

Rulemaking Advisory Committee Meeting #6

Plastic Pollution and Recycling Modernization Act

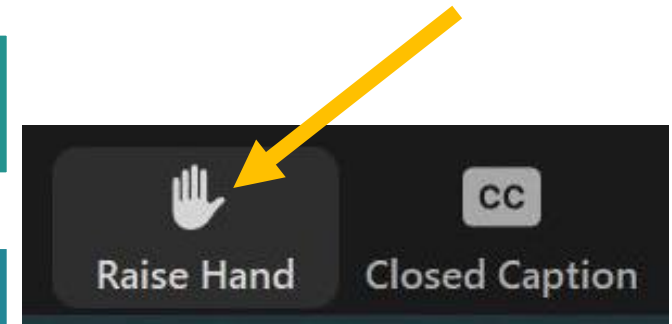
March 14, 2024
Zoom Meeting

Agenda

Time	Topic
9:05 a.m.	Welcome, Overview of Today's Meeting
9:10 a.m.	Introductions- DEQ staff and RAC members
9:20 a.m.	Updates to previously-presented material
10:05 a.m.	Rule Concept Presentation and Discussion: life cycle rule concepts VIII-X and PRO 2024 Annual Reporting
10:20 a.m.	BREAK
10:30 a.m.	Rule Concept Presentation and Discussion: Outbound Contamination Rates
10:45 a.m.	Rule Concept Presentation and Discussion: Limited Sort Facilities, Commingled Materials and Reload Facilities
11:45 a.m.	Public input period
12 p.m.	BREAK
12:15 p.m.	Rule Concept and Discussion: Local Government Compensation for Evaluation and Contamination
12:35 p.m.	Rule Concept and Discussion: Clarifications to Producer Definitions
1 p.m.	Meeting adjourns*

Meeting Tips

- 1 Join audio either by phone or computer, not both
- 2 For panelist discussion and comments, use the raise hand button to get in the queue; if by phone press *9
- 3 This meeting is being recorded
- 4 For Zoom technical issues email: stephanie.caldera@deq.oregon.gov



Meeting agreements

- Listen and treat everyone with respect
- Allow one person to speak at a time
 - please raise your hand
- Move around and take care of yourself as needed
- Share constructive feedback on rule concepts



Introductions- DEQ Staff



Cheryl Grabham, meeting facilitator



Justin Gast, lead for processor permit/certification and fees topics



Nicole Portley, lead for producer and PRO rules



Peter Canepa, technical lead for life cycle evaluations



Arianne Sperry, RMA implementation lead

Introductions- RAC

Name	Affiliation	Representing
Aimee Thompson	Thompson Sanitary Service	Service Provider
Claire Dorfman	Amazon	Producer
Doug Mander	Circular Action Alliance	Producer Responsibility Organization
Jeff Murray (for Greg Ryan)	Pioneer Recycling	Commingled Recycling Processing Facility
Katy Nesbitt	Wallowa County	Local Government
Kristin Leichner	Pride Disposal	Service Provider
Marcel Howard	GAIA	Environmental

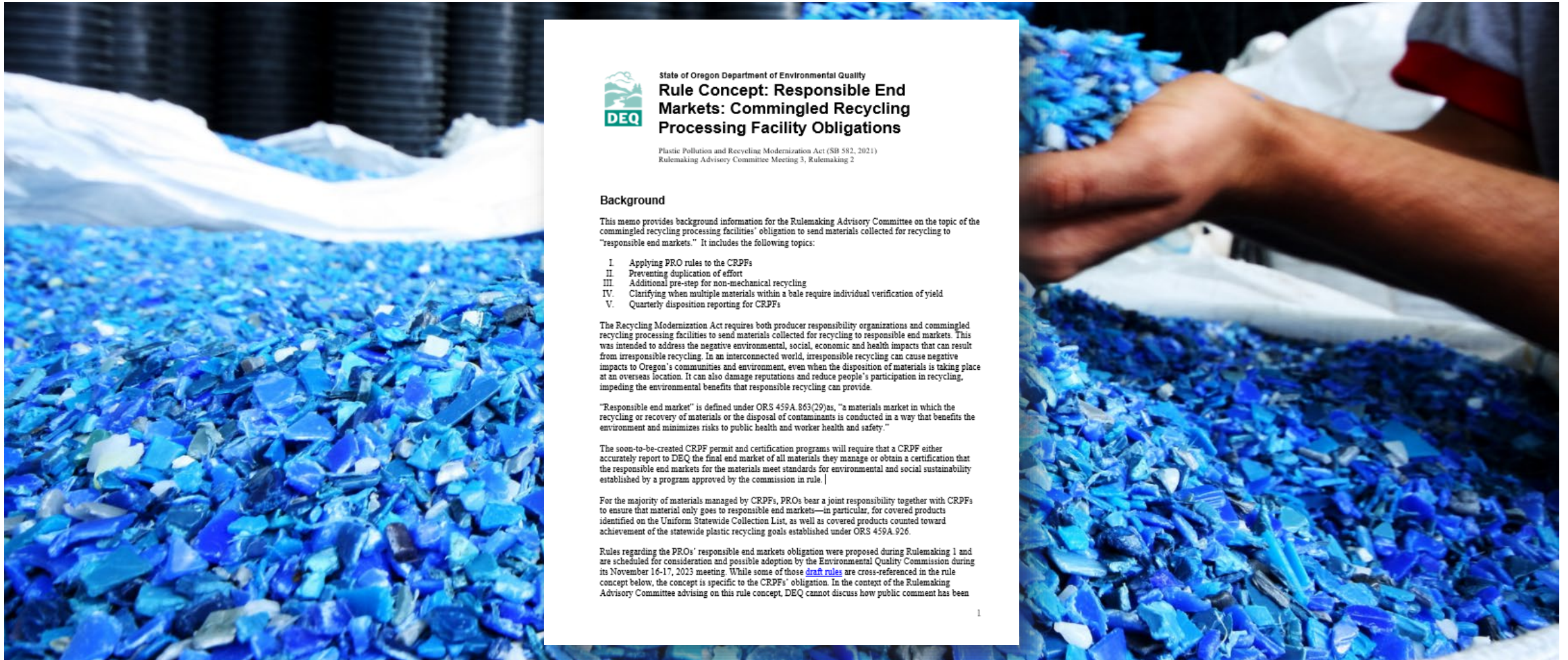
Introductions- RAC

Name	Affiliation	Representing
Maria Gabriela Buamscha	Lanin Iman Consulting	Community
Neil Menezes	General Mills	Producer
Rick Paul	Rim Rock Recycling	Community
Robert Jones (for Chris Drier)	Waste Management	Commingled Recycling Processing Facility
Sydney Harris	Upstream	Environmental
Tracey Reed	Rogue Basin Partnership	Community
Warren Johnson	Metro	Local Government
Will Posegate	Garten Services Inc.	Commingled Recycling Processing Facility

Rule Concept Updates

- Responsible End Market Obligations (presented on Nov. 1)
- Covered Product Exemptions (presented on Jan. 31)
 - Update on medical device packaging proposed exemption
 - Update on agricultural chemical packaging proposed exemption
 - Update on private recycling exemption ORS 459A.869(13)
- Clarifications to covered product - consumer wrap rule (presented Jan. 31)
- Standards and Methods for Life Cycle Disclosure: rule concepts II, III, IV and VII (presented on Feb. 14)

Update: CRPF Responsible End Market Obligations



Update: Responsible End Markets

Rule Concept V: disposition reporting

- Use capture rate reporting categories
- Allow rolling average accounting

340-090-0670(2)(b)(D) (60% yield requirement)

Proposing two exceptions that would only need to meet a 50% threshold:

- Shredded paper processed into high-grade office paper
- Cartons processed into tissue

Vision for public input on verification results

- PRO annual report process



Questions / Discussion?



Update: Covered Product Exemptions



State of Oregon Department of Environmental Quality
Rule Concept: Clarifications and Exemptions to the Definition of “Covered Product”

Plastic Pollution and Recycling Modernization Act (SB 582, 2021)
Rulemaking Advisory Committee Meeting 4, Rulemaking 2

Jan. 17, 2024

Background

This memo provides background information regarding the definition of “covered product.” It clarifies the scope of “covered product” and indicates materials recommended for exclusion from that scope. Per ORS 459A.869, obligated producers of “covered products” must join a Producer Responsibility Organization, report data to the PRO on the amount of product they sell into the [state](#), and pay membership fees.

ORS 459A.863(6)(a) defines “covered product” as (A) packaging; (B) printing and writing paper; and (C) food ~~service~~ware. Each of these items are in turn defined at ORS 459A.863(18), (20), and (7) respectively.

ORS 459A.863(6)(b) provides an itemized list of packaging, paper, and food ~~service~~ware products that are specifically exempt from the definition of “covered product”. The statute also provides a placeholder for the Environmental Quality Commission to approve additional product-specific exemptions in rule. In anticipation of additional exemptions in rule, DEQ conducted an exemption request period between April-December 2023 to allow interested parties to request an exemption. The Oregon Recycling System Advisory Council was invited to review materials submitted and to advise DEQ on potential exemptions. For more information, see:

- DEQ’s exemption request [criteria](#).
- DEQ’s [analysis of all 27 exemption requests received](#), and
- The document “[Oregon Recycling Council: Covered Product Exemptions poll results](#),” which summarizes the Council’s recommendations to the department on the five exemptions recommended by DEQ.

Concepts for discussion at January 31, 2024 RAC meeting

The following ten rule concepts clarify the scope of “covered product.” The first three propose defining three sub-classes of packaging, specifying that these products are included within the scope of the law. A fourth clarifies the difference between “food ~~service~~ware,” and “packaging” for types of products that could fall under either definition. Five additional proposals exempt items from the definition of “covered product” in rule, addressing ORS 459.863(6)(a)(R). The final proposal clarifies the statutory exemption at ORS 459A.869(13).

Scope clarifications

- I. Clarifying definition of storage items as packaging
- II. Clarifying definition of service packaging
- III. Clarifying definition of consumer wraps as packaging
- IV. Further differentiating “food serviceware” from “packaging”

Exemptions

- V. Durable packaging for durable goods
- VI. Subset of professional use medical devices
- VII. Packaging used to manage infectious waste
- VIII. Subset of professional use agricultural chemical packaging
- IX. Subset of reusable and refillable pressurized cylinders

Clarification to a statutory exemption

- X. Clarifications on statutory exemption ORS 459A.869(13)

Covered Product Exemptions



Durable packaging for durable goods



Durable medical equipment used in healthcare settings



Packaging for management of infectious waste



Restricted-use pesticides sold to commercial applicators



Refillable pressurized O2 and H2 cylinders

Medical device exemption: DEQ recommendation



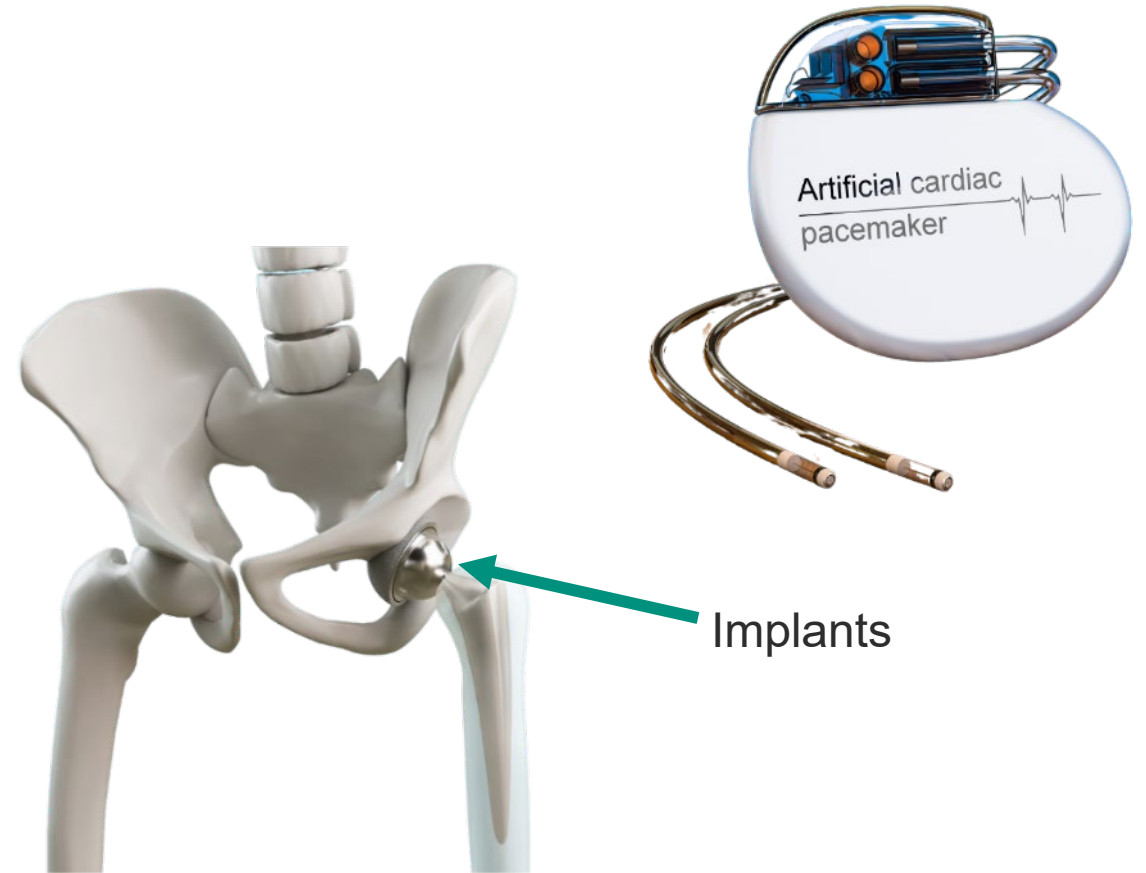
Which of the three options for a medical device exemption does DEQ recommend, and why?

- (1) DME
- (2) Class I, Class II, and/or Class III devices
- (3) Devices sold to hospitals that operate private recycling programs



Class III Medical Devices

- Life-saving medical devices
- Require pre-market approval
- Represent approximately 10% of medical devices



Ag Container Packaging: DEQ recommendation

Proposed for exemption:

1. Restricted-use pesticides sold to commercial applicators;
2. Returnable/refillable intermediate bulk containers (IBCs); and
3. Returnable/refillable asset totes, drums, and kegs.
4. **Rigid HDPE packaging of commercial-use pesticides, fertilizers and agricultural amendments with a volume greater than 5 gallons and produced by members of the Ag Container Recycling Council or ACRC. This exemption is contingent upon ACRC's annual submission of data to the department indicating that ACRC is collecting more than 75% of these containers from a collection network demonstrated to be convenient to the department's satisfaction, and recycling the containers at responsible end markets.**

Clarifications to Statutory Exemption 869(13)

- Producers can claim an exemption for the proportion of their material that:
 - (A) Is collected through a recycling collection service not provided under the opportunity to recycle;
 - (B) Does not undergo separation from other materials at a commingled recycling processing facility; and
 - (C) Is recycled at a responsible end market.



(A) Collection Not Provided Under OTR



- There is lack of clarity as to what collection is “not provided under OTR.”
- Intent lies with exempting waste that is recycled outside the commingled system.

(A) Proposed Rule Language

DEQ proposes to clarify that for the purposes of 869(13), collection services not provided under OTR include:

- a. Any collection from a commercial generator that is not used by a local government to comply with ORS 459A.005 or .007, including
 - i. commercial generators collecting and sending materials directly to end markets and exempt from the requirements of ORS 459A.005 and .007 per ORS 459A.075; and
RETAILER CARDBOARD GOING DIRECT TO MARKET
 - ii. collection points that accept materials from consumers and send them directly to end markets; PLASTIC BAG RETURN TO RETAIL @ NEW SEASONS
- b. any collection of materials from residential generators that is not used by a local government to comply with ORS 459A.005 or .007. RIDWELL

(B) Does Not Undergo Separation at a CRPF

If the materials go to a CRPF and go directly from a truck into a baler, then no "separation" occurs and (B) is met.

If the materials undergo any degree of processing - that is, *separation* from other materials (including contamination) - then (B) is not met, even if the material in question (e.g., OCC) was collected source segregated.



(C) Verifying the end market as “responsible”

To claim the exemption under ORS 459A.869(13), all end markets that recycle the material must either be verified “responsible” by a PRO per OAR 340-090-0670(3)(f) or certified “responsible” through third-party certification from an Environmental Quality Commission-approved program. The certification, verification, or an annual audit (of either the certification or verification) must either have occurred within a calendar year for the exemption to be granted.



869(13): PRO materials don't qualify

ORS 459A.869(13)(a) does not apply to materials collected through a recycling collection service provided under ORS 459A.896(1), i.e., a collection service counted by a PRO toward meeting its convenience standards under OAR 340-090-0640.



Questions / Discussion?



Clarifications to covered product - consumer wrap

Wraps sold directly to consumers are packaging

- The following wraps are packaging:

Aluminum foil	Film wrap	Wax paper	Parchment paper	Giftwrap
				

Questions / Discussion?



Rule Concept: Life Cycle Evaluation of Covered Products



Oregon Department of Environmental Quality Rule Concepts: Life Cycle Evaluation of Covered Products

Plastic Pollution and Recycling Modernization Act (SB 582, 2021)
Rulemaking Advisory Committee Meeting 5, Rulemaking 2

Feb. 1, 2024

Background

This memo provides background information and rule concepts for the Rulemaking Advisory Committee to consider on the life cycle evaluation requirements described in ORS 459A.944 (Life cycle evaluation; rules). The Oregon Environmental Quality Commission shall establish by rule the methodology, procedures, and requirements to be used by producers of covered products when evaluating life cycle environmental impacts. Evaluations will be complete in compliance with these rules conducted by producers of packaging, printing and writing paper, and food serviceware (covered products). The resulting information will be used by the top 25 largest producers in the state to evaluate and disclose impacts, and can be used by all producers to qualify for graduated (referred to as "ecomodulated") fee bonuses (see ORS 459A.884(4)).

DEQ seeks feedback from RAC members on ten rule concepts broken into two groupings:

1. Clarifying rules: one concept for the large producer disclosure and one for ecomodulation; and
2. Product Category Rules: eight concepts.

Purpose

A summarized listing of the ten rule concepts follows below. Collectively, DEQ intends for these rules to achieve the following objectives:

- Drive maximum producer disclosure of environmental impacts of covered products, which DEQ research has found to reduce impacts,
- Direct [ecomodulation toward system change](#) for impact reduction, by mandating bonuses based on the evaluation of environmental impacts,
- Build an Oregon-specific assessment methodology (a product category rule for products covered under Oregon's laws). The assessment should leverage existing methodologies but also limit flexibility to influence assessment outcomes through methodological choices, thereby facilitating more accurate comparisons across products, and
- Account for emerging impacts not traditionally well-covered by life cycle assessment including plastic pollution and toxicity, either by requiring the use of new assessment methodologies or by requiring additional producer disclosures to inform future approaches.

These objectives serve broader goals to:

1. Better align Oregon's recycling system with the environmental outcomes prescribed by [Oregon's 2050 Vision for Materials Management](#).
2. Address relevant gaps in existing standards governing the life cycle evaluation of products.
3. Initiate the process of calculating and disclosing environmental impacts for covered products as part of the shared responsibility model of the Recycling Modernization Act. These rules will likely require future updates as science and our understanding continues to evolve.

DEQ vetted these rule concepts with a [Rulemaking Advisory Panel](#) comprised of four experts in the field and with interested parties through a two-part Request For Information process. Feedback received to date is summarized in the [Background Document: Guidance on Ecomodulated Fees](#).

Translation or other formats

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Updates: Rule Concept II - Ecomodulation

	IMPACT	SERIOUSNESS WEIGHTING
(1)	Climate change	14.79
(2)	Water use	11.17
(3)	Land use	10.42
(4)	Resources use, fossils	8.58
(5)	Resource use, minerals and metals	7.78
(6)	Ionizing radiation, human health	6.64
(7)	Ozone depletion	6.50
(8)	Particular matter	6.36
(9)	Plastic physical impact on biota	6.09
(10)	Acidification	5.76
(11)	Photochemical ozone formation, human health	5.52
(12)	Eutrophication, freshwater	3.64
(13)	Eutrophication, terrestrial	3.39
(14)	Eutrophication, marine	3.37

Proposed weighting for plastic ←

Alternative option – two plastic weightings

	IMPACT	SERIOUSNESS WEIGHTING	
(1)	Climate change	13.84	
(2)	Water use	10.45	
(3)	Land use	9.76	
(4)	Resources use, fossils	8.03	
(5)	Resource use, minerals and metals	7.28	
(6)	Plastic – other impacts	6.89	← Proposed (placeholder) weighting #2 for plastic
(7)	Ionizing radiation, human health	6.22	
(8)	Ozone depletion	6.08	
(9)	Particular matter	5.95	
(10)	Acidification	5.39	
(11)	Plastic physical impact on aquatic biota	5.17	← Proposed weighting #1 for plastic
(12)	Photochemical ozone formation, human health	5.52	
(13)	Eutrophication, freshwater	3.64	
(14)	Eutrophication, terrestrial	3.39	
(15)	Eutrophication, marine	3.37	

Rule Concept III - Product Category Rule

- Requirement to report on public health impacts. Reporting must include:
 - disclosure of all incidents of (consumer health and safety) non-compliance associated with the covered product (aligns with GRI Disclosure 416-2)
 - disclosure of public health impacts of the covered product on affected communities (aligns with ESRS S3 1-5)



Rule Concept IV - Impact assessment (cont.)

How is toxicity addressed in impact assessment?

- What's already in the rule concept: required disclosures *that are not insubstantial*
- What we're proposing to add: consequences for misreporting
 - Any associated bonus must be returned
 - Incident must be made public by the PRO



Rule Concept IV - Impact assessment

Impact Categories	Source	Large Producer Disclosure	Bonus – Simple Disclosure	Bonus – Significant Reduction
Climate change	PEFCR	X	X	X
Water use		X	X	X
Land use		X	X	X
Resources use, minerals and metals		X	X	X
Resource use, fossils		X	X	X
Ionizing radiation, human health		X	X	X
Ozone depletion		X	X	X
Particulate matter		X	X	X
Acidification		X	X	X
Photochemical ozone formation, human health		X	X	X
Eutrophication, freshwater		X	X	X

Rule Concept IV - Impact assessment

Impact Categories	Source	Large Producer Disclosure	Bonus – Simple Disclosure	Bonus – Significant Reduction
Eutrophication, terrestrial	PEFCR	X	X	X
Eutrophication, marine		X	X	X
Human toxicity, cancer*		X	X	X
Human toxicity, non-cancer *		X	X	X
Ecotoxicity*, freshwater		X	X	X
Plastic physical impact on biota	MariLCA			X
Plastic other impacts	DEQ placeholder			X
Single score impact analysis	PEFCR (adapted)			X
Hazardous waste disposed	ISO 21930	X	X	X
Non-hazardous waste disposed	ISO 21930	X	X	X
Disclosure of embedded hazardous/toxic substances	ISO 21930	X	X	X
Human health impact statement	GRI / ESRS	X	X	X

Rule Concept VII - Reusable products

- Updated definition of “reusable **packaging** product”
 - A “reusable **packaging** product” is
 - a) designed ~~for reuse~~ **to be recirculated multiple times for the same or similar purpose in its original format**
 - b) durable
 - c) ~~supported with adequate commercial or publicly-owned infrastructure to enable the highest/best reuse~~ **owned by producers or a third party and returned to producers or a third party after each use, and**
 - d) actually reused.
- Requirement to calculate breakeven point and compare with actual number of reuses after 3-year grace period ends.

Discussion prompt



Do the rule concept updates that DEQ is proposing adequately address the issues raised by the RAC during the Feb. 14 meeting?



Rule Concept Presentation: Life Cycle Evaluation Concepts VIII-X



State of Oregon Department of Environmental Quality
Rule Concepts: Life Cycle Evaluation of Covered Products
Plastic Pollution and Recycling Modernization Act (SB 582, 2021)
Rulemaking Advisory Committee Meeting 5, Rulemaking 2

Feb. 1, 2024

Executive Summary

Background

This memo provides background information and rule concepts for the Rulemaking Advisory Committee to consider on the life cycle evaluation requirements described in ORS 459A.944 (Life cycle evaluation; rules). The Oregon Environmental Quality Commission shall establish by rule the methodology, procedures, and requirements to be used by producers of covered products when evaluating life cycle environmental impacts of covered products. Evaluations conducted by producers of packaging, printing and writing paper, and food ~~service ware~~ (covered products) in accordance with these rules will be used by the top 25 largest producers in the state to evaluate and disclose ~~impacts~~ and can be used by all producers to qualify for graduated (referred to as "~~economized~~") fee bonuses (see ORS 459A.884(4)).

DEQ seeks feedback from RAC members on 10 rule concepts broken into two groupings:

1. Clarifying rules - one concept for the large producer disclosure and one for ~~economized~~; and
2. Product Category Rules (PCRs) - 8 concepts.

Purpose

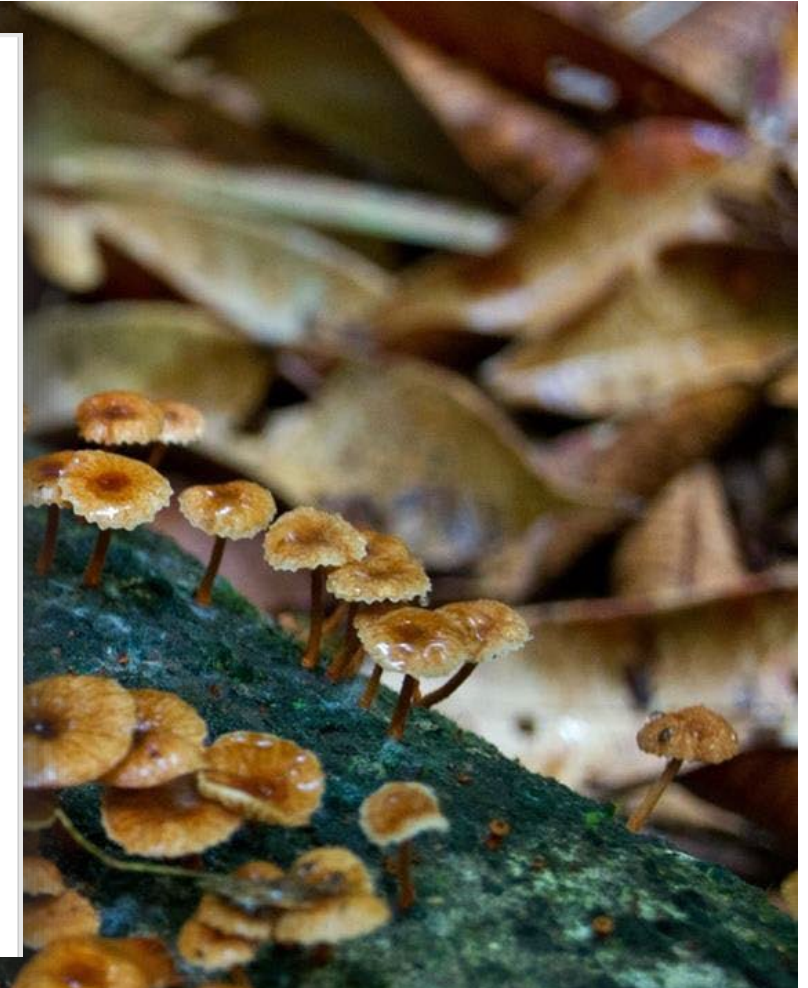
A summarized listing of the ten rule concepts follows below. Collectively, DEQ intends for these rules to achieve the following objectives:

- Drive maximum producer disclosure of environmental impacts of covered products, which in ~~prior DEQ research~~ has been demonstrated to correlate with action to reduce impacts,
- Direct ~~economized~~ toward needed ~~system change~~ in terms of impact reduction, by mandating bonuses based on the evaluation of environmental impacts,
- Build an Oregon-specific assessment methodology (a product category rule for products covered under Oregon's laws) that draws heavily upon existing methodologies but also limits flexibility to influence assessment outcomes through methodological choices, thereby facilitating more accurate comparisons across products, and
- Account for emerging impacts not traditionally well-covered by life cycle assessment including plastic pollution and toxicity, either by requiring the use of new assessment methodologies or by requiring additional producer disclosures to inform future approaches.

These objectives serve broader goals to:

1. Better align Oregon's recycling system with the environmental outcomes prescribed by [Oregon's 2050 Vision for Materials Management](#)
2. Address relevant gaps in existing standards governing the life cycle evaluation of products.
3. Initiate the process, part of the shared responsibility model of the Recycling Modernization Act, of calculating and disclosing environmental impacts for covered products. DEQ recognizes that these rules will likely require future updates as the state of the science and our understanding continues to evolve.

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VIII.Key PCR Aspect #5

Sensitivity Analysis

- Objective
 - Report additional quantitative insights regarding required impact results
- Approach
 - Propose key variables for testing
 - Propose systematic procedure for identifying additional hot spots for testing
 - Prescribe statistical outputs from testing



Discussion prompts



8.1. Should DEQ require sensitivity analysis?

8.2. Should sensitivity analysis be used exclusively to communicate variability and to feed back into subsequent revisions of the PCR with respect related to variability across assessments? Or should sensitivity analysis be considered in the ecomodulation bonus for substantial impact reduction?


IX. Key PCR Aspect #6

Recycling Allocation Procedures



- Objective
 - Flexibility in approach, with justification articulated through disclosure
- Approach
 - Adhere to existing standards
 - Must disclose approach and justify choice
 - Must be consistent, when applying for bonus
 - Must take into account quality/quantity factors

Discussion prompts



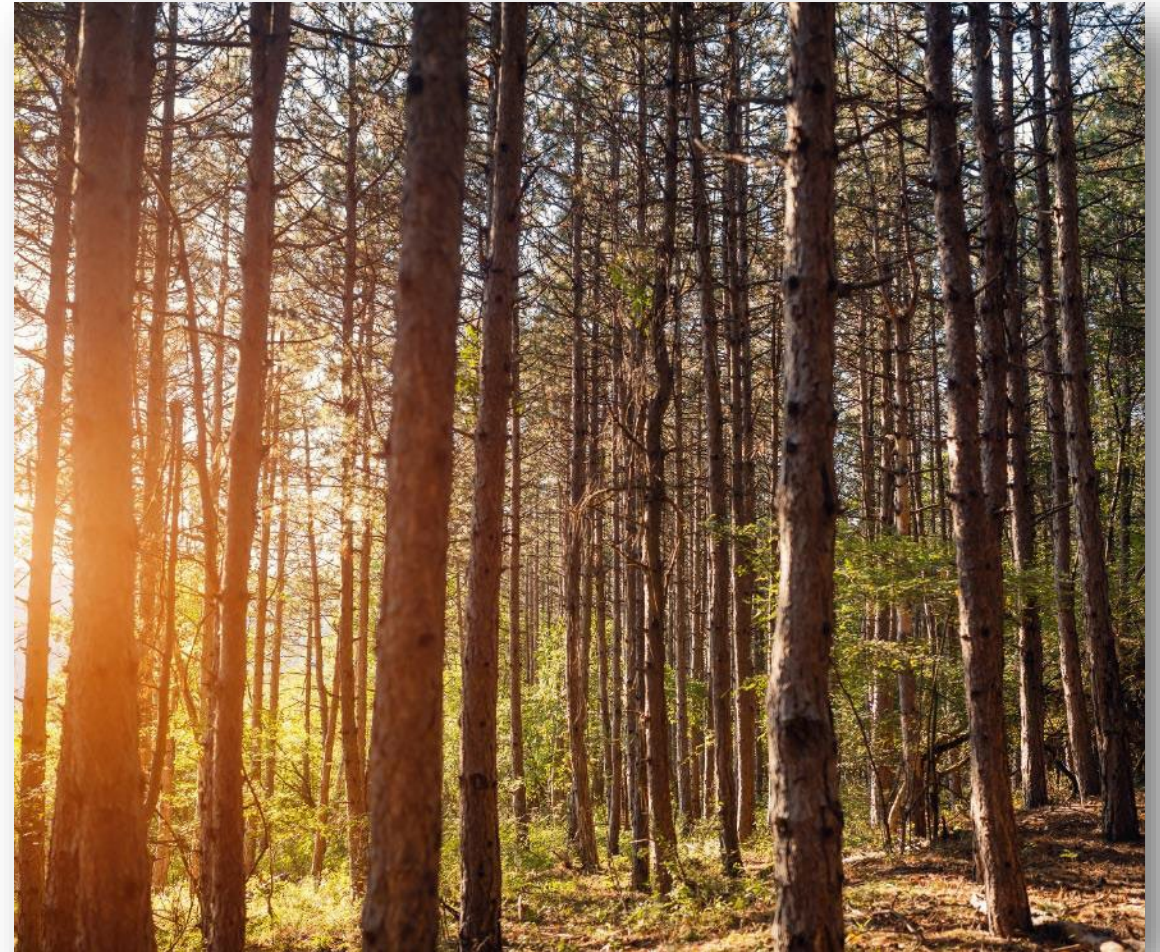
9.1. Should DEQ prescribe specific recycling allocation methodologies within these rules? If so, should there be a single methodology for all covered products, or should specific recycling allocation methodologies be set individually for each covered product? Alternatively, should these current rules allow producers to choose between different allocation methods?

9.2. Does any specificity or distinction need to be made for different types of recycling (e.g. mechanical vs. chemical)? Concerns have been raised regarding freedom of allocation when assessing life cycle impacts of chemical recycling.


X. Key PCR Aspect #7

Biogenic Carbon Accounting

- Objective
 - Exclude biogenic carbon from required GWP reporting
- Approach
 - Reflect fast-moving/short-lived nature of covered products
 - Consistent with PEFCR method
 - Optional accounting/report as “additional environmental information”



Discussion prompts



10.1. Because of the variability of covered products (some interacting with biogenic carbon flows and others not) under these rules, DEQ discourages the use of GWP results including biogenic carbon from any ecomodulation fees. However, is it sufficient to simply follow the structure of ISO 21930 here? Do we need a more nuanced approach for modeling biogenic carbon?

10.2. Should covered products which interact with biogenic carbon fluxes to/from the environment be required, as proposed, to report both GWP excluding and GWP including biogenic carbon?

2024 PRO Reporting Requirement



State of Oregon Department of Environmental Quality
Rule Concept: Requiring PROs to Submit an Annual Report for 2024

Plastic Pollution and Recycling Modernization Act (SB 582, 2021)
Rulemaking Advisory Committee Meeting 4, Rulemaking 2

Jan. 17, 2024

Background

This memo provides background information on a rule concept that will allow DEQ to play an interim coordination role among prospective Producer Responsibility Organizations beginning in April 2024 should multiple prospective PROs submit draft plans to DEQ for review and approval.

Statute addresses the need for coordination among producer responsibility organizations if DEQ receives and approves multiple producer responsibility organization program plans. ORS 459A.869(9)(b) directs the Environmental Quality Commission to establish standards and requirements for coordination between producer responsibility organizations.

Rules approved by the Environmental Quality Commission in November 2023 clarify this piece of statute.

- OAR 340-090-0680 sets standards and requirements for coordination plans, including an interim coordination plan to be developed by DEQ and implemented by willing applicant and approved PROs until a long-term coordination plan is approved.
- OAR 340-090-0700(2) requires system costs to be divided among PROs in proportion to modified market share, including start-up costs incurred prior to the start date. Details on how costs will be reconciled in proportion to modified market share will be laid out in the interim coordination plan.
- DEQ will begin developing an interim coordination plan in April 2024 if multiple prospective PROs submit program plans.

Rule concept for discussion at January 31, 2024 RAC meeting: requiring PROs to submit an annual report for 2024

To fulfill its interim coordination oversight role and ensure that system costs are being divided among PROs in proportion to modified market share, DEQ will need specific financial data from PROs.

DEQ proposes the following rule concept:

Require PROs to submit an abbreviated annual report for 2024 on or before July 1, 2025. Required content of these reports would be limited to information on expenditures to cover system costs during the calendar year of 2024, as described in ORS 459A.887(3)(e)-(g).

2024 PRO Reporting Requirement

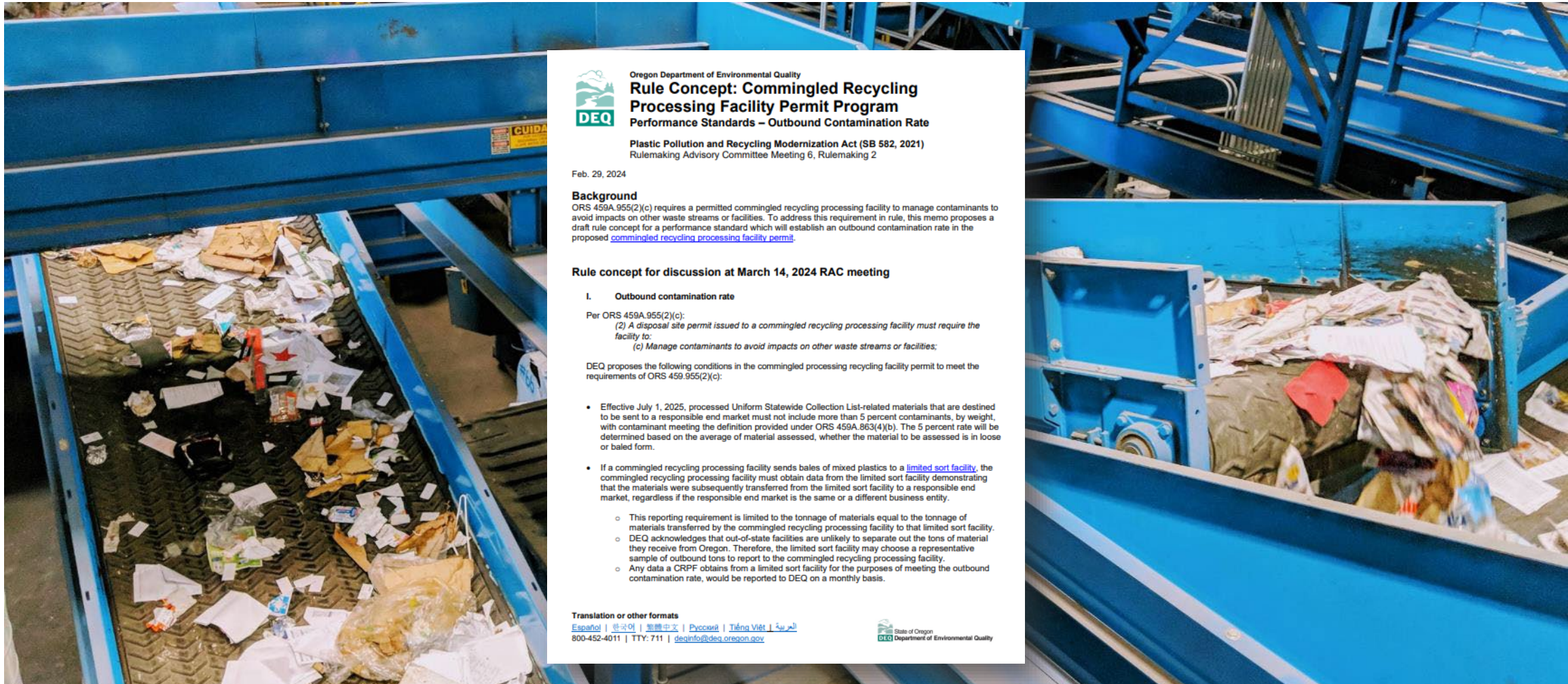


- Requires PROs to submit an annual report for 2024 **include 2024 system costs in their annual report for 2025**
- PROs would need to report on system cost expenditures
- Reporting would enable DEQ's oversight during interim coordination over reconciliation of expenses among PROs in proportion to modified market share **over fees being adequate to cover system costs per ORS 459A.875(2)(i).**

BREAK



CRPF Permit – Outbound Contamination Rate



Oregon Department of Environmental Quality
Rule Concept: Commingled Recycling Processing Facility Permit Program
Performance Standards – Outbound Contamination Rate

Plastic Pollution and Recycling Modernization Act (SB 582, 2021)
Rulemaking Advisory Committee Meeting 6, Rulemaking 2

Feb. 29, 2024

Background

ORS 459A.955(2)(c) requires a permitted commingled recycling processing facility to manage contaminants to avoid impacts on other waste streams or facilities. To address this requirement in rule, this memo proposes a draft rule concept for a performance standard which will establish an outbound contamination rate in the proposed [commingled recycling processing facility permit](#).

Rule concept for discussion at March 14, 2024 RAC meeting

I. Outbound contamination rate

Per ORS 459A.955(2)(c):

- (2) A disposal site permit issued to a commingled recycling processing facility must require the facility to:
 - (c) Manage contaminants to avoid impacts on other waste streams or facilities;

DEQ proposes the following conditions in the commingled processing recycling facility permit to meet the requirements of ORS 459.955(2)(c):

- Effective July 1, 2025, processed Uniform Statewide Collection List-related materials that are destined to be sent to a responsible end market must not include more than 5 percent contaminants, by weight, with contaminant meeting the definition provided under ORS 459A.863(4)(b). The 5 percent rate will be determined based on the average of material assessed, whether the material to be assessed is in loose or baled form.
- If a commingled recycling processing facility sends bales of mixed plastics to a [limited sort facility](#), the commingled recycling processing facility must obtain data from the limited sort facility demonstrating that the materials were subsequently transferred from the limited sort facility to a responsible end market, regardless if the responsible end market is the same or a different business entity.
 - This reporting requirement is limited to the tonnage of materials equal to the tonnage of materials transferred by the commingled recycling processing facility to that limited sort facility.
 - DEQ acknowledges that out-of-state facilities are unlikely to separate out the tons of material they receive from Oregon. Therefore, the limited sort facility may choose a representative sample of outbound tons to report to the commingled recycling processing facility.
 - Any data a CRPF obtains from a limited sort facility for the purposes of meeting the outbound contamination rate, would be reported to DEQ on a monthly basis.

Translation or other formats

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Outbound Contamination Rate

- Effective July 1, 2025, processed USCL-related materials that are destined to be sent to a responsible end market must not include more than 5% contaminants, by weight, with contaminant meeting the definition provided under ORS 459A.863(4)(b).
- The 5% rate will be determined based on the average of material assessed, whether the material to be assessed is in loose or baled form.



Outbound Contamination Rate



If a CRPF sends bales of mixed plastics to a limited sort facility, the CRPF must obtain data from the limited sort facility demonstrating that the materials were subsequently transferred from the limited sort facility to a responsible end market, regardless if the responsible end market is the same or a different business entity.

- This reporting requirement is limited to the tonnage of materials equal to the tonnage of materials transferred by the CRPF to that limited sort facility.
- Limited sort facility may choose a representative sample of outbound tons to report to the CRPF.
- Any data a CRPF obtains from a limited sort facility for the purposes of meeting the outbound contamination rate, would be reported to DEQ on a monthly basis.

Discussion prompts




Are there any questions regarding the proposed outbound contamination rate?



LSFs, Comm. Materials and Reload Facilities



 Oregon Department of Environmental Quality
Rule Concept:
Limited Sort Facilities, Commingled Materials and Reload Facilities

Plastic Pollution and Recycling Modernization Act (SB 582, 2021)
Rulemaking Advisory Committee Meeting 6, Rulemaking 2

Feb. 29, 2024

Introduction

ORS 459A.863(3)(b)(I) requires the Environmental Quality Commission to define in rule 'limited sort facilities.' Discussions with the [Commingled Recycling Processing Facility Technical Workgroup](#) and other interested parties informed the need to clarify the terms 'limited sort facility', 'reload facilities' and 'commingled materials' in rule. This rule concept also establishes permit requirements for limited sort facilities transporting to a responsible end market any amount of incoming commingled recyclable material collected by a collection program providing the Opportunity to Recycle.

Please note that proposed rule concepts here differ from what DEQ previously shared with the Technical Workgroup.

Rule concept for discussion at March 14, 2024 RAC meeting

This rule concepts will address the following regarding limited sort facilities and reload facilities:

- I. Definitions
- II. Reload/limited sort facility permit
- III. Other


Background and Statutory Context

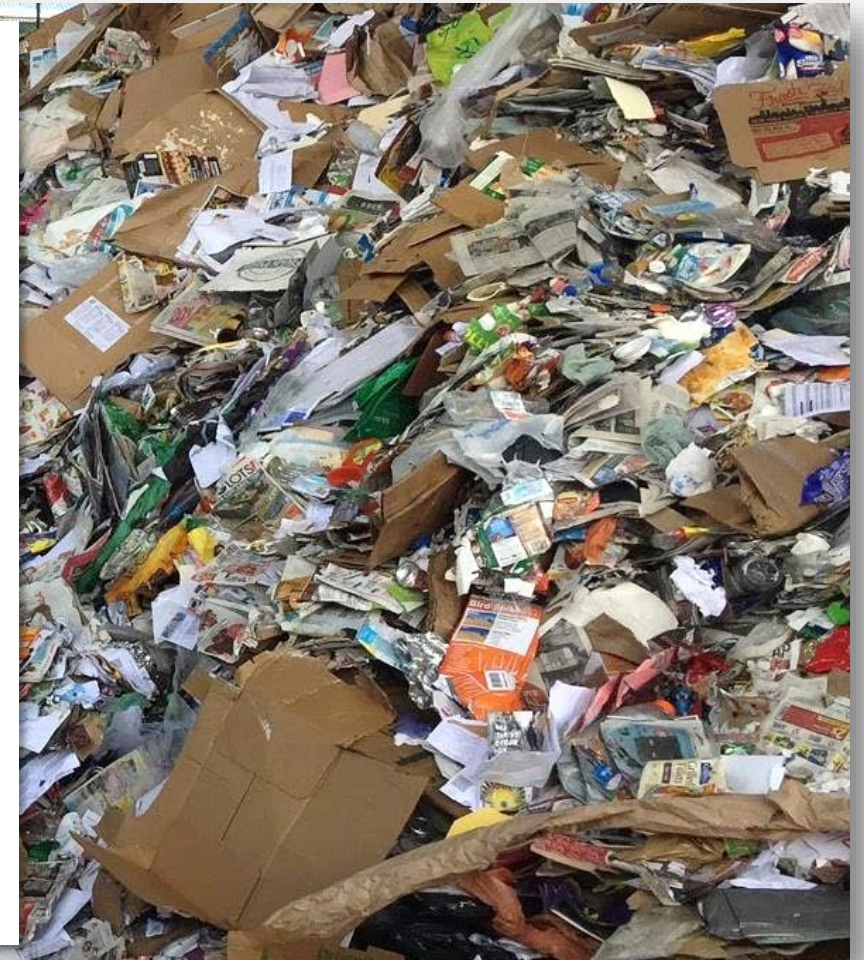
Per ORS 459A.863(2):
(2) "Commingled recycling" means the recycling or recovery of two or more materials that are mixed together and that generally would be separated into individual materials at a commingled recycling processing facility in order to be marketed.

Per ORS 459A.863(3):
(3)(a) "Commingled recycling processing facility" means a facility that:
(A) Receives source separated commingled recyclable materials that are collected commingled from a collection program providing the opportunity to recycle; and
(B) Separates the recyclable materials described in subparagraph (A) of this paragraph into marketable commodities or streams of materials that are intended for use or further processing by others.

(b) "Commingled recycling processing facility" does not include:
(A) Scrap metal recycling facilities;
(B) Scrap automotive or appliance recycling facilities;
(C) Full-service redemption centers or dealer redemption centers, as those terms are defined in ORS 459A.700, and recycling facilities owned and operated by a distributor cooperative established under ORS 459A.718;
(D) Recycling facilities handling covered electronic devices, as defined in ORS 459A.305;

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LSFs, Comm. Materials and Reload Facilities

- Commingled Materials – Materials that:
 - Are collected as part of the provision of the OTR rules and from receptacles located at residential and/or non-residential sources (generators) that are designated and promoted for the acceptance of commingled materials including at least the materials described in the Recycling Acceptance Lists rules found in either:
 - OAR 340-090-0630(2)(a) through (c) and (e) through (i), or
 - OAR 340-090-0630(2)(j) through (l); or
 - Contain at least two or more of the materials on the USCL that are mixed together; and
 - Are intended to be properly processed by a CRPF that meets the requirements contained in ORS 459A.905(2)(a).



LSFs, Comm. Materials and Reload Facilities



Limited sort facility :

- (A) A facility that receives a specific subset of processed USCL materials from a CRPF that meets the requirements under ORS 459A.905(2)(a) and that could be considered a secondary processor or a responsible end market; or

LSFs, Comm. Materials and Reload Facilities

Limited sort facility:

(B) A facility that:

- a) Removes more than 0% and less than 50%, by weight, of incoming commingled recyclable material collected by a collection program providing the OTR;
- b) Markets removed materials to REM;
- c) Manages contaminants in those removed materials to avoid impacts on other waste streams or facilities;
- d) Accurately reports to DEQ the final end markets of removed materials;
- e) Sends remaining material to a CRPF that meets the requirements under ORS 459A.902(2)(a); and,
- f) Obtains a disposal site permit from DEQ. The facility must meet all requirements of the permit.



Discussion prompts



1. Is there additional language that should be considered for the definition of “commingled material”?
2. Is there additional language that should be considered for the definition of “limited sort facility”?



LSFs, Comm. Materials and Reload Facilities



For Limited sort facilities under definition (B):

- A DEQ Solid Waste Disposal Permit is required for a limited sort facility that processes and transports to a responsible end market any amount of USCL-related material collected by a collection program providing the Opportunity to Recycle.
- If the limited sort facility is already operating under an existing Solid Waste Disposal Site permit, that facility's permit would need to be amended to recognize the new requirements.

LSFs, Comm. Materials and Reload Facilities

- The limited sort facility will need to meet the following requirements established under the commingled recycling processing facility permit program: ORS 459A.955(2)(d)(e)(f) and (g).
- The “capture rate” performance standard (.955(2)(a)) is not included.
- The limited sort facility must report material disposition to DEQ on a schedule consistent with that noted under ORS 459A.887(6).



Discussion prompts



Should DEQ consider more or fewer requirements on limited sort facilities?



LSFs, Comm. Materials and Reload Facilities



- Reload facilities, which meet the definitions listed under ORS 459A.863(27) or ORS 459A.905(1) and are consolidating and reloading commingled material (with no material removal) may not need a DEQ solid waste permit, unless there are other requirements that warrant a DEQ solid waste permit.
- Reload and limited sort facilities, like other facilities noted under ORS 459A.863(3)(b), would not be eligible for any funding associated with either the Contamination Management Fee or the Processor Commodity Risk Fee.
- A limited sort facility must also be a reload facility to be eligible for transportation cost reimbursement and funding associated with ORS 459A.890(3).

Questions / Discussion?



Public Input Period

To provide input, message
Hosts and Panelists
in the chat.


Input can also be emailed to
recycling.2024@deq.oregon.gov

Break



LG Compensation for Contamination Evaluation



 Oregon Department of Environmental Quality
Rule Concept: Local Government Compensation for Evaluation of Contamination
Plastic Pollution and Recycling Modernization Act (SB 582, 2021)
Rulemaking Advisory Committee Meeting 6, Rulemaking 2

Feb. 29, 2024

Introduction

DEQ is proposing rules to clarify ORS 459A.890(3), which obligates a PRO to fund eligible costs related to the periodic evaluation of the quality and contamination of collected materials if the evaluation occurs at a location other than a commingled recycling processing facility. The proposed rule concept clarifies eligible and ineligible costs.

Background and Statutory Context

ORS 459A.890(3) provides funding for local governments and their designated service providers, including reload facilities,¹ and limited sort facilities that are also reload facilities to meet the requirement of ORS 459A.929(2)(b).²

ORS 459A.929(2)(b) requires local governments or their designated service provider to cause collected source-separated recyclables to undergo periodic evaluation of material quality and contamination, in accordance with forms and procedures established in ORS 459A.959, to evaluate and describe levels of inbound contamination.

ORS 459A.959 requires DEQ to establish forms and procedures for commingled recycling processing facilities, recycling reload facilities and limited sort facilities that are also reload facilities, to evaluate and describe levels of inbound contamination.


Please note that DEQ is currently developing the forms and procedures for recycling reload facilities, limited sort facilities that are also reload facilities and commingled recycling processing facilities to evaluate and describe levels of inbound contamination outside of rulemaking. DEQ anticipates that the procedures will have two components:

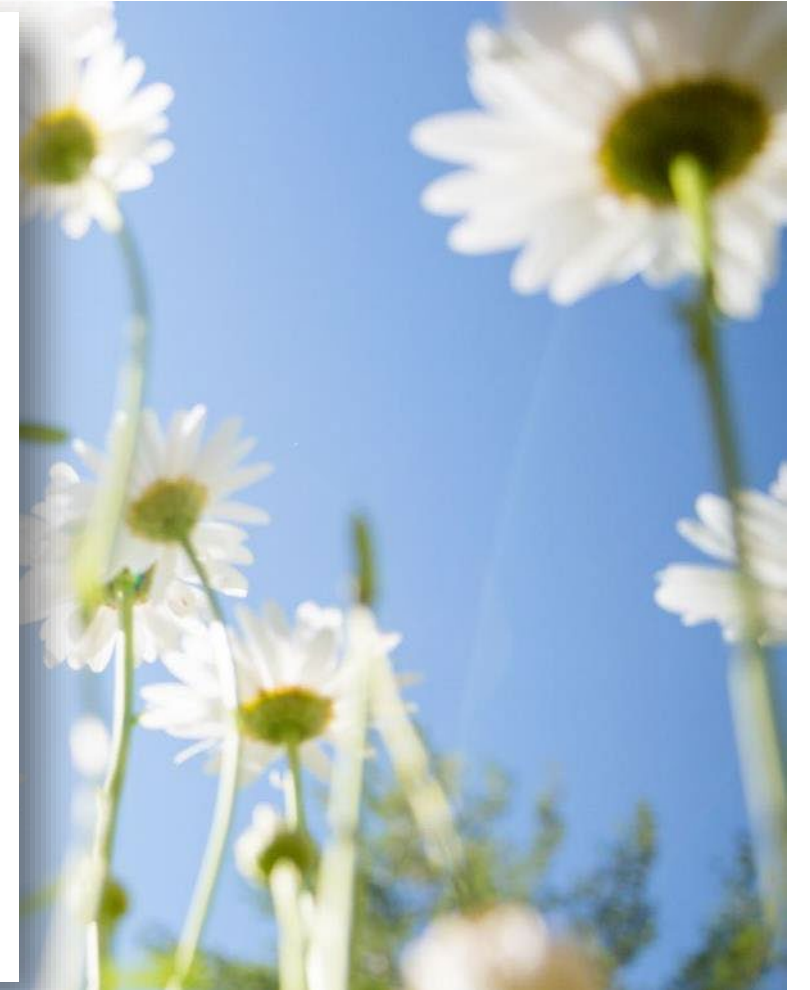
1. A process for collecting samples from inbound recycling and conducting detailed sorting and weight-based analysis of contamination every few years. This will enable DEQ to track progress towards statewide contamination reduction goals.
2. Setting up and maintaining a communication tool to regularly provide local governments and service providers with feedback about levels and types of contamination in collected recycling at the route or

¹ A reload facility not operated by or in a contractual relationship with a local government or designated service provider may be eligible for funding under ORS 459A.890(3) if the facility enters into a contractual arrangement with the local government.

² Periodic evaluation that takes place at a commingled recycling processing facility is not eligible for funding under ORS 459A.890(3) since the proposed Processor Commodity Risk Fee will compensate recycling processors for the costs of following the forms and procedures established to evaluate and describe levels of inbound contamination in accordance with ORS 459A.959.

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Background: statutory context

Local governments must ensure collected recyclables undergo periodic evaluation for quality and contamination

ORS 459A.929(2)(b)

DEQ shall establish forms and procedures for processing and reload facilities to evaluate and describe levels of inbound contamination

ORS 459.959

PRO funding for periodic evaluation at locations other than recycling processors

ORS 459A.890(3)

Background: periodic evaluation

Detailed sorting and weight-based analysis of inbound recycling samples every few years

Communication tool for regular feedback at the route or customer level

Eligible costs

1. Carry out DEQ-established procedures in accordance with ORS 459A.959 to meet the requirements of ORS 459A.929(2)(b)
2. Include:
 - a) Staffing and administrative costs
 - b) Costs associated with purchase, installation, use, and maintenance of on-board equipment and software

Ineligible costs



System expansion requests made according to “Expansion of Service Funding and Needs Assessment”



Costs incurred at limited sort facilities that are not also reload facilities



Costs incurred at commingled recycling processing facilities

Discussion prompts



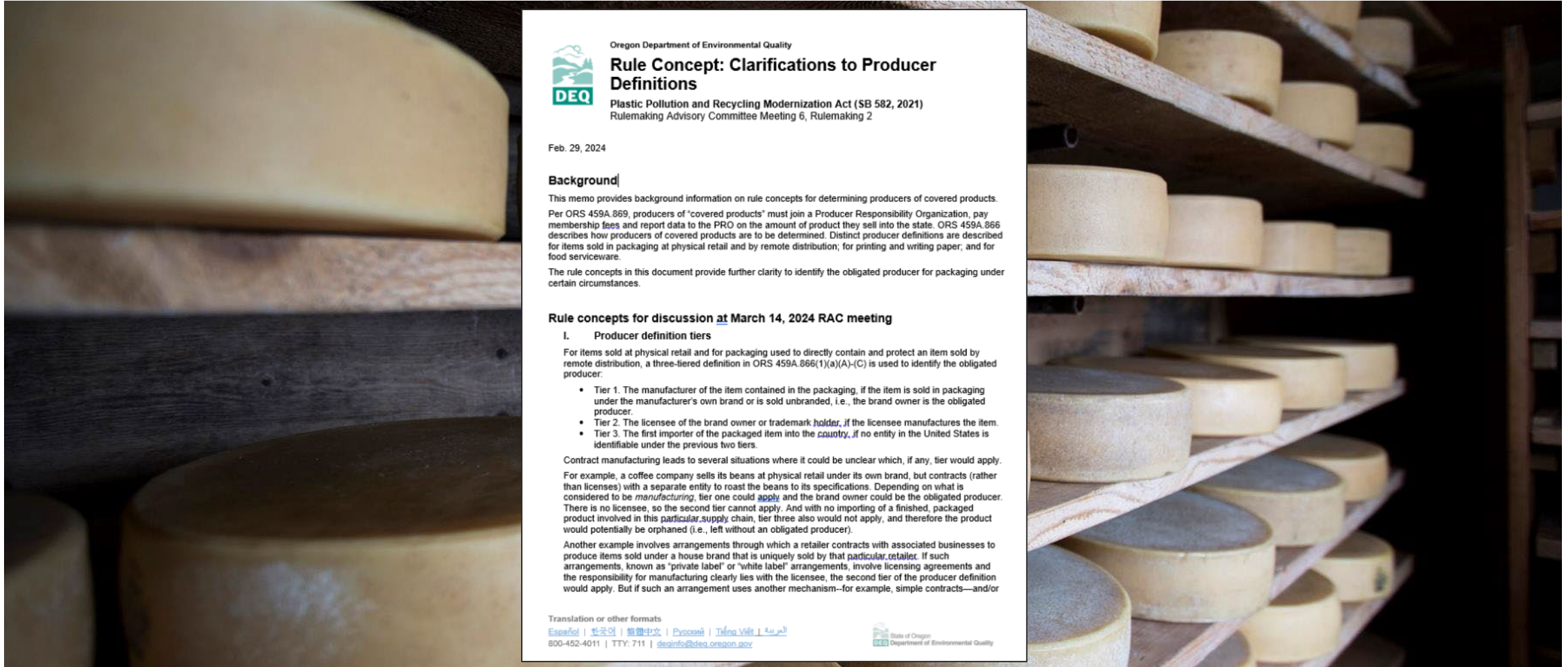
1. Are there other examples of eligible or ineligible costs that you think should be described in the rule language?
2. Do you have any feedback that could improve this rule concept?




Questions / Discussion?



Clarification to Producer Definitions



 Oregon Department of Environmental Quality
Rule Concept: Clarifications to Producer Definitions
Plastic Pollution and Recycling Modernization Act (SB 582, 2021)
Rulemaking Advisory Committee Meeting 6, Rulemaking 2

Feb. 29, 2024

Background

This memo provides background information on rule concepts for determining producers of covered products. Per ORS 459A.869, producers of “covered products” must join a Producer Responsibility Organization, pay membership fees and report data to the PRO on the amount of product they sell into the state. ORS 459A.866 describes how producers of covered products are to be determined. Distinct producer definitions are described for items sold in packaging at physical retail and by remote distribution; for printing and writing paper, and for food serviceware.

The rule concepts in this document provide further clarity to identify the obligated producer for packaging under certain circumstances.

Rule concepts for discussion at March 14, 2024 RAC meeting

I. Producer definition tiers


For items sold at physical retail and for packaging used to directly contain and protect an item sold by remote distribution, a three-tiered definition in ORS 459A.866(1)(a)(A)-(C) is used to identify the obligated producer.

- Tier 1. The manufacturer of the item contained in the packaging, if the item is sold in packaging under the manufacturer’s own brand or is sold unbranded, i.e., the brand owner is the obligated producer.
- Tier 2. The licensee of the brand owner or trademark holder, if the licensee manufactures the item.
- Tier 3. The first importer of the packaged item into the country, if no entity in the United States is identifiable under the previous two tiers.

Contract manufacturing leads to several situations where it could be unclear which, if any, tier would apply. For example, a coffee company sells its beans at physical retail under its own brand, but contracts (rather than licenses) with a separate entity to roast the beans to its specifications. Depending on what is considered to be *manufacturing*, tier one could apply and the brand owner could be the obligated producer. There is no licensee, so the second tier cannot apply. And with no importing of a finished, packaged product involved in this particular supply chain, tier three also would not apply, and therefore the product would potentially be orphaned (i.e., left without an obligated producer).

Another example involves arrangements through which a retailer contracts with associated businesses to produce items sold under a house brand that is uniquely sold by that particular retailer. If such arrangements, known as “private label” or “white label” arrangements, involve licensing agreements and the responsibility for manufacturing clearly lies with the licensee, the second tier of the producer definition would apply. But if such an arrangement uses another mechanism—for example, simple contracts—and/or

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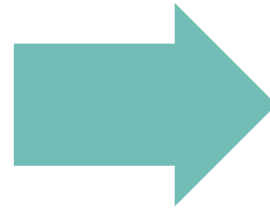
Clarification to Producer Definitions

Defining producers for packaging-like products			Clarifying producer definition for products sold at physical retail
Storage items	Service packaging	Consumer wraps	
			

Producer definitions for **retail** products

Items sold at physical retail in OR

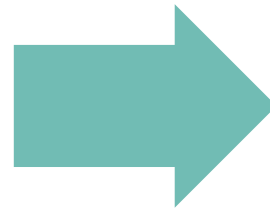
Sold in packaging under the manufacturer's own brand or in packaging without a brand.



Producer

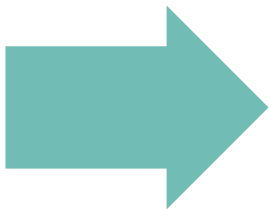
The brand owner/manufacturer of the packaged item.

The item is manufactured by a person other than the brand owner



The licensee of the brand or trademark under which a packaged item is used, sold, or distributed into Oregon, whether or not the trademark is registered in this state.

If neither of the above identifies an obligated producer



The person that imports the packaged item into the United States for use in a commercial enterprise that sells, offers for sale or distributes the item in this state.

Obligated Producers for Packaging-like Items

- For storage items and consumer wraps, an adapted version of the statutory producer definition would be applied to identifying the obligated producer.
- For service packaging, the obligated producer is the distributor that first distributes the item in or into the state.

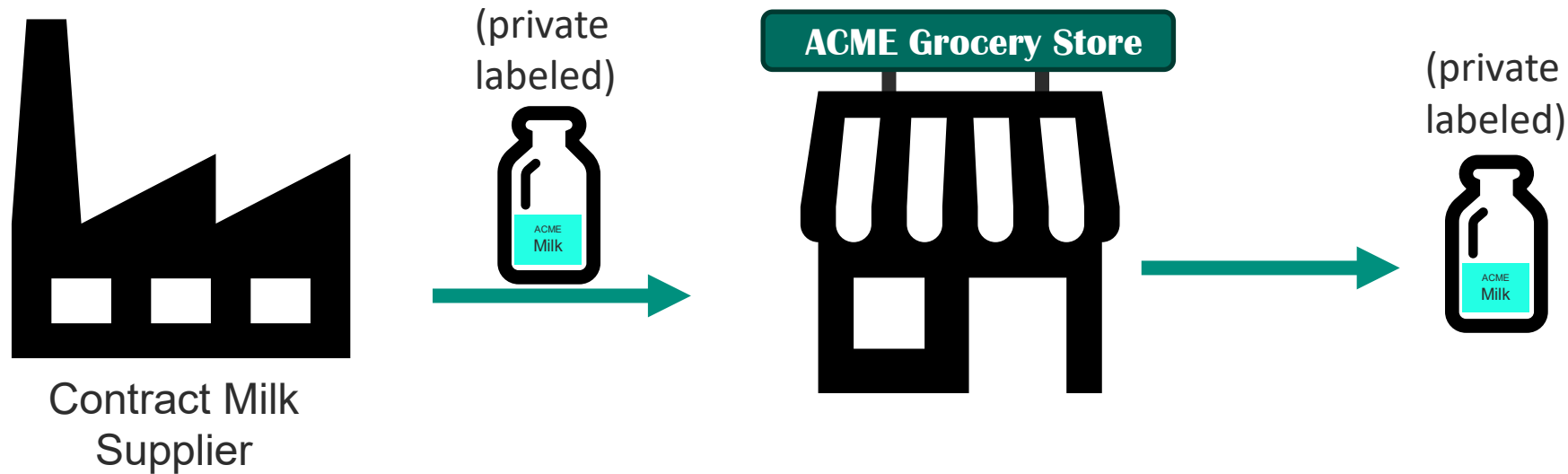


Example A: Contract Manufacturing



- Tier 1 - The manufacturer of the item contained in the packaging, if the item is sold in packaging under the manufacturer's own brand or is sold unbranded, i.e., the brand owner is the obligated producer.
- Tier 2 - The licensee of the brand owner or trademark holder, if the licensee manufactures the item.
- Tier 3 - The first importer of the packaged item into the country, if no entity in the United States is identifiable under the previous two tiers.

Example B: Contract Manufacturing



- Tier 1 - The manufacturer of the item contained in the packaging, if the item is sold in packaging under the manufacturer's own brand or is sold unbranded, i.e., the brand owner is the obligated producer.
- Tier 2 - The licensee of the brand owner or trademark holder, if the licensee manufactures the item.
- Tier 3 - The first importer of the packaged item into the country, if no entity in the United States is identifiable under the previous two tiers.

DEQ rule concept: contract manufacturing

- “Manufacturing” an item includes directing manufacturing of an item.
- Setting specifications for an item’s packaging is considered directing manufacturing.
- Purchasing or ordering an item for retail sale in the normal course of business is not considered directing manufacturing.
- “The manufacturer’s own brand” includes any brand or trademark that the manufacturer wholly owns or co-owns according to the US Patent and Trademark Office.



Questions?

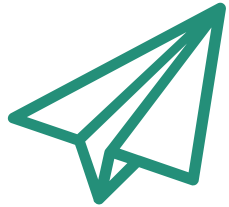


Next steps



- Connect with your networks
- Email any questions or feedback to:
recycling.2024@deq.oregon.gov
- Next RAC meeting is April 3, 2024
- Public comment period in June

More info



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Recycling 2024 Webpage:

<https://www.oregon.gov/deq/rulemaking/Pages/recycling2024.aspx>

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