State of Oregon Department of Environmental Quality

Written Comments- Part 2

Plastic Pollution and Recycling Modernization Act Rulemaking 2

This document is a compilation of written comments received during the formal public comment period for the Plastic Pollution and Recycling Modernization Act 2024 Rulemaking.

Comments

Translations or other formats

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Contact: 800-452-4011 | TTY: 711 | deqinfo@deq.state.or.us

Flexible Packaging Association
Connecting. Advancing. Leading.

185 Admiral Cochrane Drive
Suite 105
Annapolis, MD 21401

Tel (410) 694-0800
Fax (410) 694-0900

www.flexpack.org

July 26, 2024

State of Oregon Department of Environmental Quality
Plastic Pollution & Recycling Modernization Act, Rulemaking 2
Submitted Electronically at recycling.2024@deq.oregon.gov

The Flexible Packaging Association (FPA) is submitting in response to the Department of Environmental Quality's Plastic Pollution & Recycling Modernization Act Second Rulemaking, which aims to implement the extended producer responsibility (EPR) program outlined in the Plastic Pollution and Recycling Modernization Act of 2021.

I. Background on FPA & Flexible Packaging

I am John Richard, Director of Government Relations at FPA, which represents flexible packaging manufacturers and suppliers to the industry in the U.S. Flexible packaging represents $43 billion in annual sales; is on par with corrugated carboard as the largest and fastest growing packaging type in the U.S.,; and employs over 81,000 workers in the United States. Flexible packaging is produced from paper, plastic, film, aluminum foil, or any combination of these materials, and includes bags, pouches, labels, liners, wraps, rollstock, and other flexible products.

These are products that you and I use every day—including hermetically sealed food and beverage products such as cereal, bread, frozen meals, infant formula, and juice, as well as sterile health and beauty items and pharmaceuticals, such as aspirin, shampoo, feminine hygiene products, and disinfecting wipes. Even packaging for pet food uses flexible packaging to deliver fresh and healthy meals to a variety of animals. Flexible packaging is also used for medical device packaging to ensure that the products packaged, like diagnostic tests, IV solutions and sets, syringes, catheters, intubation tubes, isolation gowns, and other personal protective equipment maintain their sterility and efficacy at the time of use. Trash and medical waste receptacles use can liners to manage business, institutional, medical, and household waste. Carry-out and take-out food containers and e-commerce delivery, which became increasingly important during the pandemic, are also heavily supported by the flexible packaging industry.

Thus, FPA and its members are particularly interested in solving the plastic pollution issue and increasing the recycling of solid waste from packaging. While FPA greatly applauds the progress the Department of Environmental Quality has made, there are still several changes necessary to provide Oregonians with a durable, effective EPR program.

Flexible packaging is in a unique situation as it is one of the most environmentally sustainable packaging types from a water and energy consumption, product-to-package ratio, transportation efficiency, food waste, and greenhouse gas emissions reduction standpoint, but circularity options are limited. There is no single solution that can be applied to all communities for the best way to collect, sort, and process flexible packaging waste. Existing equipment and infrastructure influences viability; material collection methods and rates; volume and mix; and demand for the recovered material. Single-material flexible packaging, which is approximately half of the flexible packaging waste generated, can be mechanically recycled through store drop-off programs; however, end markets are scarce. The other half can be used to generate new feedstock, whether through pyrolysis, gasification, or fuel blending.

source reduction
less waste in the first place.®

Developing end-of-life solutions for flexible packaging is a work in progress, and FPA is partnering with manufacturers, recyclers, retailers, waste management companies, brand owners, and other organizations to continue making strides toward total packaging recovery. Some examples include The Recycling Partnership (TRP); the Materials Recovery for the Future (MRFF) project; the Hefty® ReNew® Program; the Consortium for Waste Circularity, and the Flexible Film Recycling Alliance (FFRA). All of these programs seek to increase the collection and recycling of flexible packaging. Increasing the recycled content of new products will not only create markets for the products but will also serve as a policy driver for the creation of a new collection, sortation, and processing infrastructure for the valuable materials that make up flexible packaging.

It is FPA's position that a suite of options is needed to address the lack of infrastructure for non-readily recyclable packaging materials and promotion and support of market development for recycled products is an important lever to build that infrastructure. FPA also supports well-crafted EPR that can be used to promote this needed shift in recycling in the U.S. In fact, FPA worked with the Product Stewardship Institute (PSI) and jointly drafted a set of principles to guide EPR for flexible packaging (FlexPack.org/end-of-packaging-life). The dialogue looked at the problems and opportunities for EPR to address the needs of the flexible packaging industry to reach full circularity.

It is with this background that FPA provides these comments to improve the Plastic Pollution and Recycling Modernization Act rulemaking.

II. Life Cycle Analysis Should Utilize Unbiased Metrics

As currently drafted, the regulation correctly identified life cycle analysis as the best method for determining material fees and impacts. Unfortunately, OAR 340-090-0930's Table of Weighting Factors includes metrics that specifically evaluate plastic when all materials could be evaluated equally. For example, the category "plastic physical impact on aquatic biota" is important, but all materials should be subject to the same evaluation. Aluminum, paper, and glass all have well-documented effects on marine life and should be evaluated similarly to provide the best data to regulators.[1,2,3] FPA and its members request that the categories be made material-neutral in the Department's next draft.

III. "Credible Evidence" of Unintentionally Added PFAS Should Be Further Defined

Because the threshold for the Department of Environmental Quality (DEQ) to presume PFAS as intentionally added is "any total fluorine," the onus is on producers to document and provide evidence that PFAS has only been used as processing aids, mold release agents, and in other non-material applications. FPA and its members request further explanation on the documentation that DEQ will consider "credible evidence" before these regulations are finalized.

IV. "Ready to Eat" Definition for Food Serviceware is Vague & Difficult to Implement

OAR 340-090-0840 (1)(b)(D)(d) defines food serviceware as "used to contain or consume food or drink that is ready to eat." In order to identify which products would be subject to the EPR framework, a clear definition of "ready to eat" must be provided. While some products like uncooked meat are self-

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[1] U.S. EPA, "Aquatic Life Criteria – Aluminum," (Washington D.C., 2024). https://www.epa.gov/wqc/aquatic-life-criteria-aluminum.

[2] Sing & Chandra, "National Institutes of Health: Pollutants released from the pulp paper industry: Aquatic toxicity and their health hazards" (Washington D.C., 2019). https://pubmed.ncbi.nlm.nih.gov/31029991/.

[3] Kumari, Agarwal, and Khan, "Micro/nano glass pollution as an emerging pollutant in near future" (Washington D.C., 2022). https://www.sciencedirect.com/science/article/pii/S2772416622000201.

explanatory, fresh fruit and vegetables pose a more difficult challenge. It is also important to note that FPA's members sell film to grocery stores and have no knowledge of how that film is used or on what products. Being multiple steps removed from the actual application of the material makes it nearly impossible to accurately quantify our members' obligation as a producer of this material.

IV. Trash Bags Are Fundamentally Incompatible With EPR

FPA and its members strongly support EPR programs to create much-needed infrastructure for our products to achieve circularity. In OAR 340-090-0840 Covered Products (1)(a), DEQ interprets Section 2 (18)(a)(C) of the Plastic Pollution and Recycling Modernization Act to include garbage bags as "packaging" by listing them as "materials used in storage." This is antithetical to the principles of EPR. The OECD, UN, WWF, and Ellen MacArthur Foundation all agree that EPR is not a tax, but rather a fee that pays for a service.[4] Trash bags are by their nature destined for landfill and should not have to pay a fee for recovery infrastructure unless the Department of Environmental Quality is pioneering a program to collect and recycle bags from landfills. FPA and its members request that they be removed from the packaging covered under Oregon's EPR program.

VII. Conclusion & Next Steps

We welcome the opportunity to connect with you in order to achieve these changes. In advance, thank you for your consideration. If we can provide further information or answer any questions, please do not hesitate to contact me at (443) 534-3771 or jrichard@flexpack.org.

Respectfully,

John J. Richard
Director, Government Affairs
Flexible Packaging Association

[4] OECD Environment Policy Paper No. 41, "Extended Producer Responsibility: Basic facts and key principles," (Paris, 2024). https://www.oecd.org/en/publications/extended-producer-responsibility_67587b0b-en.html

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July 26, 2024

Oregon DEQ
700 NE Multnomah Street, Suite 600
Portland, Oregon 97232-4100

Submitted via email to recycling.2024@deq.oregon.gov

RE: Recycling Modernization Act Rulemaking 2

Dear Oregon Department of Environmental Quality:

I am writing to you today to reiterate the significant concerns I shared in a phone call with DEQ staff on the RMA Rulemaking 2.

Trex is one of the largest recyclers of polyethylene (PE) film bags, wraps and packaging in North America and recycles nearly 100% of its production scrap back into its process. TREX has successfully and responsibly processed more than 5 billion pounds of materials since its founding, including materials from Oregon programs. We are the primary market that would process and recycle the PE film bags to be collected under the proposed depot list.

TREX is a responsible domestic market, the exact type of market this program should be incentivizing and expanding. **Instead, these regulations would make it more challenging for us to do business in Oregon without any benefit to our operations. The additional burden and cost would cause us to question whether we could meet the regulatory burden and continue buying materials from Oregon.** Plastic film is aggregated at supermarkets and other drop-off sites across the Northwest. It is not possible to pinpoint each load from Oregon or a specific location because of the consolidation process. Reasonable expectations must be considered on the data based on actual operations and from discussions with responsible recyclers.

Annually, TREX publishes its ESG reports on its website (https://www.trex.com/why-trex/sustainability/) and complies with local and state permitting. We are a responsible recycler, capable of expanding our operations to help increase recycling in Oregon as demand grows for our recycled content products.

Oregon could implement a simplified, streamlined process to fast-track responsible recyclers such as TREX, like a simple checklist akin to the state's OSHA compliance. In addition, greater integration with business operations and real-world data would be more helpful.

TREX recently announced a new facility for 2026, highlighting our commitment to continue to use post-consumer recycled materials in domestic remanufacturing. We need states to make it easier for us to collect post-consumer PE film as market demand for recycled products increases. We urge you to revise these regulations so we can stay committed to buying materials from Oregon and responsibly recycling them into new products.

Thank you,

David W. Heglas

Sr. Director, Recycled Materials

Trex Company, Inc.

2500 Trex Way

Winchester, VA 22601

July 26, 2024 *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 2

The Household & Commercial Products Association (HCPA)[1] appreciates the opportunity to provide input on the second rulemaking of the implementation of Oregon's Plastic Pollution and Recycling Modernization Act (RMA) of 2021[2]. 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 repellant, 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 340-012-0098, Classification of Violations for ORS 459A.860 to 459A.975 and related rules

HCPA is concerned that OAR 340-012-0098(2)(c) would disallow the Producer Responsibility Organization (PRO), material recovery facilities (MRF), and local governments in Oregon from participating in a pilot program to test the recyclability of any materials being considered for potential future inclusion on the Uniform Statewide Collection List. This provision designates "accepting or promoting for acceptance into a commingled recycling program a material that is not identified on the uniform statewide collection list" as a Class II violation. Pilot programs to assess the benefits and risks associated with accepting a new material into commingled recycling programs are key to making informed decisions, building confidence in introducing new materials, and increasing recycling overall. If stakeholders are not allowed under any circumstances to accept materials not identified on the uniform statewide collection list into a commingled recycling program, there is no way for them to engage in such a pilot program. This is a significant barrier to adding any new materials to the uniform statewide collection list. HCPA recommends that Oregon add language to OAR 340-012-0098(2)(c) as follows: "accepting or promoting for acceptance into a commingled recycling program a material that is not identified on the uniform statewide collection list, unless otherwise authorized by DEQ" in order to allow for the possibility of DEQ reviewing and approving a pilot program.

OAR 340-090-0035, Contamination Reduction Programming Elements

HCPA is concerned that OAR 340-090-0035(3)(a)(B)(i) describes all aerosol containers as hazardous contaminants in recycling although aerosols are included on the PRO Recycling Acceptance List. It is unclear to HCPA why aerosol containers are specifically called out in this section while other materials on the PRO Acceptance List or otherwise collected for recycling outside of curbside collection are not. HCPA requests that DEQ remove the reference to aerosol containers in this section.

OAR 340-090-0690 Producer Responsibility Organization Fees; OAR 340-090-0820, Processor Commodity Risk Fee; OAR 340-090-0830, Contamination Management Fee

HCPA appreciates that DEQ is required by statue to develop provisions for several different PRO fees and has dedicated significant time and resources to determining the fee structures and amounts. HCPA respectfully requests that DEQ provide clarity in the rules on the timing of payments from producers to the PRO to cover these different fees and in turn payment from the PRO to the designated receivers of these fees. HCPA encourages DEQ to strive to provide the same level of clarity as is given for the Program Plan Review Fee and Annual Administrative Fee. For example, it does not appear to be clear what year the PRO must first pay the Waste Prevention and Reuse Fee, or what happens if the first due date is prior to a three-year average of the PRO's expenditures being available for use in a cost calculation.

HCPA also requests clarity on the earliest date by which the PRO is expected to begin paying the Processor Commodity Risk Fee described in OAR 340-090-0820 and the Contamination Management Fee described in OAR 340-090-0830 and how these variable monthly fees relate to the anticipated annual fee required to be paid to the PRO by producers.

HCPA additionally recommends that DEQ make the following modification to OAR 340-090-0690(4)(d), which would enable DEQ to use the Waste Prevention and Reuse Fund to fund improvements related to use of refillable items as well as reusable items should DEQ in the future decide this is necessary: "Reusable and refillable items that allow for a reduction in the environmental impacts of covered products."

HCPA recommends that DEQ include a provision that would require DEQ to provide a complete accounting each year of costs incurred in the prior year relating to activities paid for using the Waste Prevention and Reuse Fund. This requirement should contribute to demonstrating that the Waste Prevention and Reuse Fund is only being used for activities described in ORS 459A.941 and OAR 340-090-0690(4).

HCPA is concerned that OAR 340-090-0830(3), which defines eligible material for the Contamination Management Fee, would disincentivize the PRO from participating in a pilot program to test the recyclability of any materials being considered for potential future inclusion on the Uniform Statewide Collection List. This section identifies any material not on the Uniform Statewide Collection List that is in commingled recycling as eligible for the Contamination Management Fee. As a result, any attempt by a PRO to collaborate with a MRF and municipality to run a pilot program for a new material would leave the PRO open to be later charged a substantial contamination management fee by the MRF, even if the MRF agrees to participate in the pilot program. HCPA recommends that DEQ add the following provision under OAR 340-090-0830(b) in order to allow for the possibility of DEQ-approved pilot programs: "(E) Any material that is not listed on the Uniform Statewide Collection List and is authorized by DEQ for inclusion in the inbound stream at a commingled recycling processing facility."

OAR-340-090-0700, Market Share

DEQ refers to "interim modified market share" multiple times throughout the draft rules but deleted the definition for this term in OAR-340-090-0700(3) of the current draft. DEQ additionally uses the terms "preliminary modified market share" and "final modified market share" but does not provide definitions for these terms either. HCPA respectfully requests that DEQ clarify what is meant by "interim modified market share," "preliminary modified market share," and "final modified market share" and how or if these will be used differently than non-modified market shares.

OAR 340-090-0840, Covered Products

HCPA appreciates the inclusion of an exemption for returnable or refillable commercial use pesticide products but is concerned that the targeted pesticide product exemptions in OAR 340-090-0840(2)(d) will increase consumer and worker confusion about how to appropriately dispose of pesticide products and unintentionally penalize companies instead of encouraging the adoption of new, more sustainable innovations for pesticide product packaging. HCPA recommends that DEQ broaden the exemptions to include all pesticide products subject to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

The primary objective of FIFRA is to ensure that, when applied as instructed, pesticides (including disinfectants and pest management products) will not generally cause unreasonable risk to human health or the environment. To reach this objective, FIFRA includes provisions that require the U.S. Environmental Protection Agency (EPA) to establish several programs, including for packaging, labeling, storage, disposal, and transportation, as described in 40 CFR § 156 (labeling), 157 (child-resistant packaging), and 165 (nonrefillable containers, other packaging requirements).

In addition to the specific constraints described above, all product packaging and labeling for FIFRA-regulated products, including changes to existing product packages and labels, must undergo EPA review prior to being sold in order to ensure compliance with the above-described sections as well as other expansive FIFRA requirements. This review can take years and there is no guarantee that EPA will approve the proposed changes.

Further, some requirements under FIFRA apply to all pesticide products, such as label standards. Others only apply to those that meet certain criteria, such as nonrefillable container, refillable container, repackaging, and child-resistant packaging regulations. There is significant complexity in distinguishing which products meet which criteria, particularly at the level of the typical consumer and worker trying to decide how to dispose of a container.

Consumers and workers often cross state lines in the course of transitioning between the various parts of their lives (for example, living in one state and working in another). Regional uniformity is important to promote consumer and worker confidence in how to appropriately

dispose of products, and particularly so for pesticide products given the inherent complexity already associated with their disposal. HCPA recommends that Oregon stay consistent with California and Colorado, both of which have excluded all FIFRA-regulated products from their EPR programs, and exempt all federally regulated pesticide product containers instead of specific subsets.

OAR 340-090-0900, Life Cycle Evaluation Definitions

HCPA recommends that the definitions referencing reusable packaging be modified to also include packages that are refilled by the consumer in the home. Refill-at-home is an important and viable reuse model in addition to returnable packaging. As written, the life cycle analysis (LCA) provisions would selectively incentivize return-and-reuse models over refill-at-home models, and HCPA is concerned that this would negatively impact the holistic improvement of reuse and refill pathways in Oregon. Specifically, HCPA recommends that the definition of "break-even point" in OAR 340-090-0900(4) and "reusable packaging" in OAR 340-090-0900(37) be modified accordingly and suggests that Oregon look at how California incorporates refill along with reuse into its EPR program as an example.

HCPA additionally recommends that the definition of "hazardous substance" in OAR 340-090-0900(16) be modified to remove the references to targeted lists of chemicals that are specific to products other than packaging or are reporting requirements only, not restrictions. For example, OAR 333-016-2020 is a list of chemicals that may be of concern when used in *children's products* and is a reporting requirement intended to fill data gaps, not a restriction. ORS 431A.345(1)-(2) is a list of chemicals that are restricted in *cosmetic products*. It is scientifically inaccurate to apply these lists, which were developed with specific products and target users in mind, as a blanket standard for the wide range of products included in Oregon's EPR program. Instead, HCPA recommends that DEQ use the existing definition of toxic materials in OAR 340-090-0010(45) to also define hazardous substance for the LCA purposes, which references DEQ's Toxics Focus List[3] and allows DEQ to designate additional substances if the department feels there is a need: "Hazardous substance means chemicals that are on DEQ's Toxics Focus List or that DEQ otherwise designates as "toxic" ~~considered hazardous in consumer products in Oregon through their designation as a high priority chemical of concern to children pursuant to OAR 333-016-2020, or as a chemical pursuant to ORS 431A.345(1)-(2) or OAR 333-016-2020~~."

HCPA recommends that the definition of "intentionally added" in OAR 340-090-0900(20) be modified as follows, as producers are aware of when they intentionally add a chemical regardless of quantification limit or other circumstances:

- "Intentionally-added means a ~~hazardous~~ substance that serves a technical or functional purpose in the finished ~~deliberately used in the formation of a~~ covered product where its

[3] https://www.oregon.gov/deq/Hazards-and-Cleanup/Documents/toxicsFocusListChem.pdf

continued presence is desired in the finished product to provide a specific characteristic, appearance, or quality."

- ~~"(a) The use of a hazardous substance as a processing agent, mold release agent or intermediate is considered intentional introduction where the hazardous substance is present at a concentration above the practical quantification limit in the finished product."~~
- "(b) The use of PFAS is presumed intentional if any total organic fluorine is present in the finished covered product. Producers may rebut this presumption by providing credible evidence to demonstrate that PFAS were not intentionally added.
- "(c) The use of flame retardants is presumed intentional if a hazardous substance that belongs to this chemical class is present in the finished covered product at a concentration above 1,000 parts per million. Producers may rebut this presumption by providing credible evidence to demonstrate that the flame retardant was not intentionally added."

HCPA recommends removing the definition of "practical quantification limit" in OAR 340-090-0900(31). This term is only used to reference the level to which intentionally added hazardous substances must be disclosed in OAR-340-090-0940(1), but if a substance is intentionally added, a producer will know it is there regardless of level and there does not appear to be a value to adhering to a practical quantification limit.

OAR 340-090-0910, Scope and Applicability

HCPA recommends that DEQ adjust the identification of the top one percent of covered products subject to LCA evaluation and disclosure in this section to be consistent with the framework for producer reporting and fees. Specifically, HCPA recommends that the method of identification for these products be based on packaging weight as well as sales volume, consistent with OAR 340-090-0700(1)(b) which calculates a producer's market share by weight of covered products. Additionally, HCPA recommends that DEQ specifically reiterate in this section that producers are allowed to use estimated market data if they provide methodology and methodological justification, consistent with OAR 340-090-0700(1)(d)-(e).

OAR 340-090-0940, Additional Environmental and Human Health Information

As discussed above, HCPA recommends removing references to the term "practical quantification limit" in OAR 340-090-0940(1) since a producer will have information on all intentionally added substances regardless of hazard level and quantification limit: "The evaluation must include a list of the material content of the covered product that, at a minimum, states any intentionally-added ~~hazardous~~ substances in the covered product ~~that are at or above practical quantification limits~~, as well as any contaminant hazardous substances in the covered product at concentrations above 100 parts per million.

Conclusion

HCPA thanks DEQ for the opportunity to provide input on the second 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 continuing to engage with DEQ to support the success of RMA implementation. We invite any questions about this submission and look forward to DEQ's response.

Sincerely,

Molly R. Blessing
Vice President, Sustainability & Product Stewardship

AMERIPEN
The power of packaging in balance™

1350 Main Street • Suite 1100 • Springfield, Massachusetts 01103
Phone: +1 413-686-9198

July 26, 2024

Submitted via email: recycling.2024@deq.oregon.gov

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

RE: Plastic Pollution and Recycling Modernization Act Rulemaking #2 – Comments

Dear Ms. Nayar,

AMERIPEN – the American Institute for Packaging and the Environment – appreciates the opportunity provided by the Oregon Department of Environmental Quality ("Department" or "DEQ") to submit written comments during the formal comment period on the draft rules of the second rulemaking for the Plastic Pollution and Recycling Modernization Act ("RMA.") AMERIPEN respectfully submits these written comments for DEQ's consideration when updating and finalizing the proposed regulations.

AMERIPEN is a trade association dedicated to improving packaging and the environment. We are the only material-inclusive packaging association in the United States representing the entire packaging supply chain. This includes materials suppliers, packaging producers, consumer packaged goods companies, retailers, and end-of-life materials managers. Our membership also includes a robust array of industry, material, and product-specific trade associations who are essential to the AMERIPEN fabric. We focus on science and data to define and support our public policy positions, and our advocacy and policy engagement is based on rigorous research rooted in our commitment to achieve sustainable packaging policies. We have several member companies with a significant presence in Oregon, and many more who import packaging materials and products into the state. The packaging industry in Oregon supports over 18,000 jobs and accounts for $5.45 billion in total economic output.

AMERIPEN supports policy solutions, including packaging producer 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.
- **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.

1350 Main Street • Suite 1100 • Springfield, Massachusetts 01103
Phone: +1 413-686-9198

The below written comments and clarifying questions from AMERIPEN, ordered by rule section in Chapter 340 of the Oregon Administrative Rules (OAR), speak to the contents of the draft regulatory text released by DEQ on May 29, 2024.

DIVISION 12 – ENFORCEMENT PROCEDURE AND CIVIL PENALTIES

340-012-0098 – Classification of Violations for ORS 459A.860 to 459A.975 and related rules

As a technical note, DEQ should adjust § 340-012-0045(1)(a) to reflect the addition of § 340-012-0098. The end of subparagraph § 340-012-0045(1)(a) should be amended as follows: "…to 340-012-00~~97~~98."

As used in subparagraph (1)(d), AMERIPEN seeks clarification about the meaning of "allowing to be delivered." It is unclear when an entity or entities would be responsible for "allowing to be delivered" commingled recyclables to a noncompliant commingled recycling processing facility (CRPF). Generally, such an occurrence would happen outside of the control of producers and a producer responsibility organization (PRO), so AMERIPEN urges this provision be appropriately tailored to reflect realistic circumstances.

OAR 340-012-0140 – Determination of Base Penalty

Subparagraph (1)(a)(Z) subjects PROs, producers, persons that have or should have a permit for a CRPF or limited sort facility (LSF), and local governments with a population of 25,000 or more to the $12,000 Penalty Matrix. Since § 340-012-0098 classifies all RMA violations as a Class I or Class II violation, penalties would range from $1,500 to $12,000. This range is rather high and would be punitive, especially for relatively minor violations or violations with limited impact. AMERIPEN requests the Department use a lower matrix, at least during the initial years implementing the program, so these entities have an opportunity to develop their compliance capacity without severe fiscal impact. DEQ could also implement a phased-in approach where the applicable matrix is graduated over time.

DIVISION 90 – RECYCLING AND WASTE REDUCTION

OAR- 340-090-0010 – Definitions

Paragraph (6) provides a definition of "commingled materials" that, among other things, identifies two subsets of materials on the Recycling Acceptance Lists. The first such subset excludes OAR 340-090-0630(2)(d) ("Polycoated cartons (for example milk cartons) and aseptic cartons.") It is unclear why the materials are bifurcated into the two lists, and why polycoated cartons and aseptic cartons are excluded. AMERIPEN seeks the Department's justification for this approach.

1350 Main Street • Suite 1100 • Springfield, Massachusetts 01103
Phone: +1 413-686-9198

OAR 340-090-0030 – General Requirements

Subparagraph (7)(b) sets the deadline for local governments to begin implementing measures to ensure adequate space for the recycling collection of materials identified on the uniform statewide collection list (USCL) at multifamily properties. This is delayed from the original deadline of July 1, 2026, in rulemaking #1, with an unspecified deadline for full implementation. While it is understandable that local governments may need more time to conduct this provision, AMERIPEN is concerned that the new language will delay collection of USCL materials despite PRO investments to facilitate their collection. At the very least, AMERIEPN requests additional language to this subparagraph to empower DEQ to oversee progress in implementing local government implementation plans and to enforce against unreasonable delays.

OAR 340-090-0035 – Contamination Reduction Programming Elements

The last sentence of subparagraph (3)(a)(C) restricts the imposition of financial and service consequences on a customer by a local government or local government's service provider by, among other things, requiring contamination to be "documented as significant and occur at least three times within a consecutive three-month period." This could create too stringent of a standard for local governments and service providers, whereby they may never realistically be able to penalize behavior that contributes to contamination (no matter how severe). AMERIPEN therefore recommends amending the sentence to read, "documented as significant and occur at least three times within a consecutive three-month period **or at least six times within a 12-month period**."

OAR 340-090-0630 – Recycling Acceptance Lists

AMERIPEN appreciates the clarification added to subparagraph (2)(e) stating that food serviceware "designed to be in direct contact with food" is excluded from the "molded pulp packaging" category.

AMERIPEN appreciates the addition to subparagraph (2)(k) of "other non-food cans," reflecting the acceptability of all types of aluminum cans.

AMERIPEN appreciates the deletion of "through recycling depot or mobile events" in paragraph (3), preserving flexibility for PROs to use different collection methods.

Paragraph (6) would allow a local government to continue collecting PRO Acceptance List materials that it already collects if the PRO has not met certain conditions, subject to DEQ approval. While this continuity of service may prove beneficial for recycling performance, it could also be disruptive to the rollout of PRO activities. AMERIPEN requests that a local government interested in pursuing this option consult with all PROs before submitting a

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request. AMERIPEN also seeks clarification as to whether the local governments' actions under an approved request would be eligible for PRO reimbursement.

OAR 340-090-0670 – Responsible End Markets

AMERIPEN remains concerned with the responsible end market definition under subparagraph (1)(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 processes flake, pellet, or other resin material 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 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). Furthermore, recyclers may be unwilling or unable to disclose customer information, which would foreclose the ability to use their recycling capacity. Finally, this separate end market location creates an inconsistency amongst packaging producers that in effect creates a higher level of burden or disincentive for their products. 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.

AMERIPEN seeks the Department's rationale for the addition of subparagraph (2)(b)(D)(i), providing a separate yield requirement for certain paper types.

Subparagraph (2)(c)(D)(v) adds a requirement to calculate yield separately for any materials "counted toward the statewide plastic recycling goal." As the yield calculation is a distinct measurement from the plastic recycling goal, for which the calculation is governed by ORS 459A.926(5), it unnecessary and excessive to require this additional yield calculation. AMERIPEN recommends striking the addition proposed in this subparagraph.

AMERIPEN supports the addition of paragraph (3)(e) to create a more efficient program and to avoid duplication of efforts and creation of unnecessary costs. Similarly, AMERIPEN supports the documentation exemptions added in subparagraph (3)(g)(C).

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AMERIPEN appreciates the flexibility provided in subparagraph (6)(c)(C) by not requiring reporting for de minimis amounts of individual dispositions to end markets and other locations of final disposition.

OAR 340-090-0640 – Convenience Standards

Subparagraph (6)(c)(D) requires DEQ to additionally assess an alternative compliance proposal against "environmental outcomes." As there is no evaluation of the default convenience standards based on environmental outcomes, this proposed assessment is unjustified. AMERIPEN therefore recommends deletion of this provision.

OAR 340-090-0690 – Producer Responsibility Organization Fees

Regarding subparagraph (3)(a), AMERIPEN appreciates the cap on the annual waste prevention and reuse fee of $15 million after 2025 and the authority for DEQ to reduce the fee annually at its discretion.

In paragraph (4), AMERIPEN recommends the addition that the proposals determined to be the most cost effective will receive priority for funding from the Waste Prevention and Reuse Fund. Additionally, AMERIPEN requests that DEQ conduct a regular lookback assessment on prior use of funding every five years. AMERIPEN also requests that the allowance for the funding to be used for DEQ's administrative expenses (subparagraph (a)) and for indirect costs and overhead each (subparagraph (n)) be capped at 5% of total funds expended each year. Together, these provisions will help ensure funds are maximized and used in an appropriate manner.

Separately, AMERIPEN seeks clarity about what types of activities would be covered by the "Repair and lifespan extension of covered products" category in subparagraph (e). It is not clear that such projects would be effective or even feasible, but it would be helpful for the Department to share potential examples.

OAR-340-090-0700 – Market Share

The last sentence of subparagraph (4)(b) states that, "A producer responsibility organization will set producer fees using supply data from two years prior." This sentence could benefit from clarity about the timing it contemplates. For example, if the intention is that fees paid for 2028 would be based on 2026 supply data, the sentence could be clarified as follows: "A producer responsibility organization will set producer fees **for a prospective year** using supply data from two years prior **to applicable program calendar year**."

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OAR 340-090-0810 – Local Government Compensation and Invoicing

Paragraph (2), pertaining to funding and reimbursement for contamination-related work, lacks prioritization of funding uses or consideration of which activities are most cost-effective. To maximize the use of program funding, AMERIPEN recommends adding a provision to require the PRO to conduct a cost-benefit study of contamination reduction activities and prioritize the most cost-effective activities. This study could be conducted after the completion and funding of contamination-related activities during the first program plan period to then inform priorities for future funding. AMERIPEN is also aware that the Circular Action Alliance is developing a contamination evaluation protocol and we are supportive of DEQ evaluating their proposed approach as an alternative way to systemically evaluate and manage contamination.

Paragraph (5) allows local governments (or their service provider or other authorized person) serving up to 50,000 people to "request and receive up to two years of advanced funding for contamination reduction programming." There is ambiguity as to how this request process would work, so it would be helpful to specify that the PRO should be empowered to review the requests and grant them if appropriate.

OAR 340-090-0820 – Processor Commodity Risk Fee

As a technical note, in subparagraphs (3)(b)(B)(ii), (iii), and (iv), references to other subparagraphs within the subsection should be corrected to utilize Roman numerals for consistency.

AMERIPEN appreciates the thoughtful approach in subparagraph (3)(c)(E) to provide a contingency should a secondary source for a commodity market value become unavailable.

Subparagraphs (4)(c) and (d) prohibit a CRPF from including on an invoice any amount of commingled recycling which originated outside the State of Oregon and any amount of non-commingled recycling handled by the facility, respectively. For the RMA program to function properly, it is critical that these prohibitions are followed. AMERIPEN recommends the Department provide ample enforcement of these provisions and consider additional provisions to provide oversight, such as regular reviews or audits to verify the invoice data.

AMERIPEN appreciates the authority for the PRO to conduct assessments of facility-specific data and the requirement for CRPFs to reimburse PROs for non-compliance, as provided in subparagraph (5)(b).

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OAR 340-090-0830 – Contamination Management Fee

Under subparagraph (3)(a)(B), "eligible material" is defined to include "Any covered product that is included in the Uniform Statewide Collection List but which was improperly prepared by system users to the point the material is difficult for the processing facility to handle or market." "Difficult" is a vague term that may complicate the implementation of the contamination management fee for all parties involved. To help clarify the definition, AMERIPEN recommends amending the subparagraph as follows: "Any covered product that is included in the Uniform Statewide Collection List but which was improperly prepared by system users to the point the material ~~**is difficult**~~ **requires significant additional effort** for the processing facility to handle or market."

AMERIPEN appreciates the authority for the PRO to conduct assessments of facility-specific date and the requirement for CRPFs to reimburse PROs for non-compliance, as provided in subparagraph (5)(c).

OAR 340-090-0840 – Covered Products

While AMERIPEN acknowledges the Department's efforts in this rulemaking to clarify and distinguish the scope of "packaging" and "food serviceware," there is still vagueness between the definition of the two categories.

For example, "service packaging" as proposed in paragraph (b) includes "items such as paper used to separate slices of cheese, and used by a retailer for packaging cheese, tofu, produce, meat, and fish." In paragraph (d), "food serviceware" is defined as being "used to contain or consume food or drink that is ready to eat[...] regardless of whether the item is used to prepackage food for resale, is filled on site for food ordered by a customer or is resold as is." "Paper used to separate slices of cheese" are explicitly considered "service packaging," but can also be "used to contain […] food […] that is ready to eat." Furthermore, "ready to eat" can be interpreted in different ways: (1) can be consumed safely as is "e.g., raw vegetables) or (2) does not require further preparation for consumer consumption (e.g., take-out food). These are just two examples of how these definitions overlap and create a risk of confusion in implementation and enforcement. In tandem with changes we propose for OAR 340-090-0860, AMERIPEN recommends elimination of the separate "service packaging" definition to avoid the overlap and potential confusion.

Subparagraph (2)(a) excludes "[p]ackaging that is used for the long-term (five or more years) storage of a product with a lifespan of three or more years" from being considered "covered products." The lifespan of a product is immaterial to whether packaging is actually used or usable for storage in the long term (i.e., five years). The performance of the packaging, rather

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than the underlying product, is what is under consideration. Therefore, AMERIPEN recommends deleting "with a lifespan of three or more years" from this subparagraph.

OAR 340-090-0860 – Producer Definitions

Paragraph (4) provides that the first distributor in or into Oregon is the producer of service packaging sold or provided to a consumer at a physical retail location. Should DEQ retain a distinct definition of "service packaging," it is unclear why an entirely different approach for identifying the producer would be used for service packaging compared to other products. It would be exceedingly difficult, if not impossible, to determine the end user in many cases since the distributor does not know the ultimate use of the product. Ideally, it would be more logical to define the producer as closely as possible to the party applying the service packaging, since that party is responsible for the use of it. However, given practical and statutory limits, AMERIPEN recommends clarifying in rule that the producer of food serviceware is "the person that first sells the food serviceware to a retailer or a dine-in food establishment or a take-out food establishment in or into this state." Additionally, to ensure accurate accounting of covered products," DEQ should establish a requirement for users of food serviceware to report to the obligated producer.

AMERIPEN supports the approach in paragraph (5) aimed at categorizing large and small producers to ensure the provisions of the RMA are applied appropriately.

OAR 340-090-0870 – Producer Pre-Registration

AMERIPEN recommends adding a stipulation that this pre-registration requirement does not apply if a producer did not sell, offer for sale, or distribute covered products in or into the state in 2024. Otherwise, it will be impossible for producers that form in the future to comply with this section through no fault of their own. To handle such producers, a provision can be added to require their registration within six months after their entrance into the Oregon market; this is like what is provided in California's packaging extended producer responsibility (EPR) law (Senate Bill 54[1]).

OAR 340-090-0900 – Life Cycle Evaluation Definitions

As a general comment, AMERIPEN appreciates the significant work that has gone into developing the life cycle evaluation (LCE) rules, which we hope will provide a comprehensive and material-neutral way to analyze packaging formats. We encourage DEQ to solicit feedback

[1] California Public Resources Code 42051(b)(1).

on the implementation of the evaluations and adapt them over time as necessary to limit the associated burdens, including for the proposed weighting factors.

AMERIPEN recommends the addition of explicit clarification that producers be allowed to utilize in house staff, software solutions that meet the requirements of the RMA and the LCE rules, or both to carry out an LCE, rather than contracting out to a consultant. Such options could allow for costs to be "substantially reduced," as DEQ's Notice of Proposed Rulemaking for the rules acknowledges. AMERIPEN also encourages DEQ to allow pre-existing life cycle analysis work and resources be used to inform LCEs, such as the Sustainability Consortium and the European Platform on Life Cycle Analysis.

Subparagraph (20)(a) treats the presence of a hazardous substance used as a processing agent, mold release agent, or intermediate above the practical quantification limit as intentional introduction. This is impractical because it would be exceedingly difficult to determine whether such a minimal amount resulted from incidental accumulation as opposed to from the manufacturing process. Furthermore, use as a processing agent, mold release agent or intermediate is not "desired in the finished product to provide a specific characteristic, appearance, or quality," as required by paragraph (20). AMERIPEN recommends setting a threshold value, rather than using the practical quantification limit, to deal with such scenarios involving *de minimis* amounts. A similar and more supportable approach is provided in subparagraph (20)(c).

AMERIPEN appreciates the opportunity to rebut the presumptions regarding fluorine and flame retardants provided in subparagraphs (20)(b) and (c). AMERIPEN also recommends adding such a provision to help address the concern in subparagraph (20)(a) mentioned above.

As a technical note, AMERIPEN recommends shifting and renumbering paragraphs (25) and (26) to occur immediately after paragraph (18), to maintain the alphabetical ordering of this section.

For the LCE rules, subparagraph (37)(b) requires "reusable packaging" to be "durable." However, it does not provide a definition of that term. AMERIPEN suggests that the requirement in subparagraph (37)(a) may be sufficient to cover what is intended by "durable," such that (a) and (b) could be combined. Otherwise, DEQ should consider creating a definition in collaboration with stakeholders.

Subparagraph (37)(c) requires reusable packaging to be "[s]upported with adequate commercial or publicly-owned infrastructure to enable the highest and best reuse." Subparagraph (37)(d) requires reusable packaging to be "[r]eturned to a producer or third party after each use." These criteria fail to acknowledge packaging that can be reused and refilled

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without being returned (e.g., at-home reuse). AMERIPEN requests the inclusion of such reuse pathways, to utilize all potential methods for reuse.

OAR 340-090-0910 – Scope and Applicability

There may be instances where an entity manufacturers multiple similar or identical products that then become "covered products" produced by multiple different responsibility parties under the RMA. In such scenarios where a practically identical product is "produced" by multiple producers, there is an opportunity to create efficiency by having the manufacturer conduct the LCE. AMERIPEN therefore recommends allowing an entity upstream of the responsible producer to agree to conduct an LCE on behalf of one or more producers.

Paragraph (1) states that the LCE rules "provide standards for the evaluation and disclosure of the environmental impacts of covered products through the life cycle of the products." Subparagraph (2)(b)(B) requires large producers' LCE evaluations to include "the product contained or protected by the packaging if it is a covered product." While there is value in assessing packaging's impact on the fate of a product, AMERIPEN reiterates to the Department the importance of having LCEs ultimately focus on the performance of the packaging and not the covered product. The choice of packaging is meant to protect the product and must be considered holistically.

Paragraph (3) specifies the duration and nature of fee reductions available to producers that conduct LCEs. For example, subparagraph (3)(b)(D) limits the eligibility for an action to receive the substantial impact reduction to occurring within two years prior to submission of the LCE and subparagraph (3)(b)(G) provides that fee reduction for at least five years. Given that this is a relatively novel approach to packaging EPR, there is a risk in fixing the scope of fee reductions in rules because they will be inflexible and make it harder to adjust all other program fees. AMERIPEN therefore recommends that DEQ not establish prescriptive bounds around the fee reductions for this initial set of LCE rules. Instead, DEQ should allow a PRO to set the nature of the reductions in its PRO plan, which will still be reviewed by DEQ and the public.

OAR 340-090-0920 – Project Report

Subparagraph (1)(c)(B)(ii) requires an LCE project report to include "[q]uantification of energy and material inputs and outputs, taking into account how plant-level data is allocated to the declared products." AMERIPEN is concerned with the use of plant-level data, as it can be of too poor quality to accurately allocate impacts to products. Furthermore, use of plant-level data may implicate proprietary data and force DEQ to consider a high volume of confidential information protection requests. AMERIPEN recommends defaulting to use of industry-wide data to avoid these issues, at least during the first cycle of LCEs.

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Subparagraph (1)(f)(D) requires a LCE project report to include "[f]ull transparency in terms of value-choices and expert judgements" within the life cycle interpretation section, which is further described in OAR 340-090-0930(4). It is unclear what "full transparency" entails, as used in this subparagraph. AMERIPEN requests DEQ further clarify what is intended for inclusion or include more specific expectations in OAR 340-090-0930(4).

OAR 340-090-0930 – Core Product Category Rule

Subparagraph (1)(b) defines the "system boundary" for LCEs and lists the scope of activities that comprise the system boundary. Some of the listed activities make it clear that they only apply to actions related to covered products, but it would be helpful to disclaim that all of the listed activities are within the boundary only to the extent they apply to covered products. AMERIPEN accordingly recommends amending subparagraph (1)(b) as follows: "The system boundary for life cycle evaluations of covered products shall be based on a cradle-to-grave system boundary, as provided in paragraphs (A) to (E) **to the extent applicable to covered products subject to the life cycle evaluations**."

Subparagraph (1)(c)(B) provides that Information Module B (use stage) is required only for reusable packaging products. While AMERIPEN understands and accepts the rationale for this approach, it must be noted that this will result in an additional barrier in developing reuse packaging and there should be a caveat that this additional data does not necessarily mean reusable items have more impacts relative to other packaging formats or materials. Furthermore, and as with our comments regarding OAR 340-090-0900(37), AMERIPEN requests inclusion of in-home reuse formats.

As a technical note, in subparagraph (1)(d)(A)(i), the reference to "Subsection (b)" should refer to "Subsection (B)" instead.

AMERIPEN appreciates the allowance provided in Subsection (2)(e)(B) for use of projected data when transitioning from single-use to reusable covered products.

DIVISION 93 – SOLID WASTE: GENERAL PROVISIONS

OAR 340-093-0160 – Place for Collecting Recyclable Material

Paragraph (1) amends existing regulations that require sold waste permittees to provide a place for collecting source separated recyclable materials, partially replacing the language with a more specific collection requirement tied to the Local Government Acceptance List. However, the new requirement would not become effective July 1, 2025. This would leave a gap between when the regulation is amended and when the provision takes effect. AMERIPEN recommends instead amending the existing language as follows: "All solid waste permittees shall ensure that

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a place for collecting source separated recyclable material is provided for every person whose solid waste enters the disposal site. **Beginning July 1, 2025, this requirement only applies to source separated recyclable material identified in OAR 340-090-0630(2).**"

Subparagraph (3)(e) creates a process for disposal sites to request an exemption from DEQ for the requirement to provide a place for collecting source separated recyclable material. Exemptions from this requirement diminish Oregonians' ability to access recycling services and may undermine the efforts under the RMA to invest in and expand recycling opportunities. AMERIPEN encourages DEQ to be judicious in granting such exemptions and to consider requiring applicants to provide a rationale for their requests. Alternatively, paragraph (5) already may provide sufficient flexibility and make the proposed exemption in subparagraph (3)(e) unnecessary.

DIVISION 96 – SOLID WASTE: PERMITS SPECIAL RULES FOR SELECTED SOLID WASTE DISPOSAL SITES, WASTE TIRE STORAGE SITES AND WASTE TIRE CARRIERS

OAR 340-096-0300 – Commingled Recycling Processing Facilities and Limited Sort Facilities

Subparagraph (3)(a)(B) requires CRPFs to meet the material capture rates specified in Table A: Commingled Recycling Processing Facility Permit Material Capture Rates. While it is understandable that the capture rate goals should exceed current conditions, AMERIPEN is concerned that some of the proposed rates may not be realistic. AMERIPEN encourages the Department to review the "MRF Capture Rate" section of a 2024 report by The Recycling Partnership[2] and consider whether the rates in Table A are realistically obtainable. AMERIPEN acknowledges that Oregon facilities may outperform some of these national averages but believes this additional dataset will be helpful for the Department's consideration.

AMERIPEN appreciates the opportunity for flexibility through alternative evaluation method assessments for capture and outbound contamination rate performance standards, as provided in subparagraph (5)(c).

Under subparagraph (5)(d), a CRPF is required to be responsible for covering costs associated with undertaking a comparison study related to the use of an alternative evaluation method. Given that comparison studies and alternative evaluation methods will impact the performance of recycling system under the RMA, and that PROs may have to provide reimbursement for the studies, the PRO should be included in their development. AMERIPEN requests that a CRPF consult with the PRO or PROs about the nature of the study before undertaking it.

[2] The Recycling Partnership. (2024). State of Recycling | The Present and Future of Residential Recycling in the U.S. | 2024. https://recyclingpartnership.org/wp-content/uploads/dlm_uploads/2024/05/SORR_Methodology-1-1.pdf

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OAR 340-096-0310 – Responsible End Markets

Subparagraph (1)(a)(B) requires a CRPF to "ensure that all entities described in OAR 340-090-0670(2)(a)(A)-(E) have been verified as responsible through a more detailed assessment against the responsible standard provided by OAR 340-090-0670(2)." In comparison, OAR 340-090-0670 requires the PRO or PROs to "conduct a more detailed assessment of whether each end market and other downstream entity meets the responsible standard." It is unclear what the requirement for a CRPF to "ensure" verification of end markets entails. AMERIPEN requests more detail as to what is expected of CRPFs at this stage.

AMERIPEN appreciates the consideration provided in subparagraph (1)(d) toward avoiding duplication of efforts for responsible end market screening and verification.

OAR 340-096-0820 – Commingled Recycling Processing Facility Certification Program

Subparagraph (6)(g) requires a CRPF to implement a follow-up assessment when an initial unannounced assessment, arranged and paid for by DEQ, determines the CRPF fails to meet performance standards for capture rates and outbound contamination. It is unclear whether the CRPF would be financially responsible for the follow-up assessment and if PROs then might be responsible for reimbursing the CRPF for that cost. AMERIPEN requests clarification from the Department about the financial obligation and reimbursable status of the follow-up assessment.

As a technical note for subparagraph (6)(g), we note an apparent unnecessary "is" in the second sentence: "If the assessment determines the commingled recycling processing facility ~~is~~ fails to meet the established…"

# # #

AMERIPEN strives to offer a good-faith and proactive approach that integrates elements from other established packaging producer responsibility programs with hopes of developing a plan that will incentivize recycling growth and the beneficial impacts that come along with that in Oregon. AMERIPEN continues to focus on strategies that develop and/or strengthen policies to progress the "reduce, reuse, recycle" strategies, 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 Department and interested stakeholders while collectively balancing the myriad of needs for packaging, composting, recycling, and sound solutions to grow a more sustainable future, an effective circular economy,

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and systems that achieve positive environmental outcomes for everyone, which in the end, ultimately assists in the success of this program. We remain committed to supporting progressive, proactive, and evidence-based strategies for sustainable packaging policies and programs.

As always, AMERIPEN thanks the Department for this opportunity to provide written comments regarding these draft rules and appreciates the Department staff's time and assistance throughout the RMA regulatory process. Please feel free to contact me or Gregory Melkonian with Serlin Haley, LLP (GMelkonian@serlinhaley.com) with any questions on AMERIPEN's positions.

Sincerely,

Dan Felton
Executive Director

July 26, 2024

Via electronic submission: recycling.2024@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 build a better recycling system, one that delivers the economic and environmental benefits our communities and the hundreds of thousands of people who work throughout the recycling industry deserve. In the comments submitted here, the organization offers suggestions on several areas of DEQ's proposed rules in phase 2:

- The frequency of review of the Contamination Management Fee and Processor Commodity Risk Fee
- The definition of the term "limited sort facility"
- The assessment process for CRPF standards
- End market requirements for certain applications of recycled plastic
- Various points in the rules focused on life cycle evaluation

These suggestions are based on The Recycling Partnership's decade of work to improve and enhance residential recycling systems across the United States. We believe the comments align with the Recycling Modernization Act's goal of moving material processing in Oregon to consistently higher levels of performance.

Please don't hesitate to contact us if you have any questions about the information we've provided.

Sincerely,

Kate Davenport

Kate Davenport – Chief Policy Officer
The Recycling Partnership

Comments on Specific Proposed Rules

Reviewing the CMF and PCRF more frequently
340-090-0820 and 340-090-0830 (5)(b)

The Recycling Modernization Act very wisely puts a focus on enhancing the recycling materials stream in multiple ways – contamination reduction programming at the local government level, contamination evaluation inside and outside of CRPFs, harmonized education and outreach, on-ramp options for the uniform statewide collection list, and other steps.

The Recycling Partnership believes these types of ongoing initiatives will help create a cleaner stream and more efficient material processing. However, because the impacts of these different mechanisms are likely to be seen quickly – and continue as the RMA matures – the Partnership recommends that reviews of the Contamination Management Fee (CMF) and Processor Commodity Risk Fee (PCRF) take place every three years, instead of the every-five-years sequencing currently outlined in the CMF rule (no specific period was noted in rule for the PCRF).

Assessments of the CMF and PCRF at least once every three years will help spur a system of cost allocation that is fully in line with what's happening in the materials stream. The volume and nature of contamination is almost assuredly going to change, for example, and processing improvements and new facilities are expected to come on-line in the initial years of the program and beyond.

It thus makes sense to ensure the fees tied to contamination management and materials processing are set up to evolve regularly as well.

It's also worth noting that much of the heavy lifting to determine the structure of the CMF and PCRF has already been undertaken. Reviews moving forward would not require significant reworking of how the fees are built; rather, they would simply ensure the mechanisms are fully accounting for the material-related changes that are an inevitable part of the RMA concept.

Splitting the two types of Limited Sort Facilities into their own categories
340-093-0030 (65)

The Recycling Partnership encourages DEQ to create and use different terms for the two kinds of facilities that currently fall under the definition of a Limited Sort Facility (LSF).

The two types of facilities perform unique functions in the recycling system, with one conducting activities before CRPF processing and the other downstream from CRPF sites. We feel making a clear vernacular distinction between the two types of operations would reduce confusion for all RMA participants, including the facilities themselves, and would help DEQ better align regulatory requirements with facility function and purpose.

Our recommendation is to use the term "secondary processors" to refer to post-CRPF facilities, as that is a descriptor already used and understood within the wider recycling sector.

Regarding regulatory requirements, The Recycling Partnership also encourages DEQ to ensure facilities downstream from CRPFs are not subject to solid waste permitting and fees, while ensuring that no loophole is created for downstream secondary sorting facilities diverting material to landfill or other disposal. Such a step would ensure that rules do not incentivize these facilities to locate operations outside Oregon. Invariably, some post-CRPF processors will be sited elsewhere, but by encouraging in-state utilization of materials as much as possible, RMA regulations help reduce costs and environmental impacts while also creating in-state jobs and feedstock for local manufacturing, among other benefits.

More frequent assessments of CRPF performance
340-096-0300 (5)(c)

The RMA will trigger rapid and continual change in the CRPF infrastructure in Oregon, largely via requirements for CRPFs to meet stringent capture rates and contamination limits in outbound bales. As such mandates take hold, assessments of CRPF capabilities need to be frequent enough to ensure accurate, reliable representation of a facility's true performance.

It is the view of The Recycling Partnership that undertaking assessments at an average cadence of once every 2.5 years, as currently spelled out in rule, is not adequate to sufficiently monitor a facility's capture rate or outbound contamination. More frequent evaluation of facilities, whether by conventional means or using a DEQ-approved alternative (such as reports produced using AI visioning), will help program administrators gain a more representative picture of what is happening at CRPFs day-to-day.

Frequent assessments also help other system actors – including local governments, other CRPFs and producer responsibility organizations – fully trust that the RMA's ambitious processing standards are being achieved.

The Recycling Partnership recommends CRPF assessments take place annually, at a minimum. This requirement puts the system in line with wider industry best management practices for materials recovery facility contracting – in examples across the U.S., we have seen cities require performance information from contracted processing sites at least once a year and sometimes as frequently as once every six months.

Oregon's requirements on high capture rates with limited contamination are unique and exciting. The assessment protocol underlying such an initiative must include a frequency factor that can effectively hold processors accountable to the new standards.

Plastic end markets for food and beverage application and children's toys
340-090-0670(1)(e)

The Recycling Partnership appreciates the rigor DEQ is bringing to the wider discussion of responsible end markets for various materials, helping both industry entities and the public understand what is required to ensure collected material does in fact become feedstock for new products in a safe and sustainable format.

However, our organization has concerns that it may be unduly onerous to define the end market for certain categories of plastic as "the entity that places [the plastic] into a mold for the manufacturer of such packaging or product."

Certainly, there is a great value in developing a framework that tracks and verifies the movement of Oregon-generated material as far downstream as possible, and The Recycling Partnership fully supports (and works to facilitate) recycling systems that are increasingly transparent about end market realities. That said, requiring RMA actors to detail the movement of recycled resin to the converter level at the outset of the Oregon program does not seem feasible.

For one thing, there is not a commonly used chain of custody certification or process currently in place in recycling markets. It is key that such a system be fully developed and tested to address the numerous challenges and barriers that inhibit accurate information sharing on the movement of recycled plastic material.

One such barrier is the reality that plastic reclaimers are not always able to fully disclose customer information, with their commercial agreements often prohibiting the sharing of these details. This is a complication that can be worked out as companies throughout the value chain become better acquainted with compliance priorities and iron out new contract parameters. But rewriting these rules of engagement in a multifaceted and global sector such as recycled plastics will take time.

Another market complication is the fact that commercial reporting requirements that extend beyond the plastics reclaimer could very likely cause potential end users to refuse to buy recycled resin sourced from Oregon. Reclaimers already face enormous challenges trying to compete with low-cost virgin resin plastic, so it seems counterintuitive for a program geared toward strengthening recycling to impose another market barrier on recycling entities.

The Recycling Partnership recommends DEQ support the creation and recommendations of a working group of recycling industry supply chain actors, including CAA, The Association of Plastic Recyclers and other material associations such as ReMA, GPI and AF&PA, and other entities that have been developing chain of custody certifications and traceability tools such as Blue Green's Recycled Material Standard and Kamilo. This working group would identify the elements of an effective REMs verification system that would address the market concerns and barriers noted above for RMA implementation (and REM requirements in other states). APR, TRP or another partner could lead the group. In issuing future rules regarding REMs, DEQ should consider the recommendations of this group.

Life Cycle Evaluation Rules

Firstly, The Recycling Partnership congratulates DEQ for a drafting of Life Cycle Evaluation rules that closely align with the internationally recognized standard of life cycle assessment (LCA) principles and framework of ISO. As the first EPR regulation to require product LCAs, we believe Oregon's law will have a smoother and more thorough implementation, via producer adherence and producer responsibility organization oversight, if aligned as much as possible with other life cycle inventory, analysis, and reporting principles.

Seeing as this is the first introduction of LCA in the context of EPR for paper and packaging products, we suggest a few areas of technical refinement to the Life Cycle Evaluation Rules and emphasize areas we see for further consideration by the Department.

Attributional LCA vs. Consequential LCA

We foresee that many of the producers subject to the RMA may have little familiarity with the concept and procedures of LCA. The majority of the rules laid out by DEQ help tremendously to guide such producers.

However, we note one area of potential confusion in the inclusion of Attributional LCA and Consequential LCA. Both are included in the Definitions section, but there is no further explanation of when the rules require an Attributional LCA (i.e., in OAR 340-090-0910(2) when large producers must submit LCAs for ≥1% of their covered products sold in Oregon) and when the rules require a Consequential LCA (i.e., in OAR 340-090-0930(3)(c) when producers are seeking a fee reduction bonus via the two-scenario Single score impact profile).

It may bring clarity to producers to label each rule as their respective type of LCA.

Life Cycle Impact Assessment and Life Cycle Inventory Analysis

Similarly, The Recycling Partnership believes that the definitions for Life Cycle Impact Assessment (OAR 340-090-0900(23)) and Life Cycle Inventory Analysis (OAR 340-090-0900(24)) would convey greater clarity if the phrase “as defined by the goal and scope of the Life Cycle Assessment” were added to the end of each definition.

Core Product Category Rules

The Recycling Partnership commends DEQ for seeking to include guidance on use stage in the system boundary of a reusable packaging product's life cycle via the inclusion of Information Module B of OAR 340-090-0930(1)(c)(B)(i-iii). Concurrently, we also recognize that standards for LCA calculations of reusable packaging are still developing, as demonstrated by the need to reference ISO21930:2017 § 7.1.7, which is a standard intended for "environmental product declarations of construction products and services" rather than for consumer goods products. Acknowledging this current reality, we suggest DEQ be broad in definition where possible to anticipate a variety of interpretations for the sections related to calculating reusable packaging product life cycle impacts, and, most importantly, to align with previously developed standards where possible, as has been done for the alignment on the concept of “return rate factors” with the EU's Product Environmental Footprint method in OAR 340-090-0930(2)(e)(D).

In this regard, DEQ might consider changing the term “break-even point” to “replacement rate,” as used in the industry, or “replacement factor,” as used in ISO21930:2017 § 7.1.7.

Due to reusable product LCAs being a developing field of practice, DEQ should expect a wide degree of estimation in the calculations data requested in Information Module B, such as the data points for mode of transport and miles traveled for the consumers' "Transportation for Return" in OAR 340-090-0930(1)(c)(B)(i). Similarly, DEQ should expect a varying estimation-to-reality comparison when producers are asked to give a projection of return rates in OAR 340-090-0930(2)(e)(B). As this pertains to fee adjustments, DEQ should consider either removing the option to use estimated data or adding text to allow for the PRO to gain a backpay of over-assumed fee reductions from the producer based on the realized data after the three years.

In conclusion on this topic, we suggest that DEQ convenes a working group on LCA-related topics that includes CAA as well as experts from academic, industry and governmental backgrounds to stay aligned with developing common standards and trends in this evolving compliance realm.

Plastic Leakage and Plastic Impact

The Recycling Partnership commends DEQ for including text about plastic leakage and plastic impact in the Core Product Category rules as a regulatory means of monitoring – and hopefully preventing – the additional leakage of plastics into biological or natural environments. Since The Plastic Footprint Network methodology, as referenced in OAR 340-090-0930(2)(g), is considered a nascent guiding document for assessing plastic leakage, we recommend removing it as the main point of reference and instead allowing producers or the PRO to use alternative methodologies, provided they are of sound and accurate composition as regarded by the plastic environmental and LCA communities, are specific to Oregon, or a combination of both.

Similarly, we request that additional consideration be given to the inclusion of the factors "Plastic physical impacts on biota (MariLCA, PAF m3 day)" and "Plastics leakage inventory value (DEQ, kg)," which have not yet been reviewed and approved by a group of experts in the way that has been seen with Product Environment Footprint Category Rules (PEFCR), which are used as the reference factors for all the other life cycle impact indicators in OAR 340-090-0930(3)(b)(A-R) and OAR 340-090-0930 Table of Weighting Factors.

Additional Environmental and Human Health Information

Finally, The Recycling Partnership commends DEQ for providing rules on adding Additional Environmental and Human Health Information to covered product life cycle evaluations. However, since the concept of product LCAs informing regulations on material health and toxicity is new, we suggest limiting this section to those areas that resonate with existing legislation, such as that which is required by EU sustainability reporting standards as is listed in OAR 340-090-0940(5)(b). We suggest that DEQ collaborate with the LCA working group suggested above to follow the industry evolution of these reporting practices.

July 26, 2024

TO: Roxann Nayar, Oregon Department of Environmental Quality

FR: Derek Sangston, Oregon Business & Industry

RE: Oregon Business & Industry Comments on Proposed 2024 RMA Rules

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Thank you for the opportunity to submit comments on the Department of Environmental Quality's (DEQ) proposed rules for the Plastic Pollution and Recycling Modernization Act (RMA) Rulemaking dated June 10.

Oregon Business & Industry (OBI) is a statewide association representing businesses from a wide variety of industries and from each of Oregon's 36 counties. In addition to being the statewide chamber of commerce, OBI is the state affiliate for the National Association of Manufacturers and the National Retail Federation. Our 1,600 member companies, more than 80% of which are small businesses, employ more than 250,000 Oregonians. Oregon's private sector businesses help drive a healthy, prosperous economy for the benefit of everyone.

OBI has significant concerns with the draft rules and urges DEQ to modify the rules in a way that would align Oregon's implementation of the RMA with that of other states that are implementing their own extended producer responsibility programs, provide producers with clear guidance and a longer runway with which to comply, and accurately forecast/reduce the program's costs. Since its passage, OBI has supported working towards a successful rulemaking process and implementation of the RMA. OBI was a member of the initial RAC working to craft the regulations to implement the RMA and has cautioned the DEQ against developing regulations that are too voluminous and complex to be successfully implemented, especially on the ambitious, tight timeline on which the RMA must come online per SB 582 (2021).

For the implementation of the RMA to be successful, producers and the PRO should know and be able to improve the many complex provisions of the program. Unfortunately, due to the unnecessary complexity of DEQ's provisions and inadequate timeline with which producers must comply with them, OBI must conclude that the implementation of the RMA will create a system that will fail from a cost, complexity, workability, and consumer behavior perspective. Recognizing that there is less than one year before the system must come online, OBI respectfully requests DEQ to simplify its proposed rules to reflect that very real possibility.

General Comment on the Overbreadth of DEQ's Proposed Rules

Though SB 582 (2021) focused on improving the recycling of single-use packaging materials in Oregon, the proposed rules will capture many more products not envisioned by legislators when the bill passed. While ambitious, the proposed rules also ignore the fact that producers and their supply chain partners already work to responsibly manage the lifecycle of packaging materials to the degree to which they control those materials and current infrastructure allows. In many circumstances, the proposed rules would penalize producers for issues over which the producers

have no control. These rules are much more expansive than and inconsistent with laws in other states, and are unsupported by current infrastructure.

The substantial burden the rules place on industry includes requiring changes to current recycling data collection processes at both the retail and distribution/wholesale levels of the supply chain; requiring largescale changes to the materials those entities must collect and recycle (which will require significant modifications to existing contracts); and requiring the development of responsible end-markets that do not currently exist. It is also important to note that Oregon's economic footprint is simply not large enough to drive largescale change in national and internationally recycling, so when the state places more significant burdens on industry than neighboring states, especially California, consumers here are penalized most through reduced product options or much higher prices.

In our past comments on the RMA, OBI has pleaded with DEQ to take a more measured approach to not only single aspects of the program like the materials acceptance lists, but also the volume and complexity of the program as a whole. OBI renews those concerns here. Based on the overall complexity of the many rulemaking components, insufficient time for the regulated industry to vet or comply with them, and extravagant expense of the new system, OBI believes the approach in the proposed rules will lead to a functionally unworkable system.

Specific Changes DEQ Could Take to Improve Multistate Alignment

There are several provisions of the currently proposed rules that either exceed the scope of what other states propose or impose a uniquely Oregon requirement. In either circumstance, the proposed rules would significantly burden industry in a way other states enacting programs like the RMA do not.

First, OBI respectfully requests that DEQ revise the proposed rules so that the definition of "Covered Product" more broadly defines the statutory exclusion allowed in subsection 6(a)(E) of Section 2 of the RMA regarding *Specialty packaging items* that are used exclusively in industrial or manufacturing processes (*emphasis added*). While that definition goes on to contain specific examples of what must be excluded, the legislature left open the possibility that additional similar packaging items could also be excluded by rule. Often producers are required to fix or repair the products they manufactured, and the packaging for those products used for repair is not excluded. As those products and their packaging serve as an extension of the manufacturing process instead of being directly delivered to consumers, the packaging for those products should fall under this exclusion.

Second, there are examples of where DEQ has added requirements to the RMA that were not discussed, intended, or even foreseen by the legislature. One such example is ORS 459A.905 (Prohibition on delivery of commingled recyclables to certain facilities). The only enabling authority granted by ORS 459A.905 is to ensure DEQ requires commingled recycling facilities hold a valid permit under ORS 459A.955. The provisions of that statute generally regard limiting the environmental nuisance associated with collecting recyclables. It further provides that DEQ shall provide by rule the schedule for implementing the statute's requirements and for the identification of approved programs.

Notably, no provision of either ORS 459A.905 or 459A.955, or 459.205 by implication, provides direction to DEQ to set the wages and benefits paid to employees of commingled recycling facilities. Nevertheless, DEQ has used the authority granted to it under 459A.905 to require private employers – who do not seek and are not using public funds – to pay employees wage and benefit levels determined by DEQ rule. Not only are the wages and benefits provided by the proposed rules significantly higher than those found in other high-cost jurisdictions – like Berkley, CA – but they also set a dangerous precedent for undelegated authority. The legislature has heavily negotiated both its general wage and hour laws and its laws targeting issues in specific industries like bakeries, manufacturing, and agriculture. DEQ should not interfere with legislative actions on wage and hour laws and should remove proposed OAR 340-096-0840 from the rules.

Third, OBI is concerned about DEQ's proposed OAR 340-096-0820, which requires any out-of-state commingled recycling processing facility to be certified pursuant to the proposed rules or that it meets the requirements of ORS 459A.955 or 459A.956. Though DEQ has posited that they will enforce this rule through certification and requirements of certain contractual provisions necessary for licensing, OBI remains gravely concerned this proposed rule will have the effect of requiring the use of in-state recycling processing facilities to the detriment of out-of-state facilities. If that is in fact the case, or even if the rule merely substantially impacts the instrumentalities of commerce, OBI is concerned this rule violates the Commerce Clause of the U.S. Constitution.

Finally, in addition to the examples above, DEQ's proposed rules would implement the RMA with several components that are unique to Oregon. OBI and other industry associations have found no other state requiring the development of or certification of "responsible end markets" for recycling or handling of post-consumer materials. Additionally, no other state programs require producers to conduct separate "life cycle evaluations." As OBI has argued throughout the process to implement the RMA, DEQ seemingly keeps pursuing the "perfect" at the expense of the good - a system that actually works. OBI respectfully asks DEQ to consider adopting the above changes to make the implementation of the RMA more workable and align with similar programs being developed in other states.

Comments on the Condensed Timeline on which the DEQ Plans to Implement the RMA

There are also many issues that arise due to the timeline on which the DEQ plans to implement the RMA. OBI maintains its perspective that DEQ's glide-path determinations have seemingly already been made, and the pace and complexity of those determinations make it virtually impossible for industry to fully analyze, research, or understand the wider implications. Nevertheless, OBI respectfully requests that the pace slow and the timelines be extended so that industry has sufficient time to implement and comply with the program.

On a general note, OBI notes that less than one year before producers must join a PRO, contribute funding to support the PRO program plan, and the PRO must begin implementing the RMA, DEQ has not selected a PRO. Based on OBI's understanding of the timeline, the PRO will now submit its program plan in two stages: one portion will be submitted by September and the other submitted closer to 2025. Even if DEQ accepts each portion of the program plan, producers will have around six months to react to whatever new requirements are required of them under it.

Unfortunately, the proposed rules do not provide the assistance producers will need to accommodate the new requirements imposed on them.

Other states implementing extended producer responsibility programs provide producers more time. For instance, Maine, which was the first state to adopt an extended producer responsibility program, will come online on July 1, 2026, while California, which unlike Oregon has already selected its PRO program plan, does not fully implement its program until 2032. Based on the timeline DEQ has suggested and the new requirements forced upon them, producers will be extremely ill-equipped to comply with the RMA by July 1, 2025.

Two of the instances where producers will certainly struggle with compliance include: 1. the lack of a transition period to allow time for modifications to existing contracts and acquisition of new contracts that will be necessary; and 2. that collected materials must be sent to a responsible end market, but the mechanism to certify responsible end markets are not likely to be available in a timely manner. OBI respectfully requests that producers be afforded more time to seek new contracts or change current ones with supply chain partners and can self-report responsible end markets for a period or two years after the proposed rules' effective date. Both would allow for a much smoother transition as funding for the system is realized and the system itself is developed.

Comments on the Limited Cost Analysis Provided

In review of the Statement of Fiscal and Economic Impact, it is clear DEQ has not calculated the total costs of the proposed rule. The total expected annual cost of the program to be paid by producers is approximately $350 to $480 million per year. Accordingly, producers must cover the costs related to:

- Commingled Recycling Processing Facility Permits
- Certification of Out-of-State Commingled Recycling Processing Facilities
- Processor Commodity Risk Fees
- Living Wages and Supportive Benefits for employees of Comingled Recycling Processing Facilities
- Waste Prevention and Reuse Fees
- Local Government Compensation for Evaluation of Contamination
- Local Government Compensation for Contamination Reduction Programming

However, those were the costs associated with the first submitted program plan that DEQ deemed inadequate. Therefore, it is extremely difficult to see a scenario in which the proposed costs decrease in the next program plan.

There are also glaring inadequacies in how any of the estimated costs associated with the RMA were calculated. DEQ has not published any analysis showing which producers must contribute to the program, where those producers are located, or how much any company may be required to pay. Additionally, the PRO's fee rate methodology is not provided in the PRO program plan. This information must be known by the regulated community – producers – as part of an open, transparent process. It is extremely irresponsible to push through rules, adopt a program plan, and implement a program that cumulatively could cost between $925 million to

$1.2 billion over the next three years without adequate analysis on how that will impact consumers or legislative oversight.

Thank you for considering OBI comments.

LPMA
powered by Interchange 360

Date: July 26, 2024

To: Oregon DEQ

Re: Comments pertaining to DEQ second set of rulemakings to clarify and implement the Plastic Pollution and Recycling Modernization Act of 2021

The Lubricant Packaging Management Association (LPMA) are appreciative of the opportunity to submit comments pertaining to the Plastic Pollution and Recycling Modernization Act (RMA), Rulemaking 2.

The Founding Members LPMA include BP Lubricants USA, Inc. (Castrol), Chevron U.S.A. Inc., ExxonMobil Oil Corporation, Pennzoil-Quaker State d/b/a SOPUS Products (Shell) and VGP Holdings LLC (Valvoline). The Founding Members have created the LPMA, a national non-profit extended producer responsibility ("EPR") compliance agency, with a purpose of providing EPR compliance options for its members and supporting the development of circular material management solutions for their petroleum-based and related products and packaging.

The LPMA product scope includes packaging for oil-based lubricants, grease, antifreeze, engine additives, and other fluids typically used in transportation and mechanical applications. While these packaging types are covered products under the RMA, the residual fluid in these packaging containers often makes them incompatible with the common curbside collection program. They can often end up in the disposal stream and landfills if a specific and targeted collection and recycling solution is not applied. Packaging formats collected by Interchange programs contain a range of materials including, but not limited to, high-density polyethylene (HDPE), polypropylene (PP), polyethylene (PE), metal, cardboard, paper, and other constituents.

LPMA is supportive of OAR 340-090-0840(3) and ORS 459A.869(13)(a), which provide an exemption from the RMA and a reasonable solution for packaging material types that are better managed separately from the common collection system.

LPMA is also supportive of the DEQ criteria for covered producer exemption requests:

- A collection system that is independent of the common collection system
- A system whereby material does not undergo separation from other packaging material at recycling processing facility.
- Results reporting and verification of use of responsible end-markets for collected material

In our experience, everywhere that there is a successful EPR program for packaging, there is a separate collection and material management system for petroleum and petroleum related packaging. If the DEQ would like more information on EPR programs for petroleum and petroleum related products and packaging in other jurisdictions I would be pleased to provide this.

Our request is for the development of a clear process through which DEQ would:

1. Acknowledge that an exemption request has been received; and
2. Within a reasonable timeframe, confirm that the criteria for exemption have been met.

This objective of this process would be to provide our members with compliance assurance and provide Circular Action Alliance with program scope clarity.

Please let me know if you have any questions.

Sincerely,

David Lawes

Consumer Technology Association™

1919 S. Eads St.
Arlington, VA 22202
703-907-7600
CTA.tech

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 2

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 2. 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.

Definitions (OAR 340-090-0010)
CTA requests that the line "or that DEQ otherwise designates as 'toxic'" be stricken from the definition of (45) "toxic materials". CTA believes that any designation of any substance as toxic should be based on scientific peer-reviewed risk evaluations and exposure data and we handled via a separate rulemaking. We do not support the expansion of DEQ's authority to determine that a substance is toxic without scientific justification. 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.

Recycling Acceptance Lists (OAR 340-090-0630)
As stated in our January 2023 letter, CTA is supportive of 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, CTA is supportive of polyethylene film being included in the list.

Waste Prevention and Reuse Fee (OAR 340-090-0690)
CTA appreciates DEQ's inclusion of a fund cap of $15 million after 2025 as well as the discretion for DEQ to reduce the fee annually. CTA requests that further discussion and stakeholder engagement be provided on the means through which the funds will be invested.

Market Share (OAR-340-090-0700)
CTA requests further clarification around the timeframe for how market share data will be applied to the fees. As currently written in subparagraph (4)(e) we believe the wording "A producer responsibility organization will set producer fees using supply data from two years prior" is misleading. We would suggest that the rules use more specific information. For example when setting the fees in 2025 for 2026, the PRO will use supply data from 2024. Additionally, we request that a reasonable deadline be given for the PRO to formalize fees to give manufacturers adequate budgeting time.

Processor Commodity Risk Fee (OAR-340-090-0820) and Contamination Management Fee (OAR-340-090-0830)
CTA requests additional clarification as to why the fees for 2027 are greater than 2028.

Producer Definition (OAR 340-090-0860
CTA would like to request further clarification around the definition of producer for tertiary packaging. Based on the current draft rules, CTA believes it is still unclear who is responsible for materials such as unbranded shipping boxes. The consumer electronics industry has a complex supply chain and tertiary packaging may change multiple times before reaching the end consumer. Additionally, if certain types of tertiary packaging are already being managed through existing recycling streams, CTA would advocate that these systems remain intact and that these materials be exempt. CTA welcomes additional feedback opportunities for industry experts to develop a practical and fair definition.

Life cycle evaluation definitions (Section 340-090-0900)
Overall, CTA appreciates the inclusion of life cycle evaluations for materials as a decision making tool to quantify environmental impacts. We believe that a science-based approach to material selection that considers the full lifecycle impacts rather than strictly focusing on the end of life recyclability is best. Regarding the definitions for the life cycle evaluations, we offer the following comments.

Subsection 20(b) reads that "the use of PFAS is presumed intentional if any total fluorine is present in the finished product." CTA believes this is an overly broad approach and does not believe this is scientifically correct. The presence of fluorine does not equal the intentional addition of PFAs.

Additionally, at subsection 20(c), the rules state that "the use of flame retardants is presumed intentional if a hazardous substance that belongs to this chemical class is present in the finished product at a concentration above 1,000 parts per million." CTA would like to caution against the accuracy of this statement and requests that scientific evidence be presented to further substantiate it.

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 apeck@cta.tech.

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

CHPA® | CONSUMER HEALTHCARE PRODUCTS ASSOCIATION

Taking healthcare personally.

July 26, 2024

Oregon Department of Environmental Quality
ATTN: Roxann Nayar
700 NE Multnomah St., Room 600
Portland, Oregon 92323-4100

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

Director Leah Feldon:

On behalf of the Consumer Healthcare Products Association[1] (CHPA), I appreciate the opportunity to comment on the proposed rule related to the implementation of the Plastic Pollution and Recycling Modernization Act of 2021 (PPRA).

CHPA was instrumental in developing the PPRA, collaborating closely with legislators and other stakeholders to craft a balanced packaging stewardship policy. The legislative process carefully considered the unique packaging needs of FDA-regulated products. Consequently, the legislature deliberately excluded both prescription and over-the-counter drugs from the legislation's scope. This exemption recognizes the distinct challenges of pharmaceutical packaging and its crucial role in ensuring product safety, efficacy, stability, and adherence to stringent federal regulations.

Similar to drugs, medical devices and dietary supplements are also subject to stringent federal packaging regulations. In its proposed rule, the Department of Environmental Quality (DEQ) appropriately exempted Class II and III medical devices from the PPRA program, but failed to include Class I devices. Likewise, dietary supplements remain within the rule's scope, despite the Oregon Recycling Council (ORC) asserting their existing statutory exemption.

We strongly advocate for the DEQ to expand the exemption to cover all FDA-regulated medical devices and dietary supplements. This comprehensive approach would ensure consistent treatment of all FDA-regulated consumer healthcare products under the PPRA program, recognizing their unique regulatory status and packaging requirements.

Class 1 Medical Devices Should Be Exempt

Medical devices, similar to pharmaceuticals, are governed by strict federal packaging regulations. While the DEQ correctly exempted Class II and III medical devices from the PPRA program in its proposed rule, Class I devices were overlooked. We strongly recommend that the DEQ extend this exemption to include all FDA-regulated medical devices, encompassing Class I products, in its covered product clarification. This comprehensive approach would ensure consistency in the treatment of all medical devices under the PPRA program.

Class I medical devices, including common items like dental floss, gauze, and adhesive bandages, are essential healthcare products already subject to rigorous federal packaging

[1] The Consumer Healthcare Products Association is the Washington, D.C. based national trade association representing the makers and marketers of over-the-counter medicine, dietary supplements, and consumer medical devices

regulations. Exempting these products from the PPRA is crucial for several reasons. Like Class II and III devices, Class I products must comply with FDA packaging requirements, ensuring safety and efficacy. Many Class I devices are vital for home care and first aid, supporting public health outside clinical settings. Limiting exemptions to medical devices used in a healthcare setting is overly restrictive and fails to account for the evolving nature of healthcare delivery. With the rise of home healthcare, telemedicine, and non-traditional care models, medical devices across all classifications are increasingly used outside conventional medical environments. Including all FDA-regulated medical devices in the exemption would streamline implementation and reduce confusion for manufacturers. To reflect the reality of modern healthcare delivery and maintain consistency in regulatory approach, we strongly urge that the medical device exemption be expanded to encompass all FDA-regulated medical devices, regardless of their use location or class.

FDA Regulated Dietary Supplements

The Oregon Legislature also recognized the critical importance of fortified oral nutritional supplements by exempting their packaging and associated paper materials from the Act's purview. While CHPA previously advocated for an exemption covering dietary supplements, the Oregon Recycling Council declined to recommend such an exemption, asserting that these products "...are covered under an existing exemption."

However, we strongly urge the Oregon Department of Environmental Quality to reevaluate this position. Following a thorough legal analysis, we have concluded that the existing exemption cited by the ORC is insufficient in its scope. It fails to account for the full spectrum of dietary supplements, potentially subjecting many important products to regulations that may not properly address their unique features and specific needs.

Conclusion

CHPA and our members are strongly dedicated to sustainable and environmentally responsible packaging practices. We're grateful for your consideration of our concerns and eagerly anticipate further discussions with the DEQ to help shape and implement the most effective rules under the PPRA.

Respectfully submitted,

Carlos I. Gutiérrez
Vice President, State & Local Government Affairs
Consumer Healthcare Products Association
Washington, D.C.
cgutierrez@chpa.org | 202-429-3521

July 26, 2024

Electronic Delivery

Roxann Nayar
Department of Environmental Quality
State of Oregon
Recycling.2024@deq.oregon.gov

In re: Public Comments: Notice of Proposed Rulemaking: Plastic Pollution and Recycling Modernization Act, Rulemaking 2 (July 26, 2024)

Dear Roxann Nayar:

On behalf of the American Chemistry Council's (ACC), thank you for this opportunity to provide public comments. ACC respectfully submits the following comments on behalf of its membership to the Oregon Department of Environmental Quality's Plastic Pollution and Recycling Modernization Act Rulemaking #2. ACC represents over 190 companies engaged in the business of chemistry—an innovative, $639 billion enterprise that is helping solve the biggest challenges facing our nation and the world. The business of chemistry drives innovations that enable a more sustainable future, creates approximately 555,000 manufacturing and high-tech jobs—plus over four million related jobs—that support families and communities, and enhances safety through the products of chemistry and investment in research.

ACC and our members are working hard to create a more circular economy for plastics. That is why 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. 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.

ACC urges for key improvements to the proposed rule:

Responsible End Markets

ACC supports establishing fair, open, and competitive markets for post-use materials within EPR systems. We are concerned that the definition of "Responsible End Markets" in subparagraph (1)(e) and the lack of clarity and consistency in a definition throughout the rule. For a longer and more detailed explanation of our concerns please see comments submitted by AMERIPEN regarding responsible end markets.

Intentionally Added Definition

We understand the criticality of needing a definition for 'intentionally added'. However, the term carries an unintended consequence as written. As an example, placing emphasis on total organic fluorine (TOF) as a measurement of PFAS is flawed. Not everything that has a fluorine atom is a PFAS and would result in an overburden on labs to do an analysis.

"Intentionally added" should mean a chemistry deliberately added during the manufacture of a product where the continued presence of the chemistry is desired in the final product or one of the product's components to perform a specific function in the final product. This is a widely accepted framework in product regulations in the United States.

PFAS Definition

We have concerns about the general use of the term PFAS in use of the term OAR 340-090-0900, Life Cycle Definitions. All PFAS are not the same. It is neither scientifically accurate nor appropriate to group all PFAS chemistries together. This broad universe of chemistries includes liquids, gases, and solids. In no other area of science are these treated the same, and that should be no different here.

PFAS has been the subject of a great deal of research and discussion, and more specifically, a lot of work completed to assess individual PFAS compounds and to consider appropriate sub-groupings within this broad universe. Grouping these substances together is inconsistent with the views of key policy organizations including the National Academies of Science, Engineering, and Medicine (NASEM), the Environmental Council of the States (ECOS), and various states that have looked at this specifically. See PFAS Grouping: An Emerging Scientific Consensus.

The focus in this area to date has largely been on two specific PFAS substances – PFOS and PFOA. These substances are no longer produced by our members. Other PFAS substances should not be confused with these two specific PFAS.

There is a scientific basis for not treating all PFAS the same. For these reasons, different PFAS require different regulatory approaches. Given these differences, efforts to regulate all PFAS together will not be effective and will not address current regulatory priorities.

Thank you for the opportunity to provide comments. ACC welcomes the opportunity to meet with the department and the PRO to discuss our comments in greater detail. In the interim, please feel free to contact Tim Shestek, Senior Director, State Affairs, Western Region at +1 (916) 448-2581 or Tim_Shestek@AmericanChemistry.com or Adam Peer, Senior Director, Packaging & Consumer Products Markets at +1 (202) 249-6614 or Adam_Peer@AmericanChemistry.com

Rebecca McPhail
American Chemistry Council

ASSOCIATION OF HOME APPLIANCE MANUFACTURERS

1111 19TH STREET NW | SUITE 1150
WASHINGTON, DC 20036
AHAM.ORG

July 26, 2024

Comments submitted via recycling.2024@deq.oregon.gov

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

Re: Department of Environmental Quality Notice of Proposed Rulemaking: Plastic Pollution and Recycling Modernization Act, Rulemaking 2

The Association of Home Appliance Manufacturers (AHAM) appreciates the opportunity to comment on the Department of Environmental Quality's (DEQ) Notice of Proposed Rulemaking 2, which seeks to clarify and implement the Plastic Pollution and Recycling Modernization Act (RMA) (SB582, 2021). AHAM supports reasonable and effective extended producer responsibility (EPR) measures and is committed to working with stakeholders to establish an effective program in Oregon.

AHAM represents more than 160 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 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.

In Oregon, the home appliance industry is a significant and critical segment of the economy. The total economic impact of the home appliance industry to Oregon is $1.5 billion, nearly 10,000 direct and indirect jobs, $160.4 million in state tax revenue and more than $514.0 million in wages. The home appliance industry, through its products and innovation, is essential to consumer lifestyle, health, safety and convenience. Home appliances also are a success story in terms of energy efficiency and environmental protection.

AHAM Comments on the Recycling Modernization Act Proposed Rulemaking 2

The proposed rulemaking outlines the PRO's reporting requirements to DEQ on responsible end markets. AHAM appreciates the detailed outline for reporting and the continued inclusion of polyethene film (PE) and expanded polystyrene (EPS) on the accepted materials list. Reports that will be provided to DEQ by the PRO will understandably require verification for certain claims, including claims for materials that are collected outside of the opportunity to recycle.

The proposed rulemaking details the fiscal and economic impact that are outlined in certain sections of the Recycling Modernization Act (RMA). As noted in the proposed rulemaking, a fee will be assessed to producers whose materials are collected outside of the opportunity to recycle. The fees assessed to the producer are based on the statutory requirement that "require PRO verification or third-party certification to the 'responsible' standard of markets that recycle these materials in order for the producer to qualify for the exemption."[1]

It is understandable that a reasonable fee would be necessary to verify that certain materials are collected and recycled by a responsible end market. Producers who pay fees for this verification and/or are members of the PRO, should not be further impacted should those materials be found to not meet requirements outlined in the RMA. It is the obligation of the PRO and the parties they contract with to comply with statutory requirements for collection and management of these materials. Producers of materials collected outside of the opportunity to recycle, who are in good standing, should not be impacted for the noncompliance of others.

Guardrails in the RMA Limit Scope of Covered Materials and Must be Safeguarded

AHAM continues to appreciate that the RMA limits the inclusion of certain packaging generated outside of the scope of Oregon's packaging EPR laws. This provision of the law remains one of the few, if only, examples of cost containment for producers of non-consumable goods or durable goods. Additionally, AHAM appreciates DEQ's inclusion of EPS and clear polyethylene (PE) film in the Oregon Adopted Recycling Acceptance Lists and in the Uniform Statewide Collection List.

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, clothes 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 made from fiber.

[1] https://ormswd2.synergydcs.com/HPRMWebDrawer/Record/6734994/File/document

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 limited number of impacts and are more apt to lose structural integrity in hot and humid environments.

A fiber-based alternative to EPS would be bulkier and heavier. Consequently, this increased unit size leads to more truck loads need to transport the same number of units, more fuel to move them, and more warehouse space required to store them. It is estimated that there would be an increase in size of 5-10% in all directions for the equivalently designed protective 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.

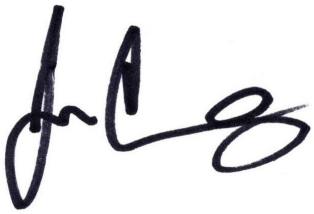
Appliance packaging is used to protect the appliance and factory personnel during storage, transport and delivery. The safest and most effective materials for this use are lightweight, can withstand multiple impacts, and maintain their integrity in humid conditions. Unlike smaller, fast-moving consumer 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.

Conclusion

AHAM appreciates the opportunity to provide comments on the Notice of Proposed Rulemaking: Plastic Pollution and Recycling Modernization Act, Rulemaking 2. 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,



Jacob Cassady
Director, Government Relations
(202) 202.872.5955 x327
jcassady@aham.org

AmericanCoatings
ASSOCIATION℠

July 26, 2024

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

Submitted via email to recycling.2024@deq.oregon.gov

RE: ACA's Comments on Oregon's Proposed Rulemaking for the Plastic Pollution and Recycling Modernization Act.

Dear Roxann Nayar,

The American Coatings Association (ACA)[1] submits the following comments to the State of Oregon Department of Environmental Quality (DEQ) regarding the proposed regulations for the Plastic Pollution and Recycling Modernization Act. The ACA represents approximately 96% of the paint and coatings products manufactured in the United States, including architectural, industrial and specialty coatings.

The $32 billion paint and coatings industry manufactures a wide variety of coatings products for consumers, businesses, and manufacturing establishments alike. With the exception of powder coatings, most paint and coatings products are in liquid form and utilize containers in a range of sizes. The sizes range from small containers of less than a liter or pint to large containers that hold several hundred gallons. These containers are typically either metal, plastic, or a hybrid of metal and plastic. With the increasing number of packaging laws across the country, ACA members will be required to evaluate the packaging being used for paint and coatings products to ensure compliance with these laws. Consequently, ACA has a significant interest in assisting our industry in compliance with any regulatory requirements.

Currently, Oregon is one of several states including Maine, Colorado and California that have passed extended producer responsibility (EPR) laws for packaging. However, individual states passing their own version of an EPR law results in significant differences within each of these states' EPR laws. This will be extremely problematic and burdensome for

[1] ACA is a voluntary, nonprofit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory, and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services.

industry because developing compliance plans for manufacturers with a nationwide customer base will be extremely challenging. The coatings industry routinely conducts interstate transactions where their products are shipped across states lines, thereby requiring these companies to comply with various applicable federal and state laws.

ACA provides the following recommendations on this proposed rulemaking to provide clarification and consistency with other existing EPR state laws across the country, which would bolster implementation across Oregon.

1. **Clarify that architectural coatings are not covered products.**

In the Oregon statute (SB 582) that was passed in 2022, Section 2 (6)(b)(I) set forth the definition of what " '[c]overed products' does not include" and further states that "[p]ackaging related to containers for architectural paint, as defined in ORS as defined in ORS 459A.822,that has been collected by a producer responsibility organization under the program established under ORS 459A.820 to 459A.855." PaintCare began its operations as the paint stewardship program in Oregon in 2008 and serves as the producer responsibility organization (PRO) for architectural paints, which allows these products to be excluded from these EPR laws. Although architectural paints were identified in the statute as not being a covered product, the proposed regulations make no mention or reference to this exclusion. ACA requests that DEQ clarify in the proposed regulations that architectural paints collected under the state's paint stewardship program are excluded and are not covered products under these regulations.

2. **Amend the definition of long-term storage under what are considered "not covered products".**

In the proposed regulations, under OAR 340-090-0840 (2)(a), it states "the following are not covered products" which includes "[p]ackaging that is used for the long-term (five or more years) storage of a product with a lifespan of three or more years." While the packaging is intended to store the product and each (i.e., the packaging and the product) would have separate and independent lifespans, it does not seem feasible to place a shorter lifespan limit on the product being stored.

The lifespan of a coating depends greatly on the type of product. Many latex and oil-based paints are manufactured for an average lifespan of ten to fifteen years.[2] The lifespan of paint once the can is opened also depends on the type of paint as well as storage conditions. Paint is a product that can be used up entirely in a project, or it can be partially used and stored for use at a later time. The remaining paint can be reused for touchup jobs or for another project entirely. This requires that the paint packaging also be durable enough to withstand the lifespan of the paint. ACA recommends DEQ amend the definition of long-term

[2] Christin Perry and Samantha Allen, *How Long Does Paint Last?*, FORBES (July 25, 2022), https://www.forbes.com/home-improvement/painting/how-long-does-paint-last/.

storage to merely state that the "following are not covered products [including] packaging that is used for long-term (five or more years) storage of a product."

3. Include exemptions to align with other state extended producer responsibility laws.

ACA recommends DEQ include the following exemptions to align with other states' laws in order to streamline the regulatory burden and assist with implementation by reducing the confusion from varying state laws.

a. Exempt packaging materials classified for the transportation of dangerous goods or hazardous materials under Title 49 of the Code of Federal Regulations (CFR) Part 178.
b. Exempt packaging used to contain hazardous or flammable products regulated under the 2012 Federal Occupational Safety and Health Administration (OSHA) Hazard Communication Standards within 29 CFR Part 1910.1200.
c. Exempt packaging material that is exclusive to manufacturing or industrial processes.
d. Exempt packaging material intended solely for use in business-to-business transactions.

California currently provides exemptions for specific packaging under 49 CFR and 29 CFR, as listed in California's Act in § 42021 (e)(2)(C). Additionally, under 49 CFR §199.9, it states that "…this part preempts any State or local law, rule, regulation, or order to the extent that: (1) Compliance with both the State or local requirement…" Based on the preemption clause within 49 CFR, the federal regulation would prevail when compliance to both the state requirement and the federal requirements is not possible.

California and Minnesota both provide an exemption for packaging of products regulated by OSHA under 29 CFR. With respect to packaging exclusive to manufacturing or industrial processes, this was listed in the Oregon statute (SB 582) that was passed in 2022, Section 2 (6)(b)(E) for what a "covered product" does not include. However, the proposed regulations make no mention or reference to this exclusion. Furthermore, Colorado provides an exemption for this category as well and an exemption for packaging material that is solely for use in business-to-business transactions since these are not consumers.

To promote and streamline compliance requirements while encouraging commerce and the transport of goods, ACA recommends that DEQ consider including these exemptions into Oregon's regulations.

4. Clarify the procedure on how producers obtain an exemption.

While the proposed regulations set forth what are not covered products (under OAR 340-090-0840(2) and that an exemption is permitted for products collected and recycled

outside of the Opportunity to Recycle (under OAR 340-090-0840(3)), it is unclear what producers would need to provide to ensure their products are categorized correctly under this law. ACA recommends that DEQ provide further clarification on how to seek an exemption.

5. Reconsider the overly broad proposed per- and polyfluoroalkyl (PFAS) definition and amend the PFAS definition.

ACA is concerned that Oregon's proposed definition of PFAS is unnecessarily broad detracting focus from identifying potential PFAS contaminants in the state. The proposed definition is not aligned with U.S Environmental Protection Agency's (EPA) PFAS definition under its PFAS reporting rule or PFAS as defined by some other states. Due to the diversity of PFAS chemicals with varying hazard characteristics, ACA recommends that Oregon restrict any product lifecycle and reporting requirements to discreet chemical lists, based on demonstrable exposure potential to identify those products associated with significant risk to consumers. One such readily available list is EPA's listing of PFAS in commerce, available in its Toxic Substances Control Act (TSCA) PFAS Reporting Rule.

In the alternative to this narrowly tailored approach, Oregon should consider modifying its definition, currently inclusive of chemicals with one or more fluorinated carbons[3], to focus on PFAS chemistries with at least two or more fluorinated carbons. This would focus the standard on PFAS chemistries associated with toxicity and contamination. Compounds with single fluorinated carbon atoms are not persistent as typically associated with PFAS chemistries.[4]

ACA recommends using Delaware's PFAS definition as a reference:

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[3] OAR 340-090-0900, as proposed, at Section 29 – "PFAS means perfluoroalkyl and polyfluoroalkyl substances, a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom."

[4] In the preamble to its PFAS TSCA Section 8(a)(7) reporting rule, EPA explains:

> "In the development of this proposed definition, EPA intended to include substances with a strong electron withdrawing nature as this greatly effects the chemistry of the substituted, adjacent and nearby atoms, meaning they would have a minimum of two fluorine atoms on at least one carbon (e.g., -CF2-). Additionally, EPA wanted the covered substances to be unlikely to degrade or metabolize, so an adjacent CF group was added to the requirement/ definition, with the stipulations that the substitutions could not be H and both carbons must be saturated (*e.g.,* -CF2- CFR-). EPA also thought that branching might make a chemical less susceptible to degradation and metabolism, so EPA also removed the option for -CF2-CF2- when developing the proposed definition."

(EPA Final TSCA Section 8(a)(7) PFAS Reporting Rule, 88 Fed. Reg. 195, 70516, 70533, Oct. 11, 2023, bold font added for emphasis.)

Here, EPA explained its proposed definition, although the explanation also holds true for the structural definitions that EPA adopts in its final rule, all being structural forms of compounds with two or more fluorinated carbons. As noted above, addition of at least one CF group to the single original CF group is necessary for persistence, being a lack of degradation and ability to metabolize.

> "PFAS" means non-polymeric perfluoroalkyl and polyfluoroalkyl substances that are a group of man-made chemicals that contain at least 2 fully fluorinated carbon atoms, excluding gases and volatile liquids. "PFAS" includes PFOA and PFOS.
> (29 Delaware Code § 8092)

An important feature of this definition is the exclusion of fluoropolymers from the definition of PFAS, as well as focusing on compounds with 2 or more fluorinated carbons. Fluoropolymers are chemically stable, non-toxic, non-bioavailable, non-water soluble and non-mobile.[5] As explained in Henry, et. al.[6]

> Fluoropolymers, high molecular weight polymers, have unique properties that constitute a distinct class within the PFAS group. Fluoropolymers have thermal, chemical, photochemical, hydrolytic, oxidative, and biological stability. They have negligible residual monomer and oligomer content and low to no leachables. Fluoropolymers are practically insoluble in water and not subject to long-range transport. With a molecular weight well over 100 000 Da, fluoropolymers cannot cross the cell membrane. Fluoropolymers are not bioavailable or bioaccumulative, as evidenced by toxicology studies on polytetrafluoroethylene (PTFE): acute and subchronic systemic toxicity, irritation, sensitization, local toxicity on implantation, cytotoxicity, in vitro and in vivo genotoxicity, hemolysis, complement activation, and thrombogenicity. Clinical studies of patients receiving permanently implanted PTFE cardiovascular medical devices demonstrate no chronic toxicity or carcinogenicity and no reproductive, developmental, or endocrine toxicity.

In order to maintain focus within the lifecycle assessment on potential hazardous contaminants, fluoropolymers should be excluded from Oregon's PFAS definition. Alternatively, ACA recommends adoption of EPA's structural definition adopted for the purpose of EPA's TSCA Section 8(a)(7) PFAS Reporting Rule, although this definition may be overly broad by including fluoropolymers and other fluorinated chemistries that would rank low on persistent, bio accumulative, and toxic (PBT) criteria, including having negligible persistence. Under 40 CFR § 705.3, EPA defines PFAS as any chemical substance or mixture containing a chemical substance that structurally contains at least one of the following three sub-structures:

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[5] Henry, Barbara, et. al., *A critical review of the application of polymer of low concern and regulatory criteria to fluoropolymers*, 9 Feb. 2018, Integrated Environmental Assessment and Management, available online at: https://setac.onlinelibrary.wiley.com/doi/10.1002/ieam.4035.

[6] See footnote 2 at the abstract.

(1) R-(CF2)-CF(R')R'', where both the CF2 and CF moieties are saturated carbons. (i.e., This structural definition addresses persistence.)
(2) R-CF2OCF2-R', where R and R' can either be F, O, or saturated carbons. (i.e., This structural definition addresses fluorinated ethers.)
(3) CF3C(CF3)R'R'', where R' and R"" can either be F or saturated carbons. (i.e., This structural definition includes formations with non-adjacent carbons.)

6. **Clarify the degree of due diligence for downstream industry using potentially reportable PFAS in its Life cycle Assessment Requirements.**

ACA requests that DEQ specify the degree of due diligence required in attempting to identify fluorinated chemistries in raw materials used by downstream product formulators and manufacturers. Due diligence parameters are necessary due to the broad scope of this reporting requirement, encompassing any chemical with one or more carbon-fluorine bond at any amount in a chemical mixture. ACA encourages Oregon to adopt a reporting threshold aligned with Occupational Safety and Health Administration (OSHA) Safety Data Sheet (SDS) disclosure requirements of 0.1% or 1%, depending on the chemical hazard, with carcinogens and reproductive toxins disclosure at the lower threshold. Another report is adopting EPA's "known to or reasonably ascertainable by" standard of due diligence under TSCA reporting rules, including EPA's PFAS Reporting Rule and its Chemical Data Reporting Rule. ACA would welcome the opportunity to discuss this further with the agency as needed.

7. **Clarify how the information collected and submitted to DEQ for life cycle evaluations will be handled by DEQ.**

In the proposed regulations, under OAR 340-090-0910(2), it requires that producers perform a life cycle evaluation as set forth and submit those evaluations to the department and to the PRO. However, the proposed regulations do not address how this information would be used or handled by either the department or the PRO and what safeguards would be in place for any potentially business-sensitive information that could be submitted. There is no indication that these submissions could be made publicly available at a later time but there is not a mechanism to ensure that they are not either. ACA recommends that DEQ provide further clarification into how these submissions would be used by the department and the PRO, and what safeguards will be in place regarding the information within these submissions.

8. **Reconsider relying on total organic fluorine content as an indicator of intentionally added PFAS**

At OAR 340-090-0900 Section 20(b), the proposed regulations state:

> The use of PFAS is presumed intentional if any total fluorine is present in the finished product. Producers may rebut this presumption by

providing credible evidence to demonstrate that PFAS were not intentionally added.

ACA cautions against adoption of a total organic fluorine test as an indicator of intentionally added PFAS. Total fluorine testing does not distinguish the variety of PFAS chemistries from overall fluorine content, resulting in inaccurate and over-inclusive reporting. Noting limitations of total fluorine measurements, a study concludes, "Measurement of total fluorine (TF) is inexpensive, but it is not as reliable of a proxy for PFAS because it includes inorganic fluoride in addition to organic fluorine."[7] Instead of testing for total organic fluorine, end-use product manufacturers can identify and report intentionally-added PFAS by relying on disclosed information from raw materials suppliers, above SDS thresholds with appropriate due diligence requirements, as noted above.

9. Provide transparency and amend the Producer Responsibility Organization (PRO) Fees (i.e., the Program Plan Review Fee and the Annual Administration Fee) to more accurately reflect DEQ's costs.

In the proposed regulations, under OAR 340-090-0690 (1), the "Program Plan Review Fee" requires each applicant PRO submitting a plan to pay DEQ $150,000 and the plan would not be reviewed until the fee is paid. Additionally, the "Annual Administrative Fee," under OAR 340-090-0690 (2), is set to the amount of $4 million for each calendar year in the first four years and $3 million for the subsequent years. It is unclear from the proposed regulations how these amounts were determined and how these amounts accurately cover the DEQ's resources assigned to address aspects pertaining to the implementation of the Plastic Pollution and Recycling Modernization Act.

While it is statutorily mandated for this extended producer responsibility program to be established and the statute does identify that the agency may set forth a one-time fixed fee for document review, these fees should not be excessively prohibitive.[8] Furthermore, the projected annual administration fees seem to be arbitrarily set since the program has not yet started and it would be highly speculative that the $4 million fee would need to be in place for four years or that the subsequent years would cost the agency $3 million.

The PRO will be assessing and setting its fees to producers and manufacturers in order to cover the costs to the PRO, which includes the fees the PRO must pay to DEQ. If the PRO is required to pay these high fees to DEQ, the PRO would have to charge its member producers fees that would be high enough to cover these costs. Generally, government fees are typically set to a reasonable amount that reflects the agency manpower necessary to review the documents submitted, either by an hourly rate or a per page rate. ACA

[7] Young, Anna, et. al., *Organic Fluorine as an Indicator of Per- and Polyfluoroalkyl Substances in Dust from Buildings with Healthier versus Conventional Materials*, Environ. Sci. Technol. 2022, 56, 23, 17090–17099, available online at: https://pubs.acs.org/doi/10.1021/acs.est.2c05198#

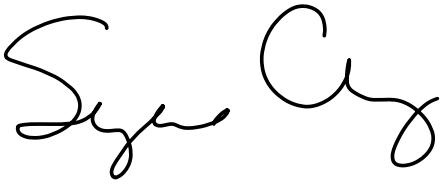
[8] See Oregon Senate Bill 582, Section 31.

recommends that DEQ provide transparency into how these fees were determined and amend these fees to more accurately reflect the costs to DEQ.

Conclusion

ACA appreciates the opportunity to provide comments to Oregon DEQ on the Proposed Rulemaking for the Plastic Pollution and Recycling Modernization Act, and we look forward to working cooperatively on this matter.

Sincerely,



Heidi K. McAuliffe
Vice President, Government Affairs

Suzanne Chang
Counsel, Government Affairs

ORPET

July 25, 2024

To: DEQ Oregon

Re: Letter of Comment re: Modernization Act Rule Making 2,
Submitted via email to recycling.2024@deq.oregon.gov

Dear DEQ staff,

ORPET, Inc. (ORPET) is a plastic recycler located in St. Helens, Oregon with more than 40 employees. We have been in operation since 2012, currently recycling 30+ million pounds annually of PET beverage bottles, helping keep Oregon beautiful. We produce high-grade PET flake, offsetting virgin PET use. ORPET is a partnership between Oregon Beverage Recycling Cooperative (OBRC) and Merlin Plastics, two organizations with a long history of environmental stewardship.

I am writing you about the Responsible End Market (REM) regulations under the Recycling Modernization Act Rulemaking 2. Certain proposed REM regulations would not define plastic recyclers as "end markets" if Recycling Modernization Act (RMA) feedstock is processed, requiring plastic recyclers to disclose potentially confidential customer names and those customers' use of post-consumer recycled (PCR) materials. This is different than requirements expected of other recyclers of reclaimed commodities for aluminum, steel, paper and glass in the regulation.

We kindly ask you to reconsider these proposed regulations requiring plastic recyclers to disclose customer names and use of this PCR material. Plastic recyclers should be considered an "end market" just like buyers of other commodities for reclaimed aluminum, steel, paper and glass. Plastic recyclers should be on the same level playing field as other commodity recyclers and their customers encouraged to purchase recycled materials. This regulation will likely have the unintended consequence of negatively impacting Oregon plastic recyclers who are investing for the future to meet the needs of our community. We appreciate your efforts to increase recycling, especially policy that will help provide ORPET and other recyclers the high-quality feedstock and customer demand needed to be successful in a circular economy.

Thank you and feel free to reach out to us with any questions,

Troy Ballew
President, ORPET
tballew@obrc.com
503-806-2947

AdvaMed
Advanced Medical Technology Association

1301 Pennsylvania Avenue,
NW, Suite 400
Washington, D.C. 20004
P :: 202.783.8700
F :: 202.783.8750
W:: AdvaMed.org

July 26, 2024

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

Re: Plastic Pollution and Recycling Modernization Act Rulemaking

Members of the Recycling Advisory Council:

On behalf of AdvaMed, the Medtech Association, I am writing to register comments on the proposed rulemaking for the Plastic Pollution Recycling Modernization Act. While we share the state's commitment to sustainability, we are concerned that the proposed rule fails to exempt thousands of lifesaving medical devices critical to patient care. We appreciate the openness and accessibility of DEQ staff throughout the rulemaking process and look forward to continued collaboration as the rule is further refined.

As currently drafted, we're concerned that the rule fails to recognize the importance of the Food and Drug Administration (FDA) in regulating the packaging of medical devices and ensuring overall safety and effectiveness of medical devices. The partial exemption for medical devices excludes a host of products that are critical to the patients and providers who rely on them for proper medical care. This includes important tubing, tools and surgical kits for a variety of procedures.

Medical device packaging is heavily regulated by the US Food & Drug Administration and subject to a rigorous regulatory review and validation process. FDA requirements govern the methods used in, and the facilities and controls used for, the design, manufacture, packaging, labeling, storage, installation, and servicing of all finished devices intended for human use.

These FDA requirements are intended to ensure that finished devices are safe and effective and otherwise in compliance with the Federal Food, Drug, and Cosmetic Act (the act). Packaging is a part of the product, and by design must be able to maintain sterility across the supply chain, protect the medical devices from contamination as well as mechanical damage during transportation and storage. FDA regulations cover all aspects of medical device handling with the aim of maintaining quality, integrity, and functionality of the product to ensure safety and effectiveness. These packaging considerations apply to all medical devices, regardless of the classification.

Exemption for Class II medical devices, as defined in the Federal Food, Drug, and Cosmetics Act at 21 U.S.C. Sec. 360(c), that are sold labeled as sterile and for which a 510(k) premarket notification pursuant to 21 U.S.C. Sec. 360(k) has been cleared by the Food and Drug Administration.

We appreciate the Council's work to identify exemptions to the definition of a covered product, however, the current exemption for medical devices fails to appropriately cover the full scope of devices critical to patient care. The current exemption for Class II devices excludes a large subset of lifesaving and life-sustaining medical devices and diagnostic equipment. There are over 140 Class II medical devices that are considered life-sustaining or lifesaving that will not be captured in the above recommendation. These products include important aspects like tubing, and adaptors, as well as pumps and stents.

In addition, the exemption limits the scope to products labeled as sterile. Sterility is just one of the many characteristics assessed by the FDA that is important to an end product's safety and effectiveness. Developers must also consider biocompatibility, integrity, stability, age testing, potential damage and temperature control when designing packaging. Companies also follow ISO consensus standards for manufacturing process validations and quality control when developing packaging systems.

There are a number of products used in medical procedures that are non-sterile and play a vital role in the delivery of care. These procedures and tools, for example, can be used to sample tissue for a biopsy, remove food that may be stuck in the upper GI tract, stop bleeding, or inject air or fluid. There are also many procedures that require devices to be sterilized on site, none of which will be captured in this exemption.

As such, we recommend the following changes to the proposed draft language:

> *(A) Class II medical devices as defined in the Federal Food, Drug, and Cosmetics Act at 21 U.S.C. Sec. 360(c)*~~, that are sold labeled as sterile and for which a 510(k) premarket notification pursuant to 21 U.S.C. Sec.~~

No Exemption for Class I Devices

As drafted, the rule does not provide an exemption for any Class I devices. The Council was directed by the legislature to craft an exemption for medical devices, and simply excluding an entire classification of devices is problematic. There are several Class I devices that are routinely used in a health care setting and essential to the healthcare system. These include but are not limited to ventilator and tracheal tubing, infant oxygen tents, breathing tubes, neonatal blood collection kits and blood bank supplies.

The legislature acknowledged that medical devices were complicated to define, and can encompass everything from pacemakers to bandages, but the intent was clear that medical devices should be exempted in rulemaking. We recommend the following language be added to

the proposed rule and look forward to continued conversations with staff on how critical Class I medical devices can be defined within the exemption.

We recommend the following addition to the proposed draft language:

> *(C) Class I medical devices as defined in the Federal Food, Drug, and Cosmetics Act at 21 U.S.C. Sec. 360(c) that are predominantly used in a healthcare setting or prescribed by a health care provider.*

We encourage the Council to also review extended producer responsibility programs in Colorado and California, which consider the important role of the FDA in oversight of medical devices and provide full medical device exemptions.

Colorado Exemption Language

HB 1355 (2022)

"Covered materials" does not include:

> *Packaging material used to contain a product that is regulated as a drug, medical device, or dietary supplement by the Federal Food and Drug Administration under the "Federal Food, Drug and Cosmetic Act", 21 U.S.C. Sec. 301 seq., as amended, or any federal regulation promulgated under the Act, or any equipment and materials used to manufacture such products.*

California Exemption Language

SB 54 (2021)

Notwithstanding paragraph (1), "covered material" does not include any of the following:

> *(A) Packaging used for any of the following products:*
>
> > *(i) Medical products and products defined as devices or prescription drugs, as specified in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Secs. 321(g), 321(h), and 353(b)(1)).*

AB 2440 (2021)

"Covered battery" does not include any of the following:

> *A Class I device as defined in Section 360c of Title 21 of the United States Code, and either of the following applies:*
>
> *(I) It is a device described in Section 414.202 of Title 42 of the Code of Federal Regulations.*
>
> *(II) Either of the following applies:*

(ia) The device is predominantly used in a health care setting by a provider.

(ib) The device is predominantly prescribed by a health care provider.

(ii) A Class II or Class III device as defined in 360c of Title 21 of the United States Code

In closing, we urge the Council to reevaluate the current exemption for medical devices to include the full scope of critical medical devices that Oregon patients and providers rely on. We appreciate the opportunity to provide comments and look forward to continued collaboration with staff and the Council on the proposed rule.

Thank you for your consideration.

Darbi Gottlieb
Director, State Government and Regional Affairs
Advanced Medical Technology Association (AdvaMed)

Personal Care Products Council
Committed to Safety, Quality & Innovation

July 26, 2024

Via Electronic Submission
Oregon Department of Environmental Quality
RethinkRecycling@deq.state.or.us

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

The Personal Care Products Council ("PCPC")[1] is pleased to submit the following comments on the Proposed Rules for Plastic Pollution and Recycling Modernization Act of 2021 (the "Proposed Rules"). Our member companies are involved in the distribution and sale of over-the-counter nonprescription drug products, cosmetics, toiletries, fragrances, and ingredients in Oregon, and therefore have a strong interest in the rulemaking and implementation of the Plastic Pollution and Recycling Modernization Act of 2021.

Oregon Department of Environmental Quality (DEQ) solicits stakeholder feedback on the Proposed Rules. PCPC appreciates the opportunity to provide feedback on behalf of our member companies. The comments below are a collection of feedback from various member companies and do not necessarily represent the perspective of all of our member companies collectively.

Costs

Budget and Methodology

We appreciate DEQ's consideration to provide estimates of costs to assist stakeholders with preparation. There is a concern, however, on how and why program fees have increased significantly from the initial estimates given when the bill was passed by the legislature. The estimated costs have increased from the initial $91 million to $113 million annually and is now estimated to be between $ 925 million to $1.2 billion over the next three years. We request for more insight on why costs have increased and why are costs expected to increase over a three-year period.

Additionally, fee rate methodology is not provided in the PRO Plan, rather the methodology is identified as a confidential formulation. We request for an opportunity to review the methodology during an open comment period.

[1] Based in Washington, D.C., PCPC is the leading national trade association representing the cosmetic and personal care products industry. Founded in 1894, PCPC's more than 600-member companies manufacture, distribute, and supply the vast majority of finished personal care products marketed in the United States. As the makers of a diverse range of products that millions of consumers rely on every day, from sunscreens, toothpaste, and shampoo to moisturizer, lipstick, and fragrance, member companies are global leaders committed to product safety, quality, and innovation.

Advanced Contaminated Reduction Fund

Per statute, local governments are required to implement Contamination Reduction Programs, which are funded by the PRO and capped at approximately $12.8 million annually. The Proposed Rules allow local governments with populations of no more than 50,000 to be eligible to receive two years of advanced funding. This two-year advanced funding could create a significant cost variance in addition to the annual cap. As such, we request for the removal of such allowance.

Life Cycle Evaluations Definitions

The following definition for reusable packaging product included in OAR 340-090-0900, Life Cycle Evaluations Definitions, does not include home refill systems where the consumer refills a reusable package using a single-use refill package. We recommend rule amendments that define reusable packaging to include home refill systems.

(37) Reuseable packaging product means a packaging product that is:

(a) Designed 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 and best reuse;

(d) ***Returned to a producer or third party after each use****; and*

(e) Actually reused.

The bolded section in the definition would prevent home refill systems from being included. We recommend working from the following definition to make necessary revisions.

"Reusable packaging material" means packaging material that is designed to be reused several times for the same purpose and without a change in format after initial use, to include allowing the business or the consumer to put the same type of purchased product back into the original packaging, and the return and reuse of which is made possible by adequate logistics and infrastructure as part of a reuse system.

Many reuse/refill definitions are geared toward mass-market models. This does not always work for products such as cosmetics, as the refill outer packages may stay with the consumer and may not be returned to the producer to be sanitized. This is due to hygiene reasons so as to protect the product quality and safety for the consumer.

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Eco-modulation Flexibility

Eco-modulation should be defined by the PRO fee structure and approved through a Program Plan process. First, the PRO must develop its preferred policy with respect to eco-modulation fee incentives, then work with state regulators to harmonize regulatory requirements over time.

Thank you for the opportunity to submit comments, and we look forward to continued engagement on this important issue.

Kind regards,

Kenisha Cromity
Staff Counsel
Personal Care Products Council

July 26, 2024

TO: DEQ
Attn: Roxanne Nayar/Materials Management
VIA EMAIL: recycling.2024@deq.oregon.gov

FROM: Jana McKamey, Oregon Winegrowers Association
Fawn Barrie, Oregon Wine Council
Sally Jefferson, Wine Institute

RE: Comments on proposed rules in the second rulemaking to clarify and implement the Plastic Pollution and Recycling Modernization Act (RMA, SB 582, 2021)

Thank you for the opportunity to comment on the proposed rules for the Plastic Pollution and Recycling Modernization Act, Rulemaking II. We have significant concerns about the draft rules and urge DEQ to address these issues in a way that recognizes the enormous costs associated with the program's implementation. Many in our industry are deeply concerned that the proposed rules will increase costs for wine producers without substantially enhancing the efficiency of glass recycling.

During legislative discussions about the RMA, it was made clear that the responsibility of the PRO (Producer Responsibility Organization) was related to making necessary enhancements to update the state's existing recycling system. In the Fiscal and Economic Impact Overview, DEQ states:

"The proposed rules would address specific topics needed to establish a new statewide system that standardizes the types of materials that will be accepted for recycling, while providing a source of funding to reduce the impacts of covered products through means other than waste recovery."

Our understanding of the intent of Senate Bill 582 from 2021 was that existing recycling systems would remain in place, and the PRO obligations would be limited to expanding recycling options. Several local governments currently collect glass on route, and we are unclear why DEQ has determined the passage of Senate Bill 582 requires local governments to abandon effective recycling methods in exchange for untested depots that require consumers to take their glass to a location where they previously had their glass picked up at the curb. DEQ has established a confusing maze of regulations that, at times, suggest local governments are no longer allowed to collect materials on the PRO-covered materials list. We do not believe this was the intent of the Legislature and do not think legislators generally are aware that curbside glass collection may be eliminated. Although the PRO and DEQ have suggested multiple times that curbside glass collection will continue, we do not believe the current rules allow for that option. Additionally, the PRO is not required statutorily to pay for the collection of glass curbside and should not pay for the collection of materials that already occur under existing recycling programs. We believe that local governments that have built out curbside collection of glass should maintain those collection methods and that ratepayers should continue to pay for the benefit of curbside collection where it exists today.

Depots are meant to enhance the ability to recycle PRO materials and should not be relied on as the sole option for recycling glass. At the same time, the PRO should not be establishing a new system that collects glass curbside, nor should they be required to reimburse costs for that collection given the statutory requirements of the RMA.

As you may recall, both OWA and OWC requested through legislation in the 2024 session an extension for including wine bottle glass in the EPR program. We did this not only because our organizations believe the Oregon Bottle Bill is the right program to ensure wine bottle glass is recycled in the most efficient and effective way possible, but also because of concerns over the potential cost of the EPR program. Wine bottle glass is a heavier packaging material and expectations that Oregonians will take their glass to a depot location, especially when they will not receive any direct benefit for doing so, is unlikely. We advise against investments in infrastructure upgrades and system changes for glass recycling unless it can be shown to improve recycling rates at a level that can justify costs. Adding costs to an agricultural sector already struggling with high material expenses, inflation, and rising labor costs should be considered carefully.

Oregon-Specific Program Costs & Cost Drivers

We believe significant provisions of the proposed rules will further drive cost impacts. Given DEQ is now aware, based on the PRO Program plan estimates, that this program will require massive investment by producers, we believe the Department should revisit the entire RMA program and associated rules to identify any potential cost savings that could make this new program more efficient. Unfortunately, the PRO Program plan was submitted before the release of these rules, and we are left uncertain whether the PRO plan incorporated the numerous cost drivers in the rules in their estimate or if these rules will only exacerbate an unsustainable expense for producers.

Oregon was not the first state to pass an EPR program. It will, however, be the first state to implement an EPR program for packaging. We do not believe this is the right approach for anybody touched by the recycling system. Not only does it put the costs directly on those producers selling products in Oregon, but it fails to provide an opportunity for the State and the PRO to learn from the mistakes and successes of other states. To our knowledge, the one PRO that submitted a plan in Oregon will also be actively involved in all other states as well. It does not make sense to have state-specific requirements that deviate from other states because Oregon consumers will ultimately bear those costs.

Based on our analysis, Oregon's EPR program for packaging materials will be the most expensive in the country.

It is important to note that many cost drivers in the RMA do not exist in other EPR programs. To our knowledge, no other state EPR program requires the development of or certification/approval of "responsible end markets" for recycling/handling of post-consumer materials. We also have concerns that these requirements may violate the Interstate Commerce Clause because they essentially require the use of in-state facilities unless out-of-state facilities meet the same state-specific requirements for certification.

Additionally, we do not believe other state programs require producers to conduct separate Life Cycle Evaluations, which will be an additional cost, according to figures presented by DEQ, of at least $2.5 million every two years for the identified “Large Producers”.

It also important to note here that significant privacy concerns persist associated with sharing sales data with DEQ as a part of these evaluations that could potentially be open to public records requests and/or having this information stored on the DEQ public records on its portal. Since producers will be paying into the PRO system, it would make more sense to provide these sensitive data disclosures to the PRO only. Additionally as a part of the Life Cycle Impact Assessments required of large producers and producers who voluntarily participate in the bonus program, we urge with regard to the the PEFCR (Product Environmental Footprint Category Rules) categories, some of which are predominantly focused on plastic, that DEQ require the actual packaging manufacturers to provide toxicity and water quality impacts of the primary, secondary and tertiary packaging to the covered producers. By doing so, it would reduce the need for producers to hire consultants and focus on providing the information related to the covered producer’s GhG footprint. Finally, we also believe that it is counterproductive to have a bonus program for producers that can only be taken advantage of for one year. Given the significant costs to develop the assessments and the importance of rewarding good stewards, offering incentives to help encourage continuous improvements should not be capped at one time.

Oregon legislators were told the RMA could cost upwards of $100 million to stand up and that those costs would likely continue into the future but decrease as the need for initial investments dissipates. Based on the cost estimates submitted by the PRO in their program plan, the program's cost, at a minimum, has tripled, with low-end estimates set at $925 million in the first 2.5 years of the program. With a high estimate from the PRO of $1.2 billion in the first 2.5 years, the RMA will require quadruple the investment that legislators were quoted this past February during the 2024 Legislative Session. It is unconscionable for DEQ to create a program and plan to implement that program without further legislative discussion when the program has ballooned to 3-4 times the cost provided to legislators when they passed Senate Bill 582. Furthermore, if the low and high end estimated costs of this program were translated into a per person cost for producers, it would result in a $72.47 per person cost a year and a staggering $94.59 per capita in the first three years. We believe that DEQ should be solely focused on revamping the RMA to meet the fiscal estimates provided to the Legislature or that DEQ should put the RMA implementation on hold until the Legislature has the ability to review these exorbitant costs and determine whether the limited recycling benefits are worth the cost.

We would also like to note that two states that have higher populations than Oregon have estimated considerably lower costs per capita. Colorado performed a needs assessment that estimated the total annual cost for the program would be $160-$260 million. On the high end, this puts their program at a maximum cost of $780 million for a 3-year investment, which is significantly lower than the low estimate submitted for Oregon – and Colorado has a population of 5.9 million, 28% higher than Oregon. Meanwhile, California’s estimated program costs will be approximately $500 million annually with a population that is

almost 10 times the size of Oregon's. The program cost estimates in Colorado and California alone show how incredibly expensive Oregon's program is anticipated to be and demand either DEQ to scale back the program or revisit the overall program costs with the Legislature before implementation.

Identification of Producers/Historical Data Requirements

We are particularly concerned that these rules do not adequately address how the PRO or DEQ will identify producers with more than $5 million in global sales. The lack of access to relevant data poses a significant challenge for the PRO in determining which companies selling in Oregon meet the definition of a producer and are thus required to join the PRO.

The section of the rulemaking proposal regarding these requirements raises critical questions:

- Is there any indication of how many businesses meet the producer definition compared to those exempt under the small producer definition?
- Are there any estimates on the number of producers subject to the RMA requirements within each category of material type?

Without this information, this system is being built without knowledge of the cost impact on producers subject to joining the PRO. If a substantial portion of the material in the system is generated by producers who are not subject to joining the PRO, the costs for the producers that are subject will increase, and the increased costs could be substantial. The expectation that businesses will self-identify and join the PRO when many companies are out of state and when many companies in-state have not been made aware of their obligation creates a disincentive for responsible producers to join because they will bear the burden of extremely high membership fees that will be required to fund the plan.

From our perspective, identification of subject producers should be one of the most important responsibilities for the PRO and DEQ to tackle as soon as possible. If DEQ and the PRO believe a producer is subject to join the PRO but the producer indicates they believe they are exempt, what will the process be to determine whether or not the producer is subject to joining the PRO given DEQ has no authority to request information from producers who claim to be small producers? We believe this is an inherent flaw in the overall design of this program that will result in a significant shift of responsibility to those large producers who choose to self-identify at the start of the program. At a minimum, we believe program implementation on July 1 should be limited to producer registration. It will be impossible for the PRO to determine actual membership fees unless they know how many producers will pay into the system and what percentage of covered products those producers represent. Any additional requirements should be delayed until the PRO is able to establish how many producers are required to join as members and what the ultimate membership fee will be.

Without a clear plan for how DEQ and the PRO will identify producers subject to joining the PRO, we do not believe this program can be successful. This concern can only be addressed by revisiting the statutory requirements of the RMA. We believe this is one of the most important elements needed to determine costs

to subject producers and urge DEQ to request a delay of implementation of the overall program in order the restructure the timeline and ensure there is a process to both identify subject producers and educate producers about their responsibility as a large producer.

Specific to the requirement in the draft rules for producers to submit historical product data for the year preceding the program's official start date of July 1, 2025, we do not believe the Department has the authority to implement this provision of the rules. The Department did not receive legislative direction or authority to start the program before this date. Thus, it seems inappropriate and burdensome to implement a backward-looking requirement. We are also concerned about the recoupment of costs envisioned by DEQ related to the PRO in advance of the July 1, 2025 start date. Costs incurred by the PRO to develop the program plan should not be the responsibility of producers and we do not believe Senate Bill 582 authorized DEQ to require producers to reimburse any costs in advance of when their membership begins. DEQ should not continue to require the PRO to expend resources until after the program starts on July 1, 2025. At this point, the PRO has not been officially selected by DEQ and will not have an approved program plan until the end of 2024.

Statement of Fiscal and Economic Impact/PRO Investment Obligations:
Reviewing the Statement of Fiscal and Economic Impact, one thing is clear – the cost impact on producers is virtually ignored and DEQ believes producers through the PRO should be required to pay for all increased costs for every other entity in the recycling chain. According to the fiscal and economic impact statement, producers through the PRO will be responsible for covering costs related to:

- Commingled Recycling Processing Facility Permits (CRPF)
- Certification of Out-of-State Commingled Recycling Processing Facilities
- Processor Commodity Risk Fees
- Living Wages and Supportive Benefits for employees of Comingled Recycling Processing Facilities
- Waste Prevention and Reuse Fees
- Local Government Compensation for Evaluation of Contamination
- Local Government Compensation for Contamination Reduction Programming

Throughout the Statement, DEQ points to the PRO as the party responsible for ultimately reimbursing costs for local governments, CRPFs and for DEQ. Repeated throughout the document is a line similar to this – "DEQ anticipates indirect negative impacts to producers of covered products, as a portion of their PRO membership fees will be used to pay into the fund." There is no analysis about the impact these costs will have on the producers paying them. DEQ assumes that because a producer has $5 million in global sales that they are automatically excluded from the definition of small business for the purpose of determining the cost impact for small business, but they fail to provide any analysis that justifies that assumption. In the column where DEQ is expected to list the number of producers of covered products, DEQ states "Information unavailable at this time." Ultimately this means the entire fiscal impact of these rules will be shouldered by a segment of producers but DEQ has no idea who these producers are or how these increased costs might impact those producers. We believe it is irresponsible to push costs of compliance for all modifications to the recycling system in Oregon onto producers especially when there hasn't been any

analysis of who those producers are, where they are located, how many of them are actual Oregon based companies, how much each of these companies may be required to pay and how the increased costs will impact the viability of that company to continue to operate in or sell products into Oregon.

Market Share Calculation

We have concerns about both the requirements for the lifecycle analysis section and the use of weight to determine market share as a benchmark for that requirement. Throughout the legislation, there is an understanding that the costs for each material type should be calculated separately. It is confusing to have separate definitions for market share and to base one of those definitions solely on weight. Glass is clearly the heaviest material that will be processed, and by requiring weight as the measurement for identifying the top 25 producers, these rules skew the impact on glass and will likely subject glass producers to more significant analysis than they would otherwise be required to complete in spite of the fact that it is 100% recyclable, can be endlessly recycled and is reusable without loss in quality or purity.

We believe this approach is not in line with the Recycling Modernization Act, which states in section 11, "Membership fees must be designed to differentiate between types of covered products, and the materials and formats that comprise those covered products. Membership fees charged for different covered product types, materials, and formats must be proportional to the costs to the producer responsibility organization for that covered product type, material, or format."

Living Wage Standards

We do not believe it is appropriate for DEQ to set specific wage rates for a private employer to pay their employees. We further do not believe it's appropriate for DEQ to require other private businesses, through the PRO, to cover the increased costs for a private employer's employees. We recognize the Legislature allowed for the recoupment of some administrative costs, but do not believe the Legislature ever intended for DEQ to set wage rates, set requirements for benefits and then require producers to pay for all those costs for employees that are not their own. This is an extremely dangerous precedent and should not be adopted as part of these rules.

In addition to our serious concerns about the appropriateness of these requirements, we are also concerned that the required wages for workers at commingled recycling processing facilities are significantly higher than those in many high-cost areas across the country, including Corvallis, Santa Fe, and Berkeley. For example, the living wage in Berkeley, an area with a high cost of living, is $19.05 per hour, effective July 1, 2024. In contrast, the living wage for facilities in Oregon's least expensive area is higher at $23.35. In Washington County, Oregon's most populace county, the wage standards are set at $32.58 by DEQ rule. which will lead to exorbitant costs for producers and ultimately for consumers. The Department should align any wage requirements with those already established by localities in high-cost areas of the state and country. Imposing excessively high wage requirements will place heavy financial burdens on companies participating in the EPR program, leading to increased consumer costs, particularly affecting low-income individuals who spend more of their income as a percentage on items that have packaging subject to this program.

Wine Producers' Request

The wine producers we represent, both large and small, are deeply concerned about the impact of adopting these rules without a more thorough consideration of costs. It would have been productive for all stakeholders, lawmakers, and the agency to have had these conversations around the time of the adoption of Senate Bill 582 years ago. However, since cost estimations have come to light in recent months through the PRO estimates and the adoption of more specific rules surrounding implementation by the DEQ, we believe this is the moment to have these conversations at the most basic level.

DEQ's timeline for officially adopting these rules is set for Fall 2024. We ask the agency to continue working on these rules until November and engaging with stakeholders. Our wine producers approach this uniquely as an agricultural industry primarily using traditionally heavier container products. We are committed to sustainability and appreciate any and all opportunities to find a path forward for sustainable wine bottle recycling that does not incur the exorbitant costs currently estimated for the RMA program.

Jana McKamey

Fawn Barrie

Jana McKamey	Fawn Barrie	Sally Jefferson
Executive Director	Executive Director	Vice President
Oregon Winegrowers Association	Oregon Wine Council	Wine Institute

July 26, 2024

Oregon DEQ
Attn: Roxann Nayar
700 NE Multnomah St., Room 600
Portland, OR 97232-4100
Submitted via email to: recycling.2024@deq.oregon.gov

RE: Comments on the Plastic Pollution and Recycling Modernization Act, Rulemaking 2

On behalf of the American Forest & Paper Association (AF&PA), thank you for the opportunity to provide comments on the Plastic Pollution and Recycling Modernization Act ("Act"), Rulemaking 2. We look forward to continued engagement with the Department of Environmental Quality (DEQ) as we refine the approach toward improving paper recycling.

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 people. The industry meets a payroll of approximately $55 billion annually and is among the top 10 manufacturing sector employers in 43 states.

Paper Recycling Works

The paper recycling rate has grown over the decades, and remains consistently high, meeting or exceeding 63 percent since 2009.[1] In 2022, nearly 68 percent of paper consumed nationally was recovered for recycling. Technological innovations in product design and recycling processes are continuously allowing our industry to access and recycle more paper-based products.

Data from the U.S. Environmental Protection Agency (EPA) confirms the excellent record and environmental success story of paper recycling from municipal collection programs.[2] Put another way, more paper by weight is recovered for recycling from municipal solid waste streams than plastic, glass, steel, and aluminum combined.

[1] https://www.paperrecycles.org/media/news/2020/05/12/u.s.-paper-industry-achieves-consistently-high-recycling-rate

[2] Advancing Sustainable Materials Management: 2018 Fact Sheet. EPA. November 2020.

Robust investment in end market use for recovered paper is an essential pillar of the paper industry's success. Our industry has completed or announced nearly $7 billion in manufacturing investments through 2025 (2019-2025) that will use more than nine million tons of recovered fiber.

Please find below our feedback on the Act, Rulemaking 2, with comments focused on the areas of greatest impact to the paper and fiber-based packaging industry. At a high level, we are troubled by the extent of the regulations' potential impacts on the recycling of paper and paper-based packaging. The intent of the Act was to create a framework for identifying problems and solutions for materials with low recycling rates. As a highly recycled material, paper is not part of the problem this legislation is intended to address, yet our members would face unnecessary new burdens under the proposed rules. Absent changes, the proposed rules will create barriers to markets for recyclable materials generated in Oregon.

Acceptance List

OAR 340-090-0630

In OAR 340-090-0630(2)(c), DEQ proposes to revise the description of excluded packaging by replacing "items used to package goods that are normally placed in a refrigerator or freezer" with "polycoated paperboard packaging, such as packaging used for refrigerated or frozen food products".

We believe that this revised phrasing continues to be problematic, as it implies that all paperboard packaging used in refrigerated and frozen food products is polycoated. As we pointed out in our comments to Rulemaking 1, 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. This provision, as currently drafted, will create confusion for producers as to what material is and isn't accepted and is likely to result in highly recyclable material being directed to landfills.

The process for developing the acceptance list remains opaque. The outcome for specific items of paper-based packaging, including polycoated paperboard and paper cups, is inconsistent with data shared by AF&PA on regional and national collection of the material, and regional acceptance by mills. By adopting an excessively narrow acceptance list and not adequately considering feedback from mills accepting Oregon materials, DEQ will unintentionally direct recyclable materials to landfills.

Yield

OAR 340-090-0670

We oppose establishing yield thresholds in regulation as set forth in OAR 340-090-0670, particularly with respect to the paper industry, which already has well established and recognized standards. Doing so creates a cumbersome process, establishing DEQ and the PRO as a decision-making authority in industry standards, when neither entity has relevant expertise for making such determinations. The paper industry maintains voluntary standards for recyclability and repulpability of material. The Forest Stewardship Council and the Sustainable Forestry Initiative have programs certifying forest fiber and recycled content through production and manufacturing to the end product. The Recycled Materials Association (formerly the Institute for Scrap Recycling Industries) maintains detailed bale specifications in the Scrap Specifications Circular. Creating a new standard through DEQ and the PRO would only create confusion among stakeholders about which standards should be adhered to for purposes of compliance with Oregon regulations.

We understand and appreciate DEQ's desire to have clear industry accountability to maintain consumer confidence in the integrity of the recycling process but suggest the same could be accomplished through an alternative framework. DEQ and/or the PRO should create a process for consideration and adoption of existing industry standards. This would ensure that appropriate expertise is leveraged when relevant, and that resources and attention of DEQ and the PRO can be focused on priorities that could lead to substantial improvements in the recycling system. We would welcome the opportunity to work with DEQ to draft language that would amend OAR 340-090-0670 to reflect this approach.

End Markets Verification

OAR 340-090-820

We have concerns about DEQ establishing specific sources, such as recyclingmarkets.net, as authoritative sources of pricing data for recycled commodities. Rather than referencing a single source for data that is competitively sensitive and extremely dynamic, it would be preferable to instruct the PRO to review multiple credible sources used in the marketplace. The PRO should determine, through a transparent and contemplative process, the appropriate mix of data to consider when determining commodity prices for purposes of calculating the risk fee.

OAR 340-090-0840

Proposed edits to the definition of covered products are confusing. The definitions of "service packaging" and "foodservice ware and packaging" seem to overlap. Clarification of these definitions is needed.

OAR 340-090-0860

The changes to the producer definition proposed in this section are inconsistent with the statutory language (codified in ORS 459A.863). This section should be deleted in its entirety and the statutory definitions should be retained as the sole definition of "producer." The proposed regulatory definitions are inconsistent with the Act, which otherwise creates tiered producer definitions focused on entities responsible for the ultimate sale of packaging to the end consumer.

OAR 340-090-0870

The timelines set forth in this section are unrealistic. The proposed rules are far from final, yet DEQ seems to have an expectation that producers would be able to both collect and report data from calendar year 2024, which is already more than half over, as we complete this comment period at the end of July.

OAR 340-090-0900

The proposed regulations contemplate the use of comparative life cycle assessments (LCAs) for regulatory purposes. We would encourage DEQ to set robust parameters on any such comparisons to ensure integrity in the process. LCAs, particularly comparative LCAs, can be prone to biased outcomes driven by assumptions used in the analysis.

OAR 340-096-0310

Both the current rulemaking (Rulemaking 2) and the prior rulemaking (Rulemaking 1) undertaken by DEQ pursuant to the Act did not consider the economic effect of the proposed rules on responsible end markets and, therefore, failed to comply with ORS 183.335(2)(b)(E). Under the proposed rules, to be

eligible to receive recyclable materials generated in Oregon, responsible end markets would be subject to onerous certification and audit requirements that require significant staff time and other out-of-pocket costs. Although the proposed rules directly regulate the PRO and CRPFs, rather than responsible end markets, the proposed rules would have a direct economic impact on responsible end markets that desire to continue receiving recyclable materials generated in Oregon. Because the statement of fiscal and economic impact issued in connection with the proposed rulemaking failed to consider these economic effects on businesses, including responsible end markets, DEQ has not complied with its obligations under ORS 183.335.

Beyond the deficiencies in the statement of fiscal and economic impact, the obligations imposed on entities in end markets that desire to receive recyclable materials generated in Oregon are inconsistent with the Act, are unnecessarily onerous, and are likely to reduce markets for recyclable materials generated in Oregon. Absent changes to the proposed rules, entities in end markets will be faced with two choices: (1) stop accepting recyclable materials from Oregon, or (2) accept burdensome new certification and audit obligations. To ensure that robust markets exist for recyclable materials generated in Oregon, DEQ should revisit the responsible end market certification and audit requirements under both OAR 340-090-0670 and OAR 340-096-0310.

The responsible end market requirements set forth in OAR 340-090-0670 and OAR 340-096-0310 are inconsistent with the Act. The Act requires CRPFs to either (1) accurately report the final end market of the materials it processes, or (2) obtain a certification that the responsible end markets for the materials meet certain standards for environmental and social responsibility, as set forth in a program approved by the EQC. Proposed OAR 340-096-0310(1)(a) appears to omit entirely the first option and instead mandates that CRPFs undertake a burdensome two-step process to verify that they sell recyclable materials only to entities that meet the definition of "responsible end markets." This two-step process is not required by and is inconsistent with the Act.

The Act does not contemplate or authorize annual audits or third-party certifications of responsible end markets; rather, the Act references a "certification." However, the first step of the verification process requires a CRPF to "perform a screening assessment, using a form provided by DEQ" to confirm that the entity receiving materials from the CRPF (e.g., a paper mill) meets the responsibility standard set forth in OAR 340-090-0670(2)(b). The second step of the verification process requires a CRPF to confirm that the entity receiving materials from the CRPF meets the responsibility standard either though an annual audit by the PRO or third-party certification pursuant to an EQC-approved program. This is inconsistent with the structure and purpose of the Act. Additionally, the annual audit and third-party certification requirements for entities downstream of CRPFs is unnecessary given that CRPFs, which are intended to be directly regulated under the Act, are not subject to the same requirement. We urge DEQ to replace the proposed two-step verification with a single-step certification process, with the option for facilities to self-certify—at least under certain circumstances, such as facilities that accept highly recycled materials within industries with established sustainability programs and standards.

In addition to being inconsistent with the Act, the proposed two-step verification process adds bureaucracy and cost to the utilization of recycled material as manufacturing feedstock. The cost-competitiveness of utilizing recycled fiber in manufacturing is a significant contributing factor to the overall success of paper recycling. Beyond a simple "certification," additional requirements such as on-

site inspections or third-party certifications to verify compliance with the responsible end markets requirement are not mentioned in the Act.

The proposed rules are unclear about which entity(ies) would bear the cost of the annual audits or third-party certifications. We assume that entities downstream from CRPFs would not be charged directly for annual audits performed by the PRO, but even if that assumption is accurate, we believe dozens if not hundreds of hours of staff time (including external consultants and advisors) will likely be required by each downstream entity to satisfy the proposed two-step verification process. This estimate is based on our members' experiences with other types of regulatory audits. We also assume that entities downstream from CRFPs would be responsible for any cost associated with third-party certifications—costs that the proposed rulemaking has failed to consider.

U.S. paper mills comply with environmental regulations on air emissions, water discharges, and handling and disposal of chemicals that are among the most rigorous in the world. Inspection and certification requirements add bureaucracy and cost to compliance, but no other substantive improvement to the environmental soundness of the manufacturing process. Establishing the obligation on the PRO to oversee this process distracts from the PRO's primary mission: to oversee needed research and investment in Oregon's collection and sortation infrastructure to drive modernization of the overall recycling system.

The proposed framework also, with the added bureaucracy and cost, would create a deterrent for manufacturers to use material sourced from Oregon, contrary to the goals of the Act—again, for no additional benefit. Simplifying the process would avoid potential negative consequences and be more consistent with the legislature's intent in passing the Act.

OAR 340-090-0670

The burdens imposed on responsible end markets are exacerbated by the provisions of OAR 340-090-0670, which go beyond the text and intent of the Act. As explained above, with respect to responsible end markets, the Act requires only "certification." DEQ has provided the option for CRPFs to self-certify under certain circumstances (see OAR 340-096-0820(3)), but the proposed rules do not include a similar self-certification option for responsible end markets. In fact, rules developed by DEQ regarding responsible end markets go far beyond a simple certification process. For example, OAR 340-090-0670(b) provides that entities must be "willing to be named and audited" and "willing to be audited and monitored for outdoor air, water and land emissions and disposal." Although any certification (or self-certification) program would need to include verification mechanisms, the audits contemplated under the proposed rules are unnecessarily broad and burdensome.

Under the rules developed by DEQ, verification of responsible end markets by the PRO are incredibly broad in scope and impose certain requirements and obligations that are more onerous than those reflected in existing environmental permitting programs. For example, the PRO would be required to develop a list of all local, state, and national laws and treaties applicable to each facility and document any noncompliance with applicable requirements. Audits would be required annually. These broad requirements and obligations cannot be reconciled with the Act, which did not include any provisions authorizing or mandating direct regulation of entities downstream from CRPFs. The text and structure of the Act evidence a clear intent to directly regulate CRPFs but not downstream entities, but the effect of

the proposed rules would be to subject downstream entities to obligations similar to (and, in certain circumstances, more onerous than) those imposed on CRPFs.

Issues with Communications Papers

On a webinar hosted on July 16, there were several inaccuracies presented about communications papers and a puzzling approach was taken to categorize that material. First, DEQ proposed to categorize some communications papers, including envelopes and some file folders as packaging rather than printing papers. We find this distinction perplexing – it makes no sense to categorize material that flows the same through a material recovery facility and ends up in the same commodity bale into different categories.

Second, DEQ's proposed approach to managing printing papers is inconsistent with how other EPR programs treat printing papers. It risks double-counting and thus double charging for material placed on the market. The July 16 webinar included several inaccurate descriptions of how printing papers are distributed and utilized in the marketplace. The regulations should focus on identifying and assessing fees on "printed paper" as the finished product. To help clarify, unprinted paper is an intermediate product that would rarely end up in a recycle bin. The webinar inaccurately stated that direct mail (bank statements, etc.) are printed on 8.5 x 11" paper. Most direct mail is in fact sold to printers as unprinted rolls which are then converted into 8.5 x 11" sizes. This misunderstanding about how paper is distributed seems to have led DEQ to conclude that the paper manufacturer should be the responsible producer. In reality, the manufacturer will not have access to information about whether that material is distributed in Oregon. Consistent with the principles of EPR, the company printing the communications should be the responsible producer as that entity would have access to the best information about quantity of material distributed in Oregon, and assessing the fee at that stage would reduce the risk of assessing the fee twice for the same material. DEQ's regulations should be clear that the fee should be assessed on the material only once.

Proposed Rules Would Eviscerate the Statutory Exemption for Industrial, Commercial, and Institutionally Collected Source-Separated Material

Finally, we want to remind DEQ of a section of the Act that was added to address concerns expressed by our industry during the legislative process:

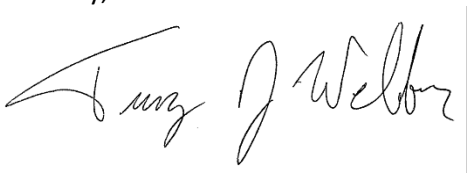
> (13)(a) A producer may demonstrate to the department that a material is exempt from the requirements for a covered product if the material:
> (A) Is collected through a recycling collection service not provided under the opportunity to recycle;
> (B) Does not undergo separation from other materials at a commingled recycling processing facility; and
> (C) Is recycled at a responsible end market.

Based on a reasonable reading of the proposed rules and what DEQ is telling stakeholders, the proposed rules as currently written would subject material exempted under this section to all reporting and auditing requirements in the proposed rules. If this interpretation stands, practically, the only meaningful operational exemption this section of the statute would provide is to the fee obligations for the material exempt under this section. We believe that outcome is inconsistent with the intent of the legislative sponsors and the legislature as a whole. The vast majority of paper and paper-based packaging is recycled through efficient source-separated collection programs at industrial, commercial

and institutional generators. The legislation was intended to identify and address opportunities for improvements in Oregon's recycling system, not to add unnecessary cost, establish excessively bureaucratic oversight, or otherwise disrupt existing efficient and dynamic markets for recycled material.

Thank you for your consideration of our comments. We remain available to discuss the feedback herein in greater detail and look forward to your response.

Sincerely,



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

ALLIANCE FOR AUTOMOTIVE INNOVATION

July 26, 2024

Submitted via email to recycling.2024@deq.oregon.gov

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

RE: Plastic Pollution and Recycling Modernization Act, Rulemaking 2

Dear Ms. Nayar:

The Alliance for Automotive Innovation (Auto Innovators)[1] appreciates the opportunity to provide comments on DEQ's Plastic Pollution and Recycling Modernization Act, Rulemaking 2.[2] Auto Innovators represents the auto manufacturing sector, including automakers that produce and sell approximately 95% of the new light-duty vehicles in the United States. Our mission is to work with policymakers to realize a future of cleaner, safer, and smarter personal transportation and to work together on policies that further these goals, increase U.S. competitiveness, and ensure sustainable, well-paying jobs for citizens throughout the country.

We provide these comments in order to help DEQ better understand the challenges that this proposal presents to manufacturers of complex durable goods like automobiles. We are concerned that DEQ's proposed regulations do not sufficiently take into consideration the manner in which complex durable goods are packaged for storage, sales, and shipping. While we read the statute as focused on residential recycling for single-use types packaging, the way the proposed rules are written captures a much wider range of products not envisioned by SB582.Because of this expanded scope, packaging used in the automotive industry—to protect cars before their sale, to store parts that may be held for years before being sold and installed into a vehicle, or that may be on products sold in a dealership—may be captured.

Automotive original equipment manufacturers (OEMs) and their supply chain members responsibly manage the lifecycle of packaging materials. In March 2024, the Suppliers Partnership for the Environment (SP)—an association of global automakers and their suppliers working together to advance environmental sustainability through the automotive supply chain—announced the publication of a newly updated edition of its *Sustainable Packaging Specification Recommendations for Automotive Manufacturing Operations* guidance document.[3] The latest version provides expanded guidance on the viable recyclability of a range of different automotive packaging materials, including the addition of new materials such as vapor corrosion inhibitors, wood dunnage, and

[1] From the manufacturers producing most vehicles sold in the U.S. to autonomous vehicle innovators to equipment suppliers, battery producers and semiconductor makers – Alliance for Automotive Innovation represents the full auto industry, a sector supporting 10 million American jobs and five percent of the economy. Active in Washington, D.C. and all 50 states, the association is committed to a cleaner, safer, and smarter personal transportation future. www.autosinnovate.org.
[2] https://www.oregon.gov/deq/rulemaking/Pages/recycling2024.aspx.
[3] https://www.supplierspartnership.org/sp-news/sp-releases-latest-sustainable-packaging-guidance-for-automotive-manufacturing-operations/

plastic dunnage trays. Additional information was added in this edition related to foam packaging products, which are commonly used to protect parts within returnable containers, and the challenges and opportunities to be considered in striving to improve circularity of foams. The update also includes information on circular economy design principles and highlights opportunities to improve the recyclability of automotive packaging in the design phase. In addition to manufacturing packaging, automotive OEMs and SP developed a document focused on expendable packaging. The document, titled "*Sustainable Packaging Specification Recommendations for Automotive Expendable Packaging,*" is a succinct set of practical recommendations to help automakers and suppliers identify opportunities to design and source sustainable packaging designs for use in expendable packaging applications.[4] Expendable packaging is most commonly used in service parts operations in the automotive industry. Service parts are defined as replacement parts manufactured to OEM specifications which are procured or released by the OEM for service part applications. Expendable packaging could also be used for international shipping and as backup for returnable packaging, when needed.

The proposed rule would require significant changes to current recycle data collection processes at dealership and distribution facilities and would likely impact the physical process used to capture and manage recycled materials at our facilities. The proposed rule would require expanding the materials that OEMs collect and send for recycling, resulting in the need for existing contracts to be modified, interrupting a process that is working well. In addition, the proposed rule does not provide for a transition period to allow time for modifications to existing and acquisition of new contracts.

If DEQ determines to finalize a rule that would capture packaging materials used in the automotive industry, Auto Innovators recommends DEQ add a phase-in period. In addition, while DEQ proposes that collected materials must be sent to a responsible end market, a mechanism to certify responsible end markets is not likely to be available in a timely manner. Again, if DEQ decides to proceed with this expanded scope of coverage, producers should instead be able to self-certify responsible end markets for their recycled materials for a period of 2 years after the proposed rule's effectives date. The phase-in period will allow for a smooth transition as statewide capabilities are developed.

The accounting of packaging materials does not seem to recognize that some packaging materials are returned to the producer/seller. The proposed rule does not account for packaging for returned products the packaging material for which is shipped out of state. Such packaging materials should be exempt. Packaging materials for many automotive parts may be returned with the product to the dealer or distribution center and then transferred for parts remanufacture at an out-of-state facility. Packaging materials may be returned with the product to the distribution center or point of sale which is then transferred out of state.

The section of the proposed rule titled "Statement of fiscal and economic impact" appears to miss some critical considerations. The total expected annual cost of the program to be paid for by business is around $350 to $480 million. The recent discussion of the Advisory Council indicated that the application submitted by Circulation Action Alliance (CAA) to be the PRO was inadequate and therefore costs are expected to increase. The total costs of the proposed rule to businesses in the state should be further evaluated and estimated costs for each business covered by the

[4] https://www.supplierspartnership.org/wp-content/uploads/2023/11/SP-Sustainable-Packaging-Guidelines-for-Expendable-Final-October-2023.pdf.

proposed rule be included. It's also noteworthy that the costs to businesses are not included in the PRO application. The PRO's fee rate methodology is not provided in the PRO Plan; the methodology is instead identified as a confidential formulation. The regulated producer community must be informed of the expected costs and be given the opportunity to review and provide comments on these proposed fee formula methodologies.

In closing, automotive OEMs and their dealers already responsibly manage waste materials at our facilities. We request that DEQ give our existing programs due consideration and consider exempting our packaging from these proposed requirements.

If you would like to further discuss the auto industry and our comments, please feel free to contact me at 202-326-5511 or cpalin@autosinnovate.org

Sincerely,

Catherine Palin
Senior Attorney & Director of Environmental Policy
Alliance for Automotive Innovation

TO: OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

FROM: SCOTT DEFIFE, GLASS PACKAGING INSTITUTE

DATE: JULY 26, 2024

RE: COMMENTS ON PPRMA RULEMAKING 2 DRAFT RULES (JUNE 10, 2024)

The Glass Packaging Institute appreciates the opportunity to provide comment with respect to the Plastic Pollution and Recycling Modernization Act Draft Rulemaking 2 issued on June 10, 2024.

GPI is the North American trade association for the glass food and beverage manufacturing companies, glass recycling processors, raw material providers and other supply chain partners within the industry. GPI and its members work closely with local and state governments throughout the country on issues surrounding sustainability, recycling, packaging manufacturing and energy use, and our members have operations in the State of Oregon that would be a part of the service provider supply chain, and end-markets covered by the plan. In addition, GPI represents end-markets in other states that may end up receiving material from the beneficiation and processing plants. Lastly, our views expressed here are also with the goal of equity and appropriateness of fees levied on producers who choose to package in glass.

The Glass industry seeks to be a constructive partner to the OR DEQ and the CAA process of developing the most efficient and effective glass recovery program that can be developed under the requirements of the law. Our goal is to maximize the sustainable recovery of glass material in Oregon and optimize its highest best use back into the glass manufacturing supply chain at an appropriate cost.

In summary, we are concerned that glass, as a material, is caught in a void of a law and regulations that clearly were meant for more problematic and harder to recycle materials. Glass is a core feed and beverage packaging material and a core recyclable. Glass is used by some of the largest food and beverage products made in Oregon, and already well recycled in Oregon, both by the bottle deposit program and for the non-deposit recovery that existed prior to the RMA. Glass clearly was not the primary focus of the regulations, and these draft regulations could make glass recycling more difficult and reduce the use of glass. There are substantial inconsistencies in the way the material is treated under different sections of the proposed rules, and producers who use glass packaging should not be penalized with higher fees, nor should the glass have to pay for the design flaws of the existing commingled material recovery facility industry that creates far higher contamination levels in the glass stream than any other commodity.

Specifically, we have several concerns with the following sections as it relates to glass:

1) Section 340-090-0670: Responsible End-markets

- It seems that in this rulemaking there are different points in the value chain of processing and beneficiation that are applied to different materials. We are concerned that may create some

economic advantages and disadvantages for differing materials due to how each material supply chain operates. The designated end-market for glass is the entity using the glass in a furnace or other application, rather than the entity taking ownership of the glass and processing it into a usable commodity in the various end-markets.

i. Under (1)(a) glass end-market is determined to be the entity that first uses glass in lieu of virgin material downstream of the beneficiation plant as opposed to (1)(b) the end-market for metal is the entity that smelts the recycled material back into an interim state, before it is refabricated into a package or other product. That limits the extent to which the entity that makes the package must comply with REM rules for metal, as opposed to glass.

ii. Since glass processing (beneficiation) facilities are as much a necessary step to prepare recycled material for remanufacture but are not clearly necessarily treated as CRPF (Commingled Recycling Processing Facility) under the rules, it would make logical sense to treat the glass beneficiation plant located in the state as the end-market, otherwise it should benefit from financial support from the PRO for handling the small fraction non-glass contamination from the primary CRPF. If the DEQ wants to extend some reporting of the ultimate destination and disposition of the recovered material downstream, then it should develop clear rules for the reporting when the material from depots or CRPF requires secondary processing before it can be used as a recyclable material.

iii. In fact, after reviewing these draft regulations, it appears that secondary sorting and beneficiation facilities are not readily identified as having a specific role. They are not front-line commingled sorting facilities, MRFs (CRPFs), but are necessary to the operation of the system because they do handle covered materials and are necessary steps to make the recovered materials into the quality that is needed so that they can be deemed recyclable and reach end-markets. The state is asking these secondary processing and beneficiation facilities to handle both material from the source separated depot stream and the CRPFs in the Metro area.

- This definition also extends the reach of the Oregon DEQ influence to operations in other states, creating a potential conflict with regulations in the state the material is ultimately used, as compared to the standard for Oregon. For domestic US end-markets, it should be adequate for an out of state entity that receives covered material to be an REM if it meets the regulatory standards in its jurisdiction and that can be confirmed by the regulatory standards of that state.

- What does the phrase "willing to be audited" mean for REMs? By whom and at what standard? The auditing standards in ORS 459A.962(7) are likely unknown to entities outside of Oregon. It seems that the definition of REM was written to cover the extremes of poorly regulated overseas markets, while recycled glass from Oregon is virtually certain to remain in the United States.

  Perhaps this is explained in (3) Implementation of the responsibility standard… (B)(e) *new section* – suggesting that each end market or "other downstream entity" that receives material collected in Oregon requires only one screening assessment each year? But this section should require entities to coordinate, not merely allow entities to coordinate to avoid duplication of effort. Even this language remains ambiguous as to what EQC-approved programs are, what the definition of a screening assessment is, and still begs the question of jurisdiction when material moves out of the state. DEQ should be mindful of the potential impact of restricting end-markets for material due to overly ambitious and burdensome screening, tracing and auditing requirements.

- For glass, there are issues related to yield that are out of the control of the end-market and are far more under the control of the service provider that first collects and conveys the material. Single-stream commingled collection may fail yield standard before the material ever reaches processing let alone the end-market due to over-crushing and contamination, resulting in glass fines that may not be able to be used by the REMs. Yield loss at landfills should not count against the glass REM.
- This last point will be revisited later in our comments as we interpret these rules to lay a greater obligation on the glass industry for the disposition of the glass and possible higher rates for glass merely because the waste management industry chooses the type of collection and plant engineering and operations that they are choosing. Put another way, it is not the fault of the glass container, or the brand that uses glass, that the waste management industry designed their collection and processing infrastructure the way that they did well before the RMA was initiated.

2) OAR 340-090-0035: Contamination Reduction Programming Events

- Glass is a mandatory recyclable but will be handled differently inside and outside the Metro area and may be handled differently in the future than it was at the time of the law and these regulations. Yet, later in 340-090-0830, glass is listed as a contaminant. This will be a change in some communities, and additional effort should be made in the Contamination Reduction Programming and education efforts to make clear to consumer if a material, like glass, is going to be handled differently in their community. We note special callouts in this section for items such as hazardous material, but not particular focus on extra attention to education of customers when the material is being handled differently in the community that before the law was enacted.

3) OAR 340-090-0630: Recycling Acceptance Lists

- We question why, under (2)(p) Local Government Recycling Acceptance List – why glass bottles and jars include the modifier of "but only from non-residential sources" when no other material on the list includes such a residential/non-residential distinction.
    i. What is purpose of excluding glass from residential sources?
    ii. How would one look at a discarded glass bottle and determine whether it was from a residential source as compared to a non-residential source?
    iii. Does that designation flow through to the determination of contamination rules and fees?
- There is no distinction in (3)(f) under the PRO Recycling Acceptance list of a difference between residential and non-residential generated glass bottles and jars – and when traced forward to the OAR 340-090-0640 Convenience Standards, that all glass bottle and jars, regardless of whether from residential or non-residential sources, need to be collected in enhanced convenience standard. Again, we are trying to discern how the agency will conclude that a bottle is from a residential or a non-residential setting when delivered to a drop center?
- While we understand it is the goal and desire of the PRO to maintain "glass on the side" collection inside the greater Metro Portland area, it is still up to the local government to make that determination and if some communities decide to alter that arrangement, it makes our point on the education and contamination reduction efforts above more critical, so that producers using glass are not penalized for changes made by local governments that do not also come with adequate educational effort to educate customers on those changes.

4) OAR 340-090-820: Processor Commodity Risk Fee

- It is unclear that a glass beneficiation facility would be eligible or assessed under the provisions of the processor commodity risk fee even though it would seem to meet the criteria laid out in ORS 459A.923 (1), at least for the glass material collected by commingled recycling service providers in the Metro area who collect glass on the side. The glass collected by these service providers would not have otherwise been previously processed by a CRPF but comes from that collection.
- It should certainly be the case that no CRPF should gain any commodity benefit from handling those tons of glass if they do not process the material and deliver it for processing to the glass beneficiation facility that is a necessary part of the recycling value chain for glass from Oregon.
- This is again, confusing for the glass commodity, especially if DEQ expects that the container glass collected in these programs is treated under the (A)(ix) "other materials (including contamination)" which it clearly is not contamination in the Metro area collection zone. We will reiterate our position that glass should also not be listed as "contamination" in any sense in the State of Oregon, and that we devise a special designation for glass that avoids the confusion of being recyclable in one part of the state and contamination in the areas where it is designated for drop off depots.
- Following on this, under (c) scrap price per ton, we see that glass is once again not listed and therefore is relegated to (ix) other materials for which the price is $0. Relatively clean, source separated and collected glass does have value and, although recyclingmarkets.net is somewhat deficient as a source for some varieties of glass pricing, a market price per ton can be determined.

5) OAR 340-090-0830: Contamination Management Fee

- As stated earlier, we object to the classification of glass as a contaminant in any part of these regulations. Glass is recycled in the state of Oregon at rates over 70 percent when the bottle deposit material and non-deposit material are combined, and the non-deposit glass, or glass currently covered by the RMA is recycled at nearly 50 percent. The regulations send mixed messages to residents on glass and will likely increase the confusion related to glass recycling, with end-markets in the State, and little to no discernable plan to provide additional education to consumers on the reasons for any jurisdiction that may change its method of glass collection to depot drop off.
- Paying CRPF a contamination fee in 2025 for glass, for 75 percent of the tonnage, (roughly $255/ton) without any transition or education, amounts to a windfall for the CRPF for doing no additional work to recycle the material that is coming through their tip floor. The amount only goes up in the subsequent years. These facilities have treated glass as a negative sort residual destined for landfill for decades, and the contamination rate for glass is extra-ordinarily high, by design, without any consideration of a separate collection stream that would reverse that market situation. Including the glass tonnage as contamination presents a cost to the PRO that is better spent on more drop-off depot or other innovative hub and spoke aggregation infrastructure to improve the transportation factors for glass, reducing costs and improving environmental outcomes.
- Again, a meeting or hearing or dialogue related to glass, or any similarly situated material, caught in the void of being readily recyclable with viable responsible end-markets in the state and region, but that do not neatly fit in commingled curbside CRPFs infrastructure, would help treat those materials appropriately.

6) OAR 340-090-0900 and 0910: Life Cycle Evaluation Definitions and Scope & Applicability

- The Glass Packaging Institute position on Life Cycle Evaluations has been submitted in prior comments during the RMA advisory review process. Rather than rehash all of the flaws with Life Cycle assessments, primarily that they are often misused as product marketing gimmicks focused solely on weight, and they lack the ability to truly assess the impact on the environment of the effects of problems that are not yet measured in a data form that can be included, we would recommend that the agency limit the use of LCAs in setting any fees or any manner which could encourage material packaging switching until data from the studies required is collected and analyzed for the first regulatory period of the RMA.
- Second, we note the inclusion of reuse in the LCA definition calculations, but the lost opportunity of failing to synchronize the reuse/refill system in the state that exists under the bottle deposit program. For RMA covered materials, few reusable options exist, and no infrastructure has been developed or incentivized under the law. A deposit on the package is normally required to encourage the high enough level of return rate. While the deposit is available under the beverage container deposit program, managed by OBRC, it is a question whether the imposition of a deposit is allowable and manageable by the PRO under the RMA. Refillable beer and potentially wine bottles would have a positive impact on the state environment, but the fact that such a program is managed in a different regulatory regime and cannot be counted under the RMA, is a missed opportunity for expansion.
- While the twenty-five largest producers have the most viable opportunity to have a wide enough variety of packaging materials, we question whether it is appropriate to use the data from large global entities to apply in the future fees for medium and smaller producers that may have a narrower set of packaging materials used for their products. It is far from understood if the data from these largest producers of covered material is relevant for smaller regional producers – when not all material may be adequately represented.

We will repeat a concern and observation here that we made in comments related to the initial PRO plan earlier this year. It seems clear that the RMA regulatory process and CAA plan continues to struggle with easily categorizing a treatment plan for glass containers. The majority of the glass is already in the state's beverage container bottle deposit return, and wine and liquor bottles could and most likely should be included in that program. There is a remaining percentage of food or personal care product glass that will be covered by the RMA, and therefore, glass gets hybrid treatment as a known, highly recyclable, non-toxic material that is circular to the state of Oregon and Pacific Northwest region – meaning there are production facilities, producers who use glass for their products and glass recycling processing facilities in the state and region that allow for high recycling rates. However, the commingled curbside single-stream collection system was not built to prioritize handling of glass, increases the contamination, lowers the recovery yield and value because it is relegated to the residual stream in most material recovery facilities. The producers who use glass should not be charged higher fees for the lack of quality glass material that is typically the output of CRPFs and has pushed the state collection to drop-off depots outside the Portland Metro area.

We believe the resulting range of glass product fees outlined in the preliminary PRO plan were high, likely at least in part due to the mixed plan treatment of glass in the draft regulation. Since glass was not a focus or impetus of the law, we are concerned that the split jurisdiction and a lack of full understanding of how recycled glass moves through the supply chain to end up and various end-markets are creating additional negative impact on glass users.

Collaboration with the glass recycling and manufacturing industry can best pay off with new, innovative thinking for a plan that deals with glass and not one that treats glass as a contaminant. There are paths for aggregation and storage of glass, that use the positive attributes of the material, collected separately, and play to its strengths to reduce the fees on glass users and allow for the material to play an increased role in the Oregon packaging portfolio. The industry can help identify strategic corridors utilizing more of a hub and spoke collection system that can use the existing processing facilities rather than be concerned with developing new markets.

Based on what we see in the draft rulemaking, we fear that without different thinking and an acknowledgement that glass does not fit neatly in a system devised to handle problematic materials through a commingled single-stream MRF infrastructure, the state may be creating the unintended consequences of limiting and constraining the use of glass in the state.

I will reiterate an ask for a special meeting/set of meetings with DEQ and CAA to discuss an alternative approach to the treatment of glass under the RMA – collaborating with industry to innovate and minimize costs to glass producers and increase the utilization of glass to the circular economy of Oregon.

Thank you for your consideration.

Sincerely,
Scott DeFife
President

Altria
Altria Client Services

July 26, 2024

STATE OF OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
Public Comment Regarding June 10, 2024 Proposed Rulemaking - Plastic Pollution and Recycling Modernization Act (the "Act")

Altria Client Services LLC ("ALCS"), on behalf of Philip Morris USA Inc. ("PM USA"), John Middleton Co. ("JMC"), U.S. Smokeless Tobacco Company LLC ("USSTC"), NJOY, LLC ("NJOY"), and Helix Innovations LLC ("Helix")[1] appreciates the opportunity to submit written comments on this Proposed Rulemaking and trusts that its comments will be considered when the Commission finalizes the rulemaking process.

Building off the existing exemptions from the Act's requirement to pay fees to a producer responsibility organization, Section 2 of OAR 340-090-0840 of the Proposed Rulemaking lists specific exemptions from the definition of "covered product." Section 2(b) of this rule appropriately exempts packaging for certain medical devices that are regulated by the U.S. Food and Drug Administration ("FDA"). Implicit in this exemption is the understanding that certain products on the market must adhere to federal law and regulations that limit a manufacturer's ability to freely redesign a product, including its packaging. Tobacco products and the federal Family Smoking Prevention and Tobacco Control Act of 2009 ("TCA") are one such example.

The TCA establishes a comprehensive framework of requirements that governs the manufacturing, marketing, and sale of tobacco products, which are further subject to FDA's regulations. A "tobacco product" is defined as "any product made or derived from tobacco, or containing nicotine from any source, that is intended for human consumption, including any component, part, or accessory of a tobacco product." 21 U.S.C. § 321(rr)(1). Under the TCA, all tobacco product manufacturers must obtain FDA's premarket authorization before introducing a "new tobacco product" into interstate commerce. 21 U.S.C. § 387j(a)(1)-(2). In other words, a producer such as PM USA, JMC, USSTC, NJOY and

[1] PM USA, JMC, USSTC, NJOY, and Helix are wholly owned subsidiaries of Altria Group, Inc. ("Altria") that manufacture tobacco products sold in Oregon. PM USA manufactures cigarettes in the United States, and JMC manufactures cigars and pipe tobacco. USSTC manufactures smokeless tobacco products and oral tobacco-derived nicotine products. NJOY manufactures and sells e-vapor products, and Helix manufactures oral tobacco-derived nicotine products. ALCS provides certain services, including regulatory affairs, to the Altria family of companies. "We" and "our" are used throughout to refer to PM USA, JMC, USSTC, NJOY, and Helix. Altria Group Distribution Company ("AGDC"), also a wholly owned subsidiary of Altria, manages the distribution of our tobacco products. There may be other such entities in the future that manufacture tobacco products subject to the Tobacco Control Act.

Helix cannot market or sell a "new tobacco product" unless and until it has received FDA's approval.

Section 387b(6) of the TCA provides that tobacco products marketed without the appropriate authorization are considered "adulterated," which is expressly prohibited under federal law. *See* 21 U.S.C. § 331(a). The consequences of selling or offering for sale any "adulterated" tobacco products include being subject to a civil enforcement action by FDA, *id*. § 334, and even criminal penalties. *Id.* § 333. Therefore, to avoid violating federal law and being subject to these and other consequences, tobacco manufacturers must diligently abide by the premarket authorization process before introducing anything that is considered a "new tobacco product."

Under the TCA, "new" tobacco products are not limited to those that have not previously been sold before. A tobacco product is also "new" if it includes "*any modification* (including a change in design, *any component*, *any part*, or any constituent, including a smoke constituent, or in the content, delivery or form of nicotine, or any other additive or ingredient) *of a tobacco product.*" *Id.* § 387j(a)(1)(B) (emphasis added); *see also* 21 C.F.R. § 1114.3 (defining "new tobacco product"). Accordingly, if a company makes any modification to a "component or part" of a tobacco product already being sold, the company must obtain a new premarket authorization from FDA.

One such modification that renders a tobacco product "new" and thus triggers the premarket review process is a change to the product's "container closure system." If a manufacturer seeks to modify packaging materials that are considered part of the container closure system, it must obtain pre-market authorization from FDA through one of the pre-market pathways ("substantial equivalence" or SE report, "premarket tobacco product application" or PMTA, and SE exemption) before making the change and marketing the product with the modified packaging. *See* 21 C.F.R. §§ 1107.1, 1107.18, 1114.7. Federal regulations define the "container closure system" of a tobacco product as "any packaging materials that are a *component or part* of a tobacco product." 21 C.F.R. § 1114.3; *see also* 86 Fed. Reg. at 55311 ("A container closure system [] is considered a component or part."). A "component or part" includes "materials intended or reasonably expected . . . [t]o alter or affect the tobacco product's performance, composition, constituents, or characteristics." 21 C.F.R. § 1114.3 (defining "component or part"). In turn, any packaging material that alters or affects the tobacco product's "performance, composition, constituents, or characteristics" is considered by FDA to be part of the tobacco product's container closure system.

FDA has provided examples of when tobacco product packaging materials may constitute part of a container closure system, including when "substances within that packaging are intended or reasonably expected to affect product moisture." 86 Fed. Reg. at 55311; *see also id.* ("[C]ompounds in packaging materials may diffuse into snuff and

affect its characteristics. . . . Thus, packaging material that affects the characteristics of a tobacco product by impacting the moisture level or shelf life of a tobacco product is a container closure system."). Federal regulations further emphasize how FDA views these packaging materials as potentially affecting the tobacco product itself such as "potential leaching and migration of packaging constituents into the new tobacco product." *See* 21 C.F.R. § 1114.7(i)(1)(vi).

Based on these definitions, FDA has concluded that many types of packaging materials are a "component or part" of the tobacco product, and thus part of the container closure system that may not be modified without prior FDA authorization. The application for approval must include "information describing how the container closure system protects and preserves the product from damage during transport, environmental contaminants, and leaching and migration of constituents into the new tobacco product" while also "describing design features developed to prevent the risk of accidental exposure, if any (e.g., child-resistant packaging for e-liquids)." 86 Fed. Reg. at 55335. (Under the Child Nicotine Poisoning Prevention Act, 15 U.S.C. § 1472a, "any nicotine provided in a liquid nicotine container" must utilize packaging that meets the requirements of 16 C.F.R. § 1700.15.)

For example, based on these definitions FDA has concluded that for cigarettes "each soft pack with surrounding cellophane is considered the container closure system." 86 Fed. Reg. at 55309-10. Likewise, FDA has made it clear that moist smokeless tobacco containers are container closure systems. FDA explained that switching between two container closure systems "(e.g., a plastic versus a metal container of smokeless tobacco)" will affect the moisture level and shelf life of a tobacco product, thus modifying a "component or part" of the tobacco product. *Id.* at 55311. Moreover, "chang[ing] the package of a moist snuff from plastic to fiberboard, which can affect microbial stability and tobacco-specific nitrosamine (TSNA) formation during storage," will affect the product's moisture and thus also amount to a modification to a "component or part" of the tobacco product. *Id.* Similarly, for cigars packaged in foil pouches or bags or "tubes" made of plastic, those packages would constitute the container closure system. In short, "modifications to . . . [any of these] container closure systems (e.g., change from glass to plastic e-liquid vials or from plastic to tin container closures) . . . *would result in a new tobacco product*" requiring premarket authorization. 86 Fed. Reg. at 55309 (emphasis added).

Obtaining premarket authorization is a significant undertaking entailing a lengthy process. Depending upon the type of tobacco product, the applicant must include in its application to FDA various studies (e.g., stability studies, vapor transfer studies, etc.) demonstrating the performance of the packaging while in the market. Once the application is completed, it must then be accepted and approved by FDA. Under FDA's current process for accepting and prioritizing premarket submissions for substantive review across

an array of product categories, any marketing application filed today would be put at the end of a long line of already-pending applications that FDA has yet to resolve and often takes years to resolve at its current pace. So while FDA reviews the application, new products cannot typically be marketed in the United States for at least 3 to 5 years, and perhaps even longer. See FDA, Tobacco Product Applications: Metrics & Reporting, https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/tobacco-product-applications-metrics-reporting.

For these reasons, under the federal regulatory framework for tobacco products, pursuing any modification to the design or material used for a tobacco product's packaging that qualifies as a container closure system can only happen after FDA's premarket authorization procedures are satisfied. This means that a tobacco product producer's ability to increase the recyclability or reduce the volume of the packaging material of its tobacco products is constrained by federal law and regulations. *See* Section 13(D) of 38 M.R.S. § 2146.

Therefore, state laws like S.B. 582 pose unique challenges for tobacco product producers because they impose fees that companies would otherwise be able to mitigate or avoid by redesigning or changing their packaging *but for* their legal obligations under FDA's system of premarket authorization. Specifically, pursuant to ORS 459A.884(4), the fees paid by producers will be "eco-modulated," adjusted to account for the type of packaging based on the environmental impact. Tobacco product producers that cannot switch packaging types quickly will be penalized because they will have to pay higher fees (possibly significantly higher fees) than those producers who are not restricted by federal laws requiring premarket approval for packaging changes.

Accordingly, ALCS recommends the Commission in consultation with the Oregon Recycling System Advisory Council provide guidance to the selected Producer Responsibility Organization ("PRO") on this issue as the PRO is responsible for determining the fees a producer must pay through its submitted program plan. The guidance should relieve tobacco product producers from being unfairly penalized for compliance with federal requirements. And in doing so, this would be consistent with ORS 183.332, 468A.327 and OAR 340-011-0029, which require DEQ to attempt to adopt rules that correspond with existing federal laws and rules.

July 26, 2024

Attn: Roxann Nayar/Materials Management
Oregon Department of Environmental Quality,
700 NE Multnomah Street, Suite 600, Portland, Oregon 97232-4100
Sent via email: recycling.2024@deq.oregon.gov

RE: Notice of Proposed Rulemaking: Plastic Pollution and Recycling Modernization Act, Rulemaking 2

Dear Roxann Nayar,

Circular Action Alliance (CAA) is pleased to submit comments in response to Plastic Pollution and Recycling Modernization Act, Rulemaking 2 process.

CAA is a U.S., non-profit producer responsibility organization (PRO) established to support the implementation of extended producer responsibility (EPR) laws for paper, packaging and food serviceware. CAA's Founding Members are Amazon; Clorox; Colgate-Palmolive; Danone North America; Ferrero; General Mills; Keurig Dr Pepper; Kraft Heinz; L'Oréal; Mars, Incorporated; Mondelēz International; Nestlé USA; Niagara Bottling, LLC; PepsiCo; Procter & Gamble; SC-Johnson; Target; The Coca-Cola Company; Unilever United States; and Walmart.

The attached submission outlines our detailed comments, including the following key recommendations:

- Adoption of a statewide, centralized contamination evaluation protocol that will serve all the contamination monitoring needs of stakeholders as described in OAR 340-090-0810(2)(a)-(c);
- Reconsideration of the end market definition for plastics for children's toys and beverage and food serviceware applications;
- Less prescriptive fee adjustment rule requirements in relation to producer life cycle evaluations to provide CAA flexibility to optimize related fee adjustments through its program plan fee schedule.

We look forward to continuing to work with Oregon DEQ staff through this process and would be pleased to discuss any questions or comments you might have.

Sincerely,

Kim Holmes
Oregon Executive Director
Circular Action Alliance (CAA)

Circular Action Alliance
20 F Street NW, Suite 700, Washington, DC 20001
info@circularaction.org

CAA Comments on Oregon Phase 2 Rulemaking

Section 1: Covered Product and Acceptance List Definitions

Garbage bags
OAR 340-090-0840 (1)(a)

Garbage bags should not be defined as packaging material covered by the scope of the law. These products are designed and used to move waste to disposal and, therefore, are not recoverable.

CAA proposes to move single-use garbage bags to the list of additional covered product exemptions through rule. This requires a complementary change to the proposed DEQ rules to clarify the distinction between packaging and food serviceware.

In addition, because under OAR 340-090-0840(2)(a) "packaging that is used for the long-term storage of a product with a lifespan of three or more years" is not considered covered product, "plastic storage containers for durable items including large bins with and without lids" should be deleted from OAR 340-090-0840(1)(a.)

CAA Rule Recommendation:

OAR 340-090-0840 (2)(f)	Proposed New Rule	(2) The following are not covered products: **(f) single-use garbage bags intended to be used for disposal of materials**
OAR 340-090-0840(1)(a)	Proposed Amendment	(a) Packaging includes materials used in storage. A material used in storage is an item purchased empty and used for storage of other material, including but not limited to file boxes and folders, moving boxes, plastic storage bags ~~**including garbage bags**~~, food containers for perishable or non- perishable foods~~**, and plastic storage containers for durable items including large bins with and without lids**~~.

Non-covered products
OAR 340-090-0630

In this round of rulemaking, DEQ has proposed to remove non-metallized gift wrap from the Local Government Acceptance List outlined in OAR 340-090-0630(2). This

Circular Action Alliance
20 F Street NW, Suite 700, Washington, DC 20001
info@circularaction.org

change comes after the Department seemingly made the determination that non-metallized gift wrap does not qualify as a covered product and thus should not be included on a statewide collection list under the program.

This same logic should be applied to other materials on the Local Government Acceptance list that have no producers, including paperback books, scrap metal under 10 pounds and medicine boxes. Producers should not be required to pay fees to the PRO for recycling products that they did not supply into the market or have any influence over their recyclability. This is a classic "free rider" scenario, which cuts away at the shared responsibility ethic at the heart of the Recycling Modernization Act.

As noted in CAA Phase I Rules submission, scrap metal can also be extremely damaging to the sorting equipment utilized by commingled recycling processing facilities (CRPF). While scrap metal has been collected in some Oregon curbside streams historically, the RMA anticipates new investments in CRPFs to improve sorting capabilities and permit the inclusion of other materials onto the Uniform Statewide Collection List (USCL) over time. The continued collection of scrap metal via the curbside system increases the risk of damage to technologies like optical sorters that will be implemented to modernize sorting facilities. Scrap metal has good market demand and is usually collected successfully outside of curbside systems. Removal of scrap metal from the USCL will not have a significant impact on current recycling rates as smaller scrap metal can simply be added to the well-established infrastructure utilized to collect larger scrap metal. In the view of CAA, the risks associated with included scrap metal on the USCL under the RMA framework outweigh any benefits associated with its continued inclusion.

To remain consistent with how non-metallized gift wrap is being treated under this rule – and to draw a clear line on free rider materials – CAA recommends the following changes:

CAA Rule Recommendation:

OAR 340-090-0630(2)(c)	Proposed Amendment	(c) Paperboard boxes and packaging, such as cereal~~,~~ **and** cracker ~~**and medicine**~~ boxes, excluding any non-paper flexible packaging inside such boxes or packaging, and excluding ~~**items used to package goods that are normally placed in a refrigerator or freezer**~~ polycoated paperboard packaging, such as packaging used for refrigerated or frozen food products;
OAR 340-090-0630(2)(h)	Proposed Amendment	(h) All printing and writing paper, including newspaper, newsprint, newspaper inserts, magazines, catalogs, similar glossy paper, telephone directories, ledger, bond, copy and printer paper, notebook paper, envelopes, cards,

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info@circularaction.org

		mail, and items made of such paper and bound with staples, **~~and paperback books~~**, but excluding thermal paper and **paperback and** hardcover books;
OAR 340-090-0630 (4) (b) & (e)	Proposed Amendment	(4) The materials listed in Section 2 of this rule must be collected as follows: (b) The materials listed in subsections (a) through **~~(m)~~** (l) are also designated for recycling collection from collection service customers as described in ORS 459A.005(1)(a)(A) and ORS 459A.863(25)(a) to (c); (e) The materials listed in subsections (a) through **~~(m)~~** (l) are suitable for commingled collection and are included in the Uniform Statewide Collection List.

Paperboard boxes and packaging
OAR 340-090-0630(2)(c)

CAA recommends a more precise definition of this material category included on the Local Government Acceptance List.

Furthermore, CAA suggests removing the mention of medicine boxes as an example in this rule because that phrase could encompass materials that are not covered products.

CAA Rule Recommendation:

OAR 340-090-0630(2)(c)	Proposed Amendment	(c) Paperboard boxes and packaging**, uncoated or coated with recycle-compatible coatin**g, such as cereal**~~,~~ and** cracker **~~and medicine~~** boxes, excluding any non-paper flexible packaging inside such boxes or packaging**~~, and excluding polycoated paperboard packaging, such as packaging used for refrigerated or frozen food products~~**;

Alternative standard for materials requiring special handling
OAR 340-090-0630(6)

CAA suggests the addition of language relating to the allowance of alternative compliance for any materials on the PRO recycling acceptance list requiring special handing as hazardous waste.

Products requiring special management effectively require a sub-program to be

Circular Action Alliance
20 F Street NW, Suite 700, Washington, DC 20001
info@circularaction.org

developed within the broader packaging EPR program. As a subset requiring significantly different management, the collection point network for these products should not be required to meet the same convenience standard as that of packaging not requiring special handling. This approach is similar to other jurisdictions in North America (e.g., Alberta, British Columbia, Manitoba, Saskatchewan, Ontario).

CAA Rule Recommendation:

OAR 340-090-0630(6)	Proposed new language for Section (6); current Section (6) becomes Section (7)	**(6) Any materials on the Producer Responsibility Organization Recycling Acceptance List, pursuant to Section (3) of this rule, that require special handling due to nature of the product requiring treatment as hazardous waste, may be eligible for an alternative compliance standard and the convenience standards defined in OAR 340-090-0640.**

Section 2: Responsible End Market Requirements

End market definitions for Specific Manufacturing Uses:
Plastic Children's Toys and Food and Beverage Applications
OAR 340-090-0670 (1)(e)

In the Phase 1 rulemaking public comment process, CAA raised concerns about this aspect of the plastic end market definitions. After continued market analysis, as well as extensive consultation with plastic reclaimers and converters, significant concerns about this rule proposal remain amongst stakeholders.

Discussions with several recyclers indicate that they are unwilling to disclose customer information, and in some cases, doing so may be a violation of commercial agreements. The potential exclusion of a significant number of plastic recyclers due to this additional downstream requirement could decrease the value of Oregon material – fewer recyclers may choose to purchase Oregon material for fear of being subject to additional compliance and associated commercial risk.

The opportunity for CAA to coordinate materials management with an organization such as the Oregon Beverage Recycling Cooperative (OBRC) is also complicated by the different end market requirements and extended REM requirements associated with certain plastic applications.

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20 F Street NW, Suite 700, Washington, DC 20001
info@circularaction.org

Once flakes and/or pellets are produced at the plastic reclaimer, their integration into a new product is carried out in manufacturing processes that are regulated under existing environmental and public health and safety regulations. Verifying converters under the REM requirements, in the subsequent step after the reclaimer, would be a major undertaking with no precedent in a mature EPR system.

As CAA noted in Phase 1 comments, the U.S. Food and Drug Administration (FDA) already regulates virgin and recycled plastic used for food-contact applications, as do similar agencies in other countries. Children's product manufacturers also have internal processes to address product safety as this is a top priority for them. The proposed regulation of these processes would more appropriately be addressed through composition and production requirements applied to these manufacturers regardless of the recycled content in their products.

The inclusion of these plastic product manufacturers as REMs under the RMA will require the attestation and audit of hundreds or potentially thousands of additional manufacturers. This requirement will duplicate or conflict with existing FDA regulatory processes and requirements and will create an unnecessary administrative burden.

Furthermore, the process of verifying converters by the PRO will be major undertaking with no precedent in other European or North American EPR systems, meaning Oregon's rule will not harmonize with requirements in other regulated jurisdictions.

Continuing to require REM verification through to the converter for recycled plastics used in food-contact or children's toy products at the onset of the program creates the risk of causing major disruptions to the movement of materials to environmentally sound and compliant end markets in North America. As North American recyclers are already in a strong, competitive market for selling PCR against other jurisdictions, especially Asia, their customers (i.e. the converters) are likely to prefer alternative sources of PCR. This will result in a shift in existing markets.

CAA recommends that requirements to verify manufacturers of children's products and packaging for food and beverage applications as REMs be deleted. The verification of compliance with REM requirements for plastics should stop at reclaimers producing flake and/or pellets.

CAA Rule Recommendations:

OAR 340-090-0670 (1)(d)	Proposed Amendment	(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 entity that last processes flake, pellet, or other resin material containing recycled plastic prior to sale or transfer to another person that creates

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20 F Street NW, Suite 700, Washington, DC 20001
info@circularaction.org

		a new product ~~either by placing it into a mold or through extrusion or thermoforming~~. This definition applies to both mechanical and non-mechanical recycling pathways.
OAR 340-090-0670 (1)(e)	Proposed Deletion	~~(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 entity that places it into a mold for the manufacturer of such packaging or product. This definition applies to both mechanical and non-mechanical recycling pathways.~~

Downstream tracking requirements
OAR 340-090-0670(4)

While CAA supports the goal of transparency around the downstream movement of materials to ensure collected recyclables are managed by responsible end markets, the organization has significant concerns about random bale tracking.

Given that the chain of custody processes required elsewhere in statute are in place,] (e.g., to verify shipments, yield requirements that ensure the efficacy of end markets), an extra mandate to employ random tracking of bales seems to be an unnecessary extra cost.

Furthermore, the use of electronic tracking devices embedded in material flowing through the system introduces a safety risk for downstream processing entities. GPS tracking devices are powered by batteries, a known fire hazard for recycling processors. Tracking devices could cause equipment damage and risk worker safety if they unknowingly are loaded onto compaction trucks, move through shredders, or impact other sorting or processing machinery.

CAA recommends that the requirements around downstream verification rely on means other than the use of tracking devices, such as chain of custody verification. This could entail, for instance, verification of shipping and receiving paper trails accompanied by an on-site verification by a certified auditor.

CAA Rule Recommendation:

OAR 340-090-0670(4)	Proposed Amendment	(4) Auditing. 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

Circular Action Alliance
20 F Street NW, Suite 700, Washington, DC 20001
info@circularaction.org

		include results of ~~random bale tracking~~ **general processes** 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~~ **processes of verification.**

Yield calculation and moisture content
OAR 340-090-0670(2)(c)(C)

CAA is concerned that it may not be practical to bring moisture assessments into the process for determining yield for a given end market.

Moisture calculations are not part of the typical standard practices currently used by recycling processors or end market entities. While varying levels of moisture can certainly influence the quality of a bale, the impact of moisture can be far different for a commodity such as paper than it would be for aluminum or plastic.

CAA recommends that DEQ establish clear parameters for measuring and reporting moisture levels to help relevant stakeholders develop a baseline for what realistic moisture levels might be in different categories of recyclables. Once variability in moisture rates is better understood, DEQ can determine if moisture needs to be factored into the yield calculation in future rulemaking.

CAA Rule Recommendation:

OAR 340-090-0670(2)(c)(C)	Proposed Amendment	(C) Calculation of recycling yield shall exclude ~~**moisture and**~~ 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. ~~**In the event that DEQ sets limits for acceptable contamination and moisture in outbound bales through the commingled recycling processing facility permit program per ORS 459A.955(3), reductions to the yield calculation denominator to account for contamination and/or moisture cannot exceed either limit.**~~

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20 F Street NW, Suite 700, Washington, DC 20001
info@circularaction.org

Initial reporting deadline
OAR 340-090-0670(6)(b)(A) and
OAR 340-096-0310(2)(a)(B)(i)

The deadlines for first disposition reports from Commingled Recycling Processing Facilities (CRPFs) and from the PRO are noted as Nov. 14, 2025, and Nov. 14, 2025, respectively.

Given the complexity of data gathering and tabulation for the CAA team and individual facility operators, more time will be required to develop the first set of end market disposition reports.

The first quarter of program activity will close Sept. 30, 2025, meaning the established deadlines provide only one month for CRPFs to finalize their initial reports. The PRO, meanwhile, will have just a month-and-a-half.

CAA requests that both deadlines be pushed back to the final day of the year. The reporting cadence laid out in rule could then begin in 2026.

CAA Rule Recommendations:

OAR 340-090-0670(6)(b)(A)	Proposed Amendment	(A) The first disposition report is due ~~**November 14, 2025**~~ **December 31, 2025**.
OAR 340-096-0310(2)(a)(B)(i)	Proposed Amendment	(i) The first disposition report is due ~~**November 1, 2025**~~ **December 31, 2025.**

Section 3: Contamination Reduction Funding

Advanced funding for smaller communities
OAR 340-090-0810(5)

CAA appreciates DEQ's revisions during the rule conception stage to limit the number of years for which a local government (or designated service provider) may receive funding for contamination reduction programming.

However, under the current proposal, concerns remain with the cost variability that the PRO will face and the associated administrative burdens that this structure puts on local governments.

Given Oregon's overall population and the $3 per capita funding requirement, the PRO could expect to pay out roughly $12.8 million annually for contamination funding. This number could swing wildly based on how many communities choose to engage on the proposed advanced funding option at any given time.

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20 F Street NW, Suite 700, Washington, DC 20001
info@circularaction.org

The vast majority of Oregon communities – over 90% – have populations that are under the threshold of 50,000 people. CAA analysis shows that if all those communities requested two years of contamination reduction funding in the same year, the overall cost would reach $18.3 million one year and would fall to $7.4 million the next.

Furthermore, the option for two years of advanced funding creates significant administrative obstacles. For instance, by the summer of 2025, CAA would need to know whether a local government would want two years of funding (for the 2026 and 2027 program years). The advanced request would have to come prior to the local government's yearly budget cycle.

If a two-year advance funding concept is retained, CAA proposes that DEQ reduce it in scope to apply only to smaller communities, for example, those with a population of 10,000 people or less. This would minimize program cost volatility and reduce additional accounting and administrative costs.

CAA would also request that communities making a two-year funding request provide a high-level budget outlining how that money will be spent over the two-year cycle. A primary objective from this budget would be to ensure that contamination reduction education is occurring throughout the two-year time frame.

CAA Rule Recommendation:

OAR 340-090-0810(5)	Proposed Amendment	(5) A local government, local government's service provider or other authorized person serving a community with a population of no more than ~~**50,000**~~ **10,000** may request and receive up to two years of advanced funding for contamination reduction programming conducted in accordance with ORS 459A.890(4).

Contamination evaluation process
OAR 340-090-0810(2)(a)-(c)

The proposed rules generally align with a CAA strategic operating principle to enhance the collection of covered materials through increased access to recycling services and efforts to reduce contamination through coordinated outreach and education initiatives.

However, as written, the rules would allow stakeholders from across the state to adopt a series of ad hoc approaches to providing contamination reduction

Circular Action Alliance
20 F Street NW, Suite 700, Washington, DC 20001
info@circularaction.org

monitoring. This could create inconsistencies in the data collection and assessment, which would hinder efforts to improve the overall system.

To provide more consistency, CAA proposes a statewide process, funded by CAA, for auditing and monitoring of inbound recyclable materials and assessing contamination composition. CAA will internally, or working with a third-party, determine a location as part of the audit protocol where sample sorting will be undertaken from samples taken from hauling routes on an ongoing basis. The CAA team will develop a protocol that will:

- Determine sampling frequency based on population and/or tonnage
- Allocate samples to routes for more precise accounting of contamination and ability to target education
- Use a standardized random sample selection, sample taking, and sortation methodology applied across jurisdictions equally
- Serve multiple purposes beyond contamination reduction, including:
    - Inform CRPF performance against capture rates
    - Inform education and outreach efforts to increase material capture and drive down contamination
    - Better inform product category data for brand reporting purposes.

Additionally, CAA will ensure each of the depots managing PRO materials will, as part of an annual performance audit, be subject to a review of contamination in collected recyclables. If contamination is seen to be abnormally high, additional spot audits may be undertaken of individual depot locations to help identify where additional education materials/support are required.

CAA requests that the rule language currently found in OAR 340-090-0810(2)(a)-(c) be replaced with language requiring local governments, service providers, reload facilities and limited sort facilities handling material before a CRPF to participate in a PRO-operated centralized contamination auditing system, should DEQ approve one. CAA will submit the proposed audit protocol as part of the September program plan for DEQ review.

CAA Rule Recommendations:

- Delete existing 340-090-0810 (2) and (3).
- Draft new rules:
    - Require the producer responsibility organization, in consultation with local governments, service providers, limited sort facilities and CRPFs, to develop and implement a statewide contamination and material composition audit protocol.
    - Contamination audit protocol and process would address periodic contamination evaluation funding associated with 459A.890(3).
    - Facilities receiving commingled materials would be obligated to

Circular Action Alliance
20 F Street NW, Suite 700, Washington, DC 20001
info@circularaction.org

participate in contamination audit protocol and process as a condition of their RMA permits.

Section 4: Permitting Requirements for Processing Facilities

Contamination management fee reporting by CRPFs
OAR 340-090-0830(5)(a)(C)

CAA requests that this rule require CRPFs to report outbound covered product contamination in a way that clearly identifies the weights of different material types marketed, since different commodity streams are eligible for different reimbursement rates.

CAA Rule Recommendation:

OAR 340-090-0820(5)(a)(C)	Proposed Amendment	(C) Monthly reporting of the invoiceable outbound residual tonnage figure**, broken out by covered material type,** and the total tons of covered product contamination sent to market**, broken out by covered material type**.

Contamination management fee review frequency
340-090-0830 (5)(b)

Because the RMA is designed to advance substantial change in material processing infrastructure, material collection lists, and contamination reduction, CAA encourages DEQ to conduct a review of the Contamination Management Fee (CMF) at least every three years, as opposed to the five-year standard currently drafted in the rule.

Once the RMA takes effect, contamination reduction and monitoring efforts will regularly shift the nature and volume of contamination across the state. Because CMF payments will represent a significant cost to the PRO, this fee must be well-calibrated to enhance and optimize the recycling system.

Furthermore, as the CAA-funded statewide contamination evaluation program (detailed in Section 3 of these comments) is implemented and refined, recycling service providers will have more consistent data from contamination samples across Oregon, which will help to guide CMF adjustments. To ensure that the CMF is achieving the intended result of reducing contamination and ensuring more material can be recycled and reincorporated into new products and packaging, the review process should be more frequent, and, therefore, undertaken every three years, rather than every five years.

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20 F Street NW, Suite 700, Washington, DC 20001
info@circularaction.org

For the reasons listed above, this more frequent review cadence should apply to the Processor Commodity Risk Fee as well.

CAA Rule Recommendation:

340-090-0830 (5)(b)	Proposed Amendment	(b) DEQ shall review the fee at least once every ~~**five years**~~ **three years**, but no more frequently than once per year.

CRPF capture rates and outbound contamination
OAR 340-096-0300(5)(c)

One objective of modernizing Oregon's recycling system is to see improved performance at processing sites permitted as CRPFs. To ensure such improvement is taking place, DEQ's assessment of CRPFs should be more frequent, enabling the PRO, regulators, the public, and others to have an accurate picture of the performance of processing facilities.

Regular assessments will help demonstrate that the funding being provided for investments in the recycling system is being used effectively to increase performance.

An audit of processing performance for each permitted or certified CRPF on an annual basis would not be overly disruptive to the facilities themselves and would help maintain a level playing field across the CRPF landscape, ensuring that all processors are in fact hitting the standards required under the law.

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20 F Street NW, Suite 700, Washington, DC 20001
info@circularaction.org

CAA Rule Recommendation:

OAR 340-096-0300(5)(c)	Proposed Amendment	(c) Each permitted commingled recycling processing facility must undergo at least one unannounced conventional evaluation method assessment within ~~**the first 2.5-year program plan period**~~ **one year of receiving processor commodity risk fee funding, and annually thereafter**, with that assessment sampling material from each of the established capture rate-related commodities categories. ~~**For each subsequent five-year program plan period, each processing facility must undergo at least two unannounced conventional evaluation method assessments.**~~ A DEQ-approved alternative evaluation method assessment may be used to substitute for one of the conventional evaluation method assessments. If a commingled recycling processing facility utilizes a DEQ-approved alternative evaluation method assessment for data-generation purposes, the facility must still perform at least one unannounced conventional evaluation method assessment ~~**within each five- year program plan period**~~ **every two years**, for comparative data purposes.

Types of limited sort facilities
OAR 340-096-0300 and OAR 340-096-0001

DEQ has defined Limited Sort Facilities (LSFs) to include both facilities that sort materials before they go to a CRPF and facilities that sort material after the CRPF. Facilities that receive materials before and after the CRPF serve very different functions, and CAA would advocate, require different levels of oversight.

Referring to these two distinct links in the recycling chain with separate terminology would reduce confusion and help DEQ assign regulatory requirements that make sense for each type of operation. For instance, many of the facilities that sort materials post-CRPF will likely be located out-of-state and thus would not be subject to Oregon solid waste permitting requirements.

"Limited Sort Facility" is an appropriate term for the pre-CRPF facilities. "Secondary Materials Processor," meanwhile, is a more appropriate label for post-CRPF facilities. This term is commonly used for such facilities elsewhere in the U.S. Such operators do not typically "limit" sortation but seek to fully sort <u>all</u> inbound material into specific commodity categories.

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20 F Street NW, Suite 700, Washington, DC 20001
info@circularaction.org

CAA would also point out that OAR 340-093-0030 (65) (a) already uses the term "secondary processor" in the definition of post-CRPF LSFs.

CAA recommends applying the current definition of limited sort facility to those operations receiving USCL materials and recovering some portion before sending USCL materials for further processing. Facilities managing materials after being processed by the CRPF should meet the standard of a responsible end market.

CAA Rule Recommendation:

340-093-0030 (65)	Proposed Amendment	"Limited Sort Facility" means~~:~~ ~~(a) A facility that receives a specific subset of processed Uniform Statewide Collection List materials from a commingled recycling processing facility that meets the requirements under ORS 459A.905(2)(a) and that could be considered a secondary processor or a responsible end market; or~~ ~~(b)~~ a facility that: (~~A~~a) Receives source separated commingled recyclable material that is collected commingled from a collection program providing the opportunity to recycle (ORS 459A.863(3)(a)(A)); and (~~B~~b) Does not meet conditions (B)-(D) under OAR 340-096-0300(2)(a); and (~~C~~c) Meets the following requirements: (~~i~~A) Markets removed materials to responsible end markets, meeting the requirements of OAR 340-096-0310; (~~ii~~B) Manages contaminants in those removed materials to avoid impacts on other waste streams or facilities; (~~iii~~C) Accurately reports to DEQ the final end markets of removed materials, in accordance with the rules described under OAR 340-096-0310(2); and (~~iv~~D) Sends remaining materials to a commingled recycling processing facility that meets the requirements under ORS 459A.905(2)(a)

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20 F Street NW, Suite 700, Washington, DC 20001
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		(~~v~~**E**) Obtains a disposal site permit from DEQ.
340-093-0030 (t.b.d.)	Proposed Addition	**"Secondary Materials Processor" means a facility that: (a) receives a specific subset of processing uniform statewide collection list materials from a commingled recycling processing facility for the purposes of further processing.**

Section 5: Other Non-LCE Rules

Waste prevention and reuse fee
OAR 340-090-0690(3) & (4)

CAA appreciates the clarity this rule brings to PRO obligations pertaining to the Waste Prevention and Reuse Fund required by statute. However, CAA requests that DEQ establish a more robust process through which funding for projects is disbursed and is evaluated.

CAA suggests that DEQ publicly consult with stakeholders on the development of administrative parameters associated with the waste prevention reuse program. Such a process would also help answer the following questions regarding the Waste Prevention and Reuse Fund:

- How will projects be evaluated for effectiveness in reducing environmental impacts?
- How will projects be prioritized?
- Will funding for projects be time limited?
- Will loans be prioritized over grants or other funding mechanisms?
- How will project success be defined?
- What are the guidelines or principles associated with overall fund management and DEQ decisions regarding annual PRO contributions?

Producer pre-registration and market share
OAR 340-090-0870 & OAR 340-090-0700

Typically, producers know the reporting categories a year before the data year and are registered with the PRO and prepared to submit data in the spring, so fees can be set in the fall ahead of the following calendar year. It is unconventional to establish reporting categories in the middle of a data year and require producers to report in Q1 of the following year.

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20 F Street NW, Suite 700, Washington, DC 20001
info@circularaction.org

However, given the challenges with the timing and sequencing included in the RMA, the proposed pre-registration rule is the best solution that can be offered within the confines of the current legislative framework.

CAA would like to acknowledge that the addition of this rule language in these areas will support CAA's ability to more effectively set fees and develop fair and reliable accounting processes moving into the initial program plan period.

To ensure that that the pre-registration process achieves its intended effect, we encourage DEQ to approve CAA's Reporting and Fee Categories as soon as possible, so CAA can finalize the Oregon section of the producer portal, develop and finalize producer reporting guidance, and work with producers through our Producer Working Group and other forums to prepare companies for reporting.

CAA appreciates DEQ's efforts to codify pre-registration and market share reporting through formal rulemaking.

OAR 340-090-0860
Producer Definitions

Clarification of Obligated Producers

CAA appreciates DEQ's intent to clarify the obligated producer application for storage containers and consumer wraps. For greater certainty, DEQ should draft rule language to clarify the additional situations.

1. Draft language providing a 3-tiered producer definition for the subcategory of covered products, nondurable materials used as shipping and moving items referenced in 459A.863 (18)(a)(C); and secondly;
2. Apply the concept included in rule 340-090-0860 (1)(a) related to a person who directs the manufacturing to the writing and paper producer hierarchy described in 459A.866 (2)(b).

These additional rules would help clarify the obligated producer obligations for these materials.

Associated Producer Rule

The associated producer rule should apply to the RMA producer definition related to eligibility for uniform fees, as per 459A.884 (6) in addition to the larger and small producer definitions as per the proposed rule.

CAA Rule Recommendation

AOR 340-090-0860 (5)	Proposed Amendment	(5) For purposes of identifying large and small producers pursuant to ORS 459A.863(8) and (32), **and producers eligible for uniform fees**

Circular Action Alliance
20 F Street NW, Suite 700, Washington, DC 20001
info@circularaction.org

		as per 459A.884 (6), a producer includes associate producers as provided by this section.

Section 6: Life Cycle Evaluation and Fee Eco-Modulation

Typically, eco-modulation is implemented once an EPR program has matured, and the necessary data collection has stabilized, as has been experienced in the limited jurisdictions that have implemented eco-modulation approaches. As a result, our preference is to allow for more time to launch the program, prepare producers for reporting and develop data collection processes to enable eco-modulation.

Another priority of CAA is the harmonization of producer services, which includes reporting, fee-setting and eco-modulation. Our first strategic operating principle states the aim of the organization is to "deliver cost-efficient extended producer responsibility services through scale of operations, harmonization of service delivery, and program planning consistency across states wherever possible."

As more states implement EPR and producers' obligations increase, it is crucial to ensure that reporting and fee-setting requirements can be harmonized to reduce the burden on producers that will need to comply with these laws.

We have concerns that Oregon's unique approach to eco-modulation will fragment eco-modulation across states; lead to a more onerous reporting requirements for producers with different approaches being taken by different states; and hinder the overall effectiveness of eco-modulation with inconsistent signals being sent to producers on packaging design, innovation and circularity.

For example, the EPR laws in California and Colorado do not include LCA requirements for eco-modulation. It is also our expectation that neither state will make a change to allow for LCAs. Instead, their eco-modulation factors focus on environmental attributes, such as recycled content, reuse and refill.

In response to the LCA rule, CAA, as the only PRO that has submitted a plan in Oregon, will have to make an Oregon-specific eco-modulation proposal in its next plan, that will be out of sync with other states and entrench a disparate approach to eco-modulation from the outset of EPR implementation in the United States.

Because LCEs (also commonly referred to as Life Cycle Assessments, or LCAs) have not before been used in the context of EPR regulation, and specifically, not in relation to eco-modulation of covered products, CAA recommends proceeding with caution in the implementation of the LCE rules.

Accordingly, CAA offers the following comments on proposed Life Cycle Evaluation Rules.

Circular Action Alliance
20 F Street NW, Suite 700, Washington, DC 20001
info@circularaction.org

Life Cycle Evaluation Definitions
OAR 340-090-0900

CAA provides the following remarks regarding the terms and their meanings which are determined for use in the Life Cycle Evaluation Rules OAR 340-090-0910 – 0940.

Comparative LCA Definition

CAA suggests adding the following definition from the ISO before the definition of Consequential LCA.

CAA Rule Recommendation:

OAR 340-090-0900(6)	Proposed Addition	**Comparative LCA means a life cycle assessment that is conducted with the purpose of making public comparative assertions, including an environmental claim regarding the superiority or equivalence of one product versus a competing product that performs the same function.**

Contaminant

CAA suggests the following change to the definition of contaminant so that it is consistent with the 100 part per million limit in OAR 340-090-0940 (Additional Environmental and Human Health Information).

CAA Rule Recommendation:

OAR 340-090-0900(7)	Proposed Amendment	Contaminant means trace amounts of chemicals **at concentrations above 100 parts per million** that are incidental to manufacturing and that serve no intended function in the product component, including but not limited to: (a) Unintended by-products of chemical reactions during the manufacture of the product component; (b) Trace impurities in feedstock; (c) Incompletely reacted chemical mixtures; and (d) Degradation products.

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20 F Street NW, Suite 700, Washington, DC 20001
info@circularaction.org

Hazardous Substance

We recommend the definition of hazardous substance be revisited as the current definition references restricted chemicals in cosmetic products (ORS 431A.345) and chemicals subject to a reporting requirement but no restrictions in children's products (OAR 333-016-2020). Neither list was intended as a list of chemicals of concern in packaging. Indeed, the language of OAR 333-016-2001 makes clear that these chemicals have not been deemed harmful even in the limited context of children's products as follows: "The presence of a high priority chemical of concern in a children's product does not necessarily mean that the product is harmful to human health or that there is any violation of existing safety standards or laws." CAA is concerned that listing such substances as "hazardous" components of packaging in the public reports that these rules mandate will be misleading with respect to risks to human health or the environment.

Intentionally Added

CAA suggests that the definition can be simplified to reduce confusion, especially for instances where a substance is intentionally added but is not harmful or necessarily desired in the finished product. Residual catalysts in plastics are examples of where this can occur.

CAA Rule Recommendation:

OAR 340-090-0900(20)	Proposed Amendment	Intentionally-added means a ~~**hazardous**~~ substance **that serves a technical or functional purpose in the finished** ~~**deliberately used in the formation of a**~~ covered product ~~**where its continued presence is desired in the finished product to provide a specific characteristic, appearance, or quality.**~~ ~~**(a) The use of a hazardous substance as a processing agent, mold release agent or intermediate is considered intentional introduction where the hazardous substance is present at a concentration above the practical quantification limit in the finished product.**~~ (b) The use of PFAS is presumed intentional if any **organic** ~~**total**~~ fluorine is present in the finished **covered** product. Producers may rebut this presumption by providing credible evidence to demonstrate that PFAS were not intentionally added. (c) The use of flame retardants is presumed intentional if a hazardous substance that belongs to this chemical class is present in the finished product at a concentration above 1,000 parts per million. Producers may rebut this presumption by

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20 F Street NW, Suite 700, Washington, DC 20001
info@circularaction.org

		providing credible evidence to demonstrate that the flame retardant was not intentionally added. (d) The use of post-consumer recycled materials as feedstock for the manufacture of new covered products, where the covered product may contain amounts of the regulated chemicals but is neither desired nor deliberate, is not considered intentional addition for the purposes of this Act.

Reusable Packaging Product Definition

CAA suggests modifying the definition of reusable packaging product to explicitly include packaging that is refilled by the consumer in the home as the current definition does not include such reuse.

CAA Rule Recommendation:

OAR 340-090-0900(37)	Proposed Amendment	Reuseable packaging product means a packaging product that is: (a) Designed to be recirculated **or reused** 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 and best reuse; (d) Returned to a producer or third party after each use **or refilled by the consumer for the same or similar purpose**; and (e) Actually reused.

Finally, we recommend removing the "Practical quantification limit" definition, consistent with our comments below on section OAR 340-090-0940.

Scope and Applicability
OAR 340-090-0910

CAA submits the following remarks regarding the Scope and Applicability section of the Life Cycle Evaluation rules.

Range of Rules Mentioned

CAA notes that there may have been a typo in "OAR 340-090-0900 to 0950," as there is no 0950 in this set of rules.

Circular Action Alliance
20 F Street NW, Suite 700, Washington, DC 20001
info@circularaction.org

CAA Rule Recommendation:

OAR 340-090-0910(1)	Proposed Amendment	OAR 340-090-0900 to ~~0950~~ **0940** are collectively referred to as the life cycle evaluation or LCE rules. The LCE rules implement ORS 459A.944 and provide standards for the evaluation and disclosure of the environmental impacts of covered products through the life cycle of the products. The LCE rules shall be used by large producers to meet the requirements of ORS 459A.944(2), as provided by Section 2 of this rule, and by producer responsibility organizations to meet the requirements of ORS 459A.884(4), as provided by Section 3 of this rule.

Unit of Sales Volume

The sales volume in OAR 340-090-0910(2)(b)(A) is imprecise and should be clarified. The dollar value of sales of contained products sold in no way reflects potential packaging impacts. Although units sold and weight of covered products sold individually have drawbacks, CAA believes that a composite of number of units sold multiplied by the total weight associated with those units would come closest to ordering Stock Keeping Units from potentially most impactful to least impactful.

CAA Rule Recommendation:

OAR 340-090-0910(2)(b)(A)	Proposed Amendment	A Large producer must order ~~by annual~~ **all** Oregon ~~sales volumes~~ individual Stock Keeping Units that the producer sold in or into the state that are covered products or that have associated packaging which is a covered product**, using the following formula for each Stock Keeping Unit:** **(units of Oregon covered products sold) * (weight of those units of covered products)** **Or equivalently,** **(units of Oregon covered products sold)^2 * (unit weight of the covered product)** **If a producer uses estimated data, the requirements for use of estimated data described in OAR-340-090-0700(1)(d) apply.**

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20 F Street NW, Suite 700, Washington, DC 20001
info@circularaction.org

Identification of large producers' one percent of covered products for evaluation and disclosure.

The language of OAR 340-090-910 (2)(b)(B) is unclear in relation to large producers' obligation to conduct a life cycle evaluation on at least one percent of their covered products every two years. As written, it seems to require large producers to conduct an evaluation on the SKU "with the highest sales volume" from its list of SKUs rather than allowing the large producer to choose any SKU that meets the 1% of covered product threshold. Large producers should have the flexibility to select SKUs that meet the statutory threshold rather than being required to conduct evaluations in a particular order starting with the largest of their SKUs. This alternative approach is more likely to support changes to packaging envisioned under the RMA as a large producer may choose to use an initial mandatory evaluation on a SKU (representing at least 1% of its covered products) prior to a subsequent voluntary life cycle evaluation related to a substantial impact bonus. This change would require a complementary amendment to OAR 340-090-910 (2)(c)(B).

CAA Rule Recommendation:

OAR 340-090-910 (2)(b)(B)	Proposed Amendment	(B) The evaluation required by Subsection (a) shall be performed on each of the Stock Keeping Units that make up ~~**the**~~ **at least** one percent of Stock Keeping Units **selected by the producer** ~~**with the highest sales volume**~~ from the list described in paragraph (b)(A). The evaluation must include any primary, secondary, and tertiary packaging associated with a Stock Keeping Unit, as well as the product contained or protected by the packaging if it is a covered product. Stock Keeping Units may be batched together in an evaluation, as provided by Paragraph (D).
OAR 340-090-910 (2)(c)(B)	Proposed Amendment	(b) If a producer is a large producer in multiple 2 year periods the producer must re-order its Stock Keeping Units, as provided by Subsection (b) and assess impacts of covered products for **Stock Keeping Units** ~~**the next**~~, not previously assessed **that make up at least** one percent of the **producer's covered products** ~~**Stock Keeping Units**~~**.** Stock Keeping Units that have already been assessed may be repeated after 10 years, or earlier if all Stock Keeping Units have

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20 F Street NW, Suite 700, Washington, DC 20001
info@circularaction.org

		been assessed.

Service and E-commerce Packaging

Subpart (ii) of OAR 340-090-0910(2)(b)(A) reads as follows:

For covered products that are not sold to consumers, such as service packaging and e-commerce packaging, the producer shall use distribution volumes in place of sales volumes.

It is unclear what is meant by covered products not sold to consumers, as well as the distinction between sales and distribution volumes, as service packaging and e-commerce packaging are supplied to consumers. Is this meant to elicit the notion of business-to-business sales? It would be helpful if this phrase were clarified.

Rule Mandated Fee Adjustments

PRO membership fee structures and related adjustments should be determined through the program plan submission and approval process. This mechanism provides far more flexibility for future fee adjustments than fee adjustments mandated through RMA rules. Plan amendments under the RMA are also subject to extensive consultation requirements so significant changes to PRO fee setting procedures are subject to an open and transparent process.

As such, CAA recommends that 340-090-0910 (3), which mandates two fee adjustments, one for voluntary life cycle evaluations and disclosures and another for a life cycle evaluation and disclosure demonstrates a substantial impact reduction, be deleted as these requirements are more appropriately regulated in the PRO's fee structure detailed in its program plan.

CAA Rule Recommendation:

OAR 340-090-0910(3)	Proposed Deletion	**Delete OAR 340-090-0910(3)**

100 SKU Voluntary Disclosure Bonus Limit

Subsection (3)(a)(B), related to a bonus for a producer voluntary disclosure of life cycle evaluation results, as worded entitles individual producers to claim up to 100 such bonuses per year. This 100 SKU entitlement is too large particularly in the initial years of the program where there is uncertainty related to both program costs and total producer supply volumes creating potential volatility in the basic fee structure (before accounting for bonus adjustments).

CAA recommends revisions to this provision to lower the number of SKUs that a producer is entitled to submit for voluntary bonuses or to allow the PRO to set lower limits via the program plan fee structure for an interim period.

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20 F Street NW, Suite 700, Washington, DC 20001
info@circularaction.org

CAA Rule Recommendations:

0340-090-0910(3)(a)(B)	Preferred Amendment	(B) Within a given program year, producers may claim bonuses for up to ~~100~~ **10** Stock Keeping Units for which a life cycle evaluation is performed and disclosed.
0340-090-0910(3)(a)(B)	Alternate Amendment	(B) Within a given program year, producers may claim bonuses for up to 100 Stock Keeping Units for which a life cycle evaluation is performed and disclosed. **A producer responsibility organization may propose a lower number of Stock Keeping Units eligible for bonuses under this section for an interim period in its program plan.**

Eligibility for Substantial Impact Reduction Bonus

OAR 0340-090-0910(2) draft rules, as written, mandate that large producers prepare a life cycle evaluation and disclosure of their top one percent of SKUs. Subsection (3)(b) requires producer responsibility organizations to "provide a fee reduction to producers that perform a voluntary evaluation and disclosure of the life cycle impacts" (emphasis added). The existing draft rule language appears to disqualify a large producer from being able to apply for a Substantial Impact Reduction Bonus for a SKU that is included in its mandatory disclosure of its top 1% of SKUs. These SKUs are the largest SKUs, from the largest producers, and as such are potentially the most impactful for reducing environmental and human health impacts of all covered materials. CAA does not believe that it was the intent of the RMA, and perhaps not DEQ, to not incentivize producers to make continuous improvements to the environmental and human health impacts of these SKUs. For this reason, CAA requests the following rule addition.

0340-090-0910(3)(b)	Proposed Amendment	Producer responsibility organizations will provide a fee reduction to producers that perform a voluntary evaluation and disclosure of the life cycle impacts of covered products according to the standards and methods in the LCE rules and that include proof of substantial impact reduction as defined according to OAR 340-090-0900(42) and calculated according to OAR 340-090-0930(3)(c). **A Stock Keeping Unit required to be evaluated and disclosed in accordance with OAR 0340-090-0910(2) can also qualify for evaluation under this Subsection (b).**

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20 F Street NW, Suite 700, Washington, DC 20001
info@circularaction.org

Magnitude of the Substantial Impact Reduction Bonus

Subsection (3)(b)(A) requires the magnitude for a fee bonus related to a life cycle evaluation demonstrating a substantial impact reduction to be greater than the magnitude of the bonus related to the voluntary disclosure bonus. This provision unnecessarily complicates CAA's flexibility in designing fee bonuses and given the ambiguity of the term magnitude, may lead to disputes regarding whether a particular fee bonus meets this requirement.

In CAA's view, there is no need for this requirement to be in rule as DEQ can ensure its objectives for the relative fee rates through the program plan approval process.

CAA Rule Recommendation:

0340-090-0910(3)(b)(A)	Proposed Deletion	**Delete 0340-090-0910(3)(b)(A)**

Timing of the Substantial Impact Reduction Action

Subsection (3)(b)(D) disqualifies any action undertaken by a producer before July 1, 2025, from being eligible for a substantial impact reduction bonus. When the RMA was passed by the legislature and signed by the governor in 2021, producers were aware of the intent of the RMA for producers to examine their covered materials and to make reductions to their impacts, and many producers have made changes since then. It is not fair to producers who have made recent changes to their packaging to reduce impacts to disallow those changes to qualify for bonuses. The July 1, 2025, date also incentivizes producers to delay making any beneficial changes until on or after July 1, 2025, even if they had intended to do so before then. The change in date to July 1, 2023, would also require a change to the time the evaluation was conducted relative to the action, to allow time for compliance with the requirement that no evaluation completed prior to July 1, 2024, yet an evaluation conducted after July 1, 2025, would otherwise be beyond the two-year criterion.

CAA Rule Recommendation:

0340-090-0910(3)(b)(D)	Proposed Amendment	The substantial impact reduction action examined in the evaluation must have been undertaken on or after July 1, **2023~~2025~~**, and no earlier than two **and one-half** years prior to submission of the evaluation to the producer responsibility organization.

Five-Year Fee Bonus for Substantial Impact Reductions

Proposed rule 0340-090-0910(3)(b)(G) mandates that bonuses associated with life cycle evaluations demonstrating a substantial impact reduction must be in place for a minimum of five years. In CAA's view, guaranteeing a fee reduction for this length of time is problematic particularly at the start of the program where it is extremely

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20 F Street NW, Suite 700, Washington, DC 20001
info@circularaction.org

difficult to model the financial impacts associated with such a bonus. This creates unnecessary uncertainty and volatility in the producer fee structure. CAA's preference would be for the length of the bonus to be the same as that for voluntary disclosure bonus or at most for a two-year period. The length of the bonus should also be set through the program plan fee structure and not set via RMA rule.

CAA Rule Recommendation:

0340-090-0910 (3)(b)(G)	Proposed Deletion	**Delete 0340-090-0910(3)(b)(G)**

Submission of Evaluations and Re-evaluations

While OAR 340-090-910 (2)(c)(B) provides some guidance on the timelines associated with resubmissions in relation to mandatory large producer life cycle evaluations, the rules do not appear to set any conditions related to re-submission of voluntary evaluations described under 340-090-910 (3) which mandate bonuses.

There should be limitations related resubmission of disclosure bonuses, otherwise producers could simply re-conduct evaluations on the same SKUs year after year to obtain the voluntary bonus which would likely not generate new information in relation to covered product impacts.

CAA proposes an additional rule related to the evaluations conducted under 0AR 340-090-910 (2) and (3) which indicates that a producer responsibility organization may set conditions related to the timing, submission and re-submission of producer life cycle evaluations.

340-910-910 (4)	Proposed Rule Addition	**(4) A producer responsibility organization may ~~propose in its program plan, s~~et additional conditions of eligibility related to the timing, submission and re-submission of producer life cycle evaluations submitted under subsections (2) and (3) including, but not limited to, implementing limitations related to the frequency of the submission of life cycle evaluations for the same Stock Keeping Units.**

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20 F Street NW, Suite 700, Washington, DC 20001
info@circularaction.org

Project Report
OAR 340-090-0920

CAA generally supports the proposed Project Report rules, which are largely aligned with standard LCA procedures from ISO.

Confidential Data

OAR 340-090-0920(2) Confidential Data allows a producer to identify data it believes is confidential and exempt from disclosure pursuant to ORS 192.311 to 192.478 or otherwise confidential under applicable law. Confidential data will need to be used to prepare all evaluations and reports under the LCE rules, including sources of supply, confidential covered product formulations, and manufacturing data. Can DEQ provide clarification on (1) what specific information can be omitted from public reports, including examples, and (2) confirmation that a producer must submit two reports to DEQ and the producer responsibility organization – the first a confidential version, and the second a public version without the confidential information.

Third Party Verification and Validation

CAA suggests that the third-party verification and validation report be appended to the project report itself to avoid inadvertently failing to post it publicly.

CAA Rule Recommendation:

0340-090-0920 (3)(b)(G)	Proposed Amendment	After review and verification, a critical review report and critical review statement shall be produced by the third-party~~**, submitted to the department, and made publicly available by the producer responsibility organization, along with the project report**~~. **This third-party review report and statement shall be appended to and made part of the project report.**

Core Product Category Rule
OAR 340-090-0930

CAA finds it very helpful that the Core Product Category Rule has pre-defined the functional unit. Similarly, CAA finds it very helpful that the Rule pre-defines the cut-off criteria. CAA recommends a few rule amendments, and also requests several clarifications to the existing draft rule text by DEQ.

Circular Action Alliance
20 F Street NW, Suite 700, Washington, DC 20001
info@circularaction.org

Functional Unit

The definition of functional unit as written fails to provide an incentive to producers to concentrate their products for the reduction of total packaging. As a simplified example, if a producer concentrated its product to half the original volume, so that only half as much packaging is needed, the functional unit requirement for one cubic meter or square meter would mean that the amount of packaging must be doubled for the "after" comparison to restore it to one cubic meter or square yard functional unit. The calculation then would show an increase in impacts, which, of course, is incorrect, and no bonus would be allowed.

As a result, the functional unit needs to be adjusted for the concentration factor, or changes from liquids to solids, in order to incentivize the reduction of packaging through concentration. This will require flexibility for producers to choose an appropriate functional unit for the purposes of the comparison.

CAA Rule Recommendation:

OAR 340-090-0930(1)(a)	Proposed Amendment	Functional Unit. All inputs and outputs of a life cycle inventory must be expressed in terms of a functional unit defined in a manner consistent with ISO14040:2006 §5.2.2 and ISO 14044:2006 §4.2.3.2. For covered products that contain or hold something the functional unit shall be defined as 1 cubic meter of capacity. For covered products that cover or wrap something the functional unit shall be set as 1 square meter of coverage. For covered products that perform some function other than containing or covering something, **or for changes to product concentration,** producers should seek DEQ feedback prior to finalizing the choice of functional unit.

Calculating Transportation for Return

Regarding OAR 340-090-0930(1)(c)(B)(ii), CAA would like to better understand how emissions will be determined for consumers returning reusable packaging. Is it assumed to be an extra trip (100% allocated to the reusable package) or a shared trip with another reason for driving (partial allocation to the reusable package)? What distance is to be assumed from the home to collection points?

Additional clarity on these points will make this rule more practicable to implement.

Data Sourcing

OAR 340-090-0930(2)(c)(E) reads as follows:

Landfilling. If materials are sent to landfills, specific unit processes and activities shall be used that account for waste composition, regional leakage rates (due to

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20 F Street NW, Suite 700, Washington, DC 20001
info@circularaction.org

technology and climate zone), landfill gas capture and utilization. Any recovery of landfill gas output that substitutes for primary production of natural gas shall be granted as a credit. These credits should be reported in Module D, as described in OAR 340-090-0930(1)(c)(D).

CAA notes that it may be unclear to producers where to source publicly available regional leakage rate data and landfill gas capture and utilization. For these and other data points, DEQ should anticipate that producers will request assistance in sourcing appropriate data where needed.

Projections Versus Data

OAR 340-090-0930(2)(e)(B) would allow return rate estimates to serve as the initial basis for a Substantial Impact Reduction bonus. CAA is concerned that overly optimistic projections for return rates may lead to awarding of bonuses that are not earned or actually accrue environmental benefits. CAA recommends that discounted fees only be provided based on actual data. If estimates are retained in the final rule, text should be added to (1) require producers to annually report actual data for all years, and (2) allow producer responsibility organizations to adjust fees in following years to recoup bonuses not actually earned.

CAA Rule Recommendation:

OAR 340-090-0930(2)(e)(B)	Proposed Deletion	**Delete OAR 340-090-0930(2)(e)(B)**

Reusable Packaging Product

CAA would like to ensure that home refill systems where the consumer refills a reusable package or durable dispenser using a reduced-impact single-use refill package are included in the product category rule section addressing reusable packaging products. CAA requests an addition to the rule to explicitly govern how impact reductions are to be calculated when the system includes both refilling of a reusable packaging product and single-use refill packaging.

CAA Rule Recommendation:

OAR 340-090-0930(2)(e)	Proposed Addition	**(E) If a producer transitions a covered product from single-use to a system employing both reusable dispensing containers and single-use refill packaging and seeks the fee adjustment pursuant to ORS 459A.884(4) and OAR 340-090-0910(3)(b), both the reusable container and single-use refill package shall be included in the assessment. A refill rate factor for the reusable container shall be calculated by dividing the volume of product in single-use refill packaging**

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		sold in Oregon in a year by the volume of reusable containers capable of being refilled sold in that same year in the state. If a producer uses estimated data, the requirements for use of estimated data described in OAR-340-090-0700(1)(d) apply.
OAR 340-090-0900 (37)	Proposed Amendment	(37) Reuseable packaging product means a packaging product that is: (a) Designed to be recirculated **or reused** 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 and best reuse; (d) Returned to a producer or third party after each use **or reused by the consumer multiple times**; and **(e)** Actually reused.

Contextualizing Hazardous and Non-Hazardous Waste

CAA notes that OAR 340-090-0930(2)(f)(A-B) could be interpreted to include wastes not attributable to covered products (such wastes would be beyond the scope of the RMA). CAA recommends the change below to provide more clarity.

OAR 340-090-0930: Core Product Category Rule (1)(c)(C)(ii) DEQ has stated: "Since covered products reaching the end-of-life stage can be managed in different ways, a representative average scenario based on a typical end-of-life shall be calculated. The end-of-life composition of dispositions for a given covered product shall reflect an average, based on a regional or national mix, of recovery and disposal." This would appear to conflict with the requirement in this section for producers to track downstream management of hazardous and nonhazardous waste. CAA requests an amendment to this rule that producers only track wastes associated with their own operations.

CAA Rule Recommendation:

OAR 340-090-0930(2)(f)(A-B)	Proposed Amendment	Hazardous waste indicators. Producers shall track and report, in addition to all other required inventory data, flows of the following wastes **attributable to covered products by**

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info@circularaction.org

		their own operations or those of their direct covered product suppliers ~~as part of the life cycle evaluation of covered products~~: (A) Hazardous waste, as defined in ORS 466.005(7) that is disposed **~~of within any life cycle stage of the covered product~~**, and (B) Non-hazardous waste that is disposed **~~of in the covered product life cycle~~**.

Plastic Leakage Inventory and Scoring, and Use of Excluded Factors in Determining Bonuses

OAR 340-090-0930(2)(g) reads as follows:

Plastic leakage inventory. Producers shall quantify, in addition to all other required inventory data, the flow(s) of plastic leakage across the life cycle of covered products. This plastic leakage assessment aims at measuring the plastic leaving the technosphere and accumulating in the natural environment (be it soil, air, or rivers and ocean) and shall be based on the methodologies of the Plastic Footprint Network (PFN) V1 Nov. 2023. The methodology provides details on flow nomenclature and units of measure to track plastic leakage, as well as providing regionalized averages when primary data cannot be obtained by the producer. The data quality requirements of OAR 340-090-0930(1)(e) apply to this Section and specifically data related to plastic leakage shall follow the data governance guidance from the Plastic Footprint Network methodology V1 Nov. 2023.

CAA observes that The Plastic Footprint Network is an emerging approach, and there is insufficient information at present to know whether it will be adequate or achieve widespread acceptance. CAA is concerned that Plastic Footprint Network data do not accurately reflect leakage of plastic from Oregon and impacts of plastic leaked from Oregon. Reporting of plastic leakage data and estimates using this method can be required, but CAA requests that this data not be included in the PEF score on which a substantial impact reduction bonus is awarded. Therefore, CAA requests the below rule change to exclude them from scoring.

The methodologies for toxicity factors are not as well defined as other factors. CAA agrees with DEQ's decision to not include them in the single score impact profile calculation. However, for the same reasons they are not being included in the single score calculation, CAA does not agree with DEQ still requiring them to be used as a final veto factor for determining whether a fee reduction or bonus is granted. Can DEQ provide more clarity on how the 1000x and the 100x factors were determined?

CAA Rule Recommendation:

OAR 340-090-0930(3)(c)(A)	Proposed Amendment	The environment impact indicators for Human Toxicity - Cancer, Human Toxicity – Non-Cancer, Ecotoxicity - Freshwater, **Plastic Physical Impact on Aquatic Biota, and Plastic – Other**

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		Impacts provided by Subsection (b) of this Section shall be excluded from the normalization, weighting, and aggregating of impact described in this Subsection. To obtain a fee reduction pursuant to OAR 340-090-0910(3)(b), these indicators must be reported separately from the single score calculation. If a producer action results in an increase in environmental impact of 1000 times or greater for human toxicity cancer and human toxicity non-cancer or 100 times or greater for freshwater ecotoxicity then no fee reduction shall be granted.

Plastic Impacts - Table of Weighting Factors

Regarding the below table, included in the LCE Rules, CAA notes that PEFCR assigned robustness factors of 0.17 to human toxicity, cancer; human toxicity, non-cancer; and ecotoxicity, freshwater. Due to the lack of robustness for those factors, DEQ is not including them in the table of weighting factors, consistent with PEFCR guidance.

Yet, DEQ has chosen to include "Plastic physical impact on aquatic biota" with the same robustness factor of 0.17. This is a logical inconsistency. CAA recommends that this factor should not be included in the calculation of the significant impact reduction bonus, like the other factors with the same robustness factor.

Further, DEQ itself developed the seriousness weighting and robustness factors for "Plastic physical impact on aquatic biota" and "Plastic - other impacts," whereas all of the other values in this table were developed through a consensus-based survey of scientists and experts, the Seriousness Weighting and Robustness factors for the two plastics categories in this table were developed internally by DEQ staff. If these are to be used to assign a score for plastics, CAA requests that an independent panel of scientists and toxicologists develop the factors.

CATEGORY INDICATOR	SERIOUSNESS WEIGHTING	ROBUSTNESS FACTORS	INTERMEDIATE COEFFICIENTS	FINAL WEIGHTING
	(A)	(B)	C=A*B	C Scaled to 100
Climate change	14.41	0.87	12.54	21.24
Water use	10.88	0.47	5.11	8.66
Land use	10.16	0.47	4.78	8.09
Resources use, fossils	8.36	0.6	5.02	8.50
Resource use, minerals and metals	7.58	0.6	4.55	7.71
Ionizing radiation, human health	6.47	0.47	3.04	5.15
Ozone depletion	6.33	0.6	3.80	6.43

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CATEGORY INDICATOR	SERIOUSNESS WEIGHTING	ROBUSTNESS FACTORS	INTERMEDIATE COEFFICIENTS	FINAL WEIGHTING
Particulate matter	6.2	0.87	5.39	9.14
Plastic physical impact on aquatic biota	5.88	0.17	1.00	1.69
Acidification	5.61	0.67	3.76	6.37
Photochemical ozone formation, HH	5.38	0.53	2.85	4.83
Eutrophication, freshwater	3.55	0.47	1.67	2.83
Eutrophication, terrestrial	3.3	0.67	2.21	3.75
Eutrophication, marine	3.29	0.53	1.74	2.95
Plastic – other impacts	2.61	0.60	1.57	2.65

Additional Environmental and Human Health Information
OAR 340-090-0940

CAA recommends that the language regarding disclosure of the material content of covered product be modified to limit a producer's disclosure obligation to materials that they introduce themselves or through their contract manufacturer. The inclusion in these rules of practical quantification limits and disclosure of contaminant substances seems to imply that a producer must perform composition testing and include the results found above the practical quantification limit in its report. If testing is required for all covered products for which a life cycle evaluation is required, that requirement should be explicitly stated in these rules. Producers should not be required to develop expensive testing programs to test all of their products for contaminants not desired nor controlled by them and then have to investigate the source of those contaminants. Eliminating the implied requirement of testing in the LCE rules would eliminate the need to define practical quantification limit, as well as other clauses related to contaminants.

CAA Rule Recommendation:

OAR 340-090-0930(1)	Proposed Amendment	The evaluation must include a list of the material content of the covered product that, at a minimum, states any intentionally-added ~~**hazardous**~~ substances in the covered product ~~**that are at or above practical quantification limits**~~, as well as any **known** contaminant hazardous substances in the covered product at concentrations above 100 parts per million.

Circular Action Alliance
20 F Street NW, Suite 700, Washington, DC 20001
info@circularaction.org

July 26, 2024

To the Oregon Department of Environmental Quality,

Thank you for the opportunity to comment on this proposed rulemaking. We, the Biodegradable Products Institute, appreciate the efforts made in Oregon to reduce the negative impacts of waste on the environment and public. However, we remain disappointed that support for composters and compostable products have been omitted from this bill, despite producers of compostable products being covered by the program. States including California, Colorado, and Minnesota have established EPR laws that recognize the clear benefits provided by certified compostable products, including and especially the diversion of additional food and organic waste. We hope that future iterations of the Plastic Pollution and Recycling Modernization Act will equitably support compost programs since covered producers of certified compostable packaging and products are paying into the program.

Regarding this draft of proposed rulemaking, we'd note that the definition of "composting" lacks language to confirm compost stability and maturity, and while requirements for digestate to be composted is referenced elsewhere in the document, we'd prefer it be included within the definition to provide clarity. The following suggestions align with the definition provided by the U.S. Compost Council.

"Composting" means the managed process of controlled biological decomposition of organic or mixed solid waste in an aerobic process that includes mesophilic and thermophilic temperatures to reduce pathogens and ultimately creates a mature and stable product beneficial to plant growth. ~~It does not include composting for the purposes of soil remediation~~. Compost is the product resulting from the composting process. "Composting" includes both aerobic composting and anaerobic digestion only when the anaerobic process is followed by composting of the digestate.

Page 43 describes penalties for accepting materials that "cannot or will not be effectively composted." While we agree that materials collected for composting should be composted, "will not" could allow for the unfair and unscientific treatment of a product or material that is inarguably capable of disintegrating and biodegrading in a well-managed compost facility. We feel that "cannot" alone captures the intent of the penalty.

(e) Accepting or promoting for acceptance into a collection program for yard debris or food waste or a compost facility, by a person that operates or controls a collection program for

yard debris of food waste or that operates or controls a compost facility, a material that cannot ~~or will not~~ be effectively composted;

Please reach out with any questions.

Sincerely,

Alex Truelove
Biodegradable Products Institute
Alexander@bpiworld.org

From: John Holden
To: 2024 Recycling * DEQ
Subject: DEQ 2024 public comment submission
Date: Friday, July 26, 2024 11:31:44 AM

Hello,

My name is John Holden, I'm a lawyer with a masters in Environmental Policy from the LSE and I'm submitting public comment on the noticed of the proposed rules.

I cannot figure out how the impact profile scores have been calculated, I could not find that in the document and it seems like the macro-level needs are weighted higher than the specific recycling targets such as plastic recycling. Even though the macro level needs are part of the European reporting framework and while they are not unimportant I think it would be more effective to have higher weights for products which actually impact Oregon recycling products.

I also had a difficult time figuring out who would be exempt from these laws, if any. Just to be certain, I believe exemptions should be as limited if they exist at all, and if there are issues with particular industries, they should be given a reporting "runway" which gradually builds over time.

Thank you
John Holden

From: Ellis, Thayer Elizabeth
To: 2024 Recycling * DEQ
Subject: Public Comments regarding June 10, 2024 Notice of Proposed Rulemaking
Date: Friday, July 26, 2024 3:06:01 PM

Good afternoon,

Thank you for the opportunity to pose some questions/comments to the June 10, 2024 Notice of Proposed Rulemaking regarding the Plastic Pollution and Recycling Modernization Act of 2021. My questions follow:

1. The definition of "large producer" means a producer that is among the 25 largest producers of covered products based on market share and carries an additional disclosure obligation. The "market share" means a producer's percentage of all covered products sold in or into the state during a specified time period, as calculated in accordance with methods established by the Environmental Quality Commission. Will the 25 largest producers be notified by the PRO or DEQ that they are among the 25 largest producers and subject to additional disclosure obligations? Will market share data be publicized and, if so, what information about companies will be shared?
2. I appreciate that DEQ has endeavored to clarify certain products that are *not* covered products in the June 10, 2024 Notice of Proposed Rulemaking. In this regard, can you please provide examples of "packaging" and "product" referenced in this statement: "packaging that is used for the long-term (five or more years) storage of a product with a lifespan of three or more years"? [OAR 340-090-0840 (2)(A)]. Are there specific metrics that DEQ will look at to assess the lifespan of a product or packaging?
3. I noticed that SB 582 does not define or even mention the term "storage item." However, the June 10, 2024 Notice of Proposed Rulemaking uses the term "storage item" often and it is not defined. Can you please provide a definition or examples of what constitutes a storage item?
4. I understand that the producer of food serviceware is "the person that first sells the food serviceware in or into this state." [SECTION 3. Determining producers of covered products (3)]. If a grocery store in the state of Oregon orders food serviceware products from a manufacturing company located outside of the state, is the "person that first sells the food serviceware in or into this state" the Company that sells the food serviceware to the grocery store in Oregon or the Oregon grocery store once it makes the first sale in the state to a consumer in Oregon?

   Alternatively, if a Company outside of the state of Oregon sells a food serviceware product to a distributor also located outside of the state of Oregon and that distributor brings the food serviceware product into the state of Oregon, is it the distributor who has then made the first sale of the food serviceware in the state and thus becomes the producer for purposes of SB 583?
5. SB 582 defines "licensee" as "a person that is licensed by a brand **and** manufactures a covered product or packaged item under that brand." [SECTION 2 (9)]. I am curious if there is a relevant part of the text that is intended to explain a private labeling scenario where a manufacturer of a covered product is neither the brand owner nor a licensee (as defined in SB 582) of the brand.

   For example: Company A manufactures a covered product for Company B with the Company

B label on the product. Company B sells the product into Oregon under Company B's brand (so there is no "licensee"). Is the statutory definition of "licensee" intended to cover Company A and make it the producer? Or is Company B, as the brand owner of the product, the relevant producer?

Thank you,

Thayer

Thayer Elizabeth Ellis
Associate
thayer.ellis@faegredrinker.com
Connect: vCard

+1 202 230 5265 direct / +1 202 807 7891 mobile

Faegre Drinker Biddle & Reath LLP
1500 K Street, N.W., Ste. 1100
Washington, DC 20005, USA

ORPET

July 25, 2024

To: DEQ Oregon

Re: Letter of Comment re: Modernization Act Rule Making 2,
Submitted via email to recycling.2024@deq.oregon.gov

Dear DEQ staff,

ORPET, Inc. (ORPET) is a plastic recycler located in St. Helens, Oregon with more than 40 employees. We have been in operation since 2012, currently recycling 30+ million pounds annually of PET beverage bottles, helping keep Oregon beautiful. We produce high-grade PET flake, offsetting virgin PET use. ORPET is a partnership between Oregon Beverage Recycling Cooperative (OBRC) and Merlin Plastics, two organizations with a long history of environmental stewardship.

I am writing you about the Responsible End Market (REM) regulations under the Recycling Modernization Act Rulemaking 2. Certain proposed REM regulations would not define plastic recyclers as "end markets" if Recycling Modernization Act (RMA) feedstock is processed, requiring plastic recyclers to disclose potentially confidential customer names and those customers' use of post-consumer recycled (PCR) materials. This is different than requirements expected of other recyclers of reclaimed commodities for aluminum, steel, paper and glass in the regulation.

We kindly ask you to reconsider these proposed regulations requiring plastic recyclers to disclose customer names and use of this PCR material. Plastic recyclers should be considered an "end market" just like buyers of other commodities for reclaimed aluminum, steel, paper and glass. Plastic recyclers should be on the same level playing field as other commodity recyclers and their customers encouraged to purchase recycled materials. This regulation will likely have the unintended consequence of negatively impacting Oregon plastic recyclers who are investing for the future to meet the needs of our community. We appreciate your efforts to increase recycling, especially policy that will help provide ORPET and other recyclers the high-quality feedstock and customer demand needed to be successful in a circular economy.

Thank you and feel free to reach out to us with any questions,

Troy Ballew
President, ORPET
tballew@obrc.com
503-806-2947

VIA e-mail: July 26, 2024

RethinkRecycling@or.deq.gov

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

Dear Sir/Madam:

Food Northwest welcomes the opportunity to provide comments on the Recycle Modernization Act (RMA) Rulemaking, Number 2 published for comment on June 10, 2024. Food Northwest represents 350 food and food-related companies across Oregon, Washington, and Idaho. Most, if not all of our food producing member companies, will become obligated producers under this program. Food Northwest does have a number of member companies who are also founding members of CAA. Food Northwest recognizes the novel nature of this plan in Oregon, and in the US, and looks forward to being an active participant in the final rule making process as well as the implementation of the Recycling Modernization Act (RMA) programs providing guidance and support to its member companies.

Over the past few years, FNW has worked closely with OR DEQ as well as the presumptive PRO, CAA, to provide input on rulemaking and educate its member companies on the proposed requirements of the program. We do feel there are a number very important considerations still unresolved that must be addressed to allow our member companies to prepare for compliance with the law beginning on July 1, 2025, per the statute.

First, the cost impacts of the RMA are still highly uncertain and without clarity it is difficult for producers to make budgeting projections as well as consider modifications to packaging design while maintaining product quality and meeting customer needs. The financial impact analysis accompanying the Proposed Rule was very inadequate in addressing potential impacts on businesses and ultimately

on the citizens of Oregon. The proposed budgets of almost a half a billion dollars as indicated in Circular Action Alliance's PRO Plan are much larger than prior estimates provided by OR DEQ , and there is no transparency in how those budget numbers were calculated. While not directly addressed in this rulemaking, the overall program success must be based on sound data and a clear understanding of financial impacts to obligated producers in the marketplace. The current estimates will have significant market impacts and represent a per capita cost increase of $115.00/year for each of Oregon's 4.2 million citizens.

These issues of incomplete data and overall program costs for producers ties closely into another concern. The timeline contemplated by the Draft producer pre-registration rule CAA 340-090-0870 including using historical data and assessment of fees immediately seems premature and at odds with the approved statute.

The RMA applies to products sold into Oregon after July 1, 2025. (RMA, Section 60). It is not feasible nor a statutory requirement for producers to track and report quantities and types of materials sold or imported into Oregon prior to July 1, 2025. Historical data may not reflect current conditions, volumes and types of materials sold cannot be accurately forecasted due to the wide range of market variability. Assessing fees based on 2024 data are not supported by statute, and it is unfair to access fees on historical data when the methods of fee calculation and rule applicability are still unknown during 2024, today's current year. Therefore, a fee structure cannot be implemented prior to some period of time after July 1, 2025, assumed to be a year, to provide accurate and complete information for producer fee assessment.

Food Northwest again thanks Oregon DEQ for this opportunity to comment on the proposed rulemaking.

Best regards,

Chris Cary
Policy Director
Food Northwest
8338 NE Alderwood Rd., Suite 160
Portland, OR 97220
chris@foodnw.org