, which have been developed

by the Association of Plastic Recyclers (APR). Otherwise, materials that can be properly sorted and recycled will be sent to disposal.

APR requires testing for small packaging only when it is less than two inches in two dimensions. DEQ should adopt a minimum threshold that is aligned with this standard. It is well understood that the glass breaker/fines screen in Commingled Recycling Processing Facilities (CRPFs) is an issue for small formats. The size of the glass/fines screen openings differs between machine manufacturers. However, [APR's protocol](#) uses an average of the four most common glass screen manufacturers and, therefore, represents the average screen throughout the industry. APR's design guide recommends that items "measure larger than five centimeters (2 inches) in two dimensions." This standard along with the ability for testing protocols should form the technical approach to DEQ's threshold.

By using a 6oz threshold, several recyclable formats that meet APR's criteria will not meet the 6oz criteria.

For example:



Another example is HDPE tubes. Extensive studies on tube sorting by brands as well as by organizations, such as Stina, show that the majority of tubes tested over 2 oz. correctly sorted to the colored HDPE bottle bales. Small format tubes 1-2 oz in volume can also be sorted properly depending on the shape and dimensions. There is work underway to better understand the shape and dimension that allows for small format 1-2 oz tubes to sort successfully, as well as a collaboration with MIT on small format packaging & plastics sorting technology.

DEQ has stated concerns that APR's size criteria cannot be appropriately communicated to residents. Whether a covered material is included or excluded from the USCL should be based on technical standards and data. Communication with residents should be separated from the technical requirements for effective sortation and managed after the list has been finalized.

CAA supports a system that promotes innovation whether that be in design, collection, sorting or promotion and education. The starting point for the rule should be size-based criteria that facilitate design changes to remove small packaging that is problematic. It should build on APR's work to date (early indications are that California's SB 54 will also adopt a size-based criteria).

- 2. Resins:** Changes between rule concepts in October 2022 and December 2022 show the management of LDPE rigids is not a clear-cut issue. All plastic bottles and jugs (excluding PVC which has largely been phased out) should be included. LDPE bottles can be effectively sorted, as noted in rule concept details from December 2022, "*If LDPE shows up at the MRF, it can be co-marketed in small quantities with either HDPE or PP.*"
- 3. Color:** The draft rule states that the USCL should include clear PET only. This direction is not in keeping with other technical standards, which identify clear unpigmented PET, transparent light blue and transparent light green PET as preferred. While certain incentives may be required to move away from opaque (pigmented) PET as these materials may be detrimental to end markets, these materials do still have end markets. The rule should be amended to align with industry accepted design standards, such as the APR Design Guide, ISRI PET Bottle Grade, and Consumer Goods Forum Golden Design Rules. By referring to APR Sorting protocol which includes APR Sort-B-01 (NIR Sortation) and APR Sort-B-02 (Size Sortation), the rules could allow for a testing process for inclusion.
- 4. Caps/lids:** Note that OAR 340-090-0630 (2)(k)(B) references caps. The reference should also include lids given the formats under discussion. The draft rules list PE and PP lids and caps as a PRO Recycling Acceptance List material but only includes caps as on the USCL if screwed on. Taking this direction will be challenging for several reasons:
 - a. *Loss of recyclable content:* DEQ acknowledged, in the rule concepts published Dec 28, 2022, the significant challenge for user participation and potential wasted cost to the system to have residents take caps and lids to recycling depots. There is potential for highly recyclable material to be unnecessarily lost and also not counted towards plastic recycling goals. Lids and caps are also commonly accepted in comingled streams in other jurisdictions.
 - b. *Consumer confusion:* Caps and lids are listed on the USCL if "acceptable if screwed/snapped on." However, if they are not screwed or snapped on, caps and lids are listed on the PRO Acceptance List and must be taken to a depot. Creating this requirement will result in consumer confusion and operational challenges as the PRO will need to collect small volumes of

separated caps and lids at depots. The direction should be simple and clear: caps and lids are recyclable; caps should be screwed on to bottles and lids should be snapped on to tubs when recycling. To make this change, we recommend removing the wording “if screwed/snapped on” from the rules in both OAR 340-090-0630 (2)(k)(B) and OAR 340-090-0630 (2)(k)(C).

CAA Rule Recommendation

<p>OAR 340-090-0630 (2)(k)(A) & (B)</p>	<p>Proposed Changes (Preferred)</p>	<p>(k) Plastic that fits loosely in the generator’s provided on-route collection container, excluding any such item that was used to contain or store motor oil, antifreeze, or other automotive fluids, pesticides or herbicides, or other hazardous materials (flammable, corrosive, reactive, toxic), as follows:</p> <p>(A) Plastic bottles, and jugs, and jars that measure larger than 2 inches (five centimeters) in two dimensions or have data to prove they can pass the APR sort protocol, including caps if screwed on, made of the following materials:</p> <ul style="list-style-type: none"> (i) PET (#1) (clear only); (ii) HDPE (#2); and (iii) PP (#5) (iv) LDPE (#4) <p>(B) Plastic tubs and other containers that measure larger than 2 inches (five centimeters) in two dimensions or have data to prove they can pass the APR sort protocol, including caps if screwed on and lids, made of the following materials:</p> <ul style="list-style-type: none"> (i) PET (#1); (ii) HDPE (#2); and (iii) PP (#5) (iv) LDPE (#4)
<p>OAR 340-090-0630 (2)(k)(A) & (B)</p>	<p>Proposed Change (Alternative)</p>	<p>(k) Plastic that fits loosely in the generator’s provided on-route collection container, excluding any such item that was used to contain or store motor oil, antifreeze, or other automotive fluids, pesticides or herbicides, or other hazardous materials (flammable, corrosive, reactive, toxic), as follows:</p> <p>(A) Plastic bottles, and jugs, and jars that measure larger than 2 inches (five centimeters) in two dimensions or have data to prove they can pass the APR sort protocol, including caps if screwed on, made of the following materials:</p> <ul style="list-style-type: none"> (i) PET (#1) (clear unpigmented, transparent light blue, transparent light green only);

		(ii) HDPE (#2); and (iii) PP (#5) (iv) LDPE (#4) (B) Plastic tubs and other containers that measure larger than 2 inches (five centimeters) in two dimensions or have data to prove they can pass the APR sort protocol , including caps if screwed-on and lids , made of the following materials: (i) PET (#1); (ii) HDPE (#2); and (iii) PP (#5) (iv) LDPE (#4)
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CAA Rule Recommendation

OAR 340-090-0630 (2)(k)(C)	Proposed Changes	(C) Plastic buckets, pails, and storage containers, including lids if snapped-on , made of the following materials: (i) HDPE (#2); and (ii) PP (#5) (iii) LDPE (#4)
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Plastic Cups

OAR 340-090-0630 (2) (k) (E)

The rule draft states that the USCL should include clear plastic cups (PET and PP) only. As noted previously to align with technical standards, the USCL should also include transparent light blue PET and transparent light green PET. While opaque (pigmented) PET may not be preferred, these materials do have markets and incentives can be applied to the fee structure. Pigmented materials are also not an issue for PP or HDPE which plastic cups can be made of. This approach would drive harmonization in industry best practices since it aligns with other industry accepted design standards, such as the APR Design Guide, and Consumer Goods Forum Golden Design Rules.

CAA Rule Recommendation

OAR 340-090-0630 (2)(k)(E)	Proposed Changes (Preferred)	(E) Clear -Plastic cups made of the following materials: (i) PET (#1); and (ii) PP (#5) (iii) HDPE (#2)
OAR 340-090-0630 (2)(k)(E)	Proposed Changes (Alternative)	(E) Clear -Plastic cups made of the following materials: (i) PET (#1) (clear unpigmented, transparent light blue, transparent light green) ; and (ii) PP (#5) (iii) HDPE (#2)

Composite cans
OAR 340-090-0630 (2)(f)

It appears DEQ's recycling end market concern for composite cans is in relation to the materials used and not the method of manufacture (e.g., spiral wound versus made with a side seam is not the concern). As a result, CAA recommends the following clarification and consistent use of terms (i.e., "cans" versus "containers"):

CAA Rule Recommendations

OAR 340-090-0630 (2)(f)	Proposed	(f) Spiral-wound containers or Composite cans made primarily of paper and steel;
OAR 340-090-0670 (2)(c)	Proposed	<p>(f) For all materials except for spiral-wound containers or composite containers composite cans made of paper and steel, the recycling yield is the amount of the material that was successfully processed by the end market divided by the amount of the material that entered the recycling supply chain initially.</p> <p>(B) For spiral-wound containers or composite containers composite cans made of paper and steel, the recycling yield is the amount of the metal fraction or paper fraction of the material that was successfully processed by the end market, divided by the amount of that fraction that entered the recycling supply chain initially. If the yield of either the metal fraction or of the paper fraction exceeds 60 percent, the composite material is achieving adequate yields.</p>

Polycoated cartons
OAR 340-090-0630 (2)(k)

There is a concern the current definition may not be broad enough to cover all types of polycoat packages. As a result, CAA recommends the following clarification to ensure all polycoat packages are included.

CAA Rule Recommendations

OAR 340-090-0630 (2)(f)	Proposed	(k) Polycoated cartons (for example milk cartons), polycoated paperboard , aseptic cartons, and polycoated paper cups;
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Small Scrap Metal
OAR 340-090-0630 (2) (n) & (o)

While CAA acknowledges the economic and environmental benefits of capturing and recycling scrap metal, recycling scrap metal via commingled materials comes with economic and safety challenges. CAA supports the argument presented by many CPRFs that scrap metal presents undue operational and safety challenges to their facilities. Evidence suggests that even small scrap metal pieces can damage equipment. Scrap metal of any size can be damaging to technologies such as optical sorters, conveyor belts, etc. In the view of CAA, the continued collection of this material through the comingled stream will act at cross purposes with other RMA objectives to improve system outcomes and recycle additional materials through the comingled stream.

Alternatively, a number of existing programs in other jurisdictions effectively capture small scrap metal through the depot and drop off centers that collect larger scrap metal in order to avoid the challenges identified above in managing them as part of a comingled system. There are no technical issues or barriers that prevent the collection of this material through the general program for collecting scrap metal. As such CAA recommends that this material be collected under the general scrap metal program rather than through the comingled stream (where the material presents technical challenges).

CAA Rule Recommendation

OAR 340- 090- 0630 (2) (n) & (o)	Proposed Changes	Delete subsection (n) (o) Scrap metal Make required complementary amendment to subsection 4
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Producer Responsibility Organization Recycling Acceptance List

OAR 340-090-0630 (3)

Steel and Aluminum Aerosol Cans

OAR 340-090-0630 (3)(a)

Given the significant environmental benefits of recycling these materials, CAA plans to conduct additional research, engage recycling system stakeholders and review this material with producers for possible inclusion on the Local Government Recycling Acceptance List in CAA's Program Plan submission.

Aluminum foil and products made of pressed aluminum foil

OAR 340-090-0630 (3)(b)

CAA recognizes the challenges DEQ has communicated regarding aluminum foil products and is not suggesting or recommending a change to this rule. However, CAA believes there may be potential for commingled collection and plans to conduct additional research and stakeholder engagement and review this material with producers for possible on the Local Government Recycling Acceptance List in CAA's Program Plan submission.

Polyethylene film and packaging made of polyethylene film without layers of other material
OAR 340-090-0630 (3)(d)

CAA recognizes the challenges faced by PE film and believes that the PRO Recycling Acceptance List is the appropriate categorization for this material at this time and is therefore not suggesting or recommending a change to this rule. CAA intends to work with producers to ensure that PE film aligns with APR's design standards or CGF's Golden Design Rules, and requests that DEQ also support that alignment in its own communications.

Provided the infrastructure and end market challenges can be addressed, PE film could transition to the USCL in the medium term, and that this may be the best and only path to achieving the necessary recycling rates.

PE and PP lids and caps
OAR 340-090-0630 (3)(h)

As noted above, CAA recommends inclusion of PE and PP lids and caps on the local government recycling acceptance list (see discussion on OAR 340-090-0630 (2)(k)(A)&(B). CAA supports the movement of these materials onto the USCL.

CAA Rule Recommendation

OAR 340-090-0630 (3)(h)	Proposed Changes	Add PE AND PP lids and caps to the list of materials under OAR 340-090-0630 (2) to be collected under the USCL
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HDPE package handles
OAR 340-090-0630 (3)(i)

As with PE and PP lids and caps CAA recommends moving HDPE package handles to the local government recycling acceptance list. These handles are made of highly recyclable material and readily available processing technology exists to recover these materials from commingled streams. Inclusion of this material on the USCL now will ensure that the processing risk fee payable to Oregon processing facilities includes anticipated costs which accounts for the adoption of technologies or processes required to effectively sort these materials.

The volume of this type of material, potentially collected through an alternate depot system, will be relatively small. In the broad context of achieving plastic recycling

targets under the RMA, this material should be added to the USCL now since package handles are commonly collected in several other jurisdictions' curbside collection program.

CAA Rule Recommendation

OAR 340-090-0630 (3) (i)	Proposed Changes	Add to list of materials under OAR 340-090-0630 (2) to be collected under the USCL
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**Pressurized Cylinders
OAR 340-090-0630 (3)(i)**

As outlined in CAA's response to the covered product exemptions request, CAA recommends the removal of pressurized cylinders from the PRO Recycling Acceptance List. Pressurized cylinders should be addressed under separate requirements. The management of these types of containers adds unnecessary complexity to obligations, requires different collection and handling systems and can create confusion with the public if managed through a general packaging system.

Other Materials

Transparent (unpigmented) PET thermoform packaging and food serviceware

CAA believes that the PET thermoform packaging and food serviceware should be included in the USCL. The market is rapidly evolving and there have been changes noted since DEQ's evaluation.

- **End markets:** There are some immediate end markets which appear to meet baseline responsible standards proposed for the RMA. CAA plans to work with industry stakeholders to scan, engage with and vet additional markets.
- **Status quo opportunity:** Oregon CRPFs are already receiving PET thermoforms whether intentionally or unintentionally. CAA believes that this creates a baseline to build up to create additional volumes of a material that is highly sortable with no technical barriers and that could substantially impact plastic recycling rates. Disruptions to recyclability designations could harm this trajectory and create consumer confusion.
- **PCR goals:** Many CAA members have PCR goals and commitments that will rely heavily on the increasing availability of thermoform content. CAA is committed to working with producers to:
 - Explore creative ways to better establish material markets – for example, making guaranteed purchases of thermoform-heavy bales from CPRFs and routing them to responsible end markets;
 - Address current design barriers that create processing challenges.

Polycoated or clay coated packaging and food serviceware

CAA recognizes the challenges DEQ has communicated regarding polycoated and clay coated packaging and food serviceware (including susceptor packaging) and is not suggesting or recommending a change to this rule. However, CAA believes there may be potential for this material in commingled collection in the future and plans to conduct additional research and stakeholder engagement and review this material with producers for possible inclusion in the Program Plan submission.

Opaque (pigmented) PET containers (including black PET)

If opaque (pigmented) PET containers remain excluded from the USCL, CAA believes there may be potential for this material in commingled collection in the future and plans to conduct additional research and stakeholder engagement and review this material with producers for possible inclusion in the Program Plan submission.

SECTION 2: Responsible End Markets 340-090-670

Under the Recycling Modernization Act (RMA), PROs are responsible for ensuring that covered materials are recycled at responsible end markets (REMs). PROs share this REM responsibility with Commingled Recycling Processing Facilities (CRPFs) for materials collected under the Uniform Statewide Collection List (USCL). Phase I Rules define REMs for various types of materials, set recycling thresholds and requirements for end markets and outline the certification, verification and audit procedures that must be established to confirm materials have been delivered to REMs.

CAA supports the objective of the RMA to ensure that materials collected in Oregon are processed and recycled in an environmentally responsible manner. The DEQ has developed a comprehensive framework through rule requirements to ensure that materials collected by local governments and PROs are recycled by responsible end markets. However, there are challenges associated with:

- The practicability of PROs to meet proposed REM standards for materials marketed by CRPFs, and;
- The ability to verify those standards under the timelines proposed by DEQ.

Under the RMA framework, PROs have little control over the flow of materials from CRPFs to REMs. The mechanisms to ensure REM compliance through third-party contractual obligations are less direct under the Oregon framework in relation to programs where PROs contract with processing facilities and/or reclaimers and, therefore, have a better control on the flow of materials. As a result, it will likely take time to sort out issues related to compliance in many situations.

It is essential that the REM responsibilities proposed under the RMA are accompanied by regulatory requirements that enable PROs to obtain the data necessary to verify and/or certify compliance with those requirements. In the view of CAA, the current Phase I rules related to REM responsibilities do not provide PROs with the ability to obtain data necessary to support successful implementation of REM requirements. Complementary Phase II rules will be required to ensure that PROs have access to data necessary to verify REM obligations.

The scope of REM requirements under the RMA are extensive for the North American market. Several adjustments to the posted REM rule framework are necessary to ensure that PROs can effectively manage these obligations. CAA recommendations for rule amendments related to REM requirements can be divided into the following categories:

- Timelines for verification of REM standards;
- End market definitions for specific manufacturing uses;
- Clarification of yield thresholds; and,
- Ability of PROs to verify REM standards and DEQ designation of REMs.

Timelines for Verification of REM Standards OAR 340-090-0670 (3)(b) and (c)

The posted rules prescribe the timelines by which PROs must use a screening assessment to identify REMs. The rules create the following timelines for verification of REMs:

- For materials on the PRO Acceptance List:
 - Screening assessment by July 1, 2025 (program start date);
 - Verification by July 1, 2026.
- For materials on the USCL:
 - Screening assessment by December 31, 2025;
 - Verification by October 1, 2026.

The implementation of REM requirements will require verification and auditing of material streams for material processing facilities, intermediaries and end markets in the supply chain managing Oregon materials. Many of these businesses are currently not subject to this type of regulatory oversight. Tracking materials through the recycling supply chain will require these entities to provide data and agree to be subject to audit processes to verify material flows and outcomes. For example, random bale tracking at processing facilities with respect to USCL materials will require access by independent auditors at Oregon CRPFs.

CAA supports DEQ's rule to permit REM certification through a third-party EQC-approved program but notes that, at the time of this rule posting, no such third-party certification program exists for the proposed REM criteria. The lack of an existing acceptance standard reflects the newness of Oregon's REM obligations. Typically, the development of independent third-party certification standards for something like the end-market standards proposed by DEQ would take extensive consultation with a wide variety of stakeholders and potentially require years to develop, consult on, and implement.¹ This option therefore is unlikely to be available by the Oregon program start date of July 1, 2025.

More time will be required to complete an initial verification of all REMs for both PRO-designated materials and for materials collected on the USCL. Although it may be possible to verify some end markets under the proposed timelines, there will be some materials and end-market situations where it will be far more difficult to complete a verification process.

The rules should include an extended timeline for the initial verification of REMs with initial screening to be completed by July 1, 2026, within a year of the program start date and verification completed by the end of first program plan operating period December 31, 2027. CAA also recommends that the verification process for the different Oregon acceptance lists be aligned given the overlap in terms of material types, between materials on the two lists.

¹ For example, the recent CSA CAN/BNQ 3840-100 Standard for assessing recycling content in plastic products took well over a year to develop once the formal process for creating the standard, which began with creating the appropriate stakeholder committee was created. Other standard setting exercises involving multiple stakeholders often require similar or longer timelines.

CAA Rule Recommendation

OAR 340- 090- 0670 (3)(b)	Proposed Changes	For materials described under ORS 459A.869(7)(a) and any other materials collected by a producer responsibility organization (including collected through contract with a producer responsibility organization), a producer responsibility organization must complete the step provided by paragraph (a)(A) by July 1, 2026 , and the step provided by paragraph (a)(B) by December 31, 2027 . For such materials added after the start date of the program a producer responsibility organization must complete the step provided by paragraph (a)(A) within six months of delivery of the materials to the end market , and the step provided by paragraph (a)(B) within eighteen months of first delivery to the end market.
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CAA Rule Recommendation

OAR 340- 090- 0670 (3)(c)	Proposed Changes	For materials described under ORS 459A.869(7)(b) and any other materials not collected by the producer responsibility organization, a producer responsibility organization must complete the step provided by paragraph (a)(A) by July 1, 2026 , and the step provided by paragraph (a)(B) by December 31, 2027 . For such materials added after the start date of the program a producer responsibility organization must complete the step provided by paragraph (a)(A) within six months of delivery of the materials to the end market, and the step provided by paragraph (a)(B) within eighteen months of first delivery to the end market.
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**End Market Definitions for Specific Manufacturing Uses:
Plastic Children’s Toys and Food and Beverage Applications
OAR 340-090-0670 (1)(d) and (e)**

The requirement that recycled plastic material be tracked through to food and beverage applications and children’s toy manufacturers relates to potential toxicology concerns with recycled plastic resin. The U.S. Food and Drug Administration (FDA) regulates virgin and recycled plastic used for food-contact applications, and similar agencies do the same in other countries. The regulation of these processes would be more appropriately addressed through composition and production requirements applied to these manufacturers regardless of the recycled content in their products.

The inclusion of these manufacturers as REMs under the RMA will require the attestation of hundreds or potentially thousands of manufacturers. Creating new requirements will duplicate or conflict with existing FDA regulatory processes and requirements.

In addition to implementing a consistent end market definition for all plastics, CAA recommends replacing “handles” in OAR 340-090-0670 (1)(d) with “processes.”

CAA Rule Recommendations

OAR 340-090-0670 (1)(d)	Proposed Changes	For plastic the end market is the entity that last processes flake or pellet containing recycled plastic prior to sale or transfer to another person that creates a new product either by placing it into a mold or through extrusion or thermoforming.
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OAR 340-090-0670 (1)(e)	Proposed Changes	Delete OAR 340-090-0670 (1)(e)
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**Clarification of Yield Requirements
OAR-090-0670 (2)**

The end markets for Oregon processing facilities are integrated with collection systems and materials from other jurisdictions. Materials are often mixed with non-Oregon materials and the pathway between processing facilities and end markets often involve multiple entities, such as brokers or other processing facilities. Some DEQ REM draft rule requirements also require tracing recycled material from recycling facilities to manufacturing facilities. It is not particularly clear under OAR-090-0670 (2)(a)(D) how yield thresholds are to be calculated in situations where Oregon RMA materials are mixed with non-RMA materials or where RMA materials maybe combined with non-covered products in the recycling process.

Key questions, using glass as an example, include:

- If RMA glass is mixed at a beneficiation facility with glass from other states, how would a yield threshold determined?
- Does all material downstream of a beneficiation plant, which is mixing RMA material with other materials, have to meet a 60 percent yield threshold based on collection inputs related to the RMA glass?
- Or does the verification process simply have to verify that a percentage of glass downstream from the beneficiation plant equivalent to the RMA inflow to the beneficiation plant meets a yield threshold?

For recycling facilities that utilize a small percentage of Oregon material, obligations associated with subsequent downstream REM requirements, may create disincentives to utilize Oregon materials at their facilities. As such a proportion downstream obligation would be fairer for those facilities as well as Oregon recyclers. For example, in the glass beneficiation plant example above, if 10% of the glass processed originates in Oregon then the downstream REM verification obligation should apply to 10% of that plant’s output. The application of OAR-090-0670 (2)(a)(D)

needs to be clarified with respect to situations where Oregon RMA materials are mixed with other non-obligated materials including materials from other states and non-obligated Oregon materials.

CAA Rule Recommendation

OAR 340- 090- 0670 (2)(b)	Proposed Changes	The responsible standard described in subsection (a) of this section applies to all entities in the supply chain after the commingled recycling processing facility or producer responsibility organization collection point (or post-collection in a supply chain without either facility) up to, and including, the end market. Producer responsibility organizations will submit to DEQ for review and approval guidelines and verification protocols to be followed in determining the application of end market requirements in situations where obligated Oregon materials are mixed with non-obligated materials, such as material from another state, before final disposition to responsible end markets.
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Practicable actions undertaken by a producer responsibility organization OAR-090-0670 (5)

Under 459A.869(7) PROs have an obligation to “work with recycling system participants to ensure, to the extent practicable” that covered products collected for recycling are recycled at responsible end markets. The proposed rule identifies “practicable actions” a PRO may undertake to comply with this requirement.

Subsection (B) indicates that the PRO may provide financial support to divert materials to a different end market that is responsible. This rule seems inconsistent with the obligation in the Act for processing facilities to market materials to responsible end markets. If an appropriate REM exists, CRPFs that send material to an end market that does not meet REM requirements should be responsible for correcting this situation. There should not be a requirement for the PRO to subsidize transportation costs in this situation. CAA recommends that this rule reference be deleted.

CAA Rule Recommendation

OAR 340- 090- 0670 (5)(a)(B)	Proposed Changes	Delete subsection (B) Providing financial support to divert materials to a different end market that is responsible under section 2 of this rule or in alignment with the hierarchy of materials management.
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Ability of PROs to Verify REM Standards and DEQ Designation of REMs OAR-090-0670 General and OAR-090-0670 (2)(c)(D)

Under the posted REM rules, PROs will need access to data and facilities to demonstrate compliance with REM requirements. Verifying responsible end markets will involve the creation of a reporting and monitoring process for hundreds of businesses. However, under the RMA shared model, PROs will not have contractual relationships with processing facilities. These facilities will be reluctant to provide data, or agree to be audited by a third party, such as a PRO without a direct contractual relationship or a rule requiring them to do so. This reality may create difficulties for PROs in obtaining the information necessary to verify the destination of collected materials, including third-party audits.

Verifying a responsible end market outcome using the process described by rule will be extremely difficult to complete in a reasonable timeframe. Measuring yield thresholds for certain bales, such as polycoated cartons processed at a paper mill, will be challenging. This may not be an indication that the material is not being recycled responsibly but rather that the specific outcome is not measurable or verifiable under the process described in the posted rule.

Although uncommon, certain situations may require DEQ to designate a particular end market as responsible even if the specific requirements of the posted rules are not being met. Such a designation could be temporary or limited to specific circumstances. Such a rule would provide flexibility to deal with unique situations or particular material types where for technical or other reasons a specific material yield calculation is not feasible or some other aspect of the REM requirement cannot be confirmed through a PRO verification process.

OAR-090-070 (2)(c)(D) requires that specified individual materials that are commonly recycled mixed with other similar materials have separate yield evaluations. Yields for individual incoming bale components will likely be impossible to determine from mixed recycled material produced and mixed process residue outputs.

An alternative of requiring batch recycling runs of individual bale components by all recycling end markets accepting mixed streams is not reasonable or feasible.

Concerns include:

- The negative economic impacts associated with shutdowns necessary to clean out processing lines and output storage areas, and perform individual material trials in their production facilities.
- Recycling end markets generally lack the ability to sort out, store, and later feed in and batch recycle specific individual bale components.
- Screens and filters in recycling facilities are designed with certain capacities to remove materials not desired in the recycled material produced. Those capacities are based on typical loading levels in the incoming mixed material stream. These systems will likely be overloaded if the system were to batch process certain individual bale components and the results of such as test will not provide results applicable to normal loading levels.

For example, OAR-090-0670 (2)(D)(i) requires yield for polycoated cartons, aseptic cartons, and polycoated paper cups to be evaluated separately from other materials. Mixed paper bales processed at paper mills may include a small percentage of this material that is typically only a couple percent of a mixed paper bale. It will be virtually impossible to effectively measure the specific yield of this material at a particular paper mill as other polycoated products will also be in the bale (e.g., ice cream cartons, foodservice packaging, frozen food boxes) as well as paperboard packaging treated with wet strength additives (e.g., paperboard beverage can carriers). It will be impossible to sort through film found in the pulper and screen residues to separate that film into what came from envelope windows, ice cream cartons, foodservice packaging, and frozen food boxes versus what came from cartons and paper cups. Similarly, it will not be possible to attribute which paper flakes containing wet strength were screened out from the pulp (e.g., cartons and cups versus other bleached fiber packaging types). Similarly, for the pulp produced from recycling mixed paper, it will not be possible to separate paper fibers by initial product source.

The only way for a producer responsibility organization to verify yields in such cases will be to review reports from lab testing to confirm that a yield of at least 60 percent of polycoated cartons, aseptic cartons, and polycoated paper cups is being retained when subject to processing equipment and conditions in typical use by mills. While this type of verification would not represent a measurement of yield at a particular end market, it would provide a strong indication that mills using certain processes replicated in a laboratory are likely achieving the yields demonstrated in a laboratory.

An additional example is clear PET cups and PET tubs that are 6 ounces or larger. OAR-090-0670 (2)(D)(iii) requires that “materials must be evaluated separately for materials identified in each subparagraph of paragraphs (A) through (E).” This means that PET cups, PET tubs, and PET bottles must be evaluated separately from each other (and separately from PET clamshell thermoforms), even though MRFs do not sort PET packaging into these categories. Clean clear PET flake or resin pellets produced by an individual PET reclaimer cannot be disaggregated into the clear bottle, tub, cup, or thermoform input components to determine individual yields by an individual reclaimer as required by the draft rule. Only laboratory tests can estimate the yield of each type by reclaimers using typical industry processing equipment and processing parameters.

CAA recommends that DEQ rewrite OAR-090-0670 (2)(c)(D) to group like plastic products made from the same resin together for the purposes of evaluating yield and not require separate yield assessments:

- PET cups, tubs, and thermoforms.
- HDPE tubs, buckets, pails, storage containers, and nursery containers.
- PP (all forms).

CAA also recommends that the rule explicitly allow lab test data to serve as evidence of process yield as long as the lab test is representative of a specific end market’s recycling process.

CAA Rule Recommendation

OAR 340- 090- 0670 General	Proposed New Rule	DEQ may, where it determines that such an action is consistent with the responsible end market objectives of ORS 469A.860 to 469A.975, designate a particular end market as responsible for the purposes of compliance with OAR-340-090-0670. This designation may accept lab testing results or other alternate methods of determining REM compliance as determined by DEQ.
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We appreciate that Phase II rules will also address REM responsibilities as they relate to commingled recycling processing facilities. However, it will be critical to the success of the RMA for the DEQ to ensure that the overall regulatory framework creates data management processes that support the verification of RMA requirements. PROs on their own under the RMA shared model do not have the ability to generate data necessary to meet REM obligations. Additional DEQ rules will be required to support collection of data and actions necessary to verify REM requirements.

CAA Phase II Rule Commentary

DEQ review Phase II rules in the context of Phase I REM requirements to ensure rules support the collection of data and processes necessary to verify REM requirements.

SECTION 3: Local Government Compensation

Transportation Costs

OAR 340-090-0770 & OAR 340-090-0780

Summary of Rule Requirements

Under the RMA, local governments that need to ship USCL materials from recycling depots or recycling reload facilities more than 50 miles are eligible to have those costs paid for by PROs. Posted rules detail eligible costs, distance calculation methodologies and PRO obligations. CAA recommends amendments to align rule requirements with the statutory intent of the transportation compensation requirement.

Clarification of Recycling Depot Collection Costs

OAR 340-090-0770 (4)

DEQ's posted rule defines eligible costs for recycling depots or recycling reload facilities as *"Costs to receive, consolidate, load and transport covered products include, but are not limited to, purchasing and maintaining equipment, signage, and other similar costs of operating the recycling depot or recycling reload facility not already covered under other sections of ORS 459A.860 through ORS 459A.975"*.

This rule wording appears to go beyond the intent of 469A.890 to compensate for local government transportation costs by broadly defining depot costs as eligible costs for transportation compensation. This seems inconsistent with the intent of the general provision. A local government utilizing on-route collection that feeds into a recycling depot (that subsequently transports materials more than 50 miles) could argue that this provision obligates the PRO to pay on-route collection. An amendment is required to clarify the scope of eligible costs at recycling depots and recycling reload facilities.

CAA Rule Recommendation

OAR 340-090-0770 (4)	Proposed Changes	Costs to receive, consolidate, load and transport covered products include, but are not limited to, purchasing and maintaining equipment, signage, and other similar costs of operating the recycling depot or recycling reload facility not already covered under other sections of ORS 459A.860 through ORS 459A.975. For clarity eligible transportation costs do not include the original local government costs to collect the material either through on-route collection or through drop offs at depots or recycling reload facilities.
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**Distance to Nearest Eligible Facility
OAR 340-090-0770 (3)(c) & (d)**

Posted rules OAR-090-0770 (3)(a) & (b) indicate that the 50-mile distance is the distance to the “nearest” commingled facility or “processing or sorting facility” for materials which may not be commingled. This provision is necessary to ensure that materials are not deliberately shipped more than 50 miles when equivalent facilities are closer, in order to receive transportation compensation from PROs.

However, rule OAR-090-0770 (3)(c) and (d) are inconsistent with the comparable references to processing and sorting facility and commingled recycling processing facility references in subsections (a) and (b) as they lack the reference to “nearest”. These sections need to be amended for consistency with those sections to prevent local governments or service providers from shipping to facilities that are farther away than available facilities.

CAA Rule Recommendations

OAR 340-090-0770 (3)(c)	Proposed Change	If the material is collected separately and in a condition that would allow it to be received directly by a responsible end market without additional processing, then the distance is measured to the nearest responsible end market.
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OAR 340-	Proposed Change	If a separated material or a group of materials is initially taken to a commingled recycling processing facility or
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090-0770 (3)(d)		other processing facility and the material requires additional processing or sorting before it can be accepted by a responsible end market, then the distance is measured to the nearest initial commingled recycling processing facility or other processing facility. The producer responsibility organization is not responsible under this rule for paying the transportation costs associated with the transport of material from the initial commingled recycling processing facility or other processing facility to additional processing facilities or a responsible end market.
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Transfer of Transportation Obligations to a PRO OAR 340-090-0780 (1)(c)

The posted rule indicates that methods for determining payment of transportation costs “must include a voluntary option that allows service providers to transfer some or all transportation responsibilities to the producer responsibility organization or coordinating body.”

This provision as worded seems to imply that Local Governments (that are 50 miles or more from processing facilities) have a voluntary option to require PROs to take over their transportation functions. This proposal goes beyond the statutory PRO requirement to reimburse local governments for transportation costs. CAA believes the intention of the proposed rule is to indicate that a PRO and local government may voluntarily agree to have the PRO assume transportation arrangement responsibilities and has proposed wording to clarify this intent.

CAA Rule Recommendation

OAR 340-090-0780 (1)(c)	Proposed Change	Methods must include a voluntary option that allows local governments and a producer responsibility organization to agree to transfer some or all transportation arrangement responsibilities to the producer responsibility organization or coordinating body.
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PRO Program Plan Needs Assessment Estimates OAR-340-090-0790 (1)(e)

Under 459A.875(2)(p) PRO program plans are required to include a schedule for the program collection expansions and methods for determining funding and reimbursement amounts including an estimate of the total amount of funds that will be made available to local governments each year.

The wording of posted rule OAR-340-090-0750 (1)(e) goes beyond this statutory requirement by requiring PROs to include an estimate of the funding to be made

available in relation to *each local government's* needs assessment request as part of their program plan submissions.

This additional requirement for estimates relating to individual local government needs assessments should be phased in after the submission of program plans. CAA intends to start discussions with some local governments this Fall to assist with initial assessments of funding requests, but determining estimates of payments to be made to local governments for the expansion of services will require more detailed discussions with those governments. Estimating funding amounts for individual local government needs assessment requests will not be completed until program plans have been submitted. Given that Oregon permits multiple PROs, individual PROs will not know if they are going to be assigned the task of administering local government needs assessment requests until after program plans are submitted and coordination tasks have been assigned.

CAA Rule Recommendation

OAR-340-090-0790 (1)(e)	Proposed Change	The program plan must describe how the producer responsibility organization will implement the requirements of ORS 459A.890(5), this section and OAR 340-090-0800. The producer responsibility plan must include: (e) An estimate of the total amount of funds that will be made available to each local governments included in DEQ's needs assessment under ORS 459A.890(5) per year; and
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**Expansion of Service Funding Eligible Capital Costs
OAR 340-090-0800**

For local governments that expressed interest in expanding recycling services, the rules specify eligible expenses for on-route services, recycling depots, and the method PROs will apply to processing expansion requests.

The RMA creates two categories of eligible expenses in relation to expansion of services, those in relation to on-route programs and those in relation to recycling depots.

For on-route programs the RMA defines eligible costs as *“For on-route programs, start-up costs, including but not limited to trucks, containers, promotional literature and, if necessary and none other is available, a recycling reload facility for reloading recyclables, including any compaction equipment necessary for the recycling reload facility.”*

The posted rules elaborate on eligible expenses for new or expanded on-route start-up costs, including:

- Collection trucks

- Containers or roll carts
- Monitoring equipment
- New program promotional literature
- Staff safety equipment
- Recycling reload facility, if none other is available or existing facilities are inadequate

For recycling depots, the RMA defines eligible costs as: *“For recycling depots, containers, on-site monitoring equipment, site preparation or other start-up costs and operational costs, including staffing.”*

The rules elaborate on recycling depot eligible expenses associated with expansion of services to include:

- Land acquisition
- Site preparation-related costs
- Containers
- Signage
- On-site monitoring equipment
- Equipment to move, compact, bale, and load recyclables for shipment
- Maintenance of on-site equipment and technology
- Hiring and training staff
- Purchasing staff safety equipment
- Other administrative-related costs

For both on-route collection services and recycling depots, the rules define several capital items as eligible expenses. In the case of expansion related to recycling depots DEQ rules indicate that PROs should be obligated to pay for land acquisition.

The payment of capital items by PROs on behalf of local governments raises the question of what measures are necessary to ensure that such items will be used for their intended purpose. Given that funding under this section may also go to private sector service providers, as opposed to the local government, there are potential scenarios where a capital item purchased by a PRO for a service provider is no longer utilized for its intended purpose. For example, the local government’s service provider could change or for unanticipated reasons, such as a business failure, the service provider may no longer be able to provide the local government with services.

The only provision in the proposed rules related to this issue is OAR 340-090-0800 (2)(f)(B) which states *“Upon request of DEQ, a local government or a local government’s service provider must demonstrate to DEQ’s satisfaction that the funding a local government or a local government’s service provider received was used for its intended purpose.”*

While CAA supports this clause, it believes that stronger financial remedies are required in relation to funding provided related to expansion of services to ensure

that purchased items are utilized for their intended purpose. CAA is proposing a new rule under OAR 340-090-0800 to address this issue.

CAA Rule Recommendation

OAR-340-090-0800 (6)	Proposed New Rule	A local government, or service provider authorized by a local government to provide services, that receives funds for expansion or improvements to recycling collection under ORS 459A.890 and this rule must enter into an agreement with the producer responsibility organization or coordinating body to utilize such funds for the expansion or improvements to recycling collection. This agreement may require a local government or an authorized service provider to reimburse the PRO for funding or a portion of the funding originally provided in the event items purchased with original funding are subsequently not utilized for their intended purpose. In the case of capital assets reimbursement may be based on the unamortized value of those assets.
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The purchase of land should not be an eligible expense under this section. Land is not a depreciable item. There is no indication in the language of the RMA that land acquisition was intended to be an eligible expense in relation to recycling depots. The fact that the relevant clause references site preparation without referencing land acquisition seems to imply that there is a distinction between site improvements (i.e., fencing in a depot area and adding temporary facilities) and buying the land that the depot is located on. The potential requirement for a PRO to purchase land on behalf of a local government service provider will be potentially even more problematic because of the difficulty with ensuring this land would be used for recycling services in perpetuity.

Land transactions on behalf of RMA participants should be financed and managed by those participants. There is no need for a PRO to purchase land to facilitate improvements in recycling services by local governments. RMA participants have several options for securing locations for recycling depots and receiving annual funding without having land purchased by a PRO.

CAA Rule Recommendation

OAR-340-090-0800 (1)(c)(B)	Proposed Change	Delete subsection (i) "Land acquisition" from OAR-340-090-0800 (1)(c)(B)
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**Section 4: PRO Acceptance List Convenience Standards and Performance Targets
OAR 340-090-0640, 0650, 0660**

Posted rules define convenience standards for collection points relating to materials on the PRO acceptance list, create performance standards for those facilities and establish collection targets for certain materials. CAA supports the objectives of establishing convenience and performance standards for PRO acceptance materials to ensure that consumers have accessible access to collection points for the materials. CAA has recommendations in relation to material-specific requirements and other amendments designed to clarify or streamline the administration of these requirements.

**Existing Depot failure to comply with performance standards
OAR 340-090-0640 (4)(b)**

Rule indicates the terms by which a PRO can discontinue service at an existing recycling depot or drop-off center if the conditions associated with the initial contract with the existing recycling depot or drop-off center are no longer being met. The PRO can discontinue service when the contract expires, when a program plan period ends or through mutual agreement with the recycling depot.

Given that one of the conditions of entering a service contract on the part of an existing recycling depot is to meet performance standards and other requirements of the PRO, this provision would seem to undermine the ability of a PRO to correct problems with performance at an existing recycling depot which was not meeting RMA standards (CAA notes the exception for collection points and pressurized cylinders).

CAA Rule Recommendation

OAR 340- 090- 0640 (4)(b)	Proposed Change	(b) Except as provided by subsection (c) of this section, if a collection point that a producer responsibility organization is using to satisfy the requirements of subsection (2)(a) of this rule no longer meets the conditions of subsection (1)(b) of this rule, the producer responsibility organization shall provide the collection point with 90 days to comply with 1 b) conditions prior to providing the collection point with notice of closure as per subsection (a) of this section. At any point the parties to a collection point contract under (1)(b) may reach mutual agreement to terminate the agreement and close the collection point provided that at least three-months' notice is provided to users of the collection point as required by subsection (a) of this section.
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**Movement of Material from PRO Acceptance List to the USCL
OAR 340-090-0640 (5)**

Rule indicates that if a material is moved from the PRO acceptance list to the USCL that the convenience standards are limited to existing drop off centers and only in situations where the drop off center continues to collect the materials as source separated.

We appreciate the scale back of the convenience standard associated with the rule. However, if a material is moved to the USCL, it should be phased out as a material on the PRO acceptance list. A continued obligation to collect through the parallel PRO depot system will unnecessarily add to system costs and inefficiencies and potentially confuse consumers. CAA recommends that PRO acceptance list materials subsequently added to the USCL should be phased off the PRO acceptance list.

CAA Rule Recommendation

OAR 340-090-0640 (5)	Proposed Change	<p>If a covered product on a producer responsibility organization’s recycling acceptance list pursuant to administrative rule is subsequently added to the uniform statewide collection list pursuant to ORS 459A.914(4)(b), a producer responsibility organization must for a period of twelve months continue to meet obligations for collection as follows:</p> <p>(a) only at existing recycling depots or drop off center, as provided by subsection (2)(a) of this rule; and</p> <p>(b) only if the depot or drop off center is continuing to collect the materials as source separated.</p>
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Standards for Collection Events
OAR 340-090-0650 (2)(b)

Rule requires PROs to include detailed policies and processes in program plans to ensure adequate staffing and management of collection events. CAA is supportive of policies to manage collection events, but the inclusion of detailed policies in a program plan is overly prescriptive and may prevent PROs from adjusting collection event management based on experience as changes to policies would potentially require a program plan amendment. CAA recommends that the reference to program plan in this rule be deleted.

CAA Rule Recommendation

OAR 340-090-0650 (2)(b)	Proposed Change	<p>Staffing and resourcing. A producer responsibility organization shall implement policies and processes to ensure adequate staffing, managing traffic flow, ensuring safety, and contingency plans for responding to larger-than-expected turnout.</p>
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**Standards for Block White Expanded Polystyrene (EPS)
OAR 340-090-0650 (3)(a)**

Rule requires specific standards for management of expanded polystyrene (EPS). Collected EPS must be densified before transportation of greater than 75 miles utilizing technologies described in PRO program plans.

While CAA supports the objective of OAR 340-0900-0650 (3)(a), the requirements of the rule are overly prescriptive. In some situations, densification may not be the best management practice due to the impact of contamination. The inclusion of detailed management requirements in the program plan also minimizes flexibility in relation to managing this material as technology changes. PROs also have a direct financial incentive to minimize transportation costs and will design a system to minimize those costs. CAA recommends more flexibility in the rule with respect to ensuring this material is managed in an environmentally responsible manner.

<p>OAR 340- 090- 0650 (3)(a)</p>	<p>Proposed Change</p>	<p>(a) Block white Expanded Polystyrene (EPS): (A) Collection and transportation of EPS must be conducted in a manner designed to reduce life cycle environmental impacts and protect worker safety. A producer responsibility organization shall develop protocols for the management of EPS after consideration of impacts on yield, transport quantities (density), and worker safety and exposure and submit those protocols to DEQ for review and approval prior to implementation.</p> <p>(B) Block white Expanded Polystyrene (EPS): Densification shall occur in a manner that minimizes worker exposure to air toxics. A producer responsibility organization may only use thermal densification technology if approved to do so by DEQ in its program plan or a plan amendment. A producer responsibility organization must include an assessment of potential impacts to workers and methods that will be followed to minimize such impacts.</p>
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**Standards for Aerosols and Pressurized Containers
OAR 340-090-0650 (3)(b)(B)&(C)**

As noted in the material list recommendations, CAA supports the removal of pressurized containers from the RMA framework and management of these containers under an alternate program. The posted rule requires pressurized containers to be processed by a “regulated hazardous waste treatment, storage, and disposal facility, which shall remove and manage contents according to hazardous

waste standards.” Subsection (B) with respect to aerosol cans also requires many of these containers to be managed in accordance with federal hazardous waste standards.

If the RMA is going to require pressurized containers to be treated and managed as hazardous waste, it would be more effective to manage these materials under an alternate hazardous waste program. This area of the RMA would benefit from further analysis because the posted rules will require the management of a hazardous waste program within the overall framework of a non-hazardous packaging program.

If these materials remain as covered products accepted for collection, similar to the EPS issue above, there should be more flexibility for the PRO to design a system for the management of these materials. Given the complexity of the existing references to federal regulations in the current DEQ rule, it is extremely difficult to determine what the implications of those proposed rules are in terms of program plan operations. PROs will be in a better position to understand the implications of DEQ proposed management requirements will be as it develops a program plan and can develop protocols to manage these containers that would ensure they are managed in a safe and environmentally responsible manner.

CAA Rule Recommendations

OAR 340- 090- 0650 (3)(b)(B)	Proposed Change	A producer responsibility organization shall ensure that all aerosol cans collected pursuant to ORS 459A.896(1) are managed in a manner designed to reduce life cycle environmental impacts and protect worker safety. A producer responsibility organization shall develop protocols for the management of aerosol cans after considerations of the content of hazardous materials and related environmental impacts and submit those protocols to DEQ for review and approval prior to implementation.
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OAR 340- 090- 0650 (3)(b)(C)	Proposed Change	A producer responsibility organization shall ensure that any pressurized cylinders collected pursuant to ORS 459A.896(1) are managed in a manner designed to reduce life cycle environmental impacts and protect worker safety. A producer responsibility organization shall develop protocols for the management of pressurized cylinders after considerations of the content of hazardous materials and related environmental impacts and submit those protocols to DEQ for review and approval prior to implementation.
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**Collection Targets for PRO Acceptance List Materials
OAR-0340-0930-0660 (1)**

Posted rule indicates that a collection target or collection rate is a percentage of material generated and calculated using weight. In CAA’s view, a rule clarifying how the material generation amount is to be calculated is necessary for the determination of these rates.

CAA Rule Recommendation

OAR 340- 090- 0660 (1)	Proposed New Rule	For the purpose of subsection (1) total amount of a material generated will be calculated based on the quantity of reported material supplied by obligated producers and adjusted to reflect material supplied by non-obligated producers.
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**Collection Targets Polyethylene Film
OAR-0340-0930-0660 (2)(b)**

Rule sets the polyethylene collection target at 28% for 2028 increasing by 2% per year thereafter. Based on targets established in other more mature recycling programs, this initial material target seems unattainable. DEQ analysis indicates that initially only a minority of Oregonians are likely to utilize recycling depots to return packaging. Current recycling rates for this material are likely four or five times less than the proposed initial target. The two percent increments included in the rule for annual increases are also overly optimistic given the time it will take to educate the public and change existing behaviors. It would be more reasonable to start with an attainable target and provide time to improve performance between target thresholds.

CAA Rule Recommendation

OAR 340- 090- 0660 (2)(b)	Proposed Change	Materials-Specific Collection Targets. Materials shall have the following collection targets: (b) Polyethylene film. The collection target for polyethylene film is as follows: (A) 10 percent in 2028, (B) 15 percent in 2031, (C) 20 percent in 2034, (D) 25 percent in 2037, (E) 30 percent in 2040, (F) 35 percent in 2043, (G) 40 percent in 2046, (H) 45 percent in 2049, (I) 50 percent by 2052 and in subsequent years.
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**SECTION 5 OAR 340-090-0680
Producer Responsibility Organization Coordination**

Posted rules establish a framework for the coordination of activities if multiple PROs submit applications for operation under the RMA. DEQ and an interim coordinator may assign PROs interim tasks to ensure program implementation while PROs develop a coordination plan for DEQ review and approval.

CAA proposed amendments in relation to coordination between PROs are primarily focused on ensuring a workable and fair approach to PRO coordination.

Standard Product Categorization OAR 340-090-0680 (1)(d)(B)

OAR 340-090-0680 (1)(d)(B) indicates that an interim coordinator will undertake several tasks, including defining the standard product categorization to be used in PRO membership fee structures.

Product categorization for the purposes of fee structures is an important PRO function. CAA intends to undertake extensive consultation with producers and develop material categories for fee-setting.

PROs should have the opportunity to submit a standard product categorization to the interim coordinator for use during the interim operating period before a coordination plan is approved. If PROs cannot reach agreement on the standard product categorization, the interim coordinator will need to define the standard product categorization to be utilized in the interim period.

CAA Rule Recommendation

OAR 340-090- 0680 (1)(d)(B)	Proposed Change	(d) The interim coordinator will conduct the following tasks in consultation with DEQ and the producer responsibility organizations: (B) Review and approve a standard material categorization submitted by producer responsibility organizations. If producer responsibility organizations cannot agree on a standard product categorization, the interim coordinator will define the standard product categorization to be used in producer responsibility organization membership fee structures.
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Assignment of Interim Coordination Costs OAR 340-090-0680 (1)(c)

Under OAR 340-090-0680 (1)(c) DEQ may assign interim coordination tasks to individual PROs including such tasks as the payment of RMA fees to processing facilities and the provision of compensation to local governments. PROs “must begin the interim coordination tasks upon DEQ assigning the task.” One of the tasks potentially assigned to a PRO is defined by subsection (B) “Setting up a system to

reconcile expenses amongst producer responsibility organizations, in proportion to modified market share as required by OAR 340-090-0700(2).”

Section OAR 340-090-0680 (1)(e) also requires an interim coordinator to develop an interim coordination plan which meets the requirements of OAR 340-090-0680 (2), which requires under subsection (c)(D) “Processes to allocate costs among producer responsibility organizations that are proportional to modified market share.” However, there are no explicit timelines associated the adoption of an interim coordination plan under OAR 340-090-0680 (1)(e).

Although OAR 340-090-0680 (1)(c)(B) references a process to reconcile expenses amongst PROs, there is no clear obligation for PROs to pay other PROs for assigned tasks. While an interim coordination plan requires a process to allocate costs among producers, there may be a significant gap between the development of an interim coordination plan, which obligates PROs to share costs, and the assignment of those tasks by DEQ. PROs should not be obligated to fund program obligations on behalf of other PROs until such time as a process for cost sharing among PROs has been developed.

CAA Rule Recommendation

OAR 340-090-0680 (1)(c)	Proposed Change	<p>DEQ may assign interim coordination tasks to approved producer responsibility organizations, or to willing applicant producer responsibility organizations. Approved producer responsibility organizations must begin the interim coordination tasks upon DEQ assigning the task.</p> <p>DEQ assignment of interim coordination tasks will include an obligation for producer responsibility organizations to compensate the assigned producer responsibility organization for any costs associated with the assigned task in proportion to modified market share as required by OAR 340-090-0700(2). The tasks required by this subsection include the following:</p>
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**Single Point of PRO Contact for Advisory Council and DEQ
OAR 340-090-0680 (2)(c)(G)**

In reviewing a coordination plan submitted for approval, DEQ will consider whether the coordination plan will ensure: “A *single point of contact for communicating with the Recycling Council and the department, including Recycling Council recommendations and material lists.*”

Under the RMA, PROs have several responsibilities in relation to the Advisory Council. These include notifying the Council of: potential noncompliance by producers or a PRO; PRO dissolution; any changes to a PRO program plan (not requiring a formal amendment); and consulting with the Council regarding the development of educational resources. In addition, the Advisory Council reviews individual PRO program plans and Annual Reports. Assigning all PRO interaction to a single PRO

would be unfair to other PROs given the anticipated PRO-Advisory Council interaction.

This is even more relevant to the PRO-DEQ relationship. It is unrealistic to expect a single PRO coordinator to manage all PRO Department relationships. The reference to material lists in the rule also seems to imply that individual PROs in a multiple PRO scenario would have a veto with respect to any recommendations related to potential additions to material lists under the RMA as PROs would need to agree on this issue before a PRO coordinator could raise the issue with either the DEQ or the Advisory Council. Under the RMA, individual PROs may have different interests with respect to the content of material lists, which might make alignment of material list recommendations extremely difficult.

CAA Rule Recommendation

OAR 340- 090- 0680 (2)(c)(G)	Proposed Change	Delete Rule
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**Material Impact Criteria re Review of Coordinating Plan
OAR 340-090-0680 (3)(f)(B)**

Rule provides grounds for DEQ to revoke, suspend or amend a coordination plan if the coordinating plan has a “*material impact on the ability*” on the ability of a PRO to implement its producer responsibility plan. This wording is imprecise as any coordination plan will likely have some material effect on PRO’s plans. It may cloud the relationship between the coordinating plan and the individual PRO plans. CAA recommends the following amendment to focus on issues with the coordinating plan that would prevent a PRO from implementing their plan:

CAA Rule Recommendation

OAR 340- 090- 0680 (3)(f)(B)	Proposed Change	Prevent a producer responsibility organization from implementing producer responsibility program in compliance with ORS 459A.860 to 459A.975.
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**SECTION 6
Market Share, Modified Market Share and PROs with less than
10 Market Share
OAR 340-090-0700 & 730**

**Market Share and Modified Market Share
OAR 340-090-0700**

Rule requires producers to report the weight of covered products sold or distributed in or into Oregon each year. From a practical perspective, material supplied can only occur after a program year has ended. In other jurisdictions, this would normally occur by May 31 of the following year. These reported quantities are subsequently used for fee calculations in the next year. For example, 2022 supplied quantities are reported in 2023 and used to set 2024 fees.

Many of the comments below will not apply if there is a single PRO in Oregon. However, since multiple PROs are possible, the rules need to adequately address the multi-PRO situation either now or in the future.

Market Share and Modified Market share are used for various purposes in the rules. OAR 340-090-0700 1(d) requires a producer to report “corrections to estimated data” before the next annual reporting deadline. These types of corrections are common in EPR programs. Given that reporting will be new to many producers in Oregon, it is expected that many producers will miss the early years reporting deadlines and will have corrections to report. It is not clear what is to be done with the corrected data. Certainty on calculations both for market share and modified market share is required. CAA proposes a new clause (4) be added to this section of the rules.

CAA Rule Recommendation

OAR 340- 090- 0700 (4)	Proposed New Rule	Preliminary and Final Reporting of Market Share. By June 30th of each program year, a producer responsibility organization must report information that will be used to calculate “preliminary market share” and “preliminary modified market share” for the previous program year to DEQ. By June 30th of the following program year, a producer responsibility organization must report corrections to estimated data for the second previous program year to DEQ that will be used to calculate “final market share” and “final modified market share”.
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CAA supports the concept that in a multi-PRO environment costs need to be allocated to different PROs on a basis that is not solely weight based. However, we are concerned about how this allocation will be accomplished. The draft rules use the term “financial burden” without defining the term.

At a high level, the fees charged by a PRO to its producers need to cover its costs. Its costs will be its internal administration type costs and any costs allocated to it in a multi-PRO environment. Since the share of allocated costs are the primary costs of a PRO (approximately 95% of costs), this allocation is critical and must be done in a way to avoid unintended consequences. It must be done in a way that a sub-set of producers cannot “game” the system to reduce the fees they may otherwise pay in a single PRO environment.

In general, there several groupings of financial burden and concerns over the calculations.

The first group of costs are those costs that the PROs are responsible for. They include the PCRf, CMF, PRO Acceptance List depot operations, etc. These might be referred to as direct costs of the PROs. It should be noted that material that is not collected (either material that is not accepted and does not show up as contamination) and ends up in the garbage stream has no direct costs to manage. For example, a covered material, such as film, that only has a 10% recovery rate, will have 90% of its material flowing into the garbage stream at no cost to the PRO.

The second group of costs are those costs that are part of the recycling program in Oregon that the PRO is not responsible for. Those would include the costs of collection of Local Government Recycling Acceptance List materials by local government (or service providers) (excluding related costs payable by PROs such as those for system expansion or contamination reduction) either as part of a curbside program or a depot program. While these costs are not the responsibility of the PRO, if fees set by a PRO do not take into account these costs, a perverse situation could occur where materials with very high collection costs (low density materials) will have very low fees applied to them. It is anticipated that some high value materials will have a negative PCRf due to the high commodity values. It is common for some materials to have processing costs less than the revenue received for those materials. CAA does not believe it is the intent of the RMA to encourage the use these materials at the expense of local government.

The third area of concern deals with the general concept of eco-modulation. Specifics of life cycle analysis (LCA) will be discussed subsequently. Eco-modulation attempts to encourage the use of some materials and discourage the use of other materials by the use of financial incentives. In a single PRO environment this can be achieved. However, in a multi-PRO environment if the effects of eco-modulation are not included in the allocation of costs between PROs, a PRO could form that could effectively “fence” itself off from the desired program outcomes. Producers that supply material with undesired attributes (perhaps low recycled content, not on the accepted lists or with low recovery rates) could potentially form a PRO. If only the direct costs to manage their materials are allocated to that PRO (which would be very low since little material is collected), the overall purpose of the RMA would not be achieved.

The fourth area of concern relates to life cycle analysis. This attempts to consider the total impact of a covered product beyond the transactional costs of collection and processing. Like the concern over eco-modulation, if the objective of the RMA is for fees to be set that consider these impacts, then the costs to be allocated need to consider this. If this is not considered, producers of materials with undesired attributes could again “fence” themselves off from having to pay higher fees to encourage the desired behavior change.

In the drafting of the proposed rules, DEQ appears to be assuming that in a multi-PRO environment that each PRO will have producers that produce the same or similar mix of materials. This is not likely to be the case as those producers who have materials with poorer environmental attributes have an incentive to align in an effort

to shield themselves from higher fees they may otherwise pay in a single PRO situation.

The following example illustrates this issue:

Example

Material Type	Material A	Material B	Material C	Total
Supplied Tons (A)	100	100	100	300
Recovered Tons (B)	10	90	0	100
Recovery Rate (B/A)	10%	90%	0%	
Cost to Manage(C) (per recovered ton)	\$1,000	\$200	\$5,000	
Total System Cost (D)=(B x C)	\$10,000	\$18,000	\$0	\$28,000
Total System Cost (per supplied ton) (D/A)	\$100	\$180	\$0	

Because the RMA requires base fee rates for materials that are not accepted by recycling collection programs to be higher than base fee rates for materials that are collected for recycling, a single PRO, after consulting with its stakeholders, might determine the following fee schedule (and associated revenue). Note: Calculations were not tested to determine other fee setting requirements and exemptions for small producers.

- Material A \$90 per supplied ton (\$9,000)
- Material B \$70 per supplied ton (\$7,000)
- Material C \$120 per supplied ton (\$12,000)

	Material A	Material B	Material C
Modulated Fees per supplied ton (E)	\$90	\$70	\$120

Total system revenues are \$28,000, which are sufficient to pay system direct costs of \$28,000

In a single PRO environment, everything works fine. However, in a multi-PRO environment the cost per ton (or cost index) used to allocate costs is critical.

Assume two PROs form. PRO Alpha is comprised of producers that only supply Material A and C. PRO Beta is comprised of producers that only supplied Material B (perhaps a trade association of B Producers). If the costs were allocated to PRO Beta based on the costs to manage materials (using the costs to manage materials

if collected), PRO Beta would only be allocated 3.2% of the costs (\$903) as shown below:

$$\frac{(100 \text{ tons times of } \$200/\text{tonne})}{(100 \times 10 \text{ plus } 100 \times 2 \text{ plus } 100 \times 50)}$$

$$= \frac{20,000}{620,000}$$

Similarly, PRO Alpha would be allocated \$27,097 of the total costs (\$4,516 for Material A and \$22,581 for Material C).

This results in producers of Material B (which actually cost \$18,000 to manage) paying a small fraction of these costs and producers of Material A and C (who are in the same PRO) paying significant fees. While it is not unexpected that Material B will pay less than the actual costs to manage materials, the significance of this effect (when eco-modulation is not factored into the cost allocation) may result in the formation of PROs with very low management costs per ton (or low index values) and high recovery rates.

Similarly, if the actual costs to manage material are used to allocate costs PRO Alpha would only have \$10,000 of costs allocated to it and PRO beta would have \$18,000 allocated to it. This would allow PRO alpha to have extremely low fees overall notwithstanding its members supply materials that are very expensive to manage (if they were collected).

To avoid the incentive for PROs to form to take advantage of this proposed cost allocation anomaly (i.e., game the system) the unit factor used in the modified market share calculation needs to include eco-modulation factors, including the LCA factors to allow this cost burden shift to be allocated to specific materials as desired by the RMA.

Since the cost allocation is done by the co-ordination body (and DEQ in the interim), these eco-modulation factors and calculations will need to be done at the co-ordination body level (or DEQ) prior to allocating costs to a specific PROs in the multi-PRO environment. In addition to this, the costs incurred by local government (which are not funded by the PRO) will need to be established in any study completed by DEQ.

CAA believes that insufficient analysis has been done by DEQ to approve rules related to the calculation of unit factors and proposes two approaches to move forward on this issue.

The first recommendation is to not move forward now and to defer any rules on modified market share to a future rulemaking phase. In the meantime, DEQ should initiate the contracting of an independent organization to develop an index of material-specific unit factors and invite all PROs who intend to submit a Program

Plan (known by September 1, 2023) to work with DEQ in developing the terms of reference for this work and participate in this work as partners with DEQ staff.

The second recommendation is that if DEQ does intend to move forward with rules at this time that changes be made to the specific wording of the proposed rule.

CAA Rule Recommendations

OAR 340- 090- 0700 (2)(c)	Proposed Change (Preferred)	The method and process for calculating material-specific unit factors for individual materials shall be included in any coordination plan approved by DEQ pursuant to OAR 340-090-0680. [Rules related to the period of interim coordination to be developed in a future rulemaking.]
OAR 340- 090- 0700 (2)(c)	Proposed Change (Alternate)	The method and process for calculating material-specific unit factors for individual materials shall be included in any coordination plan approved by DEQ pursuant to OAR 340-090-0680. Prior to the period of interim coordination pursuant to OAR 340-090-0680(1), DEQ will, in consultation with prospective producer responsibility organizations, develop principles and frameworks for allocating costs among multiple PROs and contract with an independent organization to develop an index of material-specific unit factors based on these principles and frameworks.

The material specific unit factors contemplated in these proposed rules appear to anticipate that once set, unit these factors would not change until there was a new coordination plan. However, it is not costs that are being allocated to multiple PROs, but the net cost, after revenues. As such, for the appropriate revenue to be flowed through and allocated to a specific PRO based on the different materials supplied by a member of a PRO, the unit factor cannot remain constant until a new coordination plan. The unit factor will need to be made up of two components. One component can be fixed, based on costs, and one component will need to fluctuate, with market prices. The fluctuating component can be based on the same market prices used for the purposes of calculation the PCRF.

To make it clear in rule that there will need to be two components of the material-specific unit factors the following additional rule is suggested:

CAA Rule Recommendation

OAR 340-090- 0700 (2)(d)	Proposed New Rule	For clarification, the material-specific unit factors determined in OAR 340-090-0700 (2)(c) will be comprised of two components. One component will be based on gross costs to manage a material, excluding revenue related to that material, and a second component related to the revenue from that material that is adjusted at the same
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		frequency as the PCRf fee is adjusted and it based on the same market prices used to adjust the PCRf fee.
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**PRO with less than 10% market share
OAR 340-090-0730**

Rule describes a process whereby a PRO plan would be revoked because the PRO's membership market share had fallen below the 10 percent threshold required by ORS 459A.869(12). If DEQ determines that a PRO's market share has fallen below 10 percent it issues a notification to the PRO of its intent to revoke the plan. This triggers a 60-day review period for DEQ to determine whether to issue an order to revoke the plan. If the plan is revoked, producer members are notified and have 60 days to transition to another PRO.

In CAA's view the wind down of a PRO will have significant implications for other existing PROs. Coordinating plans require a process to address, but DEQ notification of intent to revoke any PRO plan should be shared with all PROs to facilitate planning necessary to potentially accommodate the wind down of one of the PROs that is part of the current program. Other PROs should also be aware of any PRO actions DEQ has included in a decision not to revoke a PRO plan once notification of intent to revoke a plan has been provided.

CAA Rule Recommendation

OAR 340-090-0730 (5)	Proposed New Rule	<p>DEQ will provide all other producer responsibility organizations with a copy of the following notifications and decisions under this section:</p> <ol style="list-style-type: none"> 1. A notification of intent to revoke a plan provided under (1)(a); 2. An order revoking a plan or notification that the plan will not be revoked provided under (1)(c); 3. Conditions applied to a producer responsibility plan on its decision to not revoke the plan provided under (3); and 4. A decision by the producer responsibility organization to appeal the DEQ order to revoke the plan under (4).
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SECTION 7: PRO ADMINISTRATIVE FEES AND PROGRAM TIMELINES

**Producer Responsibility Organization Fees
OAR 340-090-0690**

Under the RMA, PROs are required to compensate DEQ for the costs incurred by the Department in implementing, administering and enforcing RMA requirements. 469A.938 (2) requires DEQ to notify PROs no later than September 1st of each year of the annual administrative fee required for the upcoming year.

DEQ has proposed a PRO administrative fee schedule of \$4 million annually for the first four years of the program with a reduction to \$3 million on annual basis thereafter. This rule includes a schedule for the collection of start-up costs which DEQ has incurred since the passage of the RMA. CAA supports the approach taken by the DEQ to recover its start-up costs over the first years of the program.

CAA, however, is concerned about the cash flow impacts of the DEQ schedule on PRO operations particularly in the early phase of program implementation. Under the DEQ fee schedule, PROs will have to finance \$8 million in administrative fees in 2025 a year during which only 6 months of producer fees can be collected. The start of the program will generate several financial challenges for PROs as there is a gap between the millions of costs that must be incurred to develop and implement a viable producer funding recycling program and the ability of PROs to finance these costs through the collection of producer fees.

CAA and other PROs will need to build the recovery of start-up costs into to their membership fee schedules. Given that the program will only be operational for six months in 2025 vs. 2026, the recovery of PRO startup costs in 2025 will likely be significantly less than the amounts recovered in the following program years. DEQ's proposed administrative fee schedule, however, conflicts with a logical repayment schedule by requiring double the revenues in 2025 (from six months of program operations) that it intends to collect in 2026 (from 12 months of program operations).

In the long-term the proposed fee schedule also creates an advance funding burden for PROs with respect to DEQ administrative costs as PROs would be required to advance fund DEQ expenses every year. While the RMA requires notification of fees to be paid each September 1st it does not specify when these fees must be paid. As such DEQ has the flexibility to implement a fee schedule and payment requirements that are more fairly aligned with PRO revenue streams.

Several stewardship programs in other jurisdictions have regulatory costs paid out over the course of the year in quarterly installments rather than full-year payments made in advance. This process allows for the regulator to adjust invoices over the course of the year to reflect actual costs incurred. As such reconciliations and the level of subsequent fee corrections and adjustments are reduced as the payment of administrative costs are more closely aligned with actual costs and the revenue generating ability of PROs to fund those costs.

CAA proposes the following alternate fee schedule for the payment of DEQ administrative costs.

Table 2: Proposed Alternate DEQ Administrative Fee Payment Schedule

	Start-up Estimate					
	Aug 2021 – June 2025	July – December 2025	2026	2027	2028	2029
DEQ Start-up Costs	\$8,800,000 (1)	\$900,000	\$2,000,000	\$1,500,000	\$1,800,000	\$2,200,000
DEQ Op Costs		\$1,100,000	\$2,000,000	\$2,500,000	\$2,200,000	\$1,800,000
Total		\$2,000,000	\$4,000,000	\$4,000,000	\$4,000,000	\$4,000,000
Payable		2025 Quarterly Installments July 31 Oct 31	2026 Quarterly Installments Jan 31 April 30 July 31 Oct 31	2027 Quarterly Installments Jan 31 April 30 July 31 Oct 31	2028 Quarterly Installments Jan 31 April 30 July 31 Oct 31	2029 Quarterly Installments Jan 31 April 30 July 31 Oct 31

1. Subject to DEQ revision based on actual start-up costs for 2021, 2022, 2023 & 2024.

CAA Rule Recommendations

OAR-340-090-0690 (2)	Proposed Change	Annual Administration Fee. DEQ will assess an annual administration fee of up to \$2 million in 2025 and of up to \$4,000,000 for the next four years of the program (2026-2029) and up to \$3,000,000 for all subsequent years of the program.
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OAR-340-090-0690 (2)(a)(A)	Proposed Change	In the first program year (covering 2025) DEQ will send a producer responsibility organization a provisional invoice on or before September 1, 2024. The department will send a producer responsibility organization a final invoice upon completion of the producer responsibility program plan approval process under ORS 459A.878. A producer responsibility organization will pay the first program year's fee in two \$1 million installments with payment no later than July 31, 2025 for the first installment and payment no later than October 31, 2025 for the second installment.
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OAR-340-090-0690 (2)(a)(B)	Proposed Change	In each year after the first program year the department will invoice a producer responsibility organization on or before September 1 of the proceeding program year for payment to be made in four equal quarterly installments no later than January 31st, April 30th, July 31st and October 31st of each program year.
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PRO Administrative Fees – Fee adjustments OAR 340-090-0690 (1)(b)

Rule provides that DEQ “may at its discretion reduce the fee in a given year if it determines that the full amount is not required to pay the costs of administering, implementing and enforcing the provisions of ORS 459A.860 to 459A.975 in that year.”

Under the RMA producer responsibility organizations are required to pay DEQ “costs”. They are not required to provide advance funding for those “costs”. As such if the DEQ determines that an amount charged to a PRO was not required to pay for its “costs” in any given year, the DEQ does not have the discretion to hold on to these funds. These funds must be returned to the PRO. Given that PROs will be paying back DEQ for start-up costs incurred it will be several years before DEQ may not have costs to recover, but eventually DEQ invoicing will need to align closely with actual costs incurred to be consistent with RMA provisions.

This issue related to reconciling invoicing amounts will be minimized if CAA recommendations to implement a quarterly payment schedule for DEQ administrative costs are accepted.

CAA Rule Recommendation

OAR 340- 090- 0690 (2)(b)	Proposed Change	(b) DEQ will reduce the fee in a given year if it determines that the amount originally charged is not required to pay the costs of administering, implementing and enforcing the provisions of ORS 459A.860 to 459A.975 in that year.
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Program Calendar OAR 340-090-0720

This rule establishes the calendar for program plan periods, with the first plan period starting on July 1, 2025, and running for two and half years until December 31, 2027. Subsequent plan periods will run for five years and begin on January 1 of the first year, concluding on Dec. 31 of the fifth year. Under statute, PRO renewal plans must be submitted by existing PROs 180 days before the end of a program plan period. The rule indicates that new PROs can submit draft program plans during the 180-day renewal periods or at other times with prior department approval.

Given that Oregon permits multiple PROs, the DEQ also needs to establish a process for reviewing new PRO entrants following the approval of initial PROs (and related coordinating plans). Proposed **OAR 340-090-0720 (3)** outlines the timelines for that process “*Prospective new producer responsibility organizations may submit program plans on the same calendar as renewal applicants (180 days before the*

end of a program period) and may also submit plans at other times (for example, midstream in a program period) upon petitioning the Department and receiving advance approval.”

In practice, the entry of a new PRO following approval of initial PRO plans will be highly disruptive. An additional PRO will trigger a requirement for development of a new coordination plan and a process to transfer producer members between PROs will also need to be implemented. The issues associated with accommodating a new PRO are much more complex than those associated with existing PRO plan renewals. As such the timeline for review of such plans should be longer.

There is also no need from CAA’s perspective, for the DEQ to consider entry of new PROs during the middle of a program cycle. The continual prospect of new PROs forming during a program cycle will seriously destabilize program operations and prevent existing PROs from focusing resources on program improvements. New coordination plans will take eighteen months to two years to establish and cloud program funding and prioritization for existing PRO operations. Constant program replanning will also eat up DEQ resources given their coordination functions. While the RMA permits multiple PROs, it is reasonable to require their entry or formation during the normal program planning and renewal cycle.

In the view of CAA, a Program Plan submitted by a prospective PRO must also include evidence that the prospective PRO has secured representation agreements with producers that collectively represent at least 10% market share as required by the RMA (assuming the prospective PRO plan is approved).

CAA Rule Recommendations

OAR-340-090-0720 (3)	Proposed Change	Prospective new producer responsibility organizations must submit program plans at least one year before the renewal date for existing PRO program plans and may also submit plans at other times (for example, midstream in a program period) upon petitioning the Department and receiving advance approval.
OAR-340-090-0720 (4)	Proposed New Rule	Any program plan submitted under OAR 340-090-0720 (3) must include evidence that the prospective producer responsibility organization has secured representation agreements with producers that collectively represent 10% market share.

**Program plan amendments and producer responsibility organization fees
OAR 340-090-0750**

Posted rule clarifies whether program plan amendments are required in relation to changes to membership fees. Proposed OAR-090-0750 (1) permits “routine, annual updating of base fee rate amounts to align with most recent sales information” without submitting a program plan amendment but subsection (2) indicates that changes to the fee structure or method of calculating fees constitute a method change “and will require a program plan amendment”.

In a typical program plan, minor adjustments to data inputs are quite common. These may be made because mistakes were found in relation to previous calculations or because an improved process for data inputs was implemented. It is also not clear under this section how fee incentives related to eco-modulation adjustments would be implemented. If such adjustments require new program plans, PROs may be submitting plan amendments with every LCA cycle.

In the view of the CAA requiring all methodological fee adjustments to require a program plan amendment is an overly cumbersome process and the rule should be amended to create more flexibility with respect to PRO membership fee adjustments and the submission of program plan amendments.

CAA Rule Recommendations

OAR-340-090-0750 (1)	Proposed Change	A producer responsibility organization's annual updating of base fee rate amounts to align with the most recent supply information received from member producers or updated material cost allocations from related studies does not constitute a method change and will not require a program plan amendment.
OAR-340-090-0720 (2)	Proposed Change	A significant adjustment to the basic methodology for calculating membership fees which represents an alternate approach to determining membership fees, as opposed to adjustments to fee inputs, will require a program plan amendment. This does not include implementation of membership fee incentives related to individual producer LCA evaluations.



July 28, 2023

Oregon Department of Environmental Quality
700 NE Multnomah St #600
Portland, OR 97232

Re: Recycling Modernization Act first rulemaking public comment

Thank you for the opportunity to provide public comment on the proposed permanent rule amendments. Eugene appreciates the thorough and thoughtful work of DEQ staff throughout the rulemaking process and DEQ's leadership as we navigate the process of modernizing recycling in Oregon.

Our community wants to see a recycling system that supports the collection of a broad range of materials in a convenient and accessible manner, and which ensures that these materials are also recycled responsibly. We want to see a system in which recycling is processed with as little impact to our residents or the environment as possible, and we think processing recycling should create safe, living wage jobs for people in Oregon.

We are in support of the proposed rules for this first rulemaking, but respectfully suggest further consideration by DEQ related to depot collection of glass packaging. Curbside collection of glass is more convenient and more accessible for residents than depot collection—especially for residents that do not have access to personal transportation or who may be elderly or have mobility issues as glass can be heavy and/or unwieldy to handle in any significant volume. We feel that curbside collection will increase the amount of glass that is recycled in our state and reduce barriers for Oregonians that want to recycle this material.

Although we understand that local governments will be able to collect glass at the curb, many communities may not have the resources to do so if glass isn't included on the uniform statewide collection list. Inclusion of glass packaging can ensure that the costs of collecting glass curbside can be an eligible PRO expense, which some cities may need in order to provide accessible and convenient glass recycling opportunities for their residents.

Thank you again for the opportunity to provide comment and for your leadership and investment in modernizing recycling in Oregon.



MEMORANDUM

July 25th, 2023

From: City of Portland, Bureau of Planning and Sustainability (BPS)
To: Oregon Environmental Quality Commission
Re: Public comment, Plastic Pollution and Recycling Modernization Act, Rulemaking One.

Dear Environmental Quality Commissioners,

Thank you for taking public comment in the first rule making for the Plastic Pollution and Recycling Modernization Act (PPRMA). We appreciate this commission for your service to Oregonians and appreciate DEQ staff for their tireless work taking this substantive policy into implementation.

BPS supports this rule-making process and is aligned with regional public comments submitted by Metro. We have heard and respect the hesitancy among some rural communities about the impact of PPRMA on their recycling systems, and continue to support funding to those communities for transportation costs to ship materials to markets.

The City of Portland has a strong commitment to equitable delivery of services to residents and businesses. The PPRMA prioritizes equity through improvements to the multifamily system, workforce pay and benefits, and delivery of culturally specific outreach materials to diverse communities. BPS supports these efforts and recommends that whether in rulemaking or in future amendments to the PPRMA, DEQ explore opportunities for state policy to support equity and greater diversity in ownership and management of companies providing services in the waste system.

Other areas of interest to BPS in this rule-making process include:

OAR 340-090-0630 – Recycling Acceptance Lists.

- o BPS supports the collection of materials on the proposed Local Government Acceptance List and Uniform Statewide Collection List, and the thoughtful addition of new materials as markets become available. It is important that our communities perceive PPRMA as causing improvements to recycling including through more recycling options in their cart, where markets and environmental outcomes are aligned. In our region, we support local flexibility with respect to curbside glass service.



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OAR 340-090-0640 - Convenience Standards.

- o Urban dynamics. Portland has the advantage of greater access to material recovery facilities and the disadvantage of greater traffic congestion and limited access to land which must also be prioritized for housing and jobs. Proportionally more Portlanders may not own vehicles or do not need to own vehicles, complicating self-hauling materials to depots—this should be considered within convenience standard rules.
- o Depots for PRO Materials. In the interest of convenience DEQ should consider placing greater importance upon depots that are integrated with or co-located with retail operators who are selling covered products, compared to stand-alone depots requiring additional trips.

Rules should require unified and coherent promotion and/or customer experience across depots collecting PRO materials and should empower cities and counties to help solve issues with performance of local depots. Current return-to-retail opportunities for products like plastic film are not promoted well and inconsistently implemented. In some grocery stores, for example, the film bin is poorly labelled, there is no wayfinding, and the film container may not be serviced sufficiently.

Transit access to a depot is worth considering, but its value in siting depots should be evaluated more thoroughly. It may be of limited value in promoting equitable access compared to opportunities for co-location or curbside collection. Transit is an important option but buses, shuttles and train cars do not lend themselves to the conveyance of large quantities of recyclables, and their use for such purposes may impact the quality of the transit experience for customers.

- o Collection services for PRO materials. If PRO materials can be efficiently collected through a curbside collection system with competitive environmental performance, BPS recommends that PROs and cities and counties together have the option to at least partially meet the convenience standard by partnering with city- and county-run collection systems, recognizing existing city and county regulatory authority over the collection of solid waste. DEQ should consider allowing a DEQ- and locally-approved on-route collection program delivered by a city or county's hauler(s) to substitute for some of the depot requirements that would apply for a given material, in that geographic area.

Any rules pertaining to the potential for curbside collection of PRO materials should affirm existing local collection authorities because local authority helps ensure equitable, inclusive and affordable services that are coherent with other collection services.

If local governments initiate collection of PRO material through their regulated collection services, local governments or their collectors should be eligible for funding to support the cost of collection, proportional to the investment that might otherwise be spent on depots.

OAR 340-090-0660 Collection Targets.

- o Material specific collection targets are an important element of system evaluation. BPS recommends the DEQ have authority over and is fully supported in enforcement when targets are not met. In the past iterations of the Opportunity to Recycle Act, enforcement of collection goals was not fully supported.



OAR 340-090-0670 - Responsible End Markets.

- o It is imperative that the DEQ have the ability and resources to track and enforce responsible markets, wherever they are. This includes regular inspections of facilities domestic and international and published information about where our recycling goes and what these materials are recycled into.
- o Greenhouse gas (GHG) emissions. BPS's clean fleet policy has reduced GHGs from the Portland waste system and will continue to through the implementation of the City's Renewable Fuel Standard. There should be guidance for elements of the waste system included in PPRMA to drive down emissions from material collection and processing. In addition, lifecycle evaluation of materials in the waste system should take into consideration present and future GHG reduction efforts to inform decision making.

OAR 340-090-0690 - Producer Responsibility Organization Fees.

- o BPS would like to understand how PRO investments, all else equal, will reduce recycling costs for residents and businesses across the state. One of the central intentions of PPRMA is to shift costs for waste management in part to producers, but it is not clear that PRO investments will result in stabilized and lower costs for our customers paying for MRF services. We ask DEQ to adopt rules that lead to evaluation of the degree to which residents and businesses are benefitting from PRO investments, including those made at MRFs and not just for transportation costs, in the form of lower costs, less volatility, and more acceptable materials. In the rule making process, we also ask DEQ to take this into consideration when planning for future system analysis.

OAR 340-090-0760 - Producer Responsibility Organization Membership Fees.

- o BPS recommends the differential between PRO fees for materials accepted for recycling and PRO fees for materials not accepted for recycling is great enough to create a real incentive to design packaging for recycling.

OAR 340-090-0790 - Expansion of Service.

- o BPS would appreciate more clarity in the areas of expansion that are intended to be supported by the needs assessments. In cities and counties with curbside recycling, more clarity around what measures are eligible for funding support via expansion of services would be helpful for planning purposes.

In summary, BPS supports this rule making process and proposed rules and we look forward to future engagement and improvements in the Oregon waste system. Thank you for your time and service to Oregonians.

Sincerely,



Eben Polk
Solid Waste & Recycling Manager, City of Portland, BPS



July 28, 2023

Oregon Department of Environmental Quality
Materials Management
700 NE Multnomah Street, Suite 600
Portland, Oregon, 97232, U.S.

Re: Consumer Technology Association comments on the Implementation of Oregon's Plastic Pollution and Recycling Modernization Act Rulemaking I

Dear Department of Environmental Quality and Rulemaking Advisory Committee Members,

On behalf of the Consumer Technology Association (CTA), we respectfully submit these comments for the implementation of Oregon's Plastic Pollution and Recycling Modernization Act Rulemaking I. We appreciate the opportunity to offer feedback on the implementation of the law and appreciate the Department of Environmental Quality's (DEQ) and Rulemaking Advisory Committee's (RAC) engagement with stakeholders during this process.

CTA is North America's largest technology trade association. Our members are the world's leading innovators – from startups to global brands – helping support more than 18 million American jobs. Our member companies have long been recognized for their commitment and leadership in innovation and sustainability, often taking measures to exceed regulatory requirements on environmental design and product stewardship.

In January we submitted a letter supporting DEQ's recommendation to include Block White Expanded Polystyrene (EPS) in the Recycled Materials Acceptance List as a "covered product of which a producer responsibility must provide for the collection through recycling depot or mobile event as provided in ORS 459A.896". EPS can be a necessary packaging material to the durables goods sector including some electronic devices like televisions and camera equipment. Due to the size, weight, and structure of some electronic devices, EPS is often the preferred packaging material due to its durability and versatility. We would like to follow up and further emphasize our appreciation and agreement to EPS being placed on the Recycled Materials Acceptance List. Additionally we agree that the collection targets for EPR should be set by PRO in the PRO program plan.

Regarding the definition of "toxic substances", we believe that any designation of any substance as toxic should be based on scientific peer-reviewed risk evaluations and exposure data. We do not support the expansion of DEQ's authority to determine that a substance is toxic without scientific justification. The potential for an entire material type to be designated as "toxic" and therefore banned from the recycling system is not the best path forward for encouraging the recycling and proper handling of packaging material. Designation of "toxic substances" that should be banned from packaging should be handled separately outside of a producer responsibility system based on a

risk assessment approach. The Federal government is leading in chemical regulation under the Toxic Substances Control Act (TSCA) and we believe this is the best place for toxic determinations.

Thank you again for the opportunity to provide these comments for the implementation of Oregon's Plastic Pollution and Recycling Modernization Act. We welcome further engagement with the RAC and DEQ. If you have any questions about our above comments, please do not hesitate to contact me at apecck@cta.tech.

Sincerely,
Ally Peck
Sr. Manager, Environmental Policy and Sustainability Issues
Consumer Technology Association

July 28, 2023

Via electronic submission: recycling.2023@deq.oregon.gov

Roxann Nayar/Materials Management
Oregon Department of Environmental Quality (DEQ)
700 NE Multnomah Street, Suite 600
Portland, Oregon 97232-4100

RE: Plastic Pollution and Recycling Modernization Act, Rulemaking 1

Dear Ms. Nayar,

Founded in 1933, the Foodservice Packaging Institute (FPI) is the leading authority on foodservice packaging in North America. FPI supports the responsible use of all foodservice packaging, while advocating an open and fair marketplace for all materials. Our core members include raw material and machinery suppliers as well as packaging manufacturers, which represent approximately 90 percent of the industry. Additionally, a number of distributors and purchasers of foodservice packaging are part of FPI's affiliate membership.

FPI appreciates the Department of Environmental Quality's (DEQ) efforts in managing such a significant rulemaking process on a statutorily mandated timeline. The depth of engagement, dialogue, and discussion throughout the process is commendable. FPI looks forward to continued engagement as this and future rulemakings progress.

This letter provides comments in response to the Notice of Proposed Rulemaking, May 25, 2023, for the Plastic Pollution and Recycling Modernization Act, Rulemaking 1. There are several specific rule concepts on which FPI would like to comment. Each is addressed below.

OAR 340-090-0630: Local Government Recycling Acceptance Lists

FPI welcomes the adoption of uniform statewide lists and the many benefits that they bring to the recycling system. FPI also recognizes the challenges associated with determining which items should be included on such a list, especially when existing conditions include significant geographic differences in some critical variables like population density and distance to processing facilities.

When formulating the list, it is important that DEQ not be constrained by the system as it currently functions, but instead consider the modernized recycling system that will be supported by producer responsibility organizations (PROs). To that end, we ask that DEQ reconsider the exclusion from the Uniform Statewide Collection List (USCL) of several foodservice products made from the same material as other products included on this list. Specifically, FPI asks that polyethylene terephthalate (PET) thermoform containers (e.g., clear plastic clamshells and produce containers) be included on USCL along with PET cups. Similarly, we ask that molded fiber food serviceware be included on the USCL along with

egg cartons. Finally, we ask that polypropylene food serviceware be included on the USCL, along with the cups and bottles of the same material that are on the list. In these instances, there is no functional difference in the flow of the different material formats through recycling facilities or the acceptance of those formats by end markets. The distinction will only serve to confuse the public and the marketplace.

Two of the key benefits of a unified recycling list are reducing consumer confusion and maximizing the value of those materials on the list. The goal of reducing confusion is best served by including as many products of a similar material type as possible. The average household should not be required to differentiate products by their shape or use as well as the material type. Evidence suggests that the end markets for these materials are sufficiently robust to accept the additional volume of that would be recycled by including these products on the USCL. Furthermore, including the additional products on the USCL will signal to markets that they can safely invest in further expansion of their capacity.

With regard to PET thermoformed packaging in particular, FPI understands the specific exclusion from the USCL may be due to a lack of identified reclaimers that are expected to meet the standard for responsible end markets, the absence of sufficient sorting capacity at some Oregon MRFs, and the challenges associated with adhesives and labels. FPI encourages DEQ to revisit this rapidly changing landscape and to consider the changes likely to be put in place prior to July 1, 2025. There are strong indicators of a growing market for thermoform reclamation. These include recent investments in PET thermoform reclamation facilities in the US and Mexico, an established Institute of Scrap Recycling Industries (ISRI) bale specification for PET thermoforms, and several programs in Oregon successfully collecting and marketing this material. PET thermoforms are a growing packaging format with an increasing recycling market demand. Including PET thermoforms on the USCL would provide additional momentum to an established and growing market. Investments in Oregon MRF sorting and technology that can resolve or improve the sorting challenges are likely to be underway by, or before, the launch of the USCL in 2025, which could provide a new flow of materials to these growing markets. FPI encourages DEQ to continue exploring the benefits of including PET thermoforms on the USCL.

Rule Concept 0650: Performance Standards

FPI appreciates the designation of responsibility for meeting performance standards to the PRO, as the PRO will be the entity in the best position within the new system to report on performance statewide. However, the rules should more clearly articulate the PRO's authority to monitor, audit, supervise, inspect, or otherwise collect information necessary from the governments, depots, haulers, processors, or other contracted service providers to verify the performance standards that are required to be included in a PRO's program plan. This authority will allow PROs to establish more reliable methods of monitoring performance and deliver more accurate reporting on performance standards.

Rule Concept 0670: End Markets

FPI appreciates the intent of the statute related to end markets and that the PRO should ensure, "to the extent practicable" that covered products be delivered to responsible end markets. However, aspects of this rule concept go beyond the threshold of practicable. In general, PROs will have insufficient direct knowledge of or control over the contracts or agreements between processors and their customers. Processors are not required under the rules to report their end markets and may be hesitant to share this information, as it is often considered proprietary. Furthermore, the end market companies may also be unwilling to share sufficient information and/or may not have existing processes for documenting practices sufficiently to objectively verify whether they meet the thresholds described in the rule.

The unique definition of the end market for plastics used for food and beverage applications is especially problematic. As written, the rule would require the PRO to acquire knowledge of the specific use of recycled commodities by a manufacturer that is a buyer of material from a recycler that purchased material from a recycling facility in Oregon. For example, a plastic reclaimer that buys materials from a recycling facility in Oregon is likely to produce flake or pellet that is sold to a host of end markets, some of which may be manufacturers of food and/or beverage packaging. An entity that purchases recycled flake or pellet and molds it into new products probably purchases a mix of virgin and recycled plastic from multiple suppliers and may manufacture many kinds of products. How manufacturers use their raw materials is proprietary. Requiring them to disclose intended uses (and report on actual uses) may impose costs, administrative burdens, or competitive disadvantages that force them to refuse to purchase recycled plastic from Oregon's processors. In sum, the definition of the end market for plastics used for food and/or beverage applications extends beyond the reach of the recycling system, and into the realm of manufacturing. This definition is arbitrarily applied to just one type of material in the recycling stream when, in practice, manufacturers using any kind of recycled material face real challenges in meeting a "responsible" standard.

If it is DEQ's aim to use this rule to add public health protections in food and beverage applications, those protections already exist. Any manufacturer of food and/or beverage packaging that purchases or uses flake or pellets purchased from a plastic reclaimer that is sourcing materials from an Oregon recycler is already required to obtain a letter of non-objection from the US Food and Drug Administration (FDA) that confirms it has appropriate processes in place to protect public health. The rule, therefore, adds no additional environmental or public health value.

FPI suggests several changes to this section of the rule that would make its implementation more practicable. First, the unique definition of end markets for food and/or beverage applications should be removed. Second, the rule should require that recycling facilities report to the PRO the necessary information to evaluate whether end markets are responsible. Third, FPI suggests the rules allow for additional time (per Sections 670(B)-(C)) to verify compliance of end markets.

Similar to the rules for market share and performance standards, the requirement that the PRO report on recycling yields will be challenging for the PRO to meet unless the rules provide the PRO with additional authority and/or obligate other parties in the system to comply with requests for data and information. Since the PRO has no contractual relationship with eventual end users, there is no mechanism for it to gather information on end-use processing yields short of mandatory reporting requirements. If the PRO requirement to report on yields is maintained, the PRO should be allowed to provide averages, based on a study of categories of end users, or be supported by end-user yield reporting requirements.

Finally, Section 2(a)(D) of this rule defines adequate recycling yields as "60 percent of each material" listed in the recycling acceptance lists. This rule lacks sufficient clarity about how yields will be determined in cases in which a covered product on one of the acceptance lists includes multiple materials. FPI requests that coatings, such as the coating on polycoated paper cups be specifically included in section 2(b)(C) as, "incidental materials that are adhered to the received material but are not targeted for recovery,". The rules should also clearly state that those, "incidental materials" not targeted for recovery are not also subject to meeting their own yield standard.

OAR 340-090-0700: Market Share

The Plastic Pollution and Recycling Modernization Act defines the responsible producer of food serviceware differently than the responsible producer of other covered products. Unlike other covered products, for which the responsible producer is the manufacturer of the material or product contained in the packaging, the responsible producer for food serviceware is defined as the first person to sell the food serviceware in or into the state. In many cases, food serviceware is sold into the state through distributors

who may or may not have an in-state presence. As a result, it is unclear whether the intent of the rule is for the producer to be the brand owner, the distributor, the converter/manufacturer of the foodservice ware that sells to the distributor, or the entity that sells or provides food serviceware to a consumer in Oregon.

This definition creates a unique challenge for PROs in defining who the responsible producer is, determining market share, and assigning appropriate fees for “producers” of food serviceware in Oregon. FPI requests additions to the rule that clarify which entity is the responsible producer in the case of food serviceware. In addition, DEQ should provide clear direction for assigning market share and fees for covered products that may be sold in or into the state by manufacturers or by distributors.

We appreciate your consideration of our feedback and look forward to further discussion.

Sincerely,

A handwritten signature in blue ink that reads "CPatterson".

Carol Patterson
Vice President, Government Relations
cpatterson@fpi.org



July 27, 2023

Good afternoon,

Ground Score Association recognizes and supports DEQ's hard work in trying to ensure that Oregon's Recycling Modernization Act is equitable and inclusive, including through engagement with stakeholders and consideration for the feedback provided during the first rulemaking process.

These recommendations were developed by Ground Score Association / Trash for Peace's representative to the Rulemaking Committee and Recycling Advisory Council, influenced by ongoing EPR-related engagement with Ground Score Association workers and Trash for Peace's Environmental Promoters, as well as other equity-focused recycling service providers in Oregon. All of these recommendations were written in the interest of promoting a more equitable and inclusive recycling system for our state.

Under section 15(a) of the RMA, PROs are advised to first contract "with existing recycling depots or drop off centers to provide for the collection of the covered product". The provision of services for the recovery of covered, recyclable products that are not accepted curbside is currently carried out by a range of stakeholders, including some that are championing equity and inclusion in our materials management system but that risk displacement from this system should they not qualify as an "existing recycling depot." In order to ensure their just transition into the new system, and to adhere to RMA's goals for a more equitable and convenient recycling system, Ground Score Association recommends the following:

- The definition of "existing recycling depot" should include organizations and businesses currently providing mobile and events-based collection of non-curbside recyclables.
 - Regarding the mobile collection option, we feel that the PRO should contract out for such opportunities and should indicate the following in their plan: planned frequency and timeline of these events (as determined by the contractees) and how the proposed schedule will provide adequate predictability for the public; the plan for advertising the events and paying local organizations to conduct outreach; how the events will uphold best practices in coordinating in advance with local government, community organizations and service providers; and the labor status and pay for workers running the events.
- Public-facing depots should not require permits in order to be designated as a depot under the system. These depots will be accepting clean, sorted materials from the public. Permitting already poses a costly, time-consuming and sometimes politically fraught barrier to participation, and we see no reason why it should be required in this instance, particularly for small organizations and businesses. As a result, permitting



requirements are not inline with the equity and convenience goals of the act. If permits are required, DEQ should support small and COBID-certified businesses in Oregon to understand and comply with requirements.

- Similarly, we recommend that the cost of transport of covered products from a recycling depot be covered by PROs, regardless of whether or not the site is designated or authorized by a local government as part of the recycling program operated by the local government or the local government's service provider (contrary to Section 13(B)).
- PROs should be required to pay depots per ton of material collected, which could encourage the establishment of more than the required minimum number of depots and thereby improve convenience and accessibility to depots, as well as service provision opportunities for small businesses and organizations.
- Ground Score supports Metro's advocacy that "Producer Responsibility Organizations should compensate the most convenient collection options that mirror business's delivery models such as at-home delivery and lockers. This could include at-home pickup, multiple store drop-offs and multi-material neighborhood depots."
- To ensure more equitable, affordable, and convenient service provision by depot operators, and to prevent waste dumping, we recommend that PROs cover the cost of collection and transportation of covered materials from generators to a recycling processing facility or responsible end market (contrary to Section 13(A)). Covering such costs would allow for more convenient services, such as doorstep collection for people with mobility challenges, and would also create possible service provision opportunities for small organizations and businesses.

Also regarding depots, we see inconsistency in RMA's laudable requirements for processors at "commingled recycling reload facilities" to provide their workers with a living wage and supportive benefits (Section 19)- a requirement that will not similarly apply for workers operating depots for covered products not collected curbside. We would like to see living wage and supportive benefits requirements also extended to workers in depots, whether managed by the PRO or other entities. This recommendation comes not only in the interest of protecting depot workers, but also to protect the interests of small businesses and organizations that hope to provide depot services with decent labor standards under the act. The act's proposed rules stipulate that a PRO can decline contracting with a depot if its costs are a set percentage greater than the cost to a PRO to perform the same service. Thus we can imagine a scenario in which the PRO might base such costs on the operation of depots by workers who lack protective benefits and decent pay.

Overall, Ground Score would like to see language in the act which gives priority contracting to organizations and businesses with a specific aim to promote racial, gender and economic equity in the implementation of services within Oregon's recycling system, and the distribution rather than consolidation of economic opportunity under the act.



Regarding Section 14 describing the development of educational materials:

Some portion of the development and dissemination of educational resources to promote the uniform statewide collection list, and the review of such materials, should be contracted out to local organizations that are skilled in culturally specific communications. Such work is currently an important entry point for underrepresented workers to participate in our state's materials management system, and we would like to see these opportunities grow rather than diminish.

Overall, Ground Score would like to see more information about, and exchange with, the workers who will be impacted by the implementation of RMA. RMA will generate investments in the modernization of Oregon's recycling system, which will result in the automation of jobs in material processing sites. Usually such automation displaces human operated jobs, but this does not need to be the case, as can be seen with Material Recovery Facilities like Eureka Recycling in Minneapolis. In order to keep pace with global EPR and circular economy debates, we would like to see more attention and discussion within the RMA rulemaking process to the concept of a just transition, which the International Labor Organization defines as "greening the economy in a way that is as fair and inclusive as possible to everyone concerned, creating decent work opportunities, and leaving no one behind." We recognize a number of ways that RMA aims to create more equitable jobs and services in Oregon's recycling system- including through the prescribed equity studies, which we hope will help RMA more intentionally generate inclusive jobs, and ensure a just transition for workers, businesses and organizations that will be impacted by the act.

We respect and support your ongoing efforts to promote a more inclusive recycling system, and look forward to further engagement.

With thanks,

Taylor Cass Talbott, on behalf of Ground Score Association and Trash for Peace



July 28, 2023

Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, Oregon 97232-4100
Re: Recycling Modernization Act, Rulemaking 1 - public comment

Greetings,

Metro appreciates Oregon Department of Environmental Quality's (DEQ) thoughtful incorporation of our feedback provided during the Recycling Modernization Act's (RMA) first rulemaking process. We are grateful for the opportunity to provide public comment on the proposed rule amendments.

Our feedback is grounded in extensive engagement with our community, local government, and industry partners as well as recycling behavior research. We want to ensure implementation of the new law aligns with the commitments Metro made in the 2030 Regional Waste Plan to modernize our recycling system. It is also critical to our partners and leadership that racial equity is centered in its strategic planning and the solutions are designed to place the least amount of burden on the public.

The Portland metro region accounts for more than 40 percent of the state's population. We are thrilled to see recycling services expand to the rest of the state and we want to ensure it is convenient and accessible for all Oregonians.

Building a recycling system for tomorrow.

Our communities need a modernized recycling system that provides residents, visitors, and businesses the opportunity to recycle more than our current system, while having trust and confidence materials are managed responsibly. Information needs to be culturally responsive and relevant, easy to understand, and accessible in multiple formats and languages. The system needs to address barriers such as access to reliable transportation, limited English proficiency, mobility issues, and disabilities, ensuring recycling is convenient, accessible, equitable, and efficient. It needs to grow capacity to support and encourage upstream waste prevention efforts such as reuse and repair.

We want to leverage producer support by moving the cost of the recycling system to producers and not increasing rates for the public. This includes investments in addressing contamination at material recovery facilities and public-facing education. We want a system that is stable and resilient. It has the least disruptions to operations and produces high-quality materials that meet the specifications of multiple end markets. And ultimately, we want to ensure items are sent to responsible end markets where people work in safe

conditions and are paid wages and benefits that support their families; and where items are recycled with the least amount of social and environmental impacts. The system should also support ongoing verification and the development of responsible end markets both internationally and locally, in Oregon and the Northwest.

Overall, we support DEQ's proposed rules for first rulemaking and thank DEQ staff for all their hard work, and for including Metro on the first Rulemaking Advisory Committee. The following is feedback to be taken into consideration on draft rules.

Expansion of Service of Funding and Needs Assessment

- Metro advocates Producer Responsibility Organizations compensate the most convenient collection options for the public that mirror business's delivery models such as at-home delivery and lockers. This could include at-home pickup, multiple store drop-offs and multi-material neighborhood depots.

Materials Acceptance List

- We ask DEQ to carefully consider additional materials for the proposed uniform statewide collection list, ensuring accountability and responsibility from producers. It is important to Metro and Local Government that we deliver a truly modernized system and to us that means adding materials, rather than taking materials off the list, while ensuring all materials are delivered to responsible end markets.
- For glass, the rules propose glass packaging be required for on-route commercial collection only in the Metro region. Our understanding is in the new system, local governments will have the option to collect glass on the curb but because of the results of the analysis, on-route collection will not be compensated by the Producer Responsibility Organizations.
 - During the April 11th Rule Advisory Committee meeting, DEQ staff stated there was another study conducted that concluded on-route collection of glass is beneficial. Metro agrees with DEQ staff that both studies are right because the environmental benefits greatly depend on local conditions.
 - For this reason and more, Metro and Local Governments would like to continue working in partnership with DEQ to explore other collection models that include elements like alternative end markets, electric box trucks and monthly collection of glass along with potentially additional materials being collected in the same separate bin.
 - Curbside service will always be the most convenient and for certain materials with high generation rates, it could be better suited for route collection rather than having 1.5 million people driving to depots.

- Because of our values around material quality, Metro and Local Governments spent a lot of time building the system we have today, that keeps glass on the side. It was a lot of work, and we are proud of our system, and it is what our customers want.
- We also want to ensure the system maximizes the social and environmental benefits it was designed to produce, by exploring new and innovative ways to improve the system because it is the right thing to do, and we know it is critical to maintaining trust in the system.
- Metro and local governments in greater Portland have worked extensively with community partners to develop culturally relevant recycling educational resources that the public is familiar with. To reduce redundancies and to keep information consistent, we recommend DEQ work with us to update the Education and Outreach section of the [DEQ Internal Management Directive: Oregon Recycling Modernization Act PRO Program Plans](#) to further consider expansion and implications of existing resources.

Convenience Standards

- RMA allows Producer Responsibility Organizations to propose an alternate plan for collection. DEQ should include in the 1st rulemaking criteria for how DEQ would evaluate the alternative plan. Criteria should be designed to ensure that the alternate plan is meeting or exceeding provisions for equitable service. Criteria could include direction from the DEQ Internal Management Directive: Oregon Recycling Modernization Act PRO Program Plans under The Producer Responsibility Organizations Recycling Acceptance List.

Collection Targets and Material Specific Collection Targets

- We support DEQ's collection point concept as it appears to still deliver roughly as many drop-off sites as US post offices.
- A barrier Metro foresees for small and COBID businesses in managing depots is permitting. Therefore, we recommend DEQ plan permitting and licensing accordingly and with flexibility for the opportunity to build depots at a reasonable cost and reduce barriers. This should be something to consider in equity studies.
- Fair wages and workforce development opportunities should be required as part of Producer Responsibility Organizations planning and reimbursement, and should also be considered in equity studies.
- We recommend DEQ define transit accessible recycling depots as depots that are sited so that the people in the depot's intended community can reach the facility

within a 30-minute travel time window. Travel time includes walking and waiting times in addition to ride time. This transit travel time concept for accessibility is drawn from Metro's nationally recognized work in transportation. The recommended 30-minute standard would support the Metro Council adopted Regional Transportation Plan desired outcome to "Increase the number and variety of community places that households, especially households in historically marginalized communities, can reach within a reasonable travel time for all modes of travel."

Responsible End Markets


- We would like DEQ to clarify that the responsible end market standard applies to any point in the disposition, whether it is a glass manufacturer, a landfill, or a non-mechanical recycler. While the actual yield provision is not relevant to the landfill end points, the other provisions are key to apply to landfills.

Market Share and Modified Market Share

- The rules should clarify that the denominators for market share and modified market share are limited to reported covered products, such that the sum of market shares across all Producer Responsibility Organizations, and the sum of market shares across all producers, must equal 1.0000. Production of small producers, and production of exempt product should not be included.

Thank you for being leaders in both Oregon and the U.S. to modernize our recycling system through producer responsibility.

Sincerely,



Marta McGuire, Ph.D.

Director for Metro Waste Prevention and Environmental Services



20 F Street NW
7th Floor
Washington, D.C. 20001
recyclingpartnership.org

July 28, 2023

Via electronic submission: recycling.2023@deq.oregon.gov

Oregon DEQ
Attn: Roxann Nayar/Materials Management
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100

Dear Roxann Nayar,

Thank you for the opportunity to submit the attached comments as requested through Oregon DEQ's rulemaking process.

The Recycling Partnership is a national nonprofit with a mission to advance the circular economy by building a better recycling system. Please don't hesitate to contact us if you have any questions about the information we've provided.

Sincerely,



Trina Matta
Director of Policy Implementation
The Recycling Partnership

Introduction

The Recycling Partnership (TRP) respectfully submits the following input to the State of Oregon’s proposed rule. As a prelude to detailed input below, TRP offers general comments here about the nature of the Recycling Modernization Act (RMA), the general goals we perceive to be at the heart of the law, and the dynamic, interdependent nature of recycling decision-making. TRP applauds the vision embedded in the RMA of substantially modernizing commingled material processing and moving that critical infrastructure toward consistently high levels of performance. We contend that this vision should include a steady trajectory toward wider material acceptance in collection and processing, with intention and action combining to catalyze progress.

In that context, we believe it is important that official actions such as the establishment of a Local Government Acceptance List and Collection Targets be used to send strong signals to all stakeholders of what the future is expected to be. Without these strong signals, the default will be to the status quo or to incremental steps that significantly delay achievement of the RMA vision. Strong signals initiate acceptance and planning for change, and they justify and accelerate investments and actions that change the status quo.

With that in mind, we present the following comments on specific proposed rules for your consideration. The topics included below are:

1. OAR 340-090-0630: Local Government Acceptance List
 - a. PET Thermoforms
 - b. PE and PP Lids and HDPE Package Handles
 - c. Scrap Metal
 - d. Polycoated Paperboard
 - e. LDPE Bottles, Jugs and Tubs
2. OAR 340-090-0630 (2)(k)(A) and (2)(k)(B): Minimum Size Threshold
3. OAR 340-090-0630 (2)(A)(i): Plastic bottles and jugs that are 6 ounces and larger, including caps if screwed on, made of PET (#1) (clear only) and OAR 340-090-0630 (2)(E): Clear plastic cups
4. OAR 340-090-0660 (2)(b): Collection Targets for PE Film
5. OAR 340-090-0670 (2): Responsible End Markets – Yield Threshold
6. OAR 340-090-0800: Expansion of Service Funding and Needs Assessment

Comments on Specific Proposed Rules

1. OAR 340-090-0630: Local Government Acceptance List

TRP sees that Oregon DEQ is using the Local Government Recycling Acceptance List for the purpose of advancing the vision of the RMA, as discussed above, and we encourage these efforts to be even more expansive and catalytic. TRP also understands that not all stakeholders will agree with this approach, especially given some negative history with material markets and the scale of necessary investment. However, the RMA is ideally constructed to address these concerns in establishing the producer financing base for education, collection, and processing investments to expand material acceptance, coupled with requiring responsible end markets for processed materials. While legitimate issues will pose long-term challenges for some materials, TRP believes in some cases that the challenges are easily surmountable within the framework of the RMA and thus those products should be included on the Local Government Acceptance List.

TRP specifically recommends that the rule be modified to include PET thermoforms, PE and PP lids, and HDPE package handles in the Local Government Acceptance List effective July 2025. To be consistent with previous processes, TRP provides input below on this rule according to select criteria Oregon DEQ used in its March 2022 Request for Information on material recyclability.

Material Focus: PET Thermoforms

PET thermoforms have been in a state of ambiguous recyclability for many years due to technical and market issues, but TRP believes those issues are rapidly being resolved and that this material is ripe for inclusion on the Local Government Acceptance List. As stated in our introductory remarks, TRP believes inclusion on the list to be a significant catalyzing action that drives more domestic market investment and motivates movement toward Oregon's standards of responsibility. Exclusion of PET thermoforms from the Local Government Acceptance List would send the opposite signal, thus delaying or possibly stopping beneficial recycling investments.

Stability, maturity, accessibility, and viability of responsible end markets

Through its [PET Recycling Coalition](#), TRP is actively engaging with reclaimers to track and improve thermoform market acceptance. [Recent reclamation investments in the U.S., Canada, and Mexico](#) demonstrate that the material has a growing market pathway that includes acceptance in a flexible set of commodity formats: PET thermoforms mixed with PET bottles, PET thermoform-only bales, and "1-7" or "3-7" bales in markets serving Oregon.

TRP's PET Recycling Coalition has directly helped boost thermoform market acceptance with grants to two reclaimers serving the western U.S., including one that has reversed a long-standing reluctance to receive, and process thermoforms. There are strong indications that a major new reclamation facility in Nevada will also accept, and process thermoforms sourced in the Western U.S. We regularly receive communications from reclamation stakeholders as well as packaging end-users that indicate robust interest in expanding consumption of recycled thermoforms, a trend that will continue to be reinforced by brand recycled content commitments and state-based statutory content and eco-modulation requirements.

Anticipated yield loss for the material during the recycling process

Historically, some conventional bottle processors have been able to process thermoforms without issue, and a number of bottle reclaimers who are not optimized for commingled bottle and thermoform processing are making investments to improve, including key facilities on the West Coast. Reclaimers processing PET thermoforms in a standalone stream have indicated that the absence of caps and fewer labels result in a simpler, less challenging process that several reclaimers are pursuing.

Compatibility with existing Oregon recycling infrastructure

PET thermoforms are already accepted in some collection programs in Oregon. Additional PET thermoform collectability exists in specialized programs offered by collection service providers in Oregon for a range of materials that include thermoforms. This indicates that PET thermoform collection can be compatible with Oregon's collection infrastructure and should be expandable to additional households, which can be effectively facilitated through education, needs assessment coverage, and other elements of the RMA.

A number of Oregon commingled recycling processing facilities are already receiving and sorting PET thermoforms into marketable commodity bales. Facilities currently not accepting PET thermoforms have a clear pathway to plan equipment or other upgrades to accept and sort PET thermoforms using PRO funding established in the RMA.

Amount of the material available

PET thermoforms are a growing element of consumer packaging. As we noted in our submittal to the March 2022 RFI, PET thermoform usage will accelerate as producers seek resin substitution in products like cups, egg packaging, and other formats that currently use PS and PVC, which are identified as problematic and unnecessary by the U.S. Plastics Pact.

TRP capture study data indicates non-bottle PET is generated in single family household at levels exceeding natural HDPE bottles and approaching colored HDPE bottles, two materials with "truckload" commodity status in material processing. Recent capture studies show steady growth in PET thermoform

generation – in earlier studies, thermoforms were under 11 pounds/single family household/year. The rising level of generation provides the critical mass necessary for economic sortation.

Single Family Household PET Thermoform Generation Rates Compared to HDPE Bottles

Material	Average Pounds/Household/Year	Extrapolated Tonnage for Oregon Single Family Households
PET Thermoforms	13.0	7,980
HDPE Natural Bottles & Jars	12.9	7,918
HDPE Colored Bottles & Jars	16.3	10,005

Practicalities of sorting and storing the material

TRP’s PET Recycling Coalition is actively working with commingled recycling processing facilities across the country to expand their capacity to accept and sort PET thermoforms. Building on an already solid foundation of established commingled acceptance and sortation, these efforts are helping create flexible solutions that respond to regional differences in PET thermoform markets (e.g., PET thermoform specific bales vs. inclusion in PET bottle bales). In addition, all the leading commingled processing equipment providers have standard solutions that facilitate PET thermoform sorting, indicating no technological barriers to directing the material into an appropriate commodity bale.

Contamination

As we noted in our response to the March 2022 RFI, industry stakeholders continue to address technical and other issues that pose recycling challenges for PET thermoforms (e.g., detrimental labels). These actions can be further catalyzed by eco-modulation and fee mechanisms under the RMA. Sortation into the correct bale will be spurred by Oregon DEQ’s pending regulatory performance standards for commingled facilities and is already highly feasible from a technical standpoint. This will minimize any contamination issues PET thermoforms cause for other commodities and CRPF improvements driven by the RMA will improve optical sortation in commingled recycling processing facilities to better move thermoforms into the correct commodity stream. Furthermore, if PET thermoforms are included on the Local Government Acceptance list while look-alike products made with other resins are excluded and economically discouraged by the RMA, it will reduce contamination in the recycling system from these look-alike materials.

Ability for waste generators to easily identify and properly prepare the material

Waste generators can be directed through imagery and text to identify key format categories that are predominantly PET thermoforms – e.g., berry and salad mix clamshells. As the use of other resins besides

PET declines due to many of the mechanisms included in the RMA as well as general brand movement to more recyclable materials, the education around specific formats will help capture more PET thermoforms. Although less ideal, in some cases use of the Resin Identification Code can provide further instruction to generators.

Economic factors

PET thermoforms have fluctuating but proven market value, either as a standalone commodity or as part of a bottle bale. The RMA has effective mechanisms for addressing any potential economic issues for collection in PRO funding of local needs assessment requests and in the processing commodity risk fee for commingled facilities. In addition, some key brand actors have specific commitments to use PET thermoform derived recycled PET back into packaging, providing value drivers outside of free market economics.

Conclusion

PET thermoforms are a growing packaging format with an established track record of collection in Oregon, demonstrated and expanding market demand through active reclaimer investments, and a proven ability to be sorted and produce yield in commingled processing and reclamation. Inclusion on the Local Government Acceptance List will help create a predictable supply that catalyzes further market investment. Financing of any collection, education, and processing improvements required for PET thermoforms will be facilitated by PRO funding. With all these factors in mind, The Recycling Partnership strongly recommends OAR 340-090-0630 be changed to include PET thermoforms on the Local Government Acceptance List effective July 2025.

Material Focus: PE and PP lids and HDPE package handles

TRP also advocates for PE/PP lids and HDPE package handles to be moved from the PRO Depot collection list detailed in OAR 340-090-0640 to the Local Government Acceptance List in OAR 340-090-0630. This change will increase the capture rates of these highly recyclable materials, which can be effectively sorted in commingled recycling processing facilities and sold to responsible domestic markets. TRP further believes inclusion on the Local Government Acceptance List will reduce consumer confusion about which plastics to recycle where, simplifying community education and increasing recycling convenience for Oregon generators.

Stability, maturity, accessibility, and viability of responsible end markets

The long-standing acceptance of a “tubs & lids” bale in U.S. plastic recycling markets is a clear signal that PE and PP lids, if sorted properly at commingled recycling processing facilities, will experience established domestic markets with proven commodity value. The Association of Plastics Recyclers (APR)’s [Tubs and Lids Model Bales Specification](#) was created to recognize this commodity grade, clearly

indicating recycling acceptance in domestic markets. The Institute of Scrap Recycling Industries (ISRI) also includes a “Tubs and Lids” bale spec in its [Scrap Specifications Circular](#).

HDPE package handles, although not explicitly included in the APR or ISRI specifications, are a PE material with highly similar physical characteristics to lids and thus can be anticipated to fit in the same commodity bale paradigm. They would also be addressed similar to lids in commingled processing.

Compatibility with existing Oregon recycling infrastructure

Because they are compatible resins with currently collected materials, can be effectively sorted in commingled processing, and would require simple changes to educational messaging (facilitated by PRO funding), PE and PP lids and HDPE package handles can seamlessly be added to current curbside collection. By contrast, placing these materials on the list for collection at PRO Depots, an infrastructure that needs substantial development, would be wholly new to existing Oregon recycling infrastructure, requiring significant effort to address education and convenience issues.

Amount of the material available

While The Recycling Partnership does not have specific data on the quantity of lids or HDPE handles generated by households or other generators, we would point out the ubiquitous nature of these materials that are generated on a 1-1 basis with their rigid container counterparts. HDPE package handles continue to expand market share for some key products.

Practicalities of sorting and storing the material

At the heart of whether PE and PP lids and HDPE package handles should be included on the Local Government Acceptance List is the question of whether two-dimensional lids and package handles can be sorted correctly to the container stream and not end up as a contaminant in fiber or residue. Leaving aside the likelihood that commingled processing facilities are already receiving these materials because of recycling participant error, TRP believes that standard equipment offered by all processing equipment providers can effectively address this issue. In particular, we have seen increasing adoption of optical and robotic polishing equipment on fiber lines and, through our [Polypropylene Recycling Coalition](#) work, we have also provided grants to install equipment on container lines that captures two-dimensional polyolefin materials.

Two key elements of the RMA will effectively address the technical issues of PE and PP lid and HDPE package handle sortation: 1) PRO funding to finance necessary equipment, and 2) DEQ’s pending regulatory structure around bale quality and capture rates. This connects to our introductory remarks above in which the Local Government Acceptance list becomes the catalyst of changes that are made possible by the structure of the RMA itself.

Contamination

The vast majority of lids on the marketplace are PE and PP so contamination issues from look-alikes are minimal. HDPE package handles do still have counterpart equivalents in the form of more flexible LDPE handles, but as a PE product, LDPE handles may also sort effectively with the same equipment provided above. Although some lids may be subject to contamination issues similar to rigid containers, such as food residuals, these issues can be effectively addressed in the same ways they are for those containers.

Ability for waste generators to easily identify and properly prepare the material

In most if not all cases, new messaging to include lids and package handles in curbside collection will be a straightforward matter of changing basic educational materials. By contrast, the effort to inform, motivate, and instruct generators in Oregon to separate lids and package handles from other recyclables and then deliver them to a depot network will require substantial effort if these materials are going to be recovered at scale.

Economic factors

PE and PP lids and HDPE package handles will sort effectively to commodity bales that have a robust history of market acceptance and value and that should improve commingled processing economics, once proper sortation equipment is in place.

Conclusion

Because they are a substantial material stream with a track record of market specifications and acceptance and can be effectively sorted in commingled processing by proper equipment facilitated by the RMA, while also communicated clearly to generators as recyclable, PE and PP lids and HDPE package handles should be included on the Local Government Acceptance List effective July 2025.

Material Focus: Scrap Metal

OAR 340-090-0630 “Recycling Acceptance Lists” lays out both the Local Government Recycling Acceptance List as well as the list of materials that the Producer Responsibility Organization would be responsible for collecting via depot or mobile events. Two scrap metal product categories are outlined for recycling in the draft rules, as follow:

(2)(n) Scrap metal weighing less than 10 pounds and smaller than 18” in length, excluding sharp items (for example knives) and bicycle chains, electrical wiring and other wires, and other similar items likely to cause tangling;”

(2)(o) Other scrap metal;

Scrap metal in the first category, or scrap metal weighing less than 10 pounds and smaller than 18”, is currently referenced on the Uniform Statewide Collection List (USCL), which allows for commingled collection of material for sortation at a Commingled Recycling Processing Facility (CRPF). The second category of scrap metal is intended to be collected at existing municipal depots. The Recycling Partnership recommends moving all references of general “scrap metal” product categories to the list of materials that will be collected at municipal depots. This would allow these products to be collected separately from other commingled material and bypass the CRPF. We believe the weight limit of 10 lbs. exceeds the weight of an item that can safely move through a CRPF. During the Material List Technical Workgroup, CRPF operators repeatedly expressed concerns about allowing heavy scrap metal to be commingled with other recyclables at the curb due to the hazards it presents to workers at the CRPF, as well as unnecessary wear on equipment.

In addition to the safety concerns posed by 10 pound metal items that would be allowable on the USCL under the current draft language, we believe consumers may have a difficult time gauging the weight of an item to ensure it is under 10 pounds, potentially further putting CRPF workers at risk of having to handle items that are in excess of 10 pounds.

We therefore suggest that section (4)(b) read:

The materials listed in subsections (a) through (m) are also designated for recycling collection from collection service customers as described in ORS 459A.005(1)(a)(A) and ORS 459.863(25)(a) to (c);

Combining both scrap metal categories for collection at local government depots will also reduce consumer confusion about what metal items do, and do not go into the curbside bins.

Material Focus: Polycoated Paperboard

The Recycling Partnership is pleased that DEQ has proposed to include product categories such as polycoated cartons, aseptic cartons and polycoated paper cups on the USCL. This demonstrates DEQ recognizes new processing capabilities of local end markets, such as NORPAC, and again is using sound research and engagement as well as the key mechanisms of the RMA to expand material acceptance. We ask DEQ to consider going one step farther by including, rather than excluding, polycoated paperboard boxes that are normally placed in the refrigerator or freezer.

According to the [Evaluation Matrix](#) produced by DEQ as part of the Material Technical Workgroup, “other polycoated packaging (e.g., some freezer and butter boxes)” received very similar rankings across the evaluation criteria as those received by “paper cups, coated and uncoated” and “gable-tops and aseptic cartons.” The criteria where “other polycoated packaging” scored less than paper cups or aseptic cartons is in the responsible end market sections. But as the matrix accurately notes, all three of these product

categories will flow to the mixed paper bale when that commodity is prepared at the CRPF. That bale, containing all three of those product types plus other fiber products, would all be processed together at a facility such as NORPAC.

TRP contact with NORPAC's Longview, WA facility confirmed that it would accept everything in the polycoated category of materials. Today they receive and successfully process cups and aseptic cartons from the Seattle area. They would welcome all polycoated fiber, which they estimate to be about 3% of the total fiber mix they would receive. That figure includes the polycoated fiber packaging that would be stored in the refrigerator or freezer and is currently excluded from the draft USCL in Oregon.

It is also worth noting that during the Material List Technical Workgroup effort, the American Forest and Paper Association (AF&PA) submitted a letter describing the recyclability of a full range of fiber-based products, including polycoated items. Their information stated that 49% of U.S. residents have curbside recycling of "paperboard with poly" and an additional 36% have drop-off collection access (pp. 3, of the AF&PA [letter](#)). If the goal of the RMA is to build the recycling system of the future in Oregon, we recommend that an item that sorts well in CRPFs and is processed by end markets like polycoated paperboard should be considered for collection on the USCL.

Lastly, when it comes to recycling education for consumers, The Partnership has found that clear and simple messaging is the best way to encourage participation and correct recycling. Excluding some polycoated products while including others may cause unnecessary confusion amongst the public when it comes to recycling right at the curb. We believe the spirit of the law is to encourage the recycling of materials that are technically feasible and where responsible end markets exist. With the presence of NORPAC, we believe all polycoated fiber packaging meets these criteria and should be included on the USCL.

Material Focus: LDPE Bottles, Jugs and Tubs

The current draft rule puts plastic bottles and jugs and plastic tubs that are made of PET, HDPE and PP on the Local Government Recycling Acceptance List. This would mean LDPE bottles, jugs and tubs are not accepted in commingled curbside recycling, although previous DEQ rule concepts did include LDPE on the Local Government Recycling Acceptance List. Despite this, LDPE can be sorted at the CRPF and can be included with HDPE and PP bales in small quantities, as noted by DEQ's rule concept from December 2022. LDPE bottles, jugs and tubs are not common and are not anticipated to be a burden on the CRPF.

DEQ's list as drafted compels residents to refer to the Resin Identification Code which is often difficult to identify. In our opinion, it would be simpler and more effective to include LDPE in the USCL and allow communications to residents to state "all bottles and jugs" are accepted for curbside recycling. This will

maximize the amount of quality recyclables entering the recycling stream while reducing consumer confusion. For these reasons, TRP requests that the proposed rule be changed to allow LDPE bottles, jugs and tubs to be included on the Local Government Recycling Acceptance list effective July 2025.

2. OAR 340-090-0630 (2)(k)(A) and (2)(k)(B): Minimum Size Threshold

The draft rule specifies that plastic bottles and jugs as well as plastic tubs on the Local Government Recycling Acceptance List must be 6 ounces or larger. While this threshold has been used in some local governments in Oregon, we believe that the minimum size threshold should align with industry best practice as it has previously been established by The Association of Plastic Recyclers (APR).

As materials enter a CRPF, they pass over a glass screen. Material smaller than the openings of the glass screen fall below the screen while material larger than the openings continues through the CRPF process. APR has conducted research on the size of screens offered by the four most common CRPF equipment suppliers and found that the average size of screen openings is two inches. This is the basis for APR's *Design® Guide* suggesting testing using [APR's size sortation protocol](#) for any packaging that is smaller than two inches in two dimensions that wants to meet APR Design Guide Preferred criteria. This is an established industry methodology, and we recommend that DEQ use a similar methodology – a minimum of two inches in at least two dimensions – for setting a minimum size threshold. The packaging industry is aware of this as a size threshold and this would allow them to base future packaging decisions on a common standard nationwide.

Moreover, we believe that using a 6-ounce size threshold would disallow several packaging formats that contain valuable recyclable material and thus artificially limit the ability of these materials to be returned to responsible end markets. The examples below show a bottle of lotion, a polypropylene tub of polypropylene package of cottage cheese, a polypropylene package of yogurt. Each of these packages measures at least two inches in two dimensions and would therefore sort successfully in a CRPF and could be reprocessed into PCR, but because the contents they hold weigh less than 6 ounces, they would be considered non-recyclable packaging per DEQ's proposed rule. These materials would end up in a landfill unnecessarily. The following pictures show examples of these:



A 3-ounce bottle of lotion (HDPE)



A 5-ounce package of cottage cheese (PP)



A 5.3-ounce package of yogurt (PP)



A 4-ounce package of almonds

In some cases, a package containing less than 6 ounces of product can be dimensionally larger than a package containing 6 or more ounces of product, as shown on the next page:



A 5-ounce PP tub of shredded cheese in a package that is taller than the goat cheese package to the left with roughly the same depth and width.



A 6-ounce package of goat cheese which, although much shorter than the Parmesan cheese package, is considered recyclable under proposed rules while the Parmesan cheese tub is not.

While DEQ has noted that the 6-ounce threshold may be easier for residents to understand than the details of APR's sortation protocol, we believe that a size threshold parameter can be effectively communicated to residents, thus allowing highly recyclable items under 6 ounces to be recycled.

3. OAR 340-090-0630 (2)(A)(i): Plastic bottles and jugs that are 6 ounces and larger, including caps if screwed on, made of PET (#1) (clear only) and OAR 340-090-0630 (2)(E): Clear plastic cups

The proposed rule notes that only clear PET is acceptable on the Local Government Recycling Acceptance List. While black PET or other dark colors can be challenging for CRPF NIR optical sorting equipment to detect, other industry standards, such as Consumer Goods Forum's Golden Design Rules, allow for certain lightly colored PET bottles and jugs. The Consumer Goods Forum's *Golden Design Rules for optimal plastic design, production and recycling* as well as APR's *Design® Guide Preferred* designation allow for transparent light blue or light green PET bottles as well as PET thermoformed items. In some cases, blue is added to rPET to compensate for the yellowing of this recycled material and the mixing of transparent blue PET packaging in with the clear stream aids in this process. Allowing transparent PET in these colors would mean that this rPET can stay a part of the circular economy for longer without negatively impacting the recycling system. TRP recommends the proposed rule be changed to allow transparent light blue and light green PET to be included on the Local Government Recycling Acceptance List effective July 2025.

4. OAR 340-090-0660 (2)(b): Collection Targets for PE Film

The collection targets listed for PE film are unachievable through depot collection in the near term (2028, 2030), and potentially even in the long term (2035). Today residents do have options, albeit limited, to recycle PE film through the store drop-off system at retailers, as well as with pay-for-service valet programs that collect film at homes. Largely through these methods of recycling, we estimate that the national recycling rate for film and flexible packaging is just 1.8% today. Offering additional collection at depots is unlikely to increase that number significantly. Using the example of PRO depot capture rate for "trays" offered in the [Overview of Scenario Modeling](#) prepared by Cascadia, et al., it is anticipated that depots would only capture 23% of that category of material when factoring in recycling behavior (pg. 33). Using that calculation as a proxy for other materials, it is unrealistic to expect depots to capture 25% or more of any material category statewide. Even well-established EPR programs have not yet achieved a

28% recycling rate for film. For example, Recycle BC's [2022 Annual Report](#) shows a recovery rate of 23% for a category that goes well beyond polyethylene film to include items such as [multimaterial laminated chip bags, woven polypropylene bags and multimaterial meat packaging](#).

Moreover, it will be difficult to measure the recycling rate of PE film as it is currently unknown how much is recycled through store drop-off. Retailers participate in this program voluntarily, and mix the post-residential film collected at the front of the store with their back-of-the-house post-commercial shrink wrap before marketing it to brokers and reclaimers. The Partnership is only aware of one grocery retailer who routinely weighs the post-residential material separately from the post-commercial material, and that retailer does not have stores in the Pacific Northwest. To calculate an accurate recycling rate for PE film, the PRO would need to work with retailers to estimate the amount of post-residential material they are collecting and recycling, which would be a difficult task given the practice of mixing it with post-commercial material and the fact that retailers are not obligated to participate.

If DEQ's main goal regarding PE film is to keep film at depots, then we suggest that DEQ establish more attainable targets. For example, 10% by 2028, increasing over time to 30% by 2035. As an alternate recommendation, if DEQ's main goal regarding PE film is to achieve the targets as DEQ has outlined in the proposed rule, The Recycling Partnership suggests DEQ should explore adding film to commingled curbside materials to increase recovery rates. This could be initiated by working with the selected PRO(s) to look at options for upgrading CRPFs to allow them to sort out PE film.

The Recycling Partnership's [Film and Flexibles Recycling Coalition](#) has researched film recycling in CRPFs across the country and found that PE film and other non-PE films are already in the top three plastics by weight entering CRPFs. We believe residents are already putting their flexible films in recycling carts and that this category of packaging will continue to grow over time because of its improved lifecycle benefits over alternatives. Accordingly, modern CRPFs will be forced to manage the material.

The Film & Flexibles Recycling Coalition is working on solutions to that challenge, in part by giving grant funding to CRPFs to pilot multiple methods of segregating and sorting out PE film. We are working with both CRPFs and equipment manufacturers to understand the cutting-edge technology that will be needed to successfully sort PE film from other materials while simultaneously improving quality of fiber bales and reducing downtime for CRPF operators due to clogged star screens. Beyond the CRPF, the Coalition has awarded grants to film reclaimers to enable them to process CRPF film. We are also working with APR to fund more research into film design so that the film that does enter the recycling stream is as recyclable as possible.

Lastly, DEQ may want to consider additional specificity around the term "PE film". We believe DEQ intends this category to include monomaterial PE film, however, even film that is not 100% PE is considered recyclable by film reclaimers. Because PE film is often coextruded or laminated with other resins, it may be beneficial to the recycling system to specify that the PE film category includes only

packaging that is at least 90% polyethylene and co-polymers, with this and other allowable non-PE components as detailed in [APR's Design® Guide](#).

5. OAR 340-090-0670 (2): Responsible End Markets – Yield Threshold

OAR340-090-0670 Responsible End Markets outlines four pillars of performance for recyclers receiving covered materials from Oregon. We believe each of the four focus areas are appropriate to audit against to ensure the materials being collected in Oregon are managed in a way that does not burden communities downstream in the recycling value chain.

TRP would like to offer feedback specifically on the fourth pillar of responsible end markets: achieving adequate recycling yields. We understand that the 60% yield threshold was likely selected to be widely inclusive of different recycling technologies, serving a broad range of material types. There are many cases where yield is routinely higher than 60% when it comes to end markets for paper, plastic, aluminum and glass. We encourage DEQ to identify those best-in-class technologies for each material and establish yield thresholds that are on the leading edge of the industry. By being more nuanced with yield requirements, the Oregon system can encourage all recyclers to strive for maximum yields. We therefore suggest that DEQ take a more nuanced approach when it comes to this REM criterion, and determine appropriateness of end markets based on multiple factors: yield, technology types and materials.

DEQ could also consider a “tiered” end market yield approach, “first tier” end markets with the highest yield would receive priority. If a “first tier” market is not available for a commodity, a subsequent market with lower yield requirements could be used. If a market other than a “first tier” market is selected, auditors should be able to document the absence of a “first tier” market, be able to calculate actual yield, and review the plan for how greater yield and efficiency will be achieved over time. Regardless of tier, all end markets would still need to meet the other standards for a Responsible End Market.

Using a tiered approach like this would create a more realistic, systemwide plan for continuous improvement when it comes to end market development. DEQ could revisit yield thresholds of each material and technology category on a multi-year cycle. This would ensure DEQ is driving best practices in yield rather than setting broad targets for marginal performance across the system. Creating a system inclusive of emerging technologies also creates the space for recycling innovation that will create the robust and modern system intended by the RMA.

6. OAR 340-090-0800: Expansion of Service Funding and Needs Assessment

ORS 459A.890 describes the process for DEQ to survey local governments to determine their needs and then how those needs should be funded by the PRO. Specifically, the statute notes that the commission “shall establish by rule methods for determining funding or reimbursement amounts under this subsection.” We believe this is an opportunity for DEQ to propose rules that would establish a process or

criteria for needs assessment requests. With criteria in place, DEQ and selected PROs could prioritize local government projects that aim for best management practices to be deployed, resulting in high efficiency and highly effective programs. In addition to the general framework laid out in statute referencing proximity to CRPFs or responsible end markets, DEQ could evaluate the requests of the needs assessment against criteria such as cost per ton or cost per household served, possibly moderated or balanced against other goals, such as achieving equitable access to recycling. In these analyses, DEQ would ideally apply data-based technical criteria that gauge needs assessment requests against standards of performance derived from industry practices. The goal of such criteria would be to ensure that the needs assessment and funding of the requests on the needs assessment will indeed drive system optimization and efficiency.



Reynolds Consumer Products
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July 28, 2023

Oregon DEQ
Attn: Roxann Nayar/Materials Management
700 NE Multnomah Street, Suite 600
Portland, Oregon 97232-4100

RE: Plastic Pollution and Recycling Modernization Act, Rulemaking 1

Dear Roxann:

Reynolds Consumer Products appreciates the opportunity to provide comment on the Oregon DEQ's recent proposed revision to *OAR 340 Division 90 - Recycling and Waste Reduction* regulations to implement the provisions of the 2021 Plastic Pollution and Recycling Modernization Act (SB 582) as noticed on May 25, 2023.

Reynolds Consumer Products is a leading provider of household products that simplify daily life so consumers can enjoy what matters most. With a presence in 95% of households across the United States, RCP produces and sells products that people use in their homes across three broad categories: cooking, waste and storage, and disposable tableware. RCP's iconic products include Reynolds Wrap® aluminum foil, Hefty® trash bags, and adjacent product lines that make family life easier.

Reynolds is broadly supportive of recovering the valuable materials used in packaging and single use products and recognizes the need to update our recycling system to keep more materials out of landfills and back into productive use as new products. Aluminum is one of the most infinitely recyclable materials available, requiring only a fraction of the energy needed for primary production. Reynolds operates manufacturing facilities for aluminum foil and pressed aluminum bakeware in Hot Springs, Arkansas; Louisville, Kentucky; and Wheeling, Illinois. A significant portion of the aluminum processed in these facilities is sourced from recycling and scrap operations; Reynolds is supportive of efforts to include more post-consumer aluminum in future sourcing.

Reynolds also understands the challenges in changing consumer behavior. Many citizens in Oregon are accustomed to the convenience of recycling aluminum foil and bakeware in their curbside bin. Reynolds believes Oregon should keep curbside collection of foil and bakeware in place as it will be a more effective method to divert these materials from landfills than recycling depots or collection events. Current on-package use of the How2Recycle label communicates to consumers to "rinse and recycle" to minimize the amount of food residue that these products may carry into the recycling stream. A 2022 Food Residue Study by the Foodservice Packaging Institute found that the vast majority of foodservice and food contact packaging (including aluminum packaging) in the recycling stream are relatively clean. Aluminum foil is successfully collected and sorted in many MRFs across the US and Canada.

As Oregon DEQ considers its recommendations, Reynolds appreciates the opportunity to provide feedback and would be happy to discuss how to engage other stakeholders in the aluminum industry in working towards improved recovery for these products.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Jenke". The signature is written in a cursive style with a large initial "K".

Ken Jenke
Sr. Regulatory Manager
Reynolds Consumer Products



July 28, 2023

Attn: Roxann Nayar
Oregon Department of Environmental Quality
700 NE Multnomah Street
Portland, OR 97232

Dear Ms. Nayar,

Reverse Logistics Group (RLG) is a management company providing EPR compliance, producer responsibility organization (PRO) and product returns services to major consumer product manufacturers and retailers across the globe. In North America, we are actively engaged as an EPR compliance service provider, PRO, and/or service provider to a PRO in the packaging, electronics and battery spaces.

RLG notified the Oregon Department of Environmental Quality of our intent to act as a packaging PRO under the Plastic Pollution and Recycling Modernization Act in April of this year. As a prospective PRO, we appreciate the opportunity to comment on the Department's Notice of Proposed Rulemaking, Number 1 as it pertains to implementation of the Act.

Our comments are below:

Timing of Program Plan Submittal and Overall Implementation

Prospective PROs are to submit an implementation plan to the Department by March 31, 2024. The majority of the components required to be presented in the plan such as annual implementation budgets for 2025 to 2027 and how a PRO will set or implement materials collection targets, enhancements to local government unit on route and/or depot systems, new depot or collection sites required to meet convenience requirements, performance standards, etc. are dependent on the outcome of this proposed rulemaking which is set for mid-November.

The Needs Assessment results performed by the Department is also based on a tentative recycling acceptance list to be confirmed with the final rulemaking.

The timing of final rule setting, and especially the determination of the final recycling acceptance lists leaves all stakeholders (local government units, MRF, haulers), and prospective PROs, with some level of uncertainty as to how to proceed with planning from a budgeting and implementation perspective. This sentiment has been expressed to us by multiple stakeholders that the recycling system will be dependent on to make the program ultimately successful.

RLG is currently working to develop a PRO plan for submittal, but the short window of time between final rule setting and plan submittal will cause duplicative work to occur by all

stakeholders involved in the process; this will impact the completeness of stakeholder information required for a PRO to effectively formulate plan budgets and ultimately program implementation plans.

In the spirit of ensuring implementation of the Act continues on a successful path, we ask that the Department consider expediting finalization of the recycling acceptance list or providing additional time for PROs to submit final plans.

Section OAR 340-090-0670: Responsible End Markets

(1) Definition of End Market:

The definition of an end market described in section (1) of OAR 340-090-0670 is not a universally recognized definition of an end market in the recycling industry when looking at tracking material flow from an auditing perspective. It is typical to track material from the point of collection up to the point where the material has been processed into a form for reuse, or commodity ready feedstock, or end-of-life disposition (composting, energy recovery, landfill) in accordance with Oregon's materials management hierarchy.

It is not typical, to need to understand who the end buyer is for material that is ready for reuse or a commodity feedstock and we anticipate pushback from the recycling stakeholders as they would view this as proprietary information. We do suggest that the final destination country for the reuse or commodity ready feedstock be disclosed so that it can be compared to Federal (or Oregon) restricted country lists for selling products into.

It is our practice to require each entity or tier that handles any covered material up to that point to provide chain of custody information evidencing movement or handling of the material. We also require an annual mass balance report during an annual audit.

It is standard practice to expect transparency from partners or downstream vendors processing material on behalf of a PRO or producer but requiring the tracking of movement once it is put back into the marketplace as a commodity feedstock will be costly, onerous and impractical and may limit the state's access to legitimate markets.

RLG recommends that the Department change the definition of end market to the point where packaging material cited in the Act is turned into commodity grade feedstock or reaches end-of-life in accordance with Oregon's materials management hierarchy.

(4) Auditing: This section says:

To demonstrate compliance with the requirement that materials collected for recycling go to responsible end markets as required by ORS 459A.896(2) and this rule, a producer responsibility organization must conduct auditing and provide audit results in annual reporting

to DEQ. These audits must include results of random bale tracking to verify chain of custody and must demonstrate and certify that end markets meet the requirements of section 2 and 3 of this rule. For the purposes of enforcement, DEQ may conduct its own random bale tracking.

Can you please clarify if bale tracking is to be done by use of bar codes or GPS trackers. If GPS trackers, can you confirm if it is anticipated that the tracking is to be done with consent of the entity baling the material. Also, if using GPS trackers we would like to discuss with the Department the feasibility of putting a battery-powered device in materials that may ultimately go through a shredder and/or create a safety risk.

Section OAR 340-090-0710 : Proprietary Information – End Markets

Section (4) (d) states that:

(1) For purposes of ORS 459A.860 to 975 “proprietary information” is information protected as a trade secret under the Uniform Trade Secrets Act.

(2) A party providing information to DEQ that it considers proprietary or otherwise confidential must, at the time it provides the information, specify that the information is proprietary or otherwise not subject to disclosure. The claim must be assigned to specific information and not a generalized statement.

(3) DEQ may require at any time that a claimant substantiate its claim that information is proprietary or confidential.

(4) Notwithstanding section 1 of this rule, the following information is not proprietary for purposes of ORS 459A.860 to 975:

(d)The list of end markets of Oregon’s waste including the business or person name; city, state, region, and country; identity of the material received; and amount received, excluding the names of the commingled recycling processing facilities where the waste originated.

It is fair to ask for PROs or CRPFs to share the names and contact information of end markets for recyclable materials covered under the Act with the Department, but it is not common for this information to be shared with the public. This type of information is typically viewed as commercially confidential and most likely will have an adverse business impact on the companies divulging such information such as the potential loss of niche markets.

We suggest that the Department reconsider the exclusion of covered material end market information from the list of “not proprietary” instances cited in Section OAR 340-090-0710 (4) (d), ensuring that this information is not available to the public.



Thank you for the opportunity to provide comments and questions. We look forward to your feedback.

Sincerely,

Andriana Kontovrakis

Andriana Kontovrakis
Director of Compliance Services



A **Schnitzer**  Company

Cascade Steel Rolling Mills, Inc.

3200 North Hwy 99W

McMinnville, OR 97128

800-283-2776 - 503-472-4181 - 503-434-9843 (Fax)

July 31, 2023

Ms. Roxann Nayar, Oregon DEQ
700 NE Multnomah ST #600
Portland, OR 97232

Via email only: Recycling.2023@deq.oregon.gov

RE: Comments on RMA RAC #1 Notice of Proposed Rules, Market for Spiral Wound Paper Cans

Dear Ms. Nayar:

Thank you for the opportunity to offer comments on the Notice of Proposed Rulemaking to clarify and implement the Plastic Pollution and Recycling Modernization Act of 2021 (RMA). I am the Environment, Health, and Safety Director for Schnitzer Steel's Cascade Steel Rolling Mills (CSRМ), and in that role, one of my responsibilities is to oversee recycled materials that my company accepts.

CSRМ produces high quality steel products produced from recycled scrap metal at our electric arc furnace steel mill in McMinnville, Oregon.

I write specifically about the proposal to add spiral wound paper cans to the Local Government Acceptance List, and, more particularly, to the Uniform Statewide Collection List. Schnitzer Steel is adopting a neutral position regarding the addition of spiral wound paper cans to these lists. However, we want Oregon DEQ to be aware that we have concerns related to the inclusion of these materials:

If included in the Uniform Statewide Collection List, spiral wound paper cans would be comingled in bundles with steel cans. These bundles are a part of the scrap feed for our steel mill. It would not be possible for CSRМ to separate the spiral wound paper cans from the scrap feed to our process.

The laminated body of these cans includes paper, plastic, and foil layers. This material provides no value to the steel making process and will immediately burn off in our furnace, creating air emissions.

CSRМ is governed by stringent air emissions limits and is currently working with Oregon DEQ's Air Quality section to comply with the new Cleaner Air Oregon air toxics

regulations. CSRSM is concerned due to a lack of understanding of the potential impact of these materials on emissions of air toxics and other pollutants.

One of the manufacturers of spiral wound paper cans has expressed a willingness to help clarify the effects of their inclusion in the recycling stream. Schnitzer will continue to work with this manufacturer to improve our understanding of any emissions impacts.

Thank you for your consideration, and please reach out if I may be of assistance.

Sincerely,

A handwritten signature in cursive script that reads "Jim Spahr".

Jim Spahr
EHS Director, Steel Operations
jspahr@rdus.com
+1 801 652 7921





July 28, 2023

Roxann Nayar/Materials Management
Oregon Department of Environmental Quality (DEQ)
700 NE Multnomah Street, Suite 600
Portland, Oregon 97232-4100

RE: Plastic Pollution and Recycling Modernization Act – Rule #1

Dear Ms. Nayar,

Sonoco has valued our participation in the process developed by the Oregon Department of Environmental Quality as they have engaged with stakeholders to ensure the successful implementation of Oregon's Plastic Pollution and Recycling Modernization Act (RMA) of 2021. We also appreciate the opportunity to provide final comments for this first rulemaking and look forward to continuing to work with DEQ on implementing this law.

Founded in 1899, Sonoco is a global provider of packaging products. With net sales of approximately \$7.3 billion in 2022, the Company has approximately 22,000 employees working in more than 310 operations around the world, serving some of the world's best-known brands. We are committed to creating sustainable products, and a better world, for our customers, employees and communities. The Company ranked first in the Packaging sector on Fortune's World's Most Admired Companies for 2022 as well as being included in Barron's 100 Most Sustainable Companies for the fourth consecutive year.

Sonoco has operations throughout the packaging supply chain. We are a packaging converter of a wide range of substrates, including rigid and flexible plastics, steel cans and aerosols and paper products including paper cans with metal ends. We are also a top 10 domestic recycler with 16 commercial recycling plants and 5 single-stream material recovery facilities. Finally, we are a large consumer of recovered packaging with 10 100% recycled paper mills in North America and an estimated global usage of 2,629,265 tons of recycled paper, plastic and metal in 2022.

Our roles in the packaging and packaging recycling value chain provide us with unique perspective into the Local Government Recycling Acceptance Lists and the PRO Recycling Acceptance List (OAR 340-090-0630). We appreciate the effort Oregon put into engaging with stakeholders to develop this list and understand that significant tradeoffs were necessary to create a list that would be reasonable as a state-wide mandate. Sonoco supports the inclusion of the materials currently recommended for on-route collection.

Sonoco would like to take this final opportunity to reemphasize our support for the proposed inclusion of paper cans with metal ends on the Uniform Statewide Collection List (USCL). As provided in our comments summarized by DEQ in the Dec. 13, 2022 "Supplemental Information: Recyclability of Paper Cans," paper cans with metal ends have been proven to flow to the container line within a MRF and to be picked up by the same magnet that collects other steel packaging. This process requires no additional investment from the MRF or collection infrastructure and the paper cans with metal ends can be recycled at the same steel mills that accept steel bales from residential MRFs.

We have received written support for inclusion of paper cans with metal ends from over a dozen entities in the steel recycling value chain. We recycle paper cans with metal ends at our MRFs and we know that MRFs across North America have recycled paper cans with metal ends in their steel packaging bales for well over a decade. Our internal screening LCAs have consistently shown that recycling paper cans with metal ends have a positive environmental impact compared to landfill. In July 2023 Sonoco contracted with Trayak to perform an additional screening LCA to look at the end-of-life impacts of a paper can with metal end. They found that recycling the steel while losing the remaining portion of the package to the steel making process had environmental benefits in 6 of 7 impact categories. This included an 87.3% reduction in global warming potential at the end of life phase and a 23.58% reduction over the enter life cycle of the package.

End of Life Percent Difference from Landfill	Steel Recycled & Paper Incinerated
Fossil Fuel Use (MJ deprived)	-64.1%
GWP (kg CO2 eq.)	-87.3%
Water Consumption (with Scarcity) (m3 world-eq)	-14.7%
Freshwater Eutrophication (kg PO4 eq.)	-97.1%
Mineral Resource Use (kg deprived)	168.2%
Freshwater Ecotoxicity (CTUe)	-95.8%
Human Impact (Midpoint) (CTUh)	-49.3%

As a converter we do not have a producer responsibility mandate under Oregon's RMA, however we will offer a voluntary producer responsibility commitment. Sonoco guarantees that if paper cans with metal ends are included on the USCL then they will have an available responsible end market.

If a MRF sorts paper cans with metal ends into steel bales, then any steel bales that meet ISRI "steel can bundles" (code 213) specification and includes paper cans with metal ends will get to a steel mill. If the existing broker downgrades or rejects the material Sonoco will first work with the MRF's existing broker to find a suitable end market. If we are unable to work with the MRF's existing broker, Sonoco will provide an alternative broker to purchase the material. Finally, if no broker or solution otherwise can be identified jointly, Sonoco will purchase the material directly through our existing Sonoco Recycling division.

Alternatively, if a MRF sorts paper cans with metal ends into a separate bale of material, Sonoco will purchase those bales for value and recycle them at our paper mills- likely our mill in Sumner, WA or City of Industry, CA. Sonoco has been recycling paper cans with metal ends from our own production facilities since June, 2021 (<https://investor.sonoco.com/news-releases/news-release-details/sonoco-expanding-recycling-iconic-paper-containers-us>) and all of our North American paper mills have validated that they can accept and recycle paper cans with metal ends in bales of residential mixed paper (<https://investor.sonoco.com/news-releases/news-release-details/sonoco-expanding-residential-recycling-iconic-paper-containers>). The fiber in the paper cans with metal ends will then be incorporated into our uncoated recycled board production and converted largely into new tubes and cores.

We take the sustainability of our packaging seriously and thank you for considering our views and the continued opportunities to provide comments regarding the establishment of the RMA in Oregon. We hope that this process results not only in the recycling of more packaging and more types of packaging, but in a system with greater transparency and more positive environmental outcomes. Please feel free to contact Scott Byrne, Director of Global Sustainability Services at Scott.Byrne@Sonoco.com, or Palace Stepps, Vice President and General Manager of Paper Products & Fiber Supply, North America at Palace.Stepps@Sonoco.com for further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Byrne". The signature is fluid and cursive, with a large initial "S" and "B".

Palace Stepps

Vice President and General Manager of Paper Products & Fiber Supply, North America



Oregon Department of Environmental Quality
Materials Management
700 NE Multnomah Street
Suite 600
Portland, Oregon 97232

July 28, 2023

RE: Plastic Pollution and Recycling Modernization Act 2023 RAC #1

Dear Ms. Nayar,

My name is Gavin Pechey, CEO of Sporadicate, a company created to address the significant problem of plastic waste in our landfills and waterways using mycelium mitigation technology.

Our company started in 2022, on a banana plantation in Guatemala, desperate for a solution to plastic film waste created by an industrial-scale agricultural operation. Instead of throwing plastic film in the rivers, compounding the pollution in an already fragile ecosystem, we realized this waste could be fully broken-down using mycelium fungus within a few months. In June 2023, we signed an agreement with Pocatello, Idaho to develop a demonstration project in partnership with Idaho State University. Our goals are to demonstrate the effectiveness of mycelium technology using plastics from Oregon's proposed statewide recycling list, as well as products not currently considered recyclable, such as clam shells, and film. We are also discussing the possibility of expanding this research and development proposal with Columbia County's Economic Team.

OVERVIEW

Mycelium mitigation technology is not a new concept and established companies have developed solutions for packaging, alternative leather, foam and even food. Our company believes that mycelium mitigation is a scalable solution, beyond composting, that unfortunately, cannot take place in Oregon, should certain elements of the proposed rules become enacted.

As has been previously mentioned by local governments and industry stakeholders, the power of this incredible transformational policy cannot be realized through over-regulation of existing recycling infrastructure process; incompatible solutions that ignore commodity markets and increase operational costs, nor enacting barriers to innovative solutions, to address existing inefficiencies and waste in landfills. At heart, we want to imagine, with your support, a future of new Oregon-grown manufacturing solutions within the existing recycling ecosystem in urban and rural areas of our state. It is with that passion that we hope to inspire your reconsideration of some of the proposed rules to allow companies like ours to have space within this framework and to work alongside established waste management systems for that to happen.

GENERAL COMMENT

When Rulemaking #1 was released, we vacillated between moments of adulation for the amount of groundwork covered by the agency and stakeholders; to finding ourselves overwhelmed with the size, depth, breath, and scope of the initial proposed rules encompassing local governments and producer responsible organizations. As such, we strongly encourage that in the future, DEQ propose shorter condensed versions of sections to this rulemaking process to ensure adequate fact-finding, discussion, and time to digest the materials beyond those intimately familiar and involved in the initial legislative proposal and rulemaking process. We are not experts in recycling, nor recycling systems and are comments reflect our concerns based on what we think we understand the definitions and processes to be as well as the type of business we hope to establish in Oregon.



340-090-0030 General Requirements

As proposed under Section 2, we are concerned that scalable solutions, such as what we are proposing using mycelium technology, would be prohibited from receiving comingled recycled materials based on the definition and timing of this rule. It would eliminate the opportunity for us to work with local governments and recycling partners to establish an appropriate facility-type to accommodate recycling targets.¹ We have no desire to become a comingled recycling facility as is currently proposed in definition for this rulemaking and yet we find ourselves confused as to what facility type we would be allowed to erect in order to receive comingled plastic, to decompose the material, and then to convert it to either soil or other substrate without further clarification or future legislation.

340-090-0080 Alternative Methods for Providing the Opportunity to Recycle

As stated, “this rule describes the necessary procedures and requirements that a city, county, metropolitan service district, or disposal site permittee on behalf of an out-of-state person must follow in order to request approval of an alternative program for meeting the requirements of OAR 340-090-0030, 340-090-0040, and 340-090-0042.”² **However, the proposed section, with the exhausting list of approvals and criteria required to establish an alternative recycling method is the primary example of the barrier to innovative recycling, that undermines the transformative framework of the PPRMA.** It will disincentivized companies, like mine, or even existing ones, from providing viable recycling and manufacturing solutions in the future utilizing existing feedstock. It establishes a bureaucratic minefield of approvals that cost the innovators time, money, and more importantly, it deprives Oregonians the potential for engaging in other solutions to recycle, which is at the heart of the program in the first place. We suggest this statute be amended to allow for:

¹ Effective July 1, 2025, to January 1, 2027, a city, county or metropolitan service district, a local government’s service provider or a comingled recycling reload facility may not deliver to a comingled recycling processing facility comingled recyclables that were collected pursuant to the uniform statewide collection list established under ORS 459A.914 unless: (a) At the time the city, county or metropolitan service district, the local government’s service provider or the comingled recycling reload facility delivered or contracted to deliver or transport materials to the comingled recycling facility: (A) the comingled recycling facility held a valid permit issued under ORS 459A.955; or (B) For a comingled recycling facility located outside of this state: (i) The facility held a valid certificate issued under ORS 459A.956; or (ii) The facility certified that it otherwise met the requirements of ORS 459A.955 or 459A.956, even though the facility did not hold a permit or certificate.

² The city, county or metropolitan service district responsible for solid waste management may apply for and request approval by DEQ of an alternative program for providing the opportunity to recycle. Each request must be made in writing to DEQ on a form DEQ provides. **The request for an alternative program must be complete, signed by the appropriate authority for the city, county, metropolitan service district or disposal site permittee for an out-of-state request and address all of the requirements in section (3) of this rule and sections (5) and (6) of this rule if applicable.** (2) DEQ will review applications as they are received. DEQ will approve, approve with conditions, or reject each proposed alternative program based on consideration of the criteria described in section (3) of this rule. **(3) Each application for approval of an alternative program for providing the opportunity to recycle must include detailed written information and data on the following:** (a) A description of the alternative program being proposed and how it is different from the standard method that would be required to be implemented under the opportunity to recycle requirements; (b) **The conditions and factors that make the alternative program necessary;** (c) **How the alternative program is convenient to the commercial and residential generators of solid waste using or receiving the service;** (d) **How the alternative program is as effective in recovering recyclable materials from solid waste as the requirements in OAR 340-090-0020, 340-090-0030, 340-090-0040, and 340-090-0050 for providing the opportunity to recycle.** (e) How the alternative program would achieve at least the lesser of: (A) The local government unit’s waste shed recovery rate goal specified in OAR 340-090-0050; or (B) Recovery levels comparable to similar communities. For the purposes of this rule, “similar community” means another local government unit that is similar, for the purpose of DEQ’s evaluation of the local government’s alternative program, based on: (i) Population or population density; (ii) Relevant demographics; (iii) Distance to a market for material collected for recycling; (iv) Costs of collection and disposal; and (v) Other criteria DEQ approves. (4) Anytime a city, county, metropolitan service district, or disposal site permittee on behalf of an out-of-state person desires to make changes to the approved alternative program, they must submit an amended application for DEQ’s approval following the same requirements in sections (3), (5) and (6) of this rule. (5) In addition to any other standards or conditions, an alternative program for providing the opportunity to recycle yard debris in the Metro waste shed, where yard debris is a principal recyclable material as designated in OAR 340-090-0700, must meet the following minimum standards: (a) The alternative program is available to substantially all yard debris generators in the local jurisdiction; (b) The alternative program can be demonstrated to result in the recycling of yard debris from the solid waste stream; (c) There is a promotion campaign that is designed to inform all potential users about the availability and use of the method; (d) The city, county or metropolitan service district must individually or jointly, through intergovernmental agreement, choose from the following yard debris recycling program options as an alternative program: (A) Provide monthly or more often on-route collection of yard debris during the months of April through October with drop-off depots for non-collection service customers available at least monthly...etc...



1. Establishing time limited pilot projects with local governments and/or public-private partnerships to ensure effectiveness of addressing a specific alternative recycling solution in that community. Pilot projects could include small and scalable solutions, with outcomes focused on either reducing, reusing or recycling; or any combination thereof, that meets the requirements for some of the responsible end market solutions. Transportation of comingled recyclables should be contracted through the PRO to that pilot project site at a contracted rate that takes into consideration the appropriate costs of transportation, maintenance of truck, tolls, gas, personnel time and other reasonable costs associated with transport so that the pilot project is not purchasing an inflated cost of comingled product that would undermine the value or cost of delivering a recyclable solution.

2. We propose that you focus on the outcomes from that pilot project as opportunities to learn how to complement and expand existing recycling systems and suggest you retain the following elements from proposed statute to allow for flexible, reasonably acceptable criteria for the pilot project: *“(3) Each application for approval of an alternative program for providing the opportunity to recycle must include written information and data on the following: b) The conditions and factors that make the alternative program necessary; (c) How the alternative program is convenient to the commercial and residential generators of solid waste using or receiving the service.”* Consider including elements of efficiencies gained through that alternative recycling process as a demonstrable measure of success at meeting future recycling collection targets outlined in this proposal are all that is needed to encourage innovation.

3. Allow producer recycling organizations, who are already required to work with the local governments and their contracting service providers for expanding service operations, ascertain where and how to incorporate an alternative recycling program instead of requiring numerous approvals through multiple layers of government. Consider establishing a streamlined review process with a date certain, such as 30-day, 60-day or 90-day timelines of the type of approval, approval with conditions or denial that will be issued.

4. We suggest that you eliminate the need to include the specific definition of yard debris within the alternative cycling program and consider relaxing that to include consideration of utilizing yard debris or composted wood materials, or other approved materials that are either collected or exist within a reasonable transportation area within that community. Yard debris may or may not be a useful product in a future recycling process.

5. Upon completion of the pilot program for alternative recycling, provide space for shared knowledge to ascertain the effectiveness of reducing, reusing or recycling, as well as consideration for a process that establishes a permanent or scalable solution that meets the needs of that community and methods for obtaining grants and low-cost loans that meet other energy efficiency criteria important to meeting the Governor’s Climate Goals.

340-090-0140 Recyclable Material Economic Test

Within the proposed rule, it outlines DEQ’s role in determining the economic materials test. “This rule describes the factors that DEQ must consider in determining if a material can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.”

Our primary concern is that this rule will encourage only the collection of recyclable materials that can be sold today, and sent to responsible end markets that exist today, and does not provide the flexibility to allow for all recyclable materials to be collected and recycled, which would undermine the effectiveness of the statewide uniform list. Prescribing a cost algorithm in a highly volatile commodity market will disincentivize collection of recyclable materials and should be covered by the fees that are collected from the PRO, which in so doing, would also discourage the option to landfill otherwise recyclable materials. Until there is enough high-quality recyclable plastic in the market for consumer brands to choose from, the cost to collect will remain unstable and should be subsidized by the fees collected from the PRO.



OAR 340-090-0670 Responsible End Markets

The criteria outlined within this section is a massive administrative burden on the PRO and does nothing to encourage the development or creation of a responsible end market within the existing community.³ It prohibits the potential creation of any new responsible end market because of the requirement of having to meet the defined criteria that a responsible end market must recycle at least 60% of the material listed in the recycling acceptance lists. We feel strongly that this section should be revisited to ascertain what is currently, within the United States, and within Oregon, “a responsible end market” based on criteria that has been outlined and that takes into consideration commodity market factors for comingled recycled product that may cost more to process than what the market will pay for, which will influence the volume of materials entering that responsible end market in the first place. Furthermore, as it currently defined, “responsible end market” excludes producers and manufacturers that are responsible for releasing the recycled finished product into the marketplace. It also doesn’t take into consideration other important and measurable goals such as reducing carbon emissions or providing other living wage jobs in the community.

IN CLOSING

We are deeply appreciative of the those that have engaged in this process and the visionary framework that they’ve put forward to address the expansion of recycling in Oregon. We share in your ideals of no longer tolerating an attitude of complacency while we watch our rivers and oceans swell with plastic. We are not experts in recycling nor the existing system of recycling and felt that those with that knowledge and expertise are in a better position to lend their voices.

³ (2) **Standard for responsible end markets.** (a) For an end market to be a responsible end market, **the end market and all entities in the supply chain leading to the end market must meet the following standards:** (A) **Compliant.** Meaning the entity follows its own local, state, and national laws (including relevant environmental, labor, and public health laws) and treaty obligations, and is registered and permitted as required by local, state, and national authorities. (B) **Transparent.** Meaning the entity is willing to be named and audited, provides chain of custody documentation tracking materials (originating in Oregon) to disposition, maintains record keeping relevant to chain of custody and material disposition in accordance with ORS 459A.962(7), and promptly documents within the chain of custody any penalties, violations or regulatory orders received. (C) **Environmentally-sound.** Meaning the entity is willing to be audited and monitored for outdoor air, water and land emissions and disposal; stores and manages waste and recyclables in a way that avoids release into the environment; and manages inputs sustainably. This includes demonstrating adequate emergency response and environmental health, safety, and management plans; and (D) **Achieving adequate recycling yields.** Meaning the recycling supply chain recycles or causes to be recycled at least 60 percent of each material listed in the recycling acceptance lists (if applicable, consisting of the uniform statewide collection list developed pursuant to OAR 340-090-0630(4) and ORS 459A.914(4)(b), the producer responsibility organization recycling acceptance list as described in OAR 340-090-0630(3), and the list of specifically identified materials as promulgated and maintained by DEQ pursuant to ORS 459A.917, even if multiple materials are mixed together, with the remaining material managed in a responsible manner and in alignment with Oregon’s hierarchy of materials management pursuant to ORS 459.015. (b) The responsible standard described in subsection (a) of this section applies to all entities in the supply chain after the comingled recycling processing facility or producer responsibility organization collection point (or post-collection in a supply chain without either facility) up to, and including, the end market. (c) Recycling yield, as stated in section 2(a)(D) of this rule, will be determined as follows: (A) For all materials except for spiral wound containers or composite containers made of paper and steel, the recycling yield is the amount of the material that was successfully processed by the end market divided by the amount of the material that entered the recycling supply chain initially. (B) For spiral wound containers or composite containers made of paper and steel, the recycling yield is the amount of the metal fraction or paper fraction of the material that was successfully processed by the end market, divided by the amount of that fraction that entered the recycling supply chain initially. If the yield of either the metal fraction or of the paper fraction exceeds 60 percent, the composite material is achieving adequate yields. (C) Calculation of recycling yield shall exclude any contaminants that are included in the bale of received material, as well as incidental materials that are adhered to the received material but are not targeted for recovery, such as tape and staples on corrugated boxes, or inks and labels on most types of packages. (D) For the purpose of determining whether at least 60 percent of each material is recycled, yield for individual materials that are recycled separately from other materials must be evaluated on the basis of those individual materials. For materials that are mixed together (such as a bale of mixed paper or mixed plastic), yield must be evaluated as follows: (i) Yield for items listed in OAR 340-090-0630(2)(d) must be evaluated separately from other materials. (ii) Yield for items listed in OAR 340-090-0630(2)(f) must be evaluated separately from other materials if recycled at a paper mill. (iii) Yield for items listed in OAR 340-090-0630(2)(k) must be evaluated separately for materials identified in each subparagraph of paragraphs (A) through (E). (iv) Yield must be evaluated separately for any materials proposed by a producer responsibility organization for addition to the uniform statewide collection list pursuant to ORS 459A.914(4)(b) in a producer responsibility program plan or plan amendment and approved by DEQ under ORS 459A.878, if required by DEQ. (v) Yield for other materials mixed together may be evaluated in total. (3) Implementation of the responsibility standard by a producer responsibility organization. (a) A producer responsibility organization must ensure that materials collected for recycling go to responsible end markets as detailed in ORS 459A.896(2) and this rule by completing the following two steps successively: (A) First, a producer responsibility organization must, using a screening assessment form provided by DEQ, receive and corroborate written verification from each end market and intermediary supply chain entity that it meets the responsible standard provided by section 2 of this rule. . .



We recognize that future rulemakings will evaluate the role of some of the work we hope to do in Oregon, but we cannot stress enough the challenges imposed by the existing proposed framework and felt remiss if we did not point out that missed opportunity. We look forward to continuing to engage with all of you to elevate the capacities of our waste management and recycling system to achieve the goals outlined in this transformational policy.

With Gratitude,

Gavin Pechey
CEO, Sporadic
Cell: 971-888-7487

CC: Molly McGrew, Mmc Consulting & Government Relations



Date: July 28, 2023

To: Oregon Department of Environmental Quality

From: Thomas Egleston, Washington County Solid Waste & Recycling Manager

Re: Recycling Modernization Act, Rulemaking 1 – public comment

Dear DEQ team,

Thank you for taking public comment in the first rulemaking for the Plastic Pollution and Recycling Modernization Act (RMA). We appreciate DEQ staff and members of the Rulemaking Advisory Committee for their tireless work in moving this foundational legislation forward from policy toward implementation.

Washington County supports this rulemaking process, and our position aligns with the regional public comments submitted by Metro and the City of Portland. In alignment with the RMA, Washington County maintains a strong commitment to developing a more equitable solid waste system for all Oregonians; particularly, the 600,000 community members that call Washington County home. The RMA moves this work forward by prioritizing equity through improvements to multifamily sector access to services, workforce pay and benefits, and the delivery of culturally specific outreach materials to diverse communities.

Specific areas where we are providing comments in this rulemaking effort, include:

Recycling Acceptance Lists

We support a Uniform Statewide Collection List (USCL) that expands – not diminishes – access to the opportunity to recycle for our community members. We understand some of the proposed materials will create challenges for the current system to process. Your team has presented evidence that processing challenges can be overcome through system modernization, improved technology and the existence of responsible end markets.

The longstanding recycling acceptance list in Washington County and the Portland Metro region is substantially similar to the list currently being proposed in these rules. The recommended adjustments to the current list will result in small incremental changes for our community members; continuing to leave households with limited opportunities to recycle many of the packaging items forced upon them as consumers. Our community members are demanding more access to responsible recycling, more opportunity to recycle from their homes and more shared responsibility with producers for waste products our households and communities manage. We support DEQ's efforts to carefully consider adding additional materials to the proposed USCL or depot list while ensuring accountability and responsibility from producers.

We support local flexibility with respect to curbside glass collection service. As our collection system innovates and expands with new services, like Recycle+, we value the opportunity our community has to consider options for collecting additional materials curbside, such as those included in the proposed depot list.

Convenience Standards

We support DEQ’s efforts to consider unincorporated communities in the recycling depot convenience standards. Washington County supports and provides services to a large urban and rural unincorporated area that is home to over 240,000 community members. Ensuring community members that live in these unincorporated areas also have adequate access to recycling depots and services is critical to Washington County. These draft rules include that consideration.

Further, if depot list materials can be efficiently collected through a curbside collection system with a competitive environmental performance, Washington County recommends that PROs, explore the option to meet convenience standard obligations by partnering with city- and county-run collection systems. This must be done while recognizing existing county and city regulatory authority over the collection of solid waste. DEQ should consider allowing a locally-approved on-route collection program delivered by a county or city’s hauler(s) to substitute for some of the depot requirements that would apply for a given material, in that geographic area.

Any rules pertaining to the potential for curbside collection of depot list materials should affirm existing local collection authority because that local authority helps ensure equitable, inclusive and affordable services that are compatible and complementary with existing services. If local governments initiate collection of depot list material through their regulated collection services, local governments or their collectors should be eligible for funding to support the cost of that collection, proportional to the investment that might otherwise be spent on depots.

Expansion of Service

Washington County would appreciate more clarity in the areas of expansion that are intended to be supported by the needs assessments. In counties and cities with curbside recycling, more clarity around what measures are eligible for funding support via expansion of services would be helpful for planning purposes.

In summary, Washington County supports this rulemaking effort and the proposed rules. We look forward to continuing to work with all of our solid waste system partners as we develop a more modern recycling system for Oregon. Thank you for your consideration of our comments.

Respectfully,



Thomas Egleston
Solid Waste & Recycling Manager
Department of Health and Human Services
Washington County

From: [Zöe Serrano](#)
To: [2023 Recycling * DEQ](#)
Subject: Written Comment: Proposed Rulemaking to Clarify and Implement the Plastic Pollution and Recycling Modernization Act of 2021
Date: Friday, July 28, 2023 12:43:32 PM

You don't often get email from zoeserrano99@outlook.com. [Learn why this is important](#)

Dear Oregon Department of Environmental Quality,

We are writing today on behalf of Waste-Free Advocates, a 501(c)(3) organization that is dedicated to encouraging Oregonians to create a sustainable future by empowering and connecting communities to minimize over-consumption and waste.

We are pleased with the variety of accepted materials in OAR 340-090-0630 and hope the list is not whittled down during the comment process. As you know, 40% of the plastic that is created today is for single-use. Only about 9% of plastic ever produced has been recycled and 12% has been burned. This has led to a massive waste problem with the remaining 79% of plastic ending up in the landfill or the environment. Standardized recycling acceptance lists increase the understanding of what can and can't be recycled, thus strengthening our recycling services and reducing waste.

Waste-Free Advocates is also pleased to see the 'Environmentally friendly responsible end markets' outlined in OAR 340-090-0670. This requirement will increase public confidence that materials are actually recycled and achieve reduced environmental and public harm. We are hopeful that the auditing and reporting systems will increase transparency and accountability of the PROs.

Waste-Free Advocates is in full support for increasing accessibility to recycling services, and we applaud the Convenience Standards proposed in OAR 340-090-0640. However, hauling recyclables with no monetary incentive to a depot via a bus is not truly accessible to citizens limited by poverty. We would like to see DEQ continue to encourage PROs to find creative solutions to maximize participation. For instance, would it be possible to have recycling drop off receptacles installed at bus stops or other locations that would ensure that recycling is convenient and truly accessible to everyone.

Thank you for the opportunity to share our views and our support for the first proposed rulemaking of the Plastic Pollution and Recycling Modernization Act of 2021.

Sincerely,

Waste-Free Advocates Board of Directors and our member coalition of environmental advocates:

Julia Bonnheim, Resource Director

Brittney Wendell, Board President

Tara Knierim, Board Vice President

Haley Robinson, Board Treasurer

Jessica Zahn, Board Secretary

Michael Freudenthal, Board Member At-Large

Alaina Labak, Board Member At-Large

Mikey Strauhal, Board Member At-Large

Adrienne Wallace, Board Member At-Large

Zöe Serrano, Board Member At-Large



July 28, 2023

TO: Roxann Nayar
Materials Management Program
Oregon Department of Environmental Quality
700 NW Multnomah Street, Suite 600,
Portland, Oregon 97232-4100

FROM: Paul Snyder, EVP - Stewardship, Tillamook County Creamery Association

RE: Comments on May 25, 2023 - Notice of Proposed Rulemaking - Plastic Pollution and Recycling Modernization Act, Rulemaking 1

Dear Ms. Nayar,

Thank you for the opportunity to submit comment in response to the May 25, 2023 Notice of Proposed Rulemaking - Plastic Pollution and Recycling Modernization Act, Rulemaking 1 (hereinafter, May 25 Notice).

Tillamook County Creamery Association (TCCA) is a 114-year-old farmer-owned, farmer-led cooperative, which is known for the quality of the dairy products we produce and for our ability to work collaboratively with a diverse set of stakeholders to solve complex problems. We sell over 325 different items available for sale in Oregon in a variety of packaging types that will be considered covered products under the Recycling Modernization Act.

As a certified B Corporation™, we are committed to reducing our impact on the planet and in 2017 our farmers codified our commitment to Enduring Ecosystems as a stakeholder in our Stewardship Charter. We take action on many environmental issues, such as creating a Climate Action Plan and setting greenhouse gas emission goals for 2030 and 2050. TCCA and our cooperative farmers partner with non-profits and government agencies to implement projects that improve water quality and habitat in Tillamook County. We are also working on our sustainable packaging goals, including our ambition to incorporate more recycled content into our packages, sustainably source paper, reduce packaging weight and transition 100% of our packaging to recyclable, reusable, or compostable materials.

We appreciated being invited to participate as a producer on the rules advisory committee for the rules contained in the May 25 Notice and today we write to raise questions and request additional clarity on several topics and rules contained in the May 25 Notice.



1. **Fiscal impact statement - Anticipated Business Impacts and OAR 340-090-0700 Annual Market Data Report requirement.**

As a part of the May 25 Notice, DEQ prepared a Statement of Fiscal and Economic Impact that is missing a more thorough discussion and analysis of the anticipated costs for producer businesses to comply with certain reporting requirements that are the subject of this rulemaking.

In the section addressing Anticipated Business Impacts, under PRO Obligations Rules, the topic of “Projected reporting, recordkeeping, and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule” is discussed. Under this heading, the May 25 Notice reads in part, “... DEQ does anticipate some costs associated with the labor and administration of providing PRO-requested information, to be incurred by small businesses. ***Such requirements are not the subject of this rulemaking.***”

The draft rule describing how PROs must calculate market share, OAR 340-090-0700, subsection (1)(d) includes the following requirement for producers:

“A producer must on an annual basis submit market data establishing the weight of covered products sold or distributed in or into Oregon to the producer responsibility organization to which it belongs. Producers must submit a description of their methodology for calculating covered product weight to the producer responsibility organization along with the data. Methodology used must be in accordance with applicable best practices. If estimated market data is submitted by a producer and better market data becomes available that demonstrates the estimates were not accurate, the producer must report corrections to the estimated data to the producer responsibility organization before the next annual reporting deadline.”

Based on the foregoing proposed language in OAR 340-090-0700 (1)(d), reporting, recordkeeping, and other administrative activities to provide PROs with requested information do appear to be requirements that are the subject of this rulemaking (regardless of whether they are “small businesses” per ORS 183.336). Developing and maintaining a complete detailed report of covered product weight generated by a producer over the course of a year is going to be a significant administrative undertaking and is a cost that DEQ should build into calculating the fiscal impact for producer businesses that must join a PRO.

2. **Recycling Acceptance Lists OAR 340-090-0630**

ORS 459A.914 sets out the criteria that DEQ must consider for including a material on the Uniform Statewide Collection List (USCL) and the PRO Acceptance List. The statute allows for additional covered products to be added to both lists over time. The draft OAR 340-090-0630 identifies materials that will be included initially on the USCL and the PRO Acceptance List. Please provide more information about the formal process DEQ will undertake to consider adding materials currently not proposed for recycling (trash-bound) to either the USCL or the PRO Acceptance List.



Over time, as technology and markets for recycled materials evolve, some materials on the PRO Acceptance List may be more easily and appropriately collected for recycling if they are on the USCL. Please provide more information about the formal process that will be used to consider adding materials currently on the PRO Acceptance List to the USCL.

3. Collection targets OAR 340-093-0660

Materials included on the PRO Acceptance List have or must have established collection targets as discussed in the proposed OAR 340-093-0660. Some of the collection target rates are specifically identified in the rule. Subsection (2)(c) directs PROs to propose collection targets for “other materials” identified in specific subsections of OAR 340-090-0630. Please describe in rule the criteria a PRO must consider when proposing material specific collection targets in program plans.

4. Responsible end markets OAR 340-090-0670

Subsections (1)(d) and (e) are part of the definition of “end market” and specifically set requirements for end markets for plastic recycled to make food and beverage packaging. Please describe what information DEQ considered to determine that a PRO would have knowledge of the end use for recycled plastics (knowledge of whether the plastic will fit the uses described in (d) and (e)).

Section (2) establishes standards for responsible end markets.

Subsection (2)(a)(A) describes what it means for the end market to be “compliant,” including that “the entity follows its own local, state, and national laws (including relevant environmental, labor, and public health laws) and treaty obligations.” Please describe how the PRO is expected to verify/control that the end market partners (all the way through the supply chain) are compliant with local laws and requirements and at what point the PRO must act or report suspected non-compliance to DEQ. Section (3) of this rule does not add significant clarity in this regard.

Subsection (2)(a)(C) requires end markets to be “environmentally-sound,” meaning “the entity is willing to be audited and monitored for outdoor air, water and land emissions and disposal; stores and manages waste and recyclables in a way that avoids release into the environment; and manages inputs sustainably. This includes demonstrating adequate emergency response and environmental health, safety, and management plans.” Please explain with more detail what the expectation would be for the entity to be “willing to be monitored” as used in the rule. Specifically, monitored by whom? Also, what is the expectation for maintaining records, collecting samples for specific pollutants, etc. as it relates to monitoring? Please identify the standards or criteria a PRO must use for measuring whether the end market is satisfying the criteria in this subsection “sustainably” or “responsibly.”

Subsection (2)(a)(D) addresses achieving adequate recycling yields. This subsection requires that the recycling supply chain recycles or causes to be recycled at least 60 percent of each material listed in the recycling acceptance lists. Please describe the period of time over which 60% would be measured.



Section (3) addresses implementation of the responsibility standards outlined in section (2) by a PRO.

Subsection (3)(a) explains that the PRO must take two actions in successive order to verify that the responsible end market is meeting the standards in section 2 of the rule. First, the PRO must use the DEQ provided form to ask the end market participants to verify they meet the standards. Second, the PRO must actually verify whether each participant is meeting the standards. Please explain why step one is necessary and the value of going through the screening process in that way if the PRO must actively verify compliance with the same standards independently.

Subsection (3)(a)(B) allows a PRO to use a third-party to certify compliance with the standards if the third party is approved through an EQC approved program. Is that the Oregon EQC or does that include an EQC-equivalent entity in one of the end market jurisdictions? What is the EQC approval process?

Section (5) includes the definition of “practicable.” First, as a general comment on this section, please clarify what the timeline is for taking actions to rectify non-compliance within the end market supply chain to avoid penalty. If an audit reveals that one or more of the entities within the supply chain is not meeting the standards, the “practicable” timeframe to provide the entity with tools to come into compliance or find an alternate could vary wildly. Is there some flexibility on the timeline for achieving compliance if the PRO is taking some kind of meaningful steps to ensure the supply chain is compliant? We anticipate that cost of compliance will be borne by the producer members so the requirements for PROs related to responsible end markets are relevant to prospective producer members.

Lastly, subsection (5)(c) states PROs may not claim that an action is not practicable simply because it results in higher costs for the PRO. A claim that an action is not practicable must demonstrate costs that are not justified given the resulting “societal benefit.” Please define “societal benefit.”

Thank you for your consideration of our comments on the proposed rules contained in the May 25 Notice.

Sincerely,

PAUL SNYDER
EVP, Stewardship
M: [503.812.7761](tel:503.812.7761)
PSnyder@tillamook.com

From: [HUBLER Katie K](#)
To: [2023 Recycling * DEQ](#)
Subject: recycling
Date: Thursday, May 25, 2023 3:31:59 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
Importance: High

I think this is a great move. I also think that grants should be provided to encourage facilities to install and utilize plastics recycling machinery throughout the state. Currently, all of our plastics except bottles are going in landfills, even though they are recyclable. We need operations in Oregon in place to recycle all of the currently recyclable materials that are NEVER going to break down in landfills.

Thank you so much!

Katie

Katie Kroenlein Hubler, OPBC OPMA
Oregon Department of Transportation
Facilities Contracts & Environmental Liaison
885 Airport Rd SE Bldg X
Salem, OR 97301
971-718-6681



signature block pic2



From: [LINDA THARP](#)
To: [2023 Recycling * DEQ](#)
Subject: Packaging Rules
Date: Thursday, May 25, 2023 3:22:20 PM

Hopefully the responsibility for packaging materials like styrofoam and plastic trays commonly used for meats will be included in this act. Paper products can be composted but plastics and Styrofoam take decades to break down.
Linda

Sent from my Verizon, Samsung Galaxy smartphone

From: [anna.greenberg](#)
To: [2023 Recycling * DEQ](#)
Subject: Comments for Plastic Pollution and Recycling Modernization Act of 2021
Date: Thursday, June 8, 2023 9:57:00 AM

To whom it may concern:

I support any new rules that clarify and implement the Plastic Pollution and Recycling Modernization Act of 2021 by requiring producers of packaging, paper products and food service ware to support and expand recycling services in Oregon for their products.

When I obtained my Master's of Community and Regional Planning at the University of Oregon, I wrote my thesis on the plastics recycling crisis, especially in light of the newly implemented National Sword Policy from China. Among other hard truths I learned was that producers of materials are generally not held accountable for what they distribute, including what the material is actually made of and how and if it can actually get recycled. Our materials will never be sustainable if there is not more enforcement of responsibility.

Thank you and please take these comments to heart.

Sincerely,
Anna Greenberg

--

Anna Greenberg
Owner/Operator | *Xannadu Lavender Farm*
202-246-2392

July 28, 2023

via electronic submission

Roxann Nayar
Materials Management
Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, Oregon 97232-4100

Subject: HCPA Comments on Notice of Proposed Rulemaking for Oregon’s Plastic Pollution and Recycling Modernization Act, Rulemaking

The Household & Commercial Products Association (HCPA)¹ appreciates the opportunity to provide input on the first rulemaking of the implementation of Oregon’s Plastic Pollution and Recycling Modernization Act (RMA) of 2021². We look forward to continuing to work with the Oregon Department of Environmental Quality (DEQ) on establishing and implementing regulations to carry out the requirements of the RMA.

Background

HCPA represents approximately 240 member companies engaged in the manufacture, formulation, packaging, distribution, and sale of products for household, commercial, institutional, and industrial use. HCPA members are continuously working to improve products and packaging in line with the principles of a circular economy to decrease waste and enable economic growth without greater resource use. Company members utilize several different materials for packing and shipping their products to ensure that products arrive undamaged, uncontaminated, safe for use, meet user expectations, have a lower environmental footprint, and generally enhance the quality of life of the consumers and workers who depend on these products daily. We have many members who sell products into Oregon or otherwise have a presence in the state and are committed to ensuring that Oregonians have access to high-quality products with reduced environmental impacts.

¹ The HCPA is the premier trade association representing companies that manufacture and sell \$180 billion annually of trusted and familiar products used for cleaning, protecting, maintaining, and disinfecting homes and commercial environments. HCPA member companies employ 200,000 people in the U.S. whose work helps consumers and workers to create cleaner, healthier and more productive lives.

² <https://www.oregon.gov/deq/rulemaking/Pages/Recycling2023.aspx>

In addition to representing various categories of household and commercial products (regardless of packaging), HCPA represents products packaged in the aerosol delivery form. The aerosol delivery form is used to dispense a wide range of products, including but not limited to adhesives, air fresheners, antiperspirant, asthma inhalers, body spray, cleaners, degreasers, deodorant, disinfectants, dry shampoo, hair spray, insect repellent, insecticides, lubricants, paints, pan sprays, sealant, shaving creams and gels, sunscreen, and whipped cream. HCPA has represented the U.S. aerosol products industry since 1950 through its Aerosol Products Division, which includes companies that manufacture, formulate, supply, market, and recycle a variety of products packaged in an aerosol form.

HCPA's comments below address both areas of DEQ's proposed rulemaking that are generally applicable to household and commercial products and requirements specific to aerosol products.

OAR-340-090-0630, Recycling Acceptance Lists

HCPA recommends that DEQ establish and include in rulemaking a clear process for a) materials currently deemed unrecyclable to get added to one of the two recycling acceptance lists, and b) materials currently on the producer responsibility organization (PRO) Recycling Acceptance List to be moved to the Local Government Recycling Acceptance List. It is critical for DEQ to explicitly provide a pathway to improve the recycling rates for materials that may not meet DEQ's criteria to be included in curbside recycling today but have the potential to in the near future with improvements to recycling infrastructure and education. If businesses are limited by the lowest common denominator of infrastructure available across Oregon when making a statement about the recyclability of a product or its packaging, they will be unable to describe and promote efforts to enhance the recycling of other materials and help municipalities and consumers participate. A broad group of stakeholders, including industry, must work together to grow and strengthen recycling in Oregon and throughout the U.S. It is difficult for businesses to participate in these efforts if they feel locked into adhering to set categories for their packaging materials. A lack of clarity around how to be added to a recycling acceptance list or to curbside collection via the Local Government list may create disincentives to improve infrastructure and education to recycle valuable materials.

HCPA appreciates DEQ including aerosols on the PRO Recycling Acceptance List, but is concerned that leaving empty aerosol cans, which are considered widely recyclable in the U.S. generally, out of curbside collection in Oregon creates a significant missed opportunity to recover more high-quality recyclable metal and contributes to consumer confusion. As detailed in previous comments and discussion with DEQ, a majority of Oregonians have access to recycle empty aerosol cans,³ empty aerosol cans are easily sorted by material recovery facilities (MRF),⁴

³ Data from The Recycling Partnership from 2022 showed that 60% of Oregon by households has access to aerosol recycling.

⁴ Steel aerosol containers can be separated out with a magnet and aluminum aerosol containers can be separated out with an eddy current.

empty aerosol cans do not cause issues in reprocessing,⁵ and both aluminum and steel aerosols have robust end markets^{6, 7}

HCPA also draws DEQ's attention to the United Kingdom (UK), where over 90% of households can recycle empty aerosols at curbside. The environmental consultancy Resource Futures recently conducted detailed waste composition analyses looking at recycling and residual waste arising from UK households in order to measure the UK capture rate of aerosols (percent of aerosols found in the recycling stream as a proportion of the total). The study found a capture rate of 56% for aluminum aerosols and 63% for steel aerosols. Additionally, 89% of aerosols in the mixed dry recycling were classified as empty.⁸ While there are differences between UK and U.S. consumers, HCPA believes that this research provides helpful perspective on what Oregon's situation might look like should aerosols be accepted at curbside throughout the state. HCPA suggests that DEQ consider the UK as a successful model of how aerosols can be safely collected and processed in curbside streams on a large scale.

Further, HCPA has partnered with the Can Manufacturers Institute (CMI) to launch the Aerosol Recycling Initiative⁹ with the support of companies from across the aerosol value chain. The initiative has two 2030 goals, 1) achieve at least an 85 percent recycling access rate for all empty aerosol containers in the U.S., and 2) label at least 90 percent of aerosols as recyclable with messaging on how to properly recycle them. As part of a series of activities to reach these goals, HCPA and CMI worked with a team of consultants to engage in discussions and site visits with MRFs and conducted testing of aerosol cans received at two MRFs. Additional actions are planned for the next phase of the initiative, including a deeper exploration into developing updated guidance on how to safely process aerosols. The aim is to develop more data on perceived risks of recycling aerosol cans and identify ways to address these concerns so that MRFs can safely process aerosols, thereby keeping the valuable metal they are made of in circulation, increasing the economic benefit to MRFs, and increasing the environmental benefits to the general population. Together with CMI, we will be publishing a white paper in November 2023 with the data and findings gathered from our recent activity. HCPA is happy to discuss the results with DEQ at this time and looks forward to further engagement on the recyclability of aerosols as the work of the initiative continues.

⁵ Plastic components or other possible contaminants do not pose an issue for steel recyclers and secondary aluminum processors making remelt scrap ingot and deox, a critical additive in the steel-making process.

⁶ Aluminum aerosol containers can be processed as mixed aluminum to produce remelt scrap ingot and deox, a critical additive in the steel-making process. Steel aerosol containers can be added to steel bales and processed to make a variety of steel products.

⁷ Information on sorting, processing, and end markets is from the following study: Resource Recycling Systems. Surveying State of MRFs and End Market Barriers to Recycling Steel and Aluminum Aerosols and Pet Food Cans and Identification of Solutions. 2021. Available at https://drive.google.com/file/d/1CccuPA_SPnbmu32w0L_BtKMv7aGB8dWo/view.

⁸ Resource Futures. Increasing aerosol recycling in the UK. 2023. Available at <https://alupro.org.uk/industry/programmes/the-uk-aerosol-recycling-initiative/a-roadmap-to-increasing-uk-aerosol-recycling/>.

⁹ <https://www.thehcpa.org/aerosol-recycling-initiative/>

OAR-340-090-0640, Convenience Standards

HCPA recognizes the need for standards to ensure that depot or other drop-off locations as specified in any alternative compliance plans can be readily accessed by residents. This is particularly important given that drop-off has been associated with notably lower recycling participation rates.¹⁰ We also recognize that unexpected events such as staffing shortages, technical issues, or other problems may make it difficult if not impossible to completely adhere to the standards for a certain period of time. HCPA suggests that DEQ include language that allows for a PRO to request a temporary variance from the convenience standards if such unexpected events occur.

OAR-340-090-0650, Performance Standards

HCPA recognizes the need for performance standards to ensure that all PROs provide the quality of collection and responsible recycling services envisioned under the RMA across Oregon. HCPA additionally supports the requirements in 3(b)(A) to ensure that aerosol cans which are non-exempt hazardous waste (*e.g.*, full or partially full aerosol cans from commercial generators) are not accepted at depots or other collection events for aerosol containers.

HCPA opposes the requirements in 3(b)(B), which appear to require that all aerosol cans collected for recycling be treated as hazardous and managed in accordance with universal waste regulations. Empty aerosol cans are not considered hazardous waste and should not be treated as such. They can be safely recycled without following the extensive procedures required for aerosol cans considered hazardous waste. Full or partially full aerosol cans are considered hazardous; however, these should not be collected for recycling but rather should be disposed of as household hazardous waste (HHW). HCPA recommends that DEQ differentiate between empty aerosol cans collected for recycling (which do not need additional management) and full or partially full aerosol cans that may be collected as part of HHW events (which should be managed in accordance with applicable HHW procedures). Clear and consistent messaging to consumers as part of education and outreach initiatives is essential to ensure that empty aerosols are properly recycled and full or partially full aerosols are brought to HHW collection. If Oregon treats both as the same but other states in the surrounding area do not, it contributes to consumer confusion on what to do with aerosol containers and may actually increase contamination and the risk to facilities processing those cans.

OAR-340-090-0660, Collection Targets

HCPA supports Oregon's approach of allowing the PRO to propose collection targets for most materials collected for recycling under the statute when the PRO submits a program plan for approval. We see this as consistent with a best practice of data-based decision-making as opposed to arbitrarily selecting numbers to include in the statute.

¹⁰ Participation may be as low as 30% for U.S. households with drop-off service as their only option, according to The Recycling Partnership (<https://recyclingpartnership.org/eprrreport/>).

OAR-340-090-0690, Producer Responsibility Organization Fees

HCPA recognizes the need to provide appropriate compensation to DEQ for the administration of the RMA and associated programs. We request that DEQ provide a full accounting of the requested fees to the PRO along with the invoice on an annual basis. Additionally, while HCPA appreciates that the proposed rule includes a provision for DEQ to reduce the fee if it determines the full amount is not needed, we request that language be added to allow the PRO to petition DEQ for a fee reduction as well. It is conceivable that, based on accounting statements, the PRO may find efficiencies or identify other ways that the full amount included in the statute by DEQ is not necessary. If this occurs, the PRO should have the right to request that DEQ reconsider the fee amount for that year.

OAR-340-090-0700, Market Share

HCPA notes that many of our member companies sell products through various distributors and sales channels and generally do not have access to specific sales data for these distributors or visibility into which products are eventually sold to an end consumer in which state. HCPA strongly recommends that DEQ take this complexity into account and allow for flexibility in how market share is calculated in cases where a company can demonstrate that they do not have access to state-specific data. HCPA suggests that in these cases where a company can provide sufficient justification, DEQ allow for companies to estimate sales into Oregon based on national data. States such as Washington in similar policy contexts permit the use of averaging data flowing from national sales data.

OAR-340-090-0790, Expansion of Service; OA-340-090-0800, Expansion of Service Funding and Needs Assessment

HCPA appreciates that the PRO will provide funding for expansions of service by local governments as determined based on a periodic needs assessment. HCPA additionally appreciates that local governments which receive funding for expansion activities through this process must report implementation status annually to the PRO. HCPA recommends that DEQ modify this section to include a requirement that the PRO can require local government service providers which receive funding through this process to provide a periodic accounting of the use of funds and submit to audits as necessary to ensure that the provided funds are being fully utilized for the intended purpose.

Conclusion

HCPA thanks DEQ for the opportunity to provide input on the first rulemaking for implementation of the RMA and appreciates the great care that DEQ took in working with stakeholders to develop the proposed rules. HCPA looks forward to sharing the results of HCPA and CMI's Aerosol Recycling Initiative with DEQ and to continuing to engage with DEQ in a good-faith process to support the success of RMA implementation. We invite any questions about this submission and look forward to DEQ's response.

Sincerely,

A handwritten signature in black ink, appearing to read "Molly R. Blessing". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Molly R. Blessing
Director, Sustainability