



Oregon Department of Environmental Quality

## Summary

### Recycling Modernization Act Public Hearing 1

June 27, 2024, 11 a.m.- 12:10 p.m.

Via Zoom Webinar

## List of Attendees

1. DEQ Staff:
  - Hearing Officer: Cheryl Grabham
  - Rulemaking Coordinator: Roxann Nayar
  - Subject Matter Experts: Justin Gast, Nicole Portley, Arianne Sperry
  
2. Public: There were 118 people in attendance.

## Meeting Agenda

Time	Topic
11 a.m.	Welcome
	Rulemaking and rules overview
	Question and answer period
	Formal public comment period

## Meeting Overview

DEQ welcomed the meeting attendees and introduced the format and purpose of the public hearing. This was the first of two hearings being held on June 27, 2024. DEQ staff provided background information about the Recycling Modernization Act, the rulemaking and implementation timeline.

## Overview of Proposed Rules

Justin Gast, Nicole Portley and Arianne Sperry presented an overview of the proposed draft rules. Draft rule topics that were introduced included:

- Recycling Processor Obligations
- Covered Products
- Producer Responsibility Organization Obligations
- Producer Obligations
- Standards for Life Cycle Evaluations
- Local Government Obligations
- Amendments to Enforcement Rules (Division 12)

## Question and Answer Period

After the presentation of the draft rules, DEQ provided time for the audience to ask clarifying questions about the information provided.

### Translation or other formats

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1. Chris Cary, Food Northwest

Will producers that qualify for the Opportunity to Recycle exemptions still be required to report or provide documentation to the PRO? Or is there an obligation to prove they qualify for an exemption, and what would be required?

A: The draft rules propose clarifying the statutory exemption by requiring the producer demonstrate the end market receiving their products has been verified as meeting the responsible end market standards. This may be verified by an EQC-approved third-party certification program (although none currently exists) or the PRO.

2. Derek Sangston, Oregon Business and Industry

What analysis and legal research has DEQ conducted to establish that the agency has authority for the certification of out-of-state facilities, and how will DEQ implement enforcement?

A: DEQ already knows that there are only a couple of facilities outside of Oregon that are handling materials generated in Oregon. Third-party certifiers will be used to work with the out-of-state facilities, including overseeing assessments at the facilities related to the capture rate and outbound contamination rate performance standards. DEQ's enforcement authority will be on local governments, service providers and commingled recycling reload facilities, including limited sort facilities, that are transporting commingled recyclable material, collected to meet the purpose of Opportunity to Recycle, out of state for processing.

3. Sabrina Gogol, Metro Regional Government

Can DEQ provide examples or clarify how exempting entities that take legal but not physical possession of materials from the responsible end market standard with respect to environmental soundness will apply? Will it result in reporting gaps or issues with transparency and will it create challenges for enforcement?

A: The intent of the proposed rules is to clarify that entities that only take legal and not physical possession of materials need not demonstrate environmental soundness and adequate yield, because presumably there are no environmental or yield impacts associated with activities such as brokering materials without taking possession of them. However, brokers must still meet the other elements of the responsible standard (compliance and transparency).

4. Bob Fortner, Astro-Nought

Will the LCA rules require producer reporting in a computer or machine-readable format?

A: There is a section in the LCA rules that describes the reporting format. Currently these rules do not require an accessible summary be included in the report.

## Formal Public Comment Period

DEQ opened the formal public comment period at 11:43 a.m. The following speakers provided formal comments related to the proposed draft rules:

1. Mark Hudson, Agricultural Container Recycling Council

The ACRC is a non-profit trade association and stewardship program that promotes and funds the recycling of containers from commercial agricultural products. ACRC researches the responsible uses of these plastics. The ACRC is funded by member dues. The ACRC has more information about their activities online at [www.acrc.org](http://www.acrc.org).

The ACRC would like to comment on the proposed exemption related to the ACRC-managed containers. Adjuvants and surfactants were not included in the list of product exemptions in DEQ's rules, these are products are mixed with other agricultural products. However, they are applied for other uses, like for golf courses, which then would mean they would not qualify for this exemption. ACRC proposes that adjuvants and surfactants be added to the proposed rules, or, add the phrase, "and other products, like rigid HDPE packaging of commercial use pesticides, fertilizers, agricultural amendments and other products made by members of ACRC".

2. Gregory Melkonian, Serlin Haley

These comments are being provided on behalf of Ameripen, the American Institute for Packaging and the Environment. They have several members who operate in or import their products into Oregon. They are offering preliminary feedback on the draft rules: there is ambiguity in the definitions proposed food packaging and food serviceware. The Ready-to-Eat definition is somewhat vague. Ameripen is also concerned with the producer definition related to food serviceware packaging and are concerned that the base penalties for all violations are too high, particularly for minor violations. Instead, they recommend starting with a lower base and that the penalties are increased over time as the program matures. Regarding the LCA rules, they recommend including in-home refills under these rules. They encourage DEQ to solicit feedback on the implementation of the evaluations and to adapt them over time. They would like more clarity about the scope and timing of fees the PROs will collect from producers and the costs they will incur.

Ameripen will submit written comments later.

3. Bob Fortner, Astro-Nought

Proposes that DEQ consider including making the summary information for the LCAs be submitted in a in a computer readable format. In order to deliver this information to the public the information needs to be in a standardized format that computers can read.

4. Chris Cary, Food Northwest

Food Northwest represents food manufacturer and supply chain companies, many of which will become obligated producers under this new program. They recommend that DEQ consider the following: the cost impacts of the RMA are highly uncertain and producers need more clarity to understand the impacts to their budgets. The budget amounts have increased since the initial estimates and more information about how these new amounts has not been made clear. The PRO pre-registration rule seems premature, historical data should not be used to estimate initial producer fees. Food Northwest will provide these and other comments in writing.

The cost impacts of the RMA are highly uncertain and is challenging for producers to anticipate how to prepare for compliance. It is difficult for producers to make budgeting projects or consider packaging design while maintaining product quality and meeting customer needs. The half a million dollar budget projection by DEQ is much higher than originally estimated. There is not enough transparency about how the budget projections were calculated. The current estimates have significant market impacts.

The proposed timeline for the producer pre-registration rule is premature. It is not feasible or statutorily required that producers track their products before this date and historical data should not be used to assess their fees.

5. Derek Sangston, Oregon Business and Industry

OBI represents over 1,600 businesses that employ over 250,000 people, representing multiple sectors. OBI is concerned about DEQ's expansion about what it deems recyclable. The rules are still vague and there is not enough definition about what obligations producers will face in the program. This is evident in the PRO program plan. That there is only a single PRO potentially operating in Oregon eliminates the potential for competition in the system, and the implementation timeline does not give enough time for businesses to understand the costs or understand how to comply with the requirements. This timeline is too condensed.

6. Rocky Dallum, American Forest and Paper Association and Oregonians for Food and Shelter Provided comments for two organizations. First, for the AF&PA: Paper products has a high recovery rate and significant investments are being made in recovered paper. Significant investments have been made to improve recovery rates. DEQ should consider the cost of the program and oversight, and the requirement for specific oversight in the markets that already have high recovery rates and who already use responsible end markets. They are concerned that the proposed rules may negatively impact the materials that already have high recovery rates, about the timelines, and the time to review the scope of the program plan will not provide enough time for producers to review and understand the requirements.

As a representative for OFS, a trade association representing timber and agricultural industries, they want to reiterate and support the comments already shared by Mark Hudson from ACRC. More detailed comments on both topics will be provided to DEQ in writing later.

7. Carol Patterson, Food Packaging Institute  
FPI is the only industry trade association in North America solely focused on food service packaging. FPI would like to comment on the new proposed introduction of new definitions for packaging types including service packaging and consumer wraps, and the new proposed definitions for the associated producer categories. It is their view that the introduction of these new definitions will not provide clarity to distinguish between food serviceware and packaging. These definitions create new obligations that are not consistent with statute and will cause confusion. Adjustments to the current definition of producers is also needed.

FPI also asks that DEQ provide more information in the proposed rules about the sequencing about the payment of fees to the PRO and the reimbursement costs from the PRO with the elements described in the proposed rules. FPI will provide more detailed comments in writing later.

8. Sabrina Gogol, Metro Regional Government  
Metro has recommendations for the General Requirements section of the proposed rules, where DEQ should add compliance milestones for local governments to complete in the first five to 10 years of implementation. This timeline is suggested because it is often the amount of time it will take to implement changes for multifamily service.

Metro would like DEQ to add more rule language for transparency and accountability for the amount CRPFs are charging haulers, to protect rate payers. Metro recommends that DEQ strengthen rules about the transparency and effectiveness of contamination reduction programming. This includes adding language about tracking how collected fines will be used and retaining a five-year record of the addresses to support equitable evaluation of how the program is working.

Regarding the Recycling Acceptance Lists rules, Metro would like non-metallized gift wrap to be kept on the list.

Metro would like to see a reduction of the burden on local governments by keeping certain materials commingled on the USCL as alternative options mature.

Metro would like DEQ to set a progressively shorter timeline for the detailed responsible end market assessments, as the program matures. Twelve months in perpetuity is a long time between assessments. They are also concerned that there is any moment in the movement of materials where the documentation of environmental soundness is not required, because it will impact the ability for DEQ to enforce. Metro would like as much of the information about materials tracking be available for local governments.

Metro recommends removing the cap on the waste prevention and reuse fee cap since the fee is already bound in statute by the 10 percent calculation.

Finally, Metro recommends closing the gaps in the living wage and supportive benefits requirements so that all workers are included, and that the living wages are paid to directly to the worker and not to a third party.

DEQ closed the formal public comment period at 12:08 p.m. and adjourned the meeting at 12:10 p.m.

## Contact

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