State of Oregon Department of Environmental Quality

Attachment B. Response to Comments

Plastic Pollution and Recycling Modernization Act, Rulemaking 2

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List of Commenters

*Note: * Indicates a comment submitted on behalf of multiple entities. (#) after a commenter name indicates an organization or individual who provided comment on multiple occasions.*

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1	Paul Johnson	
2	Scott Jenkins	EFI Recycling
3*	Kristan Mitchell	Oregon Refuse and Recycling Association
3*	Doug Mander	Circular Action Alliance
4	Shawn Looney	
5	Brad Humbert	
6	Brad Humbert (2)	
7	Pat Guild	
8	Mark Hudson	Ag Container Recycling Council
9	John Oluwaleye	
10	Katie Murray	Oregonians for Food and Shelter
11	Phil Stolz	Berry Global Group, Inc.
12	Joan Popowics	Proctor and Gamble
13	Tony Moucachen	Merlin Plastics
14	J. Scott Saunders	KW Plastics
15	Jordan Fengel	Carton Council North America
16*	Sydney Harris	Upstream Solutions
16*	Marcel R. Howard	GAIA
16*	Maria Gabriela Buamscha	Lanin Iman
17	Caleb Weaver	Ridwell
18	Nicole Janssen	Denton Plastics
19	Jonathan R. Levy	Pak Tech
20	Kristan Mitchell	Oregon Refuse and Recycling Association (2)
21*	Celeste Meiffren-Swango	Environment Oregon
21*	Lisa Arkin	Beyond Toxics
21*	Anja Brandon	Ocean Conservancy
21*	Charlie Fisher	OSPIRG
21*	Sam Broussard	OSPIRG Students

Commenter Number	Commenter	Organization
21*	Miriam Gordon	Story of Stuff
21*	Charlie Plybon	Surfrider Foundation
21*	Alaina Labak	Waste-Free Advocates
22	Erin Stein	Washington County
23	Pete Chism-Winfield	City of Portland
24	David Heglas	Trex
25	John Richard	Flexible Packaging Association
26	Carol Patterson	Foodservice Packaging Institute
27	Steven Alexander	Association of Plastics Recyclers
28	Kate Bailey	Association of Plastics Recyclers (2)
29*	Tom Egleston	Metro Regional Government
29*	Elizabeth Chin Start	Start Consulting
29*	Sonya Carlson	Bring Recycling
29*	Taylor Cass Talbott	Ground Score Association
29*	Scott Keller	City of Beaverton
29*	Deveron Musgrave	City of Eugene
29*	Shannon Martin	City of Gresham
29*	Andrew Bartlett	City of Hillsboro
29*	Amanda Watson	City of Lake Oswego
29*	Eben Polk and Pete Chism-Winfield	City of Portland (2)
29*	Ryan Largura	City of Troutdale
29*	Rick Winterhalter	Clackamas County
29*	Angie Marzano	Lane County
29*	Heidi Konopnicki	Multnomah County
29*	Erin Stein	Washington County (2)
30	Dan Felton	AMERIPEN
31	Molly Blessing	Household and Commercial Products Association

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32	Kate Davenport	The Recycling Partnership
33	Sharon Landis	
34	John Holden	
35*	Jana McKamey	Oregon Winegrowers Association
35*	Fawn Barrie	Oregon Wine Council
35*	Sally Jefferson	Wine Institute
36	Darbi Gottlieb	AdvaMed
37	Troy Ballew	OBRC (on behalf of ORPET)
38	Suzanne Chang	American Coatings Association
39	Jacob Cassady	Association of Home Appliance Manufacturers
40	Rebecca McPhail	American Chemistry Council
41	Ally Peck	Consumer Technology Association
42	Gutierrez, Carlos	Consumer Healthcare Products Association
43	David Lawes	Lubricant Packaging Management Association
44	Derek Sangston	Oregon Business and Industry
45	Alexander Truelove	Biodegradable Products Institute
46	Kim Holmes	Circular Action Alliance (2)
47*	Amanda Tate, Altria Client Services LLC, on behalf of	Philip Morris USA Inc.
47*	Amanda Tate, Altria Client Services LLC, on behalf of	John Middleton Co
47*	Amanda Tate, Altria Client Services LLC, on behalf of	U.S. Smokeless Tobacco Company LLC
47*	Amanda Tate, Altria Client Services LLC, on behalf of	Helix Innovations LLC

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48	Thayer Elizabeth Ellis	Faegre Drinker Biddle & Reath
49	Catherine Palin	Alliance for Automotive Innovation
50	Scott DeFife	Glass Packaging Institute
51	Erin Hall	American Forest and Paper Association
52	Mark Hudson	Ag Container Recycling Council (2) *(verbal comment)*
53	Gregory Melkonian, Serlin Haley on behalf of	AMERIPEN (2) *(verbal comment)*
54	Bob Fortner	Astro-Nought *(verbal comment)*
55	Chris Cary	Food Northwest
56	Derek Sangston	Oregon Business and Industry (2) *(verbal comment)*
57	Rocky Dallum	American Forest and Paper Association (2) *(verbal comment)*
57*	Rocky Dallum (2)	Oregonians for Food and Shelter (2) *(verbal comment)*
58	Carol Patterson	Foodservice Packaging Institute (2) *(verbal comment)*
59	Sabrina Gogol	Metro Regional Government (2) *(verbal comment)*
60	Chris Cary	Food Northwest (2) *(verbal comment)*
61	Kenisha Cromity	Personal Care Products Council
62	Chris Cary	Food Northwest (3) *(verbal comment)*

Changes Made to Draft Rules in Response to Comment

General Comments

Topic: Program Costs

Comment: Commenters expressed concern about program costs. Commenters note that "the cost impacts of the RMA are highly uncertain" and suggest that DEQ "should revisit the entire RMA program and associated rules to identify any potential cost savings that could make this new program more efficient." They express concern that Oregon residents and businesses will ultimately shoulder the cost burden. Commenter number(s): 35, 61, 57, 60, 10, 44, 49, 55, 56

Response: Currently, ratepayers in Oregon pay for most recycling costs: A recent economic analysis commissioned by DEQ found that Oregon households and businesses currently spend nearly $1 billion annually for their garbage and recycling bills. The RMA obligates producers of paper and packaging to share in the costs of responsible end-of-life-management of their products. Oregonians who currently pay for recycling services may save on their garbage and recycling bills because certain costs--like transporting recyclables from rural and coastal communities, and a portion of the cost of sorting mixed recyclables--will be shifted to producers.

Research on similar programs in Canada has not found that producer responsibility programs lead to an increase in prices for consumers. Producers may spread costs across very large customer bases or absorb some of the costs in order to remain competitive.

Program costs are still estimates. DEQ expects more clarity around the PRO's proposed budget in its third draft submittal, expected in early December 2024.

Changes to the proposed rules were made on the basis of these and other comments received, several of which reduce the cost. Examples include:

- The inclusion of aerosol containers and pressurized cylinders on the PRO acceptance list is delayed, reducing the costs of meeting the convenience standard for those materials.
- The PRO is not required to pay for costs associated with evaluation of contamination in inbound recycling pursuant to ORS 459A.890(3) if DEQ establishes contamination evaluation procedures that require facilities to participate in PRO-provided contamination evaluation procedures.

Topic: Public Comment Extension Request

Comment: Request for DEQ to extend the public comment period by 66 days and 30 days, respectively. Commenter number(s): 2, 3

Response: DEQ extended the public comment period by 21 days.

Topic: Rule Complexity

Comment: Commenters suggest that DEQ simplify the rules, as the complexity of the rules combined with the inadequate timeline poses a threat to the successful implementation of the Act. Commenters note that DEQ has created "regulations that are too voluminous and complex to be successfully implemented…," "established a confusing maze of regulations." Commenters also expressed that it does not make sense to have state-specific requirements that deviate from other states with packaging EPR laws. Commenter number(s): 35, 44

Response: The proposed rules have been revised based on comments received, several of which reduce the complexity. Examples include:

- Removed proposed rule 340-090-0035 Contamination Reduction Programming Elements
- Removed the consumer wrap subcategory of packaging.
- Aligned the producer definition of service packaging with that of food serviceware to streamline producer identification.

It is common for different states to have different regulations and for companies spanning different states to comply with them. Recycling has some elements that are very local, and the challenges and opportunities in Oregon are not identical to those in other states with packaging EPR.

Additionally, DEQ has worked to harmonize with other states that have EPR laws for packaging in situations where the statute provides that flexibility and it makes sense to do so. Examples from this rulemaking include definitions of reusable and refillable packaging in the life cycle assessment rules and the implementation approach to the responsible end market obligation, which are well-harmonized with California.

Topic: Timelines

Comment: Commenters suggest DEQ revisit, and update, the timeline for implementation of the RMA rules to allow sufficient time for producers to comply. Commenter number(s): 44, 60

Response: To comply with the RMA, producers must join a PRO, report the quantity of covered products they sell into Oregon, and pay fees based on the amount and types of materials.

RMA implementation is moving forward steadily in accordance with the timeline set in statute and is slated to meet all milestones. The RMA also builds in transitional time to facilitate a rolling launch through the program plan and administrative oversight. Changes to the proposed rules were made on the basis of this and other comments received, several of which affect the timeline for compliance:

- A one-and-a-half month delay to the due date for the first quarterly disposition report by CRPFs and the PRO.
- Allowing local governments to petition for delay with respect to when they must stop on-route collection of items that are listed on the PRO Recycling Acceptance list.

Division 12: Enforcement Procedure and Civil Penalties

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

Topic: Classification of Violations

Comment: DEQ should revise OAR 340-012-0098(2)(c) so that PROs, material recovery facilities, and local governments in Oregon can participate in pilot programs to test the recyclability of any materials being considered for potential future inclusion on the Uniform Statewide Collection List. Commenter number(s): 31

Response: DEQ revised the proposed OAR 340-012-0098(2)(c) to allow the collection, as part of a trial or research program, of materials not on the uniform statewide collection list. Collection as part of a trial or research program is permitted by the Recycling Modernization Act under ORS 459A.914(5) and (6).

Topic: Typographical Error

Comment: As a technical note, DEQ should adjust OAR 340-012-0045(1)(a) to reflect the addition of OAR 340-012-0098. Commenter number(s): 30

Response: DEQ has incorporated this suggestion and revised OAR 340-012-0045(1)(a) to reflect the addition of OAR 340-012-0098.

Rule 340-012-0140 Determination of Base Penalty

Topic: Determination of Base Penalty, Clarification on placement of local government in different matrices

Comment: Commenter notes that Washington County solid waste code and administrative rules do not have provisions for violations or fines. Commenter seeks clarification on the following regarding the Determination of Base Penalty:

- Clarify if statewide, why not apply to all jurisdictions with populations over 4,000 in alignment with other requirements?

Clarify how wasteshed-level fines assessed to 'unincorporated Washington County' apply when doing work on behalf of the Washington County Technical Wasteshed (Cooperative). How is that applied? Only to unincorporated or it is incurred by the city members and the County? Clarify if the cities with fewer than 4,000 will even get funding. If using a total wasteshed approach, would the small cities qualify? Commenter number(s): 22

Response: DEQ proposes to put (1) violations of ORS 459A.860-459A.975 or related rules, by a local government with a population of 25,000 or more in the $12,000 penalty matrix and (2) such violations by a local government with a population of more than 5,000 but less than or equal to 25,000 in the $8,000 penalty matrix, to be consistent with the existing penalty matrix. The existing penalty matrix places (1) solid waste violations by a city with a population of 25,000 or more in the $12,000 penalty matrix; and (2) solid waste violations by a city of more than 5,000 but less than or equal to 25,000 in the $8,000 penalty matrix.

See OAR 340-012-0140(2)(a)(Q)(ii) and OAR 340-012-0140(3)(a)(I)(iii). For consistency, and to clarify any potential confusion regarding the matrix placement of violations by a local government with a population of 5,000 or less, DEQ is revising OAR 340-012-0140 to clarify that such violations fall in the $3,000 penalty matrix. See proposed revisions for OAR 340-012-0140(4)(a)(M). The $3,000 penalty matrix includes solid waste violations r committed by a person with a population less than 5,000. See OAR 340-012-0140(4)(a)(L).

The proposed OAR 340-12-0140 addresses how DEQ will determine the base penalties for violations that DEQ will enforce. Regarding the question about funding for cities with a population of less than 4,000: the proposed rule does not address funding.

Division 90: Recycling And Waste Reduction

Rule 340-090-0030 General Requirements

Topic: General Requirements - Multifamily, Definitions

Comment: Suggests changing the term ‘local government’ to ‘city or county’, which would be consistent with the language employed in the preceding paragraph (7). Commenter number(s): 23

Response: DEQ has revised the language for consistency.

Topic: General Requirements - Recycling at Multifamily Properties

Comment: Commenter suggests DEQ add additional language to (7)(b), to empower DEQ to oversee progress in implementing local government implementation plans and to enforce against unreasonable delays. Commenter number(s): 30

Response: Earlier implementation has benefits for Oregon residents and DEQ has revised the proposed rule language to incorporate an earlier implementation milestone. DEQ disagrees that the proposed rules will delay collection of USCL materials, and views that annual implementation reports will provide DEQ sufficient oversight of local government progress.

Topic: Multifamily Recycling Space Timelines

Comment: The timelines for a local government to initiate an implementation plan to ensure space for multifamily recycling are too long. It is reasonable to have two years to submit the plan to DEQ, or until Nov. 1, 2027. However, to grant two more years to initiate the plan is an unnecessary delay and means that tenants will be waiting that much longer for high quality recycling collection. ORRA recommends initiation of the plan should begin no later than one year after the plan is submitted, or on by Nov. 1, 2028. Commenter number(s): 20

Response: DEQ has revised the proposed rule language to incorporate earlier implementation milestones.

Rule 340-090-0035 Contamination Reduction Programming Elements

Topic: Contamination reduction programming elements - Difficulty implementing

Comment: The proposed approach to define 'significant' recycling contamination as the presence of at least 25% by volume of materials not on the USCL may be difficult to implement in practice using known methods to identify customer-level contamination. For example, cart tagging typically involves a visual scan of materials in the top quarter or third of a roll cart. Therefore, it is important to ensure that this language does not prevent a city or county or their service provider from providing documented, targeted feedback where contamination is obvious but may not be provably 'significant' if such feedback is provided consistently and equitably within a service provider's service area, or on a route that has been identified to have higher levels of contamination. We support the requirement that contamination be provably significant before a financial or service consequence is applied. Commenter number(s): 23

Response: DEQ has revised the proposed rules and is no longer proposing rules on this topic. DEQ will provide additional clarity regarding ORS 459A.929 through its statutory obligation to establish and maintain an approved list of contamination reduction programming elements. DEQ will consider your comments during implementation.

Rule 340-090-0630 Recycling Acceptance Lists

Topic: Recycling Acceptance Lists - Definition of Paperboard Boxes and Packaging (1)

Comment: Commenter suggests DEQ update the definition to recognize the fact that 70% of the paperboard cartons in this category are uncoated, which means they present no challenge to recycling. Commenter number(s): 51

Response: DEQ has updated the proposed rule language in response to this comment.

Topic: Recycling Acceptance Lists - Definition of Paperboard Boxes and Packaging (2)

Comment: Commenter suggests DEQ update the definition to recognize the fact that 70% of the paperboard cartons in this category are uncoated, which means they present no challenge to recycling. Commenter also suggests updating the definition to remove "medicine boxes." Commenter number(s): 46

Response: DEQ has updated the language regarding packaged goods that are normally placed in a refrigerator or freezer but did not make the suggested change regarding removal of medicine boxes from the definition. Medicine boxes are no different than beverage containers, scrap metal and paperback books, all materials that are non-covered products but have been approved by the EQC for inclusion on the Uniform Statewide Collection List.

Topic: Recycling Acceptance Lists - Amend Definition of "Polyethylene Film and Packaging"

Comment: Commenter suggests updating OAR-340-090-0630(3)(d)(C). If DEQ retains the 10% weight threshold language at (3)(d)(C) for the proportion of polyethylene film that can be accounted for by flexible seals, closures or dispensers (see other comment from the same commenter proposing to eliminate this language entirely and adopt a simpler definition), increase the threshold as follows: "….free of or including flexible seals, closures or dispensers so long as they are made of polyethylene and contribute less than 10 percent of the total package by weight, or no more than 20% for flexible PE seals or closures." The original language (strict threshold of 10%) is unnecessarily restrictive. There are numerous examples of all-PE closures, such as zippers, in the 10-20% of total weight range. The proposed increased threshold matches the presumed intent of this definition to eliminate rigid attachments such as spouts rather than to exclude zippers, which can be designed to be fully compatible with the film stream. The proposed language still requires all-polyethylene structures and also will not inadvertently incentivize thicker packages to offset the weight of a zipper. Commenter number(s): 28

Response: DEQ updated the draft rule language (under OAR-090-0630(3)(d)(C)) in response to this comment.

Topic: Recycling Acceptance Lists - Gift Wrap (1)

Comment: Keep non-metallized gift wrap on the USCL and consider it a covered product (packaging). Regarding keeping non-metalized gift wrap on the USCL, this material has long been part of the metro-area recycling collection list, and as such it will be nearly impossible to educate customers now to remove this material. Processors will receive it anyway. And local governments may continue collecting it after the RMA goes into effect due to the proposed "off-ramp rule" at OAR- 340-090-0630(6). Consumers may also mistake it for a consumer wrap, pursuant to rule OAR-340-090-0840(1)(c), and as such best to keep it on the acceptance list. Regarding keeping non-metallized gift wrap as a covered product, rationales cited by commenters include:

- there is no equitable reason to give a free ride to the producers of this material,
- pursuant to OAR 340-090-0630(2)(f), DEQ considers that tissue paper is "used for packaging" rather than for presentation; would it not be the same for gift wrap?
- other items used for gifts are furthermore covered products, including tissue paper, and
- it is not clear why use of a material for 'presentation' is a rationale for exemption. Many other covered materials on the USCL are used for 'presentation' of products as well. Commenter number(s): 20, 29, 59

Response: DEQ considers that gift wrap is sometimes used for presentation rather than packaging (i.e., containment and protection) of gifts; as such, it falls outside the scope of "covered product," and producers of the product need not join a PRO and pay fees for product sold into the state. DEQ proposed to remove gift wrap from the Uniform Statewide Collection list in association with gift wrap producers not paying producer fees, as economic factors are one of the 12 statutory criteria for listing materials on the USCL, pursuant to ORS 459A.914(3)(i). However, DEQ agrees with the commenters that it may be difficult to educate consumers about the removal of this material from metro-area commingled collection and may not be worth the effort associated with its removal, especially considering public comments from local governments and the local waste industry expressing support for its continued collection. Thus, DEQ has retained the definition of non-metallized gift wrap in 340-090-0630(1), as well as its inclusion within the Uniform Statewide Collection list.

Topic: Recycling Acceptance Lists - Gift Wrap (2)

Comment: Keep non-metallized gift wrap on the Uniform Statewide Collection list despite it not being a covered product and producers not paying fees for it. If this material is removed from the list because the gift-wrapping paper industry does not consider it to be packaging, it may lead to other materials coming into question for removal, such as newspaper/newsprint, magazines, catalogs and similar paper. These materials have been collected in Oregon's recycling system for decades and should continue to be. Commenter number(s): 22

Response: In connection with this and other comments received from local governments and the local waste industry encouraging the retention of non-metallized gift wrap on the Uniform Statewide Collection List, DEQ has edited the proposed rules to keep the material on the USCL.

Topic: Recycling Acceptance Lists - PRO Recycling Acceptance List (1)

Comment: Clarify whether PRO list materials can be collected commingled at a depot. For example, it is not clear whether a depot would need separate bins for collecting plastic buckets and pails made of HDPE and PP, lids and caps made of PE and PP, and package handles made of HDPE. Combining similar materials in a single container at depots will reduce space requirements and improve consumer convenience. Commenter number(s): 29

Response: DEQ agrees with the suggested change and updated OAR 340-090-0630 to include a new section (5) that addresses the commingling of materials related to sections (2) and (3).

Topic: Recycling Acceptance Lists - PRO Recycling Acceptance List (2)

Comment: Add language allowing alternative compliance for any materials on the PRO Recycling acceptance list requiring special handing as hazardous waste. These materials require substantially different management than other materials, and should not be required to meet the same convenience standard as that of packaging not requiring special handling. Commenter number(s): 46

Response: As the requirement under the performance standard at OAR-340-090-0650(3)(b) to manage the material as hazardous waste may present significant financial and logistical challenges for the PRO, DEQ is interested in exploring other options for the collection of this material, such as collection of only empty, non-hazardous aerosol containers at PRO depots, or on-ramping of empty, non-hazardous aerosol containers onto the USCL. With a goal of finding the best-fit solution for aerosol containers, DEQ has revised OAR-340-090-0630 to require that the listing of aerosol containers on the PRO Recycling Acceptance list applies from Jan. 1, 2028, onward. This means that the PRO need not collect the material at its collection points during the first program plan period, although it may propose to on-ramp the material through the program plan process at any time. Local governments may continue on-route collection of the material pursuant to rule OAR-340-090-0630(6) and may conduct trial collections pursuant to ORS 459A.914(6), which could help inform perspectives on a possible on-ramping of the material.

DEQ edited the rules to propose the same delayed listing for pressurized cylinders, again to provide the PRO with additional time to assess alternatives.

Topic: Recycling Acceptance List - USCL Off-Ramp (1)

Comment: Reduce the burden on local governments with respect to the request process to keep materials in the USCL commingled recycling programs as alternative options mature. DEQ can reduce burden by editing OAR 340-090-0630(6) to 1) allow wasteshed representatives to also facilitate a coordinated approach to extending the timeline for removal of materials from the USCL, and 2) remove the burden on local governments for the acquisition of accurate, timely information about the PRO's collection network and convenience standard compliance. Local governments, especially governments with limited staff time for solid waste planning, may face challenges moving through the process. Additionally, this may cause confusion for customers should neighboring communities have different USCL programs. Commenter number(s): 29, 59

Response: DEQ has added the option of working with nearby jurisdictions to submit a coordinated request to continue to collect materials on the PRO list and has clarified that local governments are not responsible for demonstrating whether the convenience standard has been met.

Topic: Recycling Acceptance Lists - USCL Off-Ramp (2)

Comment: Allow local governments to, with approval of DEQ, continue collecting materials commingled that are moving from the local government to the PRO Recycling Acceptance list materials until the convenience standard is met for this material, but make approval by DEQ contingent upon safety conditions. Specifically, do not allow for continued collection of aerosol cans. A can full of bear spray was recently punctured at a recycling depot, resulting in the depot having to close twice and engagement of the fire department. This incident illustrated that aerosols should be collected through HHW programs and do not belong in the commingled waste stream. Commenter number(s): 20

Response: DEQ has updated the proposed rule language to indicate that DEQ may require a condition of approval for certain materials. For example, if a local government requests to continue to collect aerosol containers in the commingled recycling, DEQ may require customer education focused on ensuring aerosols are empty.

Rule 340-090-0640 Convenience Standards

Topic: Typographical Error

Comment: OAR-090-0640 is out of order in the proposed rules. Commenter number(s): 20

Response: This issue has been corrected.

Rule 340-090-0670 Responsible End Markets

Topic: Responsible End Markets - 1%/10% Exemption

Comment: Remove the proposed disposition exemption of 1%/10% quarterly, as it weakens the transparency and accountability in truly achieving recycling at responsible end markets. It is unclear why organizations cannot track and report on all or a much higher proportion of material disposition each quarter. Commenter number(s): 29

Response: The proposed disposition reporting requirements allow producer responsibility organizations and commingled recycling processing facilities to exempt individual dispositions to end markets and other places of disposition if they comprise less than 1% of the total material handled within a given material category within a given quarter by a CRPF, limited sort facility, or the PRO collection points collectively. The exemption can only be claimed for up to 10% of the volume of a given material in each quarter.

As the new disposition reporting requirements represent a substantial change in operations for CRPFs, DEQ included a de minimis reporting volume exemption to ease the burden of implementation for entities subject to reporting. DEQ however recognizes that this exemption could undermine consumer confidence in the system. DEQ has updated the rule language at

OAR-340-090-0670(6)(c)(C) and at OAR-340-096-0310(2)(a)(C)(iii) to limit the potential that this exemption be applied to exempt from reporting markets that actually are receiving substantial proportions of CRPF- or PRO-directed materials from Oregon, or to exempt from reporting problematic diversions toward dispositions besides Recycling. DEQ will also monitor the use of this exemption.

Topic: Responsible End Markets - 60% Yield Threshold

Comment: Remove the deduction for moisture from the yield calculation, pursuant to rule OAR-340-090-0670(2)(c)(C). Moisture calculations are not part of the typical standard practices currently used by recycling processors or end market entities; as such, it may not be practical to bring moisture into the process of calculating yield at end markets. Moisture furthermore impacts various materials variously, and DEQ should understand this variability before determining if moisture needs to be factored into the yield calculation in future rulemaking. Commenter number(s): 46

Response: DEQ has edited the rule language at OAR-340-090-0670(2)(c)(C) to require moisture be taken into account only when practical for the verification or certification body to do so.

Topic: Responsible End Markets - Auditing Random Bale Tracking Requirement

Comment: Remove the requirement on the PRO to conduct random bale tracking in order to audit the veracity of supply chain information. This introduces a safety risk for downstream processing entities due to the use of battery-powered trackers that could cause fires. It is also an unnecessary expense; it could be replaced with verification of shipping and receiving paper trails accompanied by an on-site verification by a certified auditor. Commenter number(s): 46

Response: When Total Reclaim, a Washington-based electronics recycler and e-cycles service provider for several Pacific Northwest states, was revealed, through the use of random bale tracking, in 2016 to be fraudulently routing e-waste abroad that it was reporting as staying domestic, it was a revelation for the regional recycling industry, within which Total Reclaim had before then been considered an exemplary, trustworthy business. It also shone a spotlight on random bale tracking as an important method for auditing waste supply chains, demonstrating that reliance on paper auditing and/or reputations alone is not sufficient. It is DEQ's understanding that safe battery options do exist for the purpose of tracking waste bales–for example, through the use of alkaline battery-powered trackers, as these batteries are commonly shredded without any advance preparation when recycled. Nevertheless, DEQ agrees that some clarity could alleviate the unlikely scenario that it not feasible to fulfill the requirement in compliance with labeling and safe handling laws. DEQ has amended the rule language to allow the PRO to address this in the program plan, subject to DEQ review and approval.

Topic: Responsible End Markets - Definition of "Practicable"

Comment: Amend OAR-340-090-0670(5)(a)(E), an example in a list defining "practicable action" by example, to read "developing new *processing and* market*s* for a material." These edits, marked with asterisks, emphasize two points – first, there is a need for multiple buyers for each material, and second, in addition to new buyers, there may also be a need for new processing equipment and/or additional processors. Commenter number(s): 28

Response: Note that the word "processor" in the Recycling Modernization Act very specifically refers to commingled recycling processing facilities, who are obligated to send materials collected for recycling to responsible end markets, but to whom the "responsible" standard does not apply. The commenter in this comment appears to rather use the word "processor" to refer to end markets, to which the "responsible" standard does apply.

Additional reclamation capacity could be needed to allow materials to flow to a responsible end market; however, that is not precluded by the current language at OAR-340-090-0670(5)(b), which defines practicable action by example but does not limit the definition to the listed examples. As such, there is no need to add "processors" and an "s" to "market."

When reviewing the language at OAR-340-090-0670(5)(b) in the context of preparing a response to this comment, DEQ noted an opportunity to improve precision of the rule language – the language has been updated to indicate that if results of a verification, certification or audit indicate that an end market does not meet the responsible standard, then the PRO must implement a practicable action.

Topic: Responsible End Markets - Timelines for Verifications

Comment: Add language to OAR-340-090-0670(3) to make required timelines for verification of end markets progressively shorter over time, for example, for materials delivered to end markets for recycling after 2028, verifications should be completed within six months, and after 2030 they should be completed within three months (or some other practicable timeline that progressively steps down from the original window of 12 months). The proposed regulatory language requires commingled processing facilities to verify responsible end markets to which they deliver materials within a 12-month timeframe. While we feel this is reasonable for the first few years of the program as processing facilities and end markets alike become accustomed to the new requirements, it is likely unnecessary and potentially risky to allow a full year for responsible end market verification in perpetuity. Given the verification process is not stringent enough to limit the volume of materials potentially sent to irresponsible end markets before verification is complete. Commenter number(s): 16, 29, 59

Response: DEQ has amended the language at OAR-340-090-0670(3)(b)-(c) to clarify that a screening assessment must be completed prior to the producer responsibility organization sending PRO recycling acceptance list materials (or materials otherwise under its control) to a market. There is parallel language at OAR-340-093-0310(1)(b) for commingled recycling processing facilities with respect to Uniform Statewide Collection List materials (i.e., they must complete the screening form prior to sending materials). The screening assessment, while not a

rigorous verification, requires a market to self-attest under penalty of perjury that it meets the "responsible" standard, and as such addresses the risks that the commenter is concerned with. As for shortening the timelines with respect to verification due dates, DEQ is disinclined to do so in this rulemaking, as the level of effort associated with market verification is subject to details in the program plan process (the standard to be used in verifying markets is part of the PRO program plan, which is currently under review).

Topic: Responsible End Markets - Disposition Reporting

Comment: Delay the due date for the first disposition report from the proposed Nov. 14, 2025, deadline to a revised deadline of Dec. 31, 2025. More time is required due to the complexity of data gathering and tabulation for both the PRO and the CRPFs. Subsequent reports can be submitted by the originally proposed deadlines. Commenter number(s): 46

Response: DEQ has revised OAR-340-090-0670(6)(b)(A) and OAR 340-096-0310(2)(a)(B)(i) in response to this comment. The new deadline for the PRO for the first disposition report is Dec. 31, 2025, and the new deadline for the CRPFs is Dec.15, 2025. The dates are offset from one another in case the PRO needs information from the CRPFs' reporting to complete its report.

Rule 340-090-0690 Waste Prevention and Reuse Fee

Topic: Waste Prevention and Reuse Fee - Modify Language in (4)(d)

Comment: Modify (4)(d) to add 'refillable' so rule says: "Reusable and refillable items that allow for a reduction in the environmental impacts of covered products." (eligible activities) Commenter number(s): 31

Response: DEQ has updated the rule language in response to this comment.

Topic: Waste Prevention and Reuse Fee - Strike 'in that year' from waste prevention and reuse rule language allowing DEQ to reduce Fee in a given year

Comment: Strike 'in that year' from proposed language allowing DEQ to reduce the Fee in a given year if the full amount is not required to administer and implement the program in that year. Commenter number(s): 16, 29

Response: DEQ has updated the proposed rule language in response to this comment.

Rule 340-090-0700 Market Share

Topic: Market Share - Aligning Fee Year with Program Year

Comment: Clarify the language in OAR-340-090-0700 that specifies the year of supply data that is used to set producer fees for a given program year.

The last sentence of subparagraph OAR-340-090-0700(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." Commenter number(s): 41, 30

Response: DEQ has revised the proposed rule language to state, "From 2026 onward, a producer responsibility organization will set producer fees for a given program year using supply data from two years prior to that program year, e.g., 2028 fees will be set on the basis of 2026 supply data."

Rule 340-090-0810 Local Government Compensation and Invoicing

Topic: Local Government Compensation and Invoicing - Contamination Evaluation Process

Comment: Delete existing (2) and (3). Add new rules that: 1) Require the producer responsibility organization to develop and implement a statewide contamination and material composition audit protocol, 2) Establish a protocol would address funding associated with 459A.890(3), 3) Obligate facilities receiving commingled materials to participate in protocol and process as a condition of their permits. Commenter number(s): 46

Response: DEQ has updated the rule language in response to this comment adding that if a contamination evaluation procedure is being provided by a PRO to meet the requirements under ORS 459A.959, then the PRO would no longer be responsible for covering costs relevant ORS 459A.890(3). The protocol for the evaluation procedure implemented by the PRO must be accepted by DEQ via the approval of a producer responsibility program plan or plan amendment.

Topic: Local Government Compensation and Invoicing - Contamination Reduction, Advanced Funding

Comment: Per statute local governments are required to implement Contamination Reduction Programs, which are capped at approximately $12.8 million annually. The proposed advanced funding rule could create a significant cost variance in addition to the annual cap. We suggest the removal of such an allowance. Commenter number(s): 61

Response: DEQ has revised the proposed rule language in response to this comment by reducing the size of the community that may request and receive up to two years of advanced funding pursuant to ORS 459A.890(4).

Comment: Reduce the scope for advance funding for smaller communities to those with a population of 10,000 or below. Communities requesting the two-year advanced funding should be required to provide a high-level budget outlining how the money will be spent over the two-year cycle. Commenter number(s): 46

Response: DEQ has reduced the size of communities that may receive two years of advance funding to those with a population of no more than 25,000. Local governments are not required to conduct programming throughout the entire two years but may use the funding as they see fit and in accordance with statutory requirements.

Topic: LG Compensation and Invoicing - Flexibility for Local Governments

Comment: Commenter suggests DEQ add to OAR 340-090-0810(2) the language "or other person authorized by a local government to receive payment" so that (2) reads "Costs incurred by a local government or a local government's service provider, or other person authorized by a local government to receive payment, including reload facilities and limited sort facilities that are also reload facilities, to implement the contamination evaluation procedures established by DEQ to meet the requirements of ORS 459A.929(2)(b) are eligible for funding or reimbursement pursuant to ORS 459A.890(3)." Commenter number(s): 29

Response: The proposed rules will be updated based on this comment.

Rule 340-090-0820 Processor Commodity Risk Fee

Topic: Processor Commodity Risk Fee - Material Disposition Data

Comment: Commenter suggests DEQ update OAR 340-090-0820(5) to better clarify the reporting and review requirements for permitted and certified CRPFs. Commenter number(s): 23, 29

Response: DEQ believes the commenter actually means inbound transactional data, not disposition data. OAR 340-090-0820(5) and OAR 340-090-0830(5) both propose that CRPFs provide DEQ with information relevant to the Processor Commodity Risk Fee and the Contamination Management Fee, "including but not limited to providing on forms provided by DEQ monthly transactional data associated with each inbound load of commingled recyclables received by the processing facility." DEQ, the PRO, or a combination of both may conduct on-site and off-site assessments of facility specific data, to ensure that a CRPF is in compliance with the rules and is correctly invoicing tons. DEQ is proposing this approach to meet the requirements under ORS 459A.920(2)(c) and 923(2)(c), which requires DEQ to "establish a review process to ensure that the fee is appropriately charged."

DEQ agrees with the commenters' suggested changes for (5) and will update the language.

Regarding how such transactional data will be used, DEQ will share data with jurisdictions to the extent allowed by the law.

Topic: Processor Commodity Risk Fee - Protection of Ratepayers

Comment: Commenter suggests DEQ add language to support transparency and accountability for Commingled Recycling Processing Facility charges to haulers, to ensure the significant PRO funding will fulfill the direction in ORS 459A.923 to "allow local governments to reduce the financial impacts on ratepayers."

Commenter suggests that OAR-340-090-0820(5)(a) be updated to read: "Commingled recycling process facility shall report information related to the fee, including information to ensure that producers share in the costs of fully processing commingled recyclables that are covered products and to allow local governments to reduce the financial impacts on ratepayers, including protection from the volatility of commodity markets, as described in this rule as required by DEQ, including but not limited to providing on forms provided by DEQ monthly transactional data associated with each inbound load of commingled recyclables received by the processing facility, such as the transaction level data identifying the number of tons received per jurisdiction(s) the hauler gathered the load from and whether the inbound load contamination per transaction led to a tip fee above 0 or an additional charge." Commenter number(s): 29

Response: DEQ has revised the draft rule language in response to this comment.

DEQ can only release certain information if doing so does not violate the Public Records Law and Trade Secrets Act.

Topic: Processor Commodity Risk Fee – Typographical Errors

Comment: Commenter suggests that, 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. Commenter number(s): 30

Response: DEQ has revised the draft rules in response to this comment.

Rule 340-090-0830 Contamination Management Fee

Topic: Contamination Management Fee - Definitions

Comment: Commenter suggests updating OAR 340-90-0830 (3)(a)(B) to "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 requires significant additional effort for the processing facility to handle or market." Commenter number(s): 30

Response: DEQ has revised the draft rule language in response to this comment.

Rule 340-090-0840 Covered Products

Topic: Covered Products - Storage Items

Comment: Provide a definition or examples of what constitutes a storage item. Senate Bill 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. Commenter number(s): 48

Response: DEQ revised this rule in response to this comment by adding a cross citation to OAR 340-090-0860(2) to clarify that the producer definition in OAR 340-090-0860(2) is to be applied to products meeting the definition in OAR 340-090-0840(1)(a). DEQ also amended 340-090-0840(1)(a) to include the term "storage item."

In statute, it is indicated at ORS 459A.863(18)(a)(C) that "packaging" includes "nondurable materials used in storage," with moving boxes and file boxes and folders indicated as example products. The statute does not address what other materials used in storage are in scope, whether or not durable materials used in storage are in scope, and how the producer for these packaging items is to be determined when they reach the consumer empty (the three-tiered producer definition at ORS 459A.866(1)(a) looks in part at who manufactured the product contained in the packaging). Rules included in this rulemaking are intended to provide the needed clarity. Proposed rule 340-090-0840(1)(a) provides a definition of "storage item" and examples that include durable storage products (some of which will be exempt from "covered product" due to the proposed exemption at rule OAR-340-090-0840(2)(a)). And proposed rule OAR-340-090-0860(2) provides a slightly adapted version of the three-tiered producer definition that will be applied for determining the producer of storage items.

Topic: Covered Products - Definition of "Ready to Eat"

Comment: OAR 340-090-0840 (1)(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 extended producer responsibility framework, a clear definition of "ready to eat" must be provided. While some products like uncooked meat are self-explanatory, fresh fruit and vegetables pose a more difficult challenge. Commenter number(s): 25, 53

Response: To help producers obligated under the Recycling Modernization Act to understand a) whether or not a particular product is covered under the law, and b) whether or not they are the obligated producer for the product in question, DEQ has made the following changes with respect to two product categories that could be difficult to distinguish from one another, service packaging and food serviceware:

1) a definition of "ready to eat" has been integrated into rule OAR-340-090-0850(1)(d) ("Ready to eat food is prepared or cooked in advance, with no further cooking or preparation required before consumption"), and
2) the obligated producer definition for service packaging at rule OAR-340-090-0860(4) has been edited to match the statutory obligated producer definition for food serviceware at ORS 459A.866(3) – the person that first sells the service packaging in or into this state.

Considering these two changes, the bags used by a consumer to contain fresh fruit and vegetables while in a grocery store produce aisle are service packaging. These items have not been prepared or cooked in advance. There may be some other products sold in grocery stores where the application of the ready to eat definition will be less clear, such as sliced meat or cheese at a deli. For alignment, DEQ changed the obligated producer definition for service packaging to match that of food serviceware. Producers will receive detailed guidance from the PRO that will enable their making these distinctions on a product-by-product basis.

Topic: Covered Products - Service Packaging (1)

Comment: Eliminate the separate "service packaging" definition, or clarify definitions further, to avoid overlap with the food serviceware category. Commenter number(s): 30, 51, 53, 58

Response: Service packaging reaches the consumer empty and as such the three-tiered producer definition at ORS 459A.866(1)(a) cannot be used to assign obligation for it, because it focuses on who manufactured the item in the packaging. There is partial overlap among service packaging and food serviceware, but there are many types of service packaging that could not plausibly be considered food serviceware, including brown grocery bags, which are clearly covered under the law pursuant to ORS 459A.863(18)(a)(B). DEQ retained the service packaging subcategory of packaging, but aligned the obligated producer definition for service packaging with that of food serviceware and added a definition of "Ready to Eat" for the purposes of limiting overlap among the two categories. Alignment of the producer definitions will result in the same producer being obligated regardless of whether the product is designated as food serviceware or as service packaging.

Topic: Covered Products – Service Packaging (2)

Comment: Producers of plastic film sell the 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 will make it nearly impossible to accurately attribute producer volumes to the categories of "service packaging" and "food serviceware." Commenter number(s): 25, 26

Response: In response to this and other comments, DEQ revised the producer definition for service packaging OAR-340-090-0860(4)) so that it matches the obligated producer for food serviceware, which is defined as the first seller in or into the state at ORS 459A.866(3). As a result of this change, producers classifying their products as food serviceware or as service

packaging will not be very consequential, as regardless of whether you categorize one way or the other, the obligated producer will be one and the same.

Topic: Covered Products - Exemption for Durable Packaging for Durable Goods (1)

Comment: Remove the reference to the product lifespan ("three or more years") from the exemption for packaging that is used for long-term storage. It does not seem feasible to place a shorter lifespan limit on the product being stored than on the packaging, as the lifespan of the product depends in part on the durability of the packaging. With respect to paints and coatings, lifespan of the product also changes when the product has been opened, and varies with respect to the conditions of storage. Commenter number(s): 36

Response: The inclusion of limits for both lifespan of the packaging and the product contained within in the exemption for storage containers is essential for limiting the exemption to true storage items.

DEQ has revised the draft rules by replacing "product with a lifespan of three or more years" with "product that meets the definition of "durable good" as defined by the Bureau of Economic Analysis, U.S. Department of Commerce. If the Bureau of Economic Analysis or another federal government body, such as the Environmental Protection Agency, has classified a good as a "durable" or "nondurable good" according to the glossary definition, the classification should be applied for the purposes of determining product exemption status. Later classifications supersede earlier ones.

This will allow producers to depend upon existing classifications for products at the federal level rather than making their own interpretations.

Topic: Covered Products - Exemption for Durable Packaging for Durable Goods (2)

Comment: The exemption for durable packaging for durable goods does not include the term "durable good" in its formulation nor does it include references to the source federal definition of "durable good." DEQ should add this term and the appropriate citation to the rule language. Commenter number(s): 62

Response: DEQ has replaced "product with a lifespan of three or more years" with "product that meets the definition of "durable good" as defined by the Bureau of Economic Analysis, United States Department of Commerce, in its online glossary.

Topic: Covered Products - Exemption for Agricultural Chemicals Produced by ACRC Members (1)

Comment: Include a requirement that the Ag Container Recycling Council collection program for commercial-use, rigid, HDPE agricultural chemical packaging be subject to independent auditing of its collection rates, recycling rates, and end markets in order for member producers to

qualify for exemption for their products pursuant to rule 340-090-0840(2)(d)(D). The proposed rules if adopted as is would exempt rigid HDPE packaging of commercial-use pesticides, fertilizers, and agricultural amendments produced by members of the Ag Container Recycling Council (ACRC) and eligible for collection by ACRC, and allows for self-reported data from this voluntary, producer-run collection program to qualify this packaging for a full exemption from the RMA. This is too much leniency for an industry that produces harmful toxic chemicals and, by association, packaging contaminated with these toxic substances even if limited to commercial uses.

The auditing should reveal equal or better results from ACRC's program to those that could be achieved and are achieved in practice for similar materials - under the RMA for these containers to qualify for an exemption. Ultimately, no product should be exempt from the RMA unless it can verifiably demonstrate that it is out-performing - or at the very least performing on par with - the extended producer responsibility system. Commenter number(s): 16, 29

Response: DEQ has revised the rule language to require that ACRC corroborate its self-reporting by arranging and paying for a third-party audit of its collection program in Oregon once every five years, and providing results to DEQ.

The ACRC collection network in Oregon circa 2023 was robust, with ACRC contractor Agri-Plas collecting from 527 collection sites across the state in 2022-2023. This is arguably greater convenience than that which will be provided for PRO recycling acceptance list materials by the PRO's collection point network.

DEQ cannot be certain, however, that collection will be maintained at 2023 levels going forward. This is why the exemption as proposed at OAR-340-090-0840(2)(d)(D) is contingent upon ACRC annual reporting that demonstrates maintenance of the collection program at 2023 levels (or improvement of the program). The rule language allows DEQ to proscribe the form and manner of ACRC's annual reporting. ORS 459A.962 also gives DEQ broad authority to enforce against producer misreporting and failure to report.

Topic: Covered Products - Exemption for Agricultural Chemicals Produced by ACRC Members (2)

Comment: Add adjuvants and surfactants to the exemption at OAR-340-090-0840(2)(d)(D) for rigid HDPE packaging of commercial-use agricultural chemicals produced by members of the Ag Container Recycling Council. The full scope of products collected by ACRC is pesticides, animal health, specialty pest control, micronutrient, biologicals, fertilizer, and adjuvant/surfactant products. All of these items except for adjuvants and surfactants are encompassed in the proposed exemption. These are the products that are mixed with the other listed products (like pesticides) to help the chemicals spread on the leaf of the plant for proper protection or absorption. They are essential to agricultural practices. Wherever these products are sold or used on farms or nurseries, they would also be exempt by way of ORS 459A.863(6)(b)(K and L). However, in other applications like golf courses, forestry, vegetation management, etc., there would still be a gap – they would seem to not be exempt. Commenter number(s): 8, 28, 52, 57

Response: DEQ has edited the rule language at 340-090-0840(2)(d)(D) as follows to expand the scope of the exemption to include packaging of adjuvants and surfactants: "Rigid HDPE packaging of commercial-use pesticides, fertilizers, adjuvants and surfactants, and agricultural amendments produced by members of the Ag Container Recycling Council or ACRC and eligible for collection by ACRC."

Topic: Covered Product Exemptions - Exemption for Non-OTR Collection from Residential Generators

Comment: Amend OAR-340-090-0840(3)(a)(B) (an example of a collection service not provided under opportunity to recycle, and therefore eligible for the exemption pertaining to ORS 459A.869(13)) to clarify that collected materials may be stored at a permitted facility, provided such storage and related costs are not funded through ORS 459A.890. Commenter number(s): 17

Response: The proposed list of examples in rule of collection services not provided under opportunity to recycle at OAR-340-090-0840(3)(a) is not intended to be exhaustive so DEQ will not include the proposed scenario. Furthermore, the subsequent storage of materials at a permitted facility is unrelated to the collection's status as non-OTR. DEQ assumes that materials will need to be stored in a permitted facility for a period of time before they are sent to an end market. DEQ has clarified the rule language in response to this comment.

Rule 340-090-0860 Producer Definitions

Topic: Producer Definitions - Shipping and Moving Items

Comment: Provide a three-tiered producer definition for the subcategory of covered products, nondurable materials used as shipping and moving items, referenced in ORS 459A.863 (18)(a)(C). This will help clarify the obligated producer obligations for these materials. Commenter number(s): 46

Response: DEQ revised the draft rule because the proposed approach has been taken for other packaging-like products included in the definition of packaging at ORS 459A.863(18)(a)(B)-(C). DEQ amended rule OAR-340-090-0840 to provide a definition for items used in shipping and moving, and amended rule OAR-340-090-0860(3) to provide a three-tiered producer definition specific to these items.

Topic: Producer Definitions - Definition of Obligated Producer for Food Serviceware

Comment: DEQ should clarify in rule the producer definition for food serviceware at ORS 459A.866(3), specifying 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." This will place the obligated producer closer to the user of the product, and increase the likelihood that the obligated producer can determine how the product was ultimately

used, and thus categorize it correctly. If this change is made, then DEQ can eliminate the service packaging and consumer wrap subcategories of packaging. If a covered product doesn't meet the food serviceware definition, it can just fall into the broad "packaging" definition from statute, with no need for the new subcategories and producer definitions in rule. This change will also address the following issues with the current language: (1) wraps could fall into the categories of service packaging, consumer wraps, or food serviceware (there is too much overlap and vagueness among the definitions); and (2) distinctions between the categories are based on use and producers often lack visibility into how the products are used–for example, in cases where food serviceware reaches a restaurant or retailer via a distributor, or for cases when a product could have multiple possible uses (e.g. a wrap sold to a grocery store). Commenter number(s): 26, 30, 53, 58

Response: DEQ revised OAR-340-090-0840(1)(d) to indicate that food serviceware (rather than packaging) includes consumer wraps, and eliminated the three-tiered producer definition for consumer wraps from OAR-340-090-0860. The proposed consumer wrap subcategory of packaging creates unnecessary confusion when wraps are explicitly called out as food serviceware at ORS 459A.863(7). While they sometimes are used for other applications, the primary application of consumer wraps is as food serviceware.

DEQ did not make the recommended clarification to the producer definition for food serviceware, which seems most targeted toward addressing the issue of obligated producers not knowing how their products are used downstream. A change to the definition of the obligated producer for service packaging made in response to another comment should partially address the concerns around unknown use. That change aligns the producer definition for food serviceware and for service packaging, so that regardless of how a product is categorized among these two categories, the obligated producer is the same.

DEQ did not incorporate the proposed clarification to the producer definition for food serviceware because it would expand the scope rather than clarify statute. DEQ also did not incorporate the comment requesting clarification to the obligated producer definition for food serviceware on the premise that doing so would remove the need to break out the service packaging subcategory of packaging. Service packaging reaches the consumer empty and the three-tiered producer definition at ORS 459A.866(1)(a) cannot be used to assign obligation for it, because it focuses on who manufactured the item in the packaging. There is partial overlap among service packaging and food serviceware, but there are many types of service packaging that could not plausibly be considered food serviceware, including brown grocery bags, which are clearly covered under the law pursuant to ORS 459A.863(18)(a)(B). As such, DEQ retained the service packaging subcategory of packaging, but aligned the obligated producer definition for it with that of food serviceware.

Topic: Producer Definitions - Producers of Printing and Writing Paper (1)

Comment: Clarify that the printer that used printing paper to produce communications is the obligated producer for the printing paper. The printer has 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. Judging by a July 16 webinar, DEQ

considers that the producer is rather the manufacturer on the basis of an erroneous understanding of how paper is distributed. In that webinar, DEQ said that direct mail (bank statements, etc.) is printed on 8.5 x 11" paper; however, most direct mail is in fact sold to printers as unprinted rolls which are then converted into 8.5 x 11" sizes. Commenter number(s): 51

Response: Statute at ORS 459A.866(2)(a) and (b) splits printing and writing paper into two groupings of products, one for which the obligated producer is the publisher, and one for which the obligated producer will generally be the branded-manufacturer of the paper. Specialty-printed publications (e.g. magazines, newspapers, catalogues, etc.) fall into the first category, and all printing and writing paper that is not a specialty-printed publication into the second grouping. DEQ has amended the rules at 340-090-0860(5) to clarify this, as it may help confused producers such as this commenter to determine whether they are obligated.

Topic: Producer Definitions - Producers of Printing and Writing Paper (2)

Comment: Clarify in rule that the fee for printing paper that is turned into a communications product should only be assessed once. DEQ's proposed approach to managing printing papers is inconsistent with how other extended producer responsibility programs treat printing papers, and risks double-counting and thus double charging for material placed on the market. Commenter number(s): 51

Response: The grouping of printing and writing products into two categories of products at ORS 459A.866(2)(a) and (2)(b) is intended to limit the risk of double-counting with respect to printing paper that is sold blank and then subsequently used to print a communications product. There is a risk for that the branded manufacturer of the blank paper and the publisher of the communications printed on the paper producers would pay producer fees for the same product. However, commonly-sold printing paper formats, such as 8.5x11 paper, are generally not used to produce specialty-printed publications. They can be considered on a blanket basis to fall into the second category pursuant to (2)(b), for which the obligated producer is the branded-manufacturer of the ream of paper. Functionally, most printing and writing paper products will be categorizable into one category or the other simply based on the format of the source paper. There will be scenarios that do not neatly categorize in this way, but DEQ expects that the producer responsibility organization can develop producer reporting guidance to address such scenarios.

DEQ has amended the rules to clarify that, in the case of paper used for copying, writing or other general use that is subsequently turned into a specialty-printed publication, the three-tiered definition at ORS 459A.866(2)(b) should only be applied to the original paper used for copying, writing, or other general use (e.g. the ream of 8.5x11 paper) rather than the product that resulted from printing or copying on the ream of paper.

Topic: Producer Definitions - Producers of Printing and Writing Paper (3)

Comment: Apply the concept included in rule 340-090-0860 (1)(a) regarding assignment of obligations when a brand directs manufacturing of a covered product to the writing and paper producer hierarchy described in ORS 459A.866 (2)(b). Commenter number(s): 46

Response: DEQ revised the proposed rules because it would improve consistency to treat contract manufacturing scenarios with respect to printing and writing paper similarly as contract manufacturing scenarios with respect to packaging.

Topic: Producer Definitions - Associated Producers

Comment: The associated producer rule 340-090-0860(5) should apply to the RMA producer definition pursuant to eligibility for uniform fees, as per ORS 459A.884 (6) in addition to the larger and small producer definitions. Commenter number(s): 46

Response: DEQ has revised OAR-340-090-0860(6) to include eligibility for uniform fees.

Rule 340-090-0870 Producer Pre-Registration

Topic: Producer Pre-Registration - Exempt New Producers

Comment: Add 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. Commenter number(s): 30

Response: DEQ added language to clarify that the pre-registration requirement applies only to producers that, in 2024, sold or distributed covered products in or into the state and do not qualify as small producers.

Rule 340-090-0900 Life Cycle Evaluation Definitions

Topic: Life Cycle Evaluation Definitions - Add Definitions for "Reuse Cycle" and "Refill Cycle"

Comment: Define use/reuse cycles, as well as refill cycles, in accordance with applicable international or national standards. A reuse cycle is considered complete when a package or product has been emptied by the consumer, returned to a producer or third-party system, reused for its original intended purpose in its original format, and returned to the market. A refill cycle is considered complete when a consumer has emptied the packaging, obtained a new supply of the product intended to be used, and refilled the packaging with said supply. Commenter number(s): 16

Response: The two definitions, formulated in alignment with the commenter's suggestion, were added to 340-090-0900. These definitions are cross-referenced in 340-090-0930(2) (a new reference to "refill cycle" was added as part of a new section on calculation of "refill rate," while an existing reference to "reuse cycles" at rule 340-090-0930(2)(e)(A)(ii) now has a supporting definition).

Topic: Life Cycle Evaluation Definitions - Definition for "Comparative Lifecycle Assessment"

Comment: Add a definition for "comparative lifecycle assessment" to section 340-090-0900 that references the following International Standards Organization (ISO) definition: "Lifecycle Assessment that is made with the purpose of making public comparative assertions, and claiming that an organization's product is environmentally better than alternative options." Commenter number(s): 46, 12

Response: DEQ revised the draft rule language in response to this comment but DEQ did not add a definition derived from the ISO standards for "comparative lifecycle assessment" to the definitions section at 340-090-0900 as requested because the product category rules at 340-090-0930 are unique to Oregon rather than direct copy/paste of ISO standards. Moreover, neither of the core ISO standards for Life Cycle Assessment define the term "comparative life cycle assessment;" thus, no such definition is available for use in these rules. The product category rules at 340-090-0930 do borrow heavily from both from ISO standards (14040, 14044, 21930) and from the European Union's Product Environmental Footprint Category Rules. Based on this comment DEQ added language to 340-090-0930(3)(c) to state that the evaluation of impact reduction and baseline scenarios must be based on a set of comparable conditions consistent with the guidelines provided in Section 4.2.3.7 of ISO 14044 related to "Comparisons between systems."

Topic: Life Cycle Evaluation Definitions - PFAS

Comment: Do not lump all PFAS into the same definition or regulate all PFAS together. It is neither scientifically accurate nor appropriate to group all PFAS chemistries together. 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: https://www.americanchemistry.com/chemistry-in-america/chemistries/fluorotechnology-per-and-polyfluoroalkyl-substances-pfas/pfas-grouping-an-emerging-scientific-consensus. The focus in this area to date has largely been on two specific PFAS substances: PFOS and PFOA. 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. Commenter number(s): 40, 41

Response: There are no restrictions being placed on the use of PFAS by these rules, but rather, the rules propose a disclosure requirement. DEQ is not aware of concerns related to requiring disclosure for presence/absence of a PFAS chemistry family member, and is not aware of such concerns having been raised by the policy organizations listed by the commenter.

Regarding the suggestion that DEQ should focus specifically on PFOS and PFOA, two specific chemicals in the PFAS family, DEQ would note that the only two practical quantification limits applied to PFAS through these rules are for PFOS and PFOA. DEQ is paying specific attention to these chemicals. However, if there are other PFAS present in a product, DEQ has updated the language at 340-090-0940(1) to make clear that DEQ would like producers to disclose presence of an intentionally-added hazardous substance pursuant to 340-090-0940 even if there is no PQL assigned to the chemical.

Topic: Life Cycle Evaluation Definitions - Refillable Packaging (1)

Comment: Account for refillable packaging in the product category rules, either by modifying the definition of "reusable packaging products" to include refillable packaging, or by creating a separate definition. Packaging refilled by the consumer in the home is a viable reuse model that is not captured by the current definition. Commenter number(s): 46, 61, 12, 26, 31, 30, 53

Response: DEQ revised the rule language in response to this comment. Based on this comment DEQ added a separate definition for "refillable packaging product" to rule 340-090-0900. Refillable packaging is not supported with commercial or publicly-owned infrastructure to enable the highest and best reuse, nor is it returned to a producer or third party after each use – as such, it does not meet criteria (b) and (c) of the four-part definition of "reusable packaging product" at 340-090-0900(41).

Topic: Life Cycle Evaluation Definitions - Refillable Packaging (2)

Comment: Include a definition of refillable packaging, separate from that for reusable packaging, within OAR 340-090-0900. Align this definition with the one provided in Upstream's Fact Sheet. Commenter number(s): 16

Response: DEQ added a separate definition for "refillable packaging product" to 340-090-0900. The definition aligns with that recommended by the commenter, and is structured in parallel to the definition for "reusable packaging product," highlighting two differences between the two types of packaging: refillable packaging, in contrast with reusable packaging, is not supported with commercial or publicly owned infrastructure to enable the highest and best reuse, nor is it returned to a producer or third party after each use.

Topic: Life Cycle Evaluation Definitions - Alphabetical Order

Comment: Shift and renumber paragraphs 340-090-0900(25) and (26) to occur immediately after paragraph (18), to maintain the alphabetical ordering of this section. Commenter number(s): 30

Response: The draft rules have been corrected in response to this comment.

Topic: Life Cycle Evaluation Definitions - Break-Even Point (1)

Comment: Adjust the definition of "break-even point" to broaden the concept to apply to not only reusable, but also to consumer refillable packaging products. Commenter number(s): 31

Response: DEQ revised the definition of "break-even point" to apply the concept both to reusable and to refillable packaging products.

Topic: Life Cycle Evaluation Definitions – Break-Even Point (2)

Comment: Remove the word "increased" from the definition of "break-even point." Any additional reuse cycles of a reusable packaging product beyond the break-even point would result in environmental savings, rather than increased environmental savings. Commenter number(s): 16

Response: DEQ revised the definition of "break-even point" in response to this comment.

Topic: Life Cycle Evaluation Definitions - Hazardous Substance (1)

Comment: Modify the "hazardous substances" definition to align with substances considered hazardous by the Toxics in Packaging Clearinghouse. Rationales for the suggested change provided by commenters are as follows: 1) the existing definition is comprised of substances in cosmetics and children's products, not packaging 2) chemicals listed under the Toxic Free Kids Act, if present in a children's product, do not necessarily render the product harmful to human health or indicate a violation of existing standards or laws. Commenter number(s): 12

Response: DEQ edited the definition of "hazardous substance" in response to this comment by adding "potentially" to the definition (e.g. "Hazardous substance means chemicals that are considered *potentially* hazardous in consumer products in Oregon…."

DEQ considered the option of drawing the list of chemicals for the disclosure rules from Toxics in Packaging laws operating in other states, but ultimately decided to instead cross-cite in the definition of "hazardous substance" chemicals that have already either been listed in Oregon as a chemical of concern, or the presence of which in consumer products sold in Oregon has been restricted. For many of these chemicals, practical quantification limits and acceptable testing methods have been defined in rule in Oregon with the participation of interested parties specific

to Oregon; as such, DEQ felt that these chemicals comprise the most appropriate "starter list" that may be built upon in subsequent rulemakings and tailored to the scope of the Recycling Modernization Act (i.e., to packaging, paper, and food serviceware). DEQ also cross-checked the proposed listings against substances included in current model Toxics in Packaging legislation () and found that the degree of overlap is considerable.

Topic: Life Cycle Evaluation Definitions - Hazardous Substance (2)

Comment: Modify the "hazardous substances" definition to align with DEQ's existing definition of "toxic materials" in OAR 340-090-0010(45), which references chemicals included on DEQ's Toxics Focus List. The rule language could also allow DEQ to designate additional substances if DEQ feels there is a need. Rationales for the suggested change provided by the commenter are as follows: 1) the existing definition is comprised of substances in cosmetics and children's products, not packaging, and as such it is scientifically inaccurate to apply these lists to packaging, and 2) chemicals listed under the Toxic Free Kids Act, if present in a children's product, do not necessarily render the product harmful to human health or indicate a violation of existing standards or laws Commenter number(s): 31

Response: DEQ considered the option of using an existing DEQ list of hazardous substances for the life cycle evaluation rules for products covered under the Recycling Modernization Act, such as the Toxics Focus List. Instead, DEQ decided to cross-cite in the definition of "hazardous substance" chemicals that have already either been listed in Oregon as a chemical of concern, or the presence of which in consumer products sold in Oregon has been restricted. For many of these chemicals, practical quantification limits and acceptable testing methods have been defined in rule in Oregon with the participation of interested parties specific to Oregon; as such, DEQ felt that these chemicals comprise the most appropriate "starter list" that may be built upon in subsequent rulemakings and tailored to the scope of the Recycling Modernization Act (i.e., to packaging, paper, and food serviceware).

DEQ agrees that the presence of these substances does not necessarily reflect harm to human health or a violation of existing standards or laws. As such, DEQ edited the definition of "hazardous substance" to reflect this, through the addition of the word "potentially" to the definition (e.g. "Hazardous substance means chemicals that are considered *potentially* hazardous in consumer products in Oregon….")

Topic: Life Cycle Evaluation Definitions - Intentionally-Added (1)

Comment: Remove "hazardous" from the definition of "intentionally-added." Commenter number(s): 12, 31

Response: DEQ has removed the word "hazardous" from the definition of intentionally-added. While the disclosure requirement under OAR 340-090-0940(1) encompasses intentionally-added hazardous substances, just because something is intentionally-added does not mean that it is hazardous.

Topic: Life Cycle Evaluation Definitions - Intentionally-Added (2)

Comment: In the definition of "intentionally-added," replace "a substance deliberately used in the formation of a covered product" with "a substance that serves a technical or functional purpose in the finished covered product." Commenter number(s): 12, 31

Response: DEQ has revised the definition of "intentionally-added," replacing "a…substance deliberately used in the formation of a covered product" with "a substance that serves an intended function in the final covered product or in the manufacturing of the covered product or part of the covered product."

Topic: Life Cycle Evaluation Definitions - Intentionally-Added (3)

Comment: Add the words "organic" and "covered" to the definition of "intentionally added" at rule 340-090-0900(20)(b) as follows: "The use of PFAS is presumed intentional if any total *organic* fluorine is present in the finished *covered* product." Commenter number(s): 12, 31

Response: DEQ added "covered" to the phrase in question and to other components of the definition of "intentionally added" in response to this comment, but did not replace total fluorine with total organic fluorine as the trigger for presumption of intentional addition. Use of total fluorine as an indicator for PFAS is less reliable than use of organic fluorine, but total fluorine is less expensive to test for, and the existing rule language gives producers the option of submitting a written rebuttal to DEQ should DEQ presume intentional addition of PFAS on the basis of testing for total fluorine.

Topic: Life Cycle Evaluation Definitions - Intentionally-Added (4)

Comment: Set a threshold value rather than using the practical quantification limits for attributing intentional use with respect to hazardous substances used as processing agents, mold agents, mold release agents, or intermediates. 340-090-0900(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. The current language 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). Commenter number(s): 30

Response: DEQ retained the existing language, which is aligned with language in the Toxics in Packaging model legislation and as such represents a best practice approach with respect to defining "intentionally-added" in the packaging sector. DEQ amended the rules to allow producers to rebut this presumption with credible evidence, similar as for presumption of intentionally-added PFAS.

Topic: Life Cycle Evaluation Definitions - Reusable Packaging Product

Comment: Either provide a definition of the word "durable" within the "reusable packaging product" definition, or consider it covered by "designed to be recirculated multiple times for the same or similar purpose in its original format." Commenter number(s): 30

Response: DEQ agrees that the word "durable" is practically duplicated by "designed to be recirculated multiple times for the same or similar purpose in its original format," and as such, removed "durable" from the definition of "reusable packaging product."

Rule 340-090-0910 Scope and Applicability

Topic: Scope and Applicability - Mandated Large Producer Evaluation and Disclosure (1)

Comment: Add language to 340-090-0910 indicating that large producers can use pro-rated national sales volumes or otherwise estimate market data for the purposes of ranking their Stock Keeping Units to determine the 1% of SKUs requiring evaluation and disclosure pursuant to ORS 459A.944(2). Commenter number(s): 12, 31

Response: DEQ edited rule 340-090-0910(2)(b)(A) to specify that large producers may use national data pro-rated for Oregon's population and other approximations if they conform with best available estimation methodologies.

Topic: Scope and Applicability of Life Cycle Evaluation Rules - Mandated Large Producer Evaluation and Disclosure (2)

Comment: The method of identification of the top one percent of Stock Keeping Units for which large producers must evaluate and disclose lifecycle impacts should be based not only on sales volumes but also packaging weight, as packaging weight is the framework for producer reporting and fees. Multiply sales by weight to determine the 1% of SKUs requiring evaluation and disclosure. Commenter number(s): 46, 12, 31

Response: In the rulemaking process, DEQ considered multiple parameters that could serve as proxies for the relative environmental impact of covered products, to enable large producers to rank their products and select the top 1%. As required under ORS 459A.944(2), large producers must evaluate and disclose the environmental impacts of this subset (1%) of covered products. Sales and weight were among the proxies considered. DEQ ultimately recommended that producers rank their SKUs by sales volumes rather than weight out of concern that weight would bias the rankings toward certain materials that are inherently more dense (e.g. glass or metals versus paper or plastics) and result in less diversity in terms of covered products for which large producer lifecycle impact evaluations are conducted and/or omission of some impactful products. DEQ has not made the change recommended by the commenters, but did revise the language of rule 340-090-0910(2)(b)(A) to clarify that large producers are to order their Stock Keeping Units by the number of Units sold or distributed in Oregon (this was what DEQ intended by the term "sales volumes" rather than the sales volume in dollar amount).

Topic: Scope and Applicability of Life Cycle Evaluation Rules - Mandated Large Producer Evaluation and Disclosure (3)

Comment: Rule 340-090-0910(2)(b)(A)(ii), which describes how SKUs should be ranked if the covered product is not sold to a consumer, needs to be clarified. It specifically refers to service packaging and e-commerce packaging, but these types of packaging are supplied to consumers. Commenter number(s): 46

Response: Edits to rule 340-090-0910(2)(b)(A) made in association with another suggested change render 340-090-0910(2)(b)(A)(ii) unnecessary, and DEQ has deleted it. The intent of this clause was to account for covered products that are not sold, but rather distributed into Oregon– for example, e-commerce mailer envelopes. The products that are mailed in these envelopes have associated sales volumes, but the e-commerce provider is not responsible for these products, only for the envelopes that it puts the products in for shipping. These envelopes may not be sold into Oregon, and perhaps are rather distributed by the e-commerce platform to a fulfillment center in Oregon.

The edits to 340-090-0910(2)(b)(A) clarifying that large producers are to order their Stock Keeping Units by the number of Units sold or *distributed* in Oregon will account for such cases, for which the obligated producer will order their SKUs by distribution volumes.

Topic: Scope and Applicability of Life Cycle Evaluation Rules - Attributional and Consequential LCAs

Comment: Clarify that "attributional LCAs" (i.e., in OAR 340-090-0910(2) are required of large producers when evaluating and disclosing impacts for ≥1% of their covered products sold in Oregon, and that "consequential LCAs" are required of producers seeking a fee reduction via the two-scenario Single score impact profile (i.e., in OAR 340-090-0930(3)(c)). The two terms are defined in the definitions section, but the terms are not used again subsequently. Commenter number(s): 32

Response: DEQ removed the definition for "consequential LCA" from the Definitions section at 340-090-0900 in response to this comment. This definition was included as part of an earlier iteration of the rules that encouraged producers to make several additional, optional disclosures, including that of consequential LCAs. DEQ meanwhile retained the definition of "attributional LCA" and added a clarification at rule 340-090-0930(1) to indicate that, for all life cycle evaluations conducted under these rules, producers are to apply an attributional approach. The methodology to be used by producers to qualify for the substantial impact reduction bonus is not a consequential LCA; it rather entails comparing two scenarios that are each modeled in attributional fashion.

Topic: Scope and Applicability of Life Cycle Evaluation Rules - 100 SKU Cap on Voluntary Bonuses

Comment: OAR-340-090-0910(3)(a)(B) should be amended to state the maximum number of SKUs (100) that a producer is entitled to submit life cycle evaluations for voluntary bonuses, the PRO can set lower SKU limits via the program plan fee structure for an interim period. The 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. Commenter number(s): 46

Response: DEQ has edited the rule language to allow the PRO to propose lower limits via the program plan on an interim basis, to address the problem of fee volatility in early years of the program.

Topic: Scope and Applicability of Life Cycle Evaluation Rules - Magnitude of Ecomodulation Bonuses

Comment: Do not require the substantial impact reduction bonus to be larger than the simple 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. There is also 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. Commenter number(s): 46

Response: The bonus for substantial impact reduction should be "substantial;" that is the impetus for the requirement in rule OAR-340-090-0910(3)(b)(A) that the substantial impact reduction bonus exceed the simple disclosure bonus in magnitude. To address the ambiguity issue, DEQ has edited the rule language to clarify that magnitude refers to both the proportion of the base fee by which the producer fee is adjusted, and any cap placed on either fee.

Topic: Scope and Applicability of Life Cycle Evaluation Rules - Bonus Durations

Comment: Do not fix the durations for which PROs must make bonuses available to member producers - 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. 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. 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. Commenter number(s): 46, 30

Response: There are some parameters for the duration and nature of fee reductions for producers that conduct LCEs proposed at rules 340-090-0910(3)(a)(A)-(D) and 340-090-0910(3)(b)(A)-(G). Most of these parameters seem to not unduly restrict the flexibility of the PRO – for example, the statutes of limitations in paragraphs (b)(D) and (b)(F) on how much time can pass

between a producer impact reduction action or preparation of an LCE, and submission of an LCE to DEQ. These are limits on the producer, not on the PRO, and they are proposed in order to protect the validity of the assessment results, continually incentivize reduction to impacts, as well as to protect the PRO from a deluge of bonus requests arriving in the same year for impact reduction actions that took place at various times in the past.

DEQ has deleted rules 340-090-0910(3)(a)(D) and 340-090-0910(3)(b)(G), leaving the PRO flexibility to propose the duration of bonuses as part of its program plan submission. DEQ would note that the rules for assessing reusable packaging products presume that the substantial impact reduction bonuses are offered for multiple years, because the rules allow the use of projections for three years which must be replaced by actual data from year four onward. The PRO will need to consider how to enable this provision when formulating its proposal as to the number of fee years to which substantial impact reduction bonus is applied.

Topic: Scope and Applicability of Life Cycle Evaluation Rules - Large Producer Eligibility for Disclosure Bonuses

Comment: Edit rule 340-090-0910(3)(b) to stipulate that large producers may receive the substantial impact reduction bonus for SKUs that were included in their 1% disclosure. The current rule language limits bonuses to voluntarily-conducted assessments. The SKUs covered by the mandated disclosures 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. Commenter number(s): 46

Response: DEQ agrees with the commenter's suggested change and rationale, and has updated the rule language at 340-090-0910(3)(b) to allow large producers to receive the substantial impact reduction bonus for SKUs that were included in their 1% disclosure.

Topic: Scope and Applicability of Life Cycle Evaluation Rules - Resubmission of Life Cycle Evaluations

Comment: Limits are needed regarding resubmission of life cycle evaluations; otherwise, producers could simply re-conduct evaluations on the same SKUs year after year to obtain a bonus, which would likely not generate new information in relation to covered product impacts. Add language to 340-090-0910 stipulating that the PRO can set limits in the program plan regarding the timing, submission and re-submission of both large producer and disclosure bonus LCE submissions, including limits related to the frequency of the submission of life cycle evaluations for the same Stock Keeping Units. Commenter number(s): 46

Response: With respect to the large producer disclosures, resubmissions are addressed in the existing rule language through the requirement to, every two years, order SKUs by number of units sold or distributed into Oregon and take the top 1% that has not been previously evaluated and disclosed for, with repeats allowed only after a ten-year period. However, with respect to the bonus disclosures, DEQ added language allowing the PRO to set such limits for bonus disclosures in the program plan.

Topic: Scope and Applicability of Life Cycle Evaluation Rules - Timing of the Substantial Impact Reduction Action

Comment: Change the requirement that the substantial impact reduction action undertaken by a producer to qualify for the bonus must have occurred on or after July 1, 2025; change the date to July 1, 2023. It is unfair to producers who have made recent changes to reduce the impacts of their packaging to bar them from receiving the bonus to reward their actions. The July 1, 2025, date also disincentivizes producers from undertaking changes before the start date. Commenter number(s): 46

Response: DEQ chose to emphasize impact reduction looking ahead over rewarding past action, which would arguably be a fairer approach. DEQ sees no problem with moving this date closer toward the anticipated rule adoption date of Nov. 22, 2024, at which time producers can review the final version of the rules and take them into account in decisions regarding potential substantial impact reduction actions. As such, DEQ has moved the earliest date for a substantial impact reduction action to Dec. 1, 2024.

Topic: Scope and Applicability of Life Cycle Evaluation Rules - Typographical Error

Comment: OAR 340-090-0910(1) erroneously cross-references rule 0950 when it should rather reference 0940. Commenter number(s): 46

Response: The citation has been updated.

Rule 340-090-0920 Project Report Requirements

Topic: Project Report - Criteria for Third-Party Verification and Validation

Comment: Add key objectives for the critical review, including ensuring ISO standards are followed and review of the impact assessments and interpretation of results. Commenter number(s): 12

Response: Because the impact assessment methodology proposed in the product category rule at 340-090-0930(3) borrows heavily from the European Union's Product Environmental Footprint (PEF), DEQ considers it appropriate to apply PEF's minimum requirements for verification and validation to third-party review of project reports developed to comply with Oregon's rules. As such, the rule language has been amended to mandate that critical reviewers of project reports adhere to the requirements of section 8.4.1 of Annex I of EU 2021/2279.

Topic: Project Report - Qualifications for Third-Party Reviewers

Comment: Establish criteria for critical review including standards for qualified reviewers and reviewer independence. The rule language requires critical review of project reports be conducted according to ISO standards, but procedural requirements are not defined in the ISO standards. As such, DEQ should include specific criteria for the critical review. Criteria should include but not be limited to establishment of standards for qualified reviewers and reviewer independence. Commenter number(s): 12

Response: DEQ partially agrees with the commenter that the draft rule language regarding third-party verification and validation of project reports could be more specific with respect to reviewer criteria and qualifications (e.g. rule 340-090-0920(4)(a)).

While the rules already refer to ISO 14071 for guidance on the critical review process, they do not specifically point to section 5 of ISO 14071 wherein reviewer competencies and qualifications are described. As such, we will amend the rule language at 340-090-0920(4) to make this normative reference explicit.

Additionally, because the impact assessment methodology proposed in the product category rule at 340-090-0930(3) borrows heavily from the European Union's Product Environmental Footprint (PEF), DEQ considers it appropriate to apply PEF's minimum criteria for verifier qualifications to third-party reviewers of project reports conducted under these rules. Consequently, the rule language at 340-090-0920(4) has been amended to mandate that critical reviewers of project reports meet the minimum requirements of section 8.3.1 of Annex I of EU 2021/2279 (i.e., a score of six points or more on Table 32).

Topic: Project Report - Confidential Data

Comment: Clarify 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. Commenter number(s): 46

Response: DEQ has revised rule 340-090-0920 to indicate that two versions of the project report shall be prepared. One confidential version and a second public version, as proposed by the commenter.

Topic: Project Report - Summary of Results

Comment: Require that summary information for the LCAs be submitted in a computer-readable format, which will allow the information to be delivered to the public. Commenter number(s): 54

Response: DEQ amended rule 340-090-0920 to stipulate that the project report must include a summary section of information that uses a form provided by DEQ and is computer-readable.

Topic: Project Report - Third-Party Verification and Validation Report

Comment: Require producers to append the third-party verification and validation report to the project report itself to avoid inadvertently failing to post it publicly. Commenter number(s): 46

Response: DEQ has revised the proposed rule language to enable more efficient posting of the evaluations to the PRO's website.

Rule 340-090-0930 Core Product Category Rules

Topic: Core Product Category Rule - Defining the Functional Unit

Comment: Specify that for changes to product concentration or phase changes to product (i.e., liquid to solid) that result in a reduction to the amount of packaging used, the producer should seek DEQ feedback prior to finalizing choice of the functional unit. Commenter number(s): 46

Response: DEQ and has updated the language of OAR 340-090-0930(1)(a) to reflect this. DEQ has also amended the rule language to include a requirement that the functional unit must encompass a description and report of the function provided by the specified units for different covered products.

Topic: Core Product Category Rule - Inventory Rules for Refillable Packaging Products

Comment: Account for refillable packaging products in rule 340-090-0930(2)(e) regarding the development of life cycle inventory data for reusable packaging products. For return/refill rate, look at the ratio of the number of reusable packages sold compared to the number of refills sold to determine the typical number of refills. One commenter suggesting this change specifically cited concerns with an approach that would electively incentivize return-and-reuse models over refill-at-home models and as such potentially negatively impact the holistic improvement of reuse and refill pathways in Oregon. Commenter number(s): 46, 12, 31

Response: DEQ has updated the rule language to reflect that the development of inventory data for refillable packaging products should be integrated into rule 340-090-0930(2). For refillable packaging, the producer must calculate a refill rate akin to the return rate for reusable packaging products – the refill rate shall be calculated by dividing sales of individual refills by sales of refillable packaging that the consumer loads the refills into.

As with reusable packaging products, a break-even point must be calculated for refillable packaging and the actual number of refills needs to be compared with and exceed it to qualify for the substantial impact reduction bonus.

While producers of reusable packaging products may use projections for return rate and expected number of reuse cycles during a three-year grace period after switching from single-use to reusable packaging, producers of refillable packaging will need to use actual sales data for

estimation of the refill rate. DEQ has also amended the rule 340-090-0900(1)(b)(C) to clarify that the use phase should be included in the system boundary for assessment of a refillable packaging product if washing occurs between uses.

Topic: Core Product Category Rule - Method for Calculating the Single Score Impact Profile

Comment: Because a lifecycle assessment (LCA) is valid for a specific functional unit and defined boundary conditions and represents a point in time, the rules should specifically require that a comparative LCA, as defined by International Standards Organization (ISO), be conducted to calculate the single score impact profile in order for a producer to qualify for a substantial impact reduction bonus. Mandating a comparative LCA will ensure that the impact reduction and baseline scenarios are set up and evaluated under comparable conditions, i.e., with the same allocation methods and energy grid assumptions. Commenter number(s): 12

Response: DEQ has updated the draft rule language by adding to 340-090-0930(3)(c) where it is stipulated that the evaluation of impact reduction and baseline scenarios must be based on a set of comparable conditions. Added language comports with ISO 14044-2006 - "4.2.3.7 Comparison between systems."

DEQ did not require that the single score impact profile be developed using a "comparative lifecycle assessment" as defined by International Standards Organization (ISO) because the product category rules at 340-090-0930 are unique to Oregon rather than fully conformant with ISO standards, although they do borrow heavily from both from ISO and from the European Union's Product Environmental Footprint Category Rules.

Topic: Core Product Category Rule - Source Data for Reuse Rate Factor and Expected Number of Reuse Cycles

Comment: Stipulate that the actual data (to be used following the three-year grace period during which projections may be used for key parameters in the assessment of reusable packaging products) must be obtained through the use of real-world tracking of reusable packaging assets across the entire state for each individual SKU and shall be consistent with applicable global and national standards. Commenter number(s): 16

Response: DEQ has added the suggested language to rule 340-90-0930(2)(e)(B).

Topic: Core Product Category Rules - System Boundary

Comment: Amend 340-090-0930(1)(b) to clarify that "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*." This would reflect the fact that the use phase is only being included within the boundary for some products (reusable packaging products) and not for others. Commenter number(s): 30

Response: DEQ revised the rule language in OAR 340-090-0930(1)(b) in response to this comment, as all covered product life cycle evaluations will be based on a cradle-to-grave system boundary even though some use-phase impacts will be assessed specifically for reusable and refillable packaging products.

Topic: Core Product Category Rule - System Boundary for Single-Use vs. Reusable Comparisons

Comment: Update draft rule 340-90-0930(1)(b)(C) to indicate that, for the purposes of comparisons among reusable packaging and single-use packaging, use-related activities and emissions including consumer transport should also be included within the system boundary for single-use packaging. This letter is provided as supporting documentation for this suggested change:. Commenter number(s): 16

Response: Pursuant to rule 340-090-0930(1)(b)(B)(i), the use phase is excluded from the system boundary for single-use covered products, and included in the system boundary for reusable packaging products. DEQ does not consider that this compromises the ability to compare between single-use and reusable scenarios when examining whether or not a transition to reuse qualifies for the substantial impact reduction bonus. Reusable packaging products have substantial impacts associated with the use phase (i.e., impacts and emissions associated with recovering, washing, sterilizing, and redistributing the packaging) that should be accounted for in the assessment. The life cycle of single-use products does not include such activities in the use phase. Despite the apparent discrepancy among how the boundaries are defined for the two scenarios, there is no use-phase emission that is included in the assessment of the reusable packaging product but excluded from the assessment of the single-use product–the use-phase emissions included in the system boundary for reusable packaging products are unique to reuse scenarios.

With respect to consumer transport to obtain the covered product (e.g. from a retailer), DEQ notes that this is not called out explicitly in the production information module pursuant to rule 340-090-0930(1)(c)(A), and it should be. DEQ has edited that language to specifically include customer transport to obtain the covered product. This would apply to both single-use and reusables covered products. DEQ has also edited the system boundary rules at 340-090-0930(1)(b)(A)(iv) to call out the inclusion of customer transport to place of purchase as part of "Transportation and fuel usage to distribute covered products."

Topic: Core Product Category Rule - Table of Weighting Factors

Comment: If the data robustness weighting for the impact indicator "Plastic physical impact on aquatic biota" is appropriately weighted at 0.17, this indicator should be excluded from the single score profile methodology for the substantial impact reduction bonus, because the three toxicity impact indicators that were rated for robustness at 0.17 in the PEFCR process have been excluded due to error in the methodology (i.e., low robustness). Commenter number(s): 46

Response: DEQ was taking a conservative approach to a novel method, MariLCA (the method for assessing the physical impact of plastic on aquatic biota), when it attributed a low data robustness rating to the impact indicator "plastic physical impact on aquatic biota" – 0.17, the same robustness rating attributed by the European Union to toxicity impact indicators that DEQ proposes excluding from the single score profile method due to high error in the methods. The commenter rightly asks – if these methods are equally (not) robust, why exclude toxics and include plastics?

The error in the MariLCA method will likely be further characterized over time in a growing body of peer-reviewed literature. For now, what we have to go on is the uncertainty data for the MariLCA characterization factors published to date, which we revisited in association with this comment. Uncertainty ranges from one to three orders of magnitude among the various polymer-specific characterization factors, with less uncertainty (one order of magnitude) for higher-density polymers than for medium- and lower-density ones (two to three orders of magnitude). Across all characterization factors and compared with the characterization factors used in the toxics impact methods (where uncertainty of two to three orders of magnitude predominates, particularly with respect to the human toxicity indicators), DEQ would conclude that the robustness of MariLCA is arguably better than that of the toxicity impact assessment methods.

To reflect this, DEQ has moderately increased the data robustness weighting in question from 0.17 to 0.25. With the revised weighting, the impact assessment method for plastic physical impacts on aquatic biota still has the lowest robustness rating among impact indicators included in the single score profile methodology for the substantial impact reduction bonus, which is appropriate in light of the novelty of the method, but the updated weighting is more reflective of the published information regarding the relative magnitude of error in the method.

Topic: Core Product Category Rule - Three-Year Grace Period for Reusable Packaging Products

Comment: Eliminate the three-year period pursuant to 340-090-0930(2)(e)(B) during which projections rather than actual data for return and reuse rates of reusable packaging products can be factored into an assessment of whether or not switching from single-use to reusable packaging can qualify for the substantial impact reduction bonus. Requiring use of actual data rather than projections will ensure that the fee reduction is incentivizing actual impact reduction, as projections may vary widely from reality. If DEQ will not eliminate the three-year grace period, commenters suggested a) requiring producers to publish actual data during the three-year period even though projections can be used in the inventory analysis and impact assessment, and/or b) requiring producers that received bonuses for inaccurate projections to pay them back at a later date. Commenter number(s): 46, 12, 32

Response: DEQ has proposed this three-year grace period, during which producers that have switched from single-use to reusable packaging are allowed to use projections (rather than actual data) for return and reuse rates when conducting a substantial impact reduction bonus assessment. The intent of this grace period is twofold. First, to allow for producers to ramp up infrastructure and logistics associated with reuse systems and second, to protect against rewarding spurious claims or poorly-organized reuse models. This first intent reflects DEQ's

understanding that reuse systems often require time and adjustments to reach optimal performance, such that any environmental benefits can be realized. This secondary intent offers a backstop for reuse system that do not perform better than alternatives, if after the grace period the actual data shows inferior performance then the producer would no longer be eligible for the bonus.

As such, DEQ did not eliminate the three-year grace period as requested by the commenters, and also did not require producers that received bonuses for inaccurate projections to pay them back later, as this could serve to disincentivize attempts at transition to reuse. DEQ did adjust the rule language to indicate that actual data, if available, should be reported alongside the projections used in inventory analysis and impact assessment.

Topic: Core Product Category Rule - Typographical Error

Comment: In subparagraph 340-090-0930(1)(d)(A)(i), the reference to "Subsection (b)" should refer to "Subsection (B)" instead. Commenter number(s): 30

Response: This correction has been made.

Topic: Core Product Category Rules - Table of Weighting Factors

Comment: DEQ should increase the weightings for plastic impacts relative to other environmental impacts in the life cycle evaluation rules. Plastic seriously impacts marine life and our own human bodies, and should receive a weighting that reflects this, perhaps half that attributed to climate impacts. Commenter number(s): 33

Response: In association with this and another comment, DEQ has boosted the data robustness weighting for the impact indicator "plastic physical impacts on aquatic biota," which results in a modest boost (17%) to the cumulative weighting of the two plastic indicators. However, that cumulative weighting is still only 24% as large as that of climate change, and as such is not at the level desired by the commenter.

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

Topic: Additional Environmental and Human Health Information - Disclosure of Intentionally-Added PFAS

Comment: 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. Oregon could either adopt 1) 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, or 2) 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. Commenter number(s): 38

Response: To inform a response to this question, DEQ has reviewed due diligence clauses in other laws pertaining to toxics reporting and disclosures, with particular focus on the Toxic Free Kids Act in Oregon and the Children's Safe Products Act in Washington. As DEQ has aligned with these laws on other aspects of the toxics disclosure rules, DEQ prioritized these laws with respect to exploring harmonization on due diligence, rather than the OSHA and EPA standards recommended by the commenter.

The two laws contain due diligence provisions with respect to the presence of contaminants – producers need not report on the presence of a particular contaminant if they have in place a manufacturing control program (MCP) and exercised due diligence to minimize the presence of the contaminant in the product.

DEQ does not consider that such a due diligence provision is needed for intentionally-added substances, as the producer should know that these substances are present in the product. The commenter expresses particular concern about the breadth of the reporting requirement with respect to PFAS; if DEQ presumes intentional addition of PFAS pursuant to rule 340-090-0900(21)(b), the producer has the option to rebut the presumption. A rebuttal could contain information about an MCP or how due diligence has been exercised; essentially, what the producer seems to be asking for already exists, in the form of the rebuttal presumption for PFAS.

As for contaminants, DEQ has added 340-090-0940(1)(b), which contains due diligence language that mirrors that of the Toxic Free Kids Act and the Children's Safe Products Act.

Division 96: Solid Waste: Permits Special Rules for Selected Solid Waste Disposal Sites, Waste Tire Storage Sites And Waste Tire Carriers

Rule 340-096-0300 Commingled Recycling Processing Facilities and Limited Sort Facilities

Topic: Commingled Recycling Processing Facilities and Limited Sort Facilities - Suggested Edit

Comment: Commenter suggests that (3)(b)(A) should be revised for clarity as follows: "All USCL material in OAR 340-090-0630, whether delivered from a CRPF or a LSF, and sent to a responsible end market…" Commenter number(s): 20

Response: To improve flow of the language, DEQ will update the sentence by deleting the comma after "340-090-0630" and replacing it with "that is."

Topic: Commingled Recycling Processing Facilities and Limited Sort Facilities - Typographical Error

Comment: Commenter suggests (1)(c) "facilities" should be "facility". Commenter number(s): 20

Response: The rule language has been updated.

Rule 340-096-0310 Responsible End Markets

Topic: Responsible End Markets - Disposition Reporting

Comment: Delay the due date for the first disposition report from the proposed November 14, 2025, deadline to a revised deadline of December 31, 2025. More time is required due to the complexity of data gathering and tabulation for both the PRO and the CRPFs. Subsequent reports can be submitted by the originally-proposed deadlines. Commenter number(s): 46

Response: DEQ has made the corresponding edit to rule 340-96-0310(2)(a)(B)(i).

Rule 340-096-0820 Commingled Recycling Processing Facility Certification Program

Topic: Commingled Recycling Processing Facility Certification Program - Technical Fix

Comment: Commenter suggests removal of an unneeded "is" in the second sentence of (6)(g) between "facility" and "fails." Commenter number(s): 30

Response: DEQ has made a change to the draft rules in response to this comment.

Rule 340-096-0840 Living Wage and Supportive Benefits

Topic: Living Wage and Supportive Benefits - Paid Holidays

Comment: On page 136(3)(e)(D), DEQ should revise this sentence to add at the end "(eight hours of work), at the employer's discretion." Commenter number(s): 20

Response: DEQ revised the draft rule language in response to this comment. It is supportive of the agency's intent to provide structure to the businesses subject to these regulations without being overly restrictive for their operational needs.

No Changes Made to Draft Rules in Response to Comment

General comments

Topic: CRPF Fees - Start Dates

Comment: Commenter 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 timing and magnitude of the anticipated annual fee required to be paid to the PRO by producers. Commenter number(s): 31

Response: As noted in the fee rate sections of 340-090-0820(2) and 340-090-0830(2), the fixed-in-rule fee rates are tied to specific program plan years. Facilities will not begin invoicing the PRO until after the first month of operation in the new system has concluded (i.e., July 2025). The PRO is not obligated to provide processors any funding associated with the PCRF or CMF before July 1, 2025.

Regarding the PCRF after the first completed month in the system, in the beginning of August, facilities will know the Average Commodity Value (provided by DEQ) and the PCRF will be paid as laid out under proposed 0820(1):

The PCRF shall be the total eligible tons multiplied by the total of the fee rate in Section (2) less the average commodity value determined by DEQ pursuant to Section (3). That process will occur on a monthly basis.

Regarding the CMF after the first completed month in the system, facilities will know their eligible tons able to be invoiced for and it is expected processors will begin invoicing the PRO for those tons in August. That process will also occur on a monthly basis.

With respect to how the two fees relate to the anticipated annual fee required to be paid to the PRO by producers, a breakdown of the PRO's anticipated budget (broken down by project plan years) can be found in Appendix E (Itemized Budgets by Program Year) of version one of its program plan. A similar budget will be included in subsequent versions of the PRO program plan. The timing of producer payments to the PRO is not fixed in rule, and as such flexibility is left to the PRO as to when to place due dates for producer fee payment so as to ensure adequate cash flow for covering all PRO obligations, including payment of fees to processors and to DEQ.

Topic: Concern about Costs for Glass Producers

Comment: These rules unfairly place a greater obligation on the glass industry for the disposition of the glass, via possible higher producer fees for glass vis a vis other materials, merely because the waste management industry has chosen 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.

Glass producers also will bear the financial impacts of whether or not local governments choose to collect glass on-route, a decision that is out of their hands. Commenter number(s): 50

Response: This comment is outside of the scope of the proposed rules.

Topic: Concern about Proprietary Sales Data

Comment: Producers should only be required to share their sales data with the PRO and not with DEQ. Due to the data being reported by the PRO to DEQ, it could potentially be open to public records requests and/or could end up stored on the DEQ public records 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. Commenter number(s): 35

Response: This comment is out of the scope of this rulemaking, which did not involve any clarifications with respect to producer sales data protected from public disclosure under ORS 192.311 to 192.478 (unless the information is summarized or aggregated so as to not directly or indirectly identify the amount of membership fees paid by or market share of any individual producer) pursuant to ORS 459A.887(3)(a).

Topic: General Opposition - Out-of-Scope

Comment: The current structure of the recycling system does not incentivize good stewardship and charging for recycling service incentivizes avoiding the system altogether rather than encourages people to recycle.

Commenter number(s): 1

Response: DEQ did not make changes in response to this comment because it is outside the scope of this rulemaking.

Topic: General Opposition - Out-of-Scope

Comment: DEQ should tell the truth about plastics recycling.

Commenter number(s): 5, 6

Response: DEQ did not make changes in response to this comment because it is outside the scope of this rulemaking.

Topic: General Support - Recycle More Plastics

Comment: DEQ should be more specific about what types of comments it is requesting. Currently residents are paying private services for additional plastics recycling but currently the commenter, but it should not be this hard to require manufacturers to make their products

recyclable. They hope that DEQ will create a path for more plastics to be recycled since it is impossible to buy most products without some sort of plastic packaging.

Commenter number(s): 4

Response: The law establishes the following plastics recycling goals: (A) At least 25 percent by calendar year 2028 and in each subsequent year; (B) At least 50 percent by calendar year 2040 and in each subsequent year; and (C) At least 70 percent by calendar year 2050 and in each subsequent year.

Topic: Harmonization

Comment: Commenters suggest DEQ should modify the rules to Oregon's implementation of the RMA with that of other states that are implementing their own extended producer responsibility programs for paper products and packaging. Commenters note that "many cost drivers in the RMA do not exist in other EPR programs" and that it does not make sense to have state-specific requirements that deviate from other states because Oregon consumers will ultimately bear those costs. One commenter also cited concerns with respect to producer development of compliance plans and the difficulty of doing so amidst requirements that vary by state. Commenter number(s): 35, 38, 44

Response: DEQ aims to harmonize with other states where statutes align, and coordinates with the other states regularly. However, the Oregon Legislature passed a state-specific law that necessarily involves some requirements in rule that are state-specific. One aspect of state specificity is a shared-responsibility approach, whereby the local recycling industry remains intact and receives reimbursements from the PRO rather than the PRO taking over the industry directly.

With respect to producer compliance plans, producers are not required by Oregon's Act to have compliance plans.

Topic: Inadequate Fiscal Impact Analysis

Comment: DEQ has not published any analysis showing which producers must contribute to and which producers are exempt from the program, where those producers are located, or how much any company may be required to pay. 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. 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. Commenter number(s): 35, 44, 49, 60

Response: The Fiscal Impact Statement is specifically for analysis of fiscal impacts particular to the rules, not for analysis of all system costs including those already imposed through statute.

Prospective PRO, Circular Action Alliance, generally describes its fee-setting methodology in its program plan, and the fee-setting process is ongoing. How much each individual company will pay will be an outcome of this process, although producers can already get a rough idea of what the 2025 cost of compliance will be by using the draft fee schedule published in the first draft program plan and updated in the second draft.

Topic: Incomplete FIS for End Market Impacts

Comment: 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. Commenter number(s): 51

Response: In both rulemakings, in the Fiscal Impact Statement on page 2 of the public notice, DEQ indicated end markets as parties that are indirectly-affected by the proposed regulations pertaining to responsible end markets. They were indicated as such because the requirement to ensure that materials go to responsible end markets lies with commingled recycling processing facilities and the PRO, not with the end markets. DEQ expects that the PRO will cover the costs of conducting verifications, auditing, and implementation of practicable actions with respect to end markets. Because these obligations are directly on and directly impact the PRO, impacts on the markets were represented as indirect in the FIS. It is also DEQ's perspective that investments in market improvements and modernization could be among practicable actions undertaken by the PRO, and have the potential of providing economic benefit to the end markets.

Topic: Incomplete FIS for small businesses

Comment: In the Fiscal Impact Statement, 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. Commenter number(s): 35

Response: The definition of "small business" for fiscal impact statement purposes (50 or less employees) is not the same as the definition for the exemption from the Recycling Modernization Act as a "small producer" (global annual revenue of $5 million or less). DEQ considers that an analysis of the degree of overlap between the two definitions of "small business" would unnecessarily complicate the document and made no changes on the basis of the comment. Many small businesses that produce items in packaging, paper, or food serviceware will not be

impacted by these rules because they are exempt from the Act as small producers pursuant to ORS 459A.863(32).

Topic: Collection Targets

Comment: Add language to rule 340-090-0660 to require supplemental collection services to report the weight of collected covered products to the PRO, and to require the PRO to report the weight of covered products collected by supplemental collection services and not on the PRO Recycling Acceptance list to DEQ in its annual report pursuant to ORS 459A.887. Commenter number(s): 17

Response: Rule 340-090-0660 was finalized in the first rulemaking for the Recycling Modernization Act which concluded in November 2023. This rule has not been re-opened in the current rulemaking. This comment is out of the scope of this rulemaking.

Topic: Producer Obligations - Clarity

Comment: Commenters identified concerns around fees and budgeting for obligated producers.

Commenters noted that lack of access to relevant data poses a challenge for the PRO in determining which companies meet the Oregon definition of 'producer' and are thus required to join the PRO and report sales data. Commenters expressed concerns that the system is being built without knowledge of the cost impact on producers subject to joining the PRO.

Commenters also requested greater transparency of the PRO fee methodology and budget to allow the regulated producer community the opportunity to review and provide comments on the proposed fee calculation methodologies and to be informed of the expected costs. Commenter number(s): 44, 53, 56, 58, 61

Response: DEQ did not make changes in response to this comment because the concerns raised will be addressed through the PRO program plan review process, and through reporting guidance distributed by the PRO to the producers.

Regarding identification of producers, ORS 459A.866 establishes the criteria for determining a producer of covered products and ORS 459A.869 details the requirements for producers and producer responsibility organizations.

In CAA's initial program plan submittal, CAA provided details associated with its membership fee structure and proposed base rates. CAA notes that it has worked with its founding members to develop a national fee-setting methodology to be deployed to all states with enacted packaging laws, and that it has developed a set of guiding principles to promote harmonization in the development of the fees for obligated producers.

Topic: Waste Prevention and Reuse Fee - Start Date

Comment: Clarify when the PRO will first pay the Waste Prevention & Reuse fee, and 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. Commenter number(s): 31

Response: DEQ will invoice a producer responsibility organization on or before Sept. 1 for payment within 30-days of invoicing. We anticipate the initial invoicing for the fee will occur no earlier than 2026. The fee is limited to no more than the three-year rolling average of prior annual expenditures (less prior payments of this fee). In the case of a 2026 invoice, the fee would be capped as the average of the three prior annual expenditures (2023, 2024, and 2025). As reporting of expenses will only have occurred for 2025, the values of 2023 and 2024 will be treated as $0 for the purposes of that calculation. Given this anticipated timeline, DEQ does not foresee a scenario where the first payment would be prior to the PRO's annual expenditures being available for use in the cost calculation. To retain flexibility during implementation, DEQ has chosen not to incorporate suggested changes in the rule language beyond those set by statute.

Division 12: Enforcement Procedure and Civil Penalties

Rule 340-012-0140 Determination of Base Penalty

Topic: Determination of Base Penalty, Phased-In Approach or Initial Lower Matrices

Comment: The commentor is concerned with the placement of the following entities in the $12,000 penalty matrix: PROs; producers; persons that have or should have a permit for a commingled recycling processing facility or a limited sort facility; and local governments with a population of 25,000 or more. Commenter requests DEQ use a lower matrix, at least during the initial years implementing the program, or to implement a phased-in approach where the applicable matrix is graduated over time. Commenter number(s): 53, 30

Response: DEQ did not revise the proposed OAR 340-12-0140(1)(a)(Z) in response to this comment. Compliance by producers, PROs, and the other entities included in the $12,000 penalty matrix under OAR 340-12-0140(1)(a)(Z) are integral to successful implementation of the Recycling Modernization Act. DEQ has included persons that have or should have a permit for a commingled recycling processing facility or a limited sort facility, and local governments with a population of 25,000 or more, in the $12,000 penalty matrix to align with existing base penalty determinations, as the $12,000 penalty matrix includes violations of a solid waste statute, rule, permit, or related order committed by persons that have or should have a solid waste disposal permit and by cities with a population of 25,000 or more.

As with all new programs, DEQ will lead with technical assistance and will develop guidance on its approach to working with obligated entities to achieve compliance.

Division 90: Recycling And Waste Reduction

Rule 340-090-0010 Definitions

Topic: Definition of "Source Separate"

Comment: Modify the definition of "Source Separate" in OAR 340-090-0010 to clarify that it applies to the source separation of all materials, not just "recyclable materials." This clarification would help to support the State's goals of expanding the variety of materials eligible for recycling beyond those identified as "recyclable material." Commenter number(s): 17

Response: This comment is not related to RMA and is out of scope for this rulemaking.

Topic: Definitions - Amend Definition of "Post-Consumer Waste"

Comment: Commenter suggests updating the definition of "post-consumer waste," as does not provide sufficient distinction between consumer and manufacturing waste for plastics, as well as other materials.

The recommended definition used by ISO 14021:2016 Environmental labels and declarations and Washington's SB5022 content law is: "Postconsumer material" means material generated by households or by commercial, industrial and institutional facilities in their role as end users of the product which can no longer be used for its intended purpose. This includes returns of material from the distribution chain. Commenter number(s): 28

Response: The suggested language is outside of the scope of this rulemaking. DEQ is not proposing any changes to the definition of 'post-consumer waste.'

Topic: Definitions - Amend Definition of "Post-Consumer Recycled Content"

Comment: Commenter suggests adding a specific definition of post-consumer recycled content that aligns with ISO standards and other states' definitions. Commenter number(s): 28

Response: The suggested language is outside the scope of the rulemaking.

In Oregon, 'Recycled content' is currently defined under ORS 459A.650(5) as meaning "the portion of a package's weight that is composed of recycled material, as determined by a material balance approach that calculates total recycled material input as a percentage of total material input in the manufacture of the package." The definition of 'Recycled content' under OAR 340-090-0320(15) mimics the statutory language. To change the definition in rule would also require a statutory change.

Topic: Definitions - Amend Definition of "Recyclable Material"

Comment: Commenter suggests DEQ remove the unnecessary and conflicting cost comparison in the definition of "recyclable material" at 340-090-0010(36) – it is unclear why the cost

differential between recycling and disposal is part of the definition. Mandated collection programs such as the RMA that fund recycling programs remove the need to have fully funded recycling markets. In addition, OR DEQ states that recycling has a net value of over $2000 per ton, yet it is unclear if this value is considered in this definition. Commenter number(s): 28

Response: The suggested language for 'Recyclable material' is out of scope of the rulemaking.

In Oregon, 'Recyclable material' is currently defined under ORS 459.005(20) as meaning "any material identified for recycling collection under ORS 459A.914 or any other material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material." The definition of 'Recyclable material' under OAR 340-090-0010(36) mimics the statutory language. To change the definition in rule would also require a statutory change.

Topic: Definitions - Amend the Definition of "Recycling"

Comment: Commenter suggests DEQ amend the definition of "recycling" to align with that of other states and leading organizations. It is unclear why this definition is used as is. Commenter number(s): 28

Response: DEQ did not make changes in response to this suggestion because defining "recycling" in rule would result in misalignment with the definition provided in statute.

In Oregon, 'Recycling' is currently defined under ORS 459.005(21) as meaning "any process by which solid waste materials are transformed into new products in a manner that the original products may lose their identity." The definition of 'Recycling' under OAR 340-090-0010(38) mimics the statutory language. To change the definition in rule would also require a statutory change.

Topic: Definitions - Commingled Materials

Comment: Washington County does not provide a suggested change regarding the definition of 'Commingled materials.' The county simply notes "use of the terminology 'commingled materials' will require local governments such as unincorporated Washington County to change definitions in Rules to replace 'mixed recycling' and align definitions." Commenter number(s): 22

Response: No rule change is requested.

Topic: Definitions - Commingled Materials, Cartons

Comment: Commenter asks for clarification as to why, pursuant to rule 340-090-0010(6), a definition of "commingled materials" is provided that bifurcates materials into two lists, with polycoated cartons and aseptic cartons excluded from one of the lists. Commenter number(s): 30

Response: DEQ defined "Commingled materials" to allow a jurisdiction to offer a dual stream+ collection program (i.e., fiber and containers with glass on the side) with the material collected counting as commingled material. This material could be collected in separate carts or material could be collected in a bi-weekly fashion, with fiber collected one week and containers the next. Cartons are not lumped under either (i) or (ii) because it provides program operators with flexibility to collect cartons in either the fiber or container stream.

Topic: Definitions - Eliminate Definition of "Recycled-Content Newsprint"

Comment: Commenter suggests DEQ delete the definition of "recycled-content newsprint" and just apply a single definition for "post-consumer waste" that encompasses newsprint. It is unclear why there is a separate definition for recycled content newsprint in 340-090-0010(37). Commenter number(s): 28

Response: Defining 'recycled content newsprint' is outside the scope of the rulemaking.

In Oregon, 'Recycled content newsprint' is currently defined under ORS 459A.500(4) as meaning "newsprint that includes post-consumer waste paper." The definition of 'Recycled content newsprint' under OAR 340-090-0010(37) mimics the statutory language. To change the definition in rule would also require a statutory change.

Topic: Definitions - Technical Assistance

Comment: Suggests that "Technical Assistance" under 340-090-0010(44) be updated to recognize "contamination reduction" as a function of work. Commenter number(s): 23

Response: DEQ did not be make changes in response to this comment because the use of 'technical assistance' under 340-090-0035 has been removed from the section. The term "technical assistance" only appears in rules related to the waste prevention and reuse program elements associated with The Waste Prevention and Reuse Fund established in ORS 459A.950 relative to ORS 459A.941.

Topic: Definitions - Toxic Materials

Comment: Remove the phrase "or that DEQ otherwise designates as 'toxic'" from the definition of OAR 340-090-0010(45) "toxic materials." 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. Commenter number(s): 41

Response: The suggested change is out of scope of this rulemaking.

The definition of "toxic materials" at 340-090-0010(45) pertains to a pre-existing statute, the Opportunity to Recycle statute at ORS 459A.007. This statute directs local governments to select from a menu of program elements to implement in their communities, including some waste prevention education and reuse program elements pertaining to toxic materials.

Topic: Definitions - Add a Definition of "Supplemental Collection Services"

Comment: Define "supplemental collection services" as "a service that collects source separated materials, including covered products, for reuse or recycling, not collected by a collection service franchise holder under ORS 459A.085" (OAR 340-090-0010 Definitions). This will enable amendments to 340-090-0640, 0660 and 0670 to clarify that supplemental collection services can be used by the PRO to meet convenience standards, including the requirement to provide enhanced access for populations that may otherwise find it difficult to participate in service at collection points; collection targets; and the responsible end market obligation. Commenter number(s): 17

Response: The PRO can partner with a supplemental collection service to meet convenience standards without the suggested change.

Topic: Definitions, Multifamily - Middle Housing

Comment: Suggests DEQ take into consideration "middle housing development," as defined in state building code OAR 660-046-0020(12), with 'Middle housing' being "Duplexes, Triplexes, Quadplexes, Cottage Clusters, and Townhouses." Commenter number(s): 23

Response: DEQ's authority in this rulemaking is to clarify implementation of ORS 459A.911, which is specific to multifamily properties.

Rule 340-090-0030 General Requirements

Topic: General Requirements - Language about CRPF Charges to Haulers

Comment: Add language to support transparency and accountability for CRPF charges to haulers to reduce financial impacts to ratepayers. Commenter number(s): 29, 59

Response: OAR 340-090-0030 clarifies general requirements for local governments regarding provision of recycling opportunities. As noted in response to similar comments, DEQ is proposing to add more details to OAR 340-090-0820 regarding requesting transactional data from recycling processors and, to the extent allowed by the law, sharing it with local governments.

Topic: General Requirements - Multifamily, Ensuring Adequate Space

Comment: Suggests that, to meet the requirement that adequate space for collection be provided in existing buildings, financial assistance be provided, so properties can have help implementing infrastructure improvements. Commenter number(s): 23

Response: DEQ has identified this issue in its Sept. 2024 report to the Oregon Legislature describing findings and recommendations from the Multifamily Housing Needs Assessment.

Topic: General Requirements - Multifamily Implementation Plans

Comment: Add more substantive information in the rules or provide local governments with supplemental guidance to support developing their local implementation plans. Commenter number(s): 29

Response: The current proposed rule language requires implementation plans to be in a "manner and form" prescribed by DEQ; more information will be provided before local governments begin developing plans. DEQ agrees that additional statewide guidance will help local governments implement ORS 459A.911 and intends to work with interested parties to develop those details.

Topic: General Requirements - Multifamily, Accessible Containers

Comment: Further refine requirement to consider: 1) age at which children should be expected to use a garbage or recycling container, 2) does this imply that opening a container must not exceed height limit or ramp would be required? DEQ could amend and simplify rule that directs cities and counties to consider access in implementation plans for people who use wheelchairs and children aged 12 and up. In addition, clarify that requirement would apply to new or significantly remodeled properties. Commenter number(s): 23

Response: DEQ did not make changes in response to this comment. The existing rule language is already clear that local governments must ensure accessibility at both existing and new or significantly remodeled properties. DEQ will consider other suggestions during implementation.

Topic: General Requirements - Multifamily, Milestones

Comment: Add milestones on the path to compliance with ORS 459A.911 that ensure a clear set of actions to complete in the first five and ten years of implementation. Commenter number(s): 29, 59

Response: DEQ is proposing local governments submit an implementation plan to DEQ in a manner and form prescribed by DEQ. Additional milestones may be requested as part of the instructions for the implementation plan.

Topic: General Requirements - Use of Uniform Cart Colors

Comment: Suggests use of consistent container colors that align with Metro's Regional Service Standard and overall industry standards: Mixed recycling = Blue, Glass = orange, Garbage = Gray/black and Compost = Green. Commenter number(s): 29

Response: This suggestion is outside the scope of this rulemaking.

Topic: General Requirements - Multifamily

Comment: Clarify the standards for ensuring adequate space for collection in existing buildings. Create multifamily service level standards through a regional approach. Work with local governments to align with current local governments processes. Provide the multifamily implementation form, preferably online. Clarify how implementation plans are impacted if jurisdictions have different regulations. Commenter number(s): 22

Response: DEQ will consider this comment during implementation.

Rule 340-090-0035 Contamination Reduction Programming Elements

Topic: Contamination Reduction Programming - Glass

Comment: Glass is a mandatory recyclable but is also listed as a contaminant. Customers should receive additional focused education around glass, especially since communities may choose to alter the "glass on the side" collection arrangement. Producers using glass should not be penalized for changes made by local governments that do not also come with adequate educational efforts. Commenter number(s): 50

Response: Glass is not on the Uniform Statewide Collection List and thus may not be collected mixed together with other recycling. Because of this, glass is considered a contaminant in the mixed recycling. This is consistent with historical practice in communities throughout Oregon and is not considered a change. Moving forward, communities will work with the PRO to find the best solution for glass collection, either on the side via on-route collection, or at a collection point. Special messaging for glass may be helpful as communities begin implementing program changes.

Topic: Contamination Reduction Programming- Allow for More Time

Comment: More time to create a system for contamination reduction programming is needed. Current Washington County administrative rules do not contain fines for contamination or have a collection rate element for fines. Commenter number(s): 22

Response: No change to the proposed rules is necessary. ORS 459A.929(2) requires local governments to establish and implement a program to reduce recycling contamination. Please note subsection (3), which states that local governments may not be required to provide contamination reduction programming if doing so would require the use of funds other than advance funding or reimbursements available under ORS 459A.890(4). The earliest that local governments may request PRO funding to begin establishing and implementing a program is July 1, 2025.

Topic: Contamination Reduction Programming - Long Term Funding Commitment

Comment: The PRO should provide long-term commitment to funding contamination reduction programming. Predictable funding will allow local governments to overcome the challenges with recruiting and hiring qualified staff that are encountered when positions are only funded in the short term. Funding commitment should align with the dates of the PRO's program plan. Commenter number(s): 22

Response: No change is necessary. Proposed rule OAR 340-090-0810(4) provides local governments with assurance that they may request and receive up to $3 per capita of funding or reimbursement each fiscal year for eligible costs incurred to conduct contamination reduction programming pursuant to ORS 459A.890(4). The long-term commitment and availability of funding is implied by the inclusion of this requirement in statute with no opportunity for variance.

Topic: Contamination Reduction Programming Elements - Enforcement

Comment: Clarify whether the rule means that if Washington County violates any condition, can DEQ fine the County? For example, if unincorporated Washington County chooses to opt out of corrective punishment for contamination in exchange for an education-based approach, could Washington County be fined? Commenter number(s): 22

Response: DEQ is no longer proposing rules on this topic and has determined to provide additional clarity regarding ORS 459A.929 through its statutory obligation to establish and maintain an approved list of contamination reduction programming elements.

Topic: Contamination Reduction Programming Elements - Acceptable Elements

Comment: DEQ should provide more detail about accepted contamination reduction program elements in the second half of 2024 to allow staff to start planning to meet the new requirements. Commenter number(s): 22

Response: DEQ will provide more detail about approved contamination reduction program elements in the second half of 2024.

Topic: Contamination Reduction Programming Elements - Additional Language

Comment: Add the phrase 'outreach and education' before 'materials and methods' under (1)(a). Commenter number(s): 23

Response: Local governments may use other customer-facing contamination reduction materials and methods besides outreach and education. For example, local governments may consider dual stream collection programs or implement color-coding on containers or a specific type of container opening. However, DEQ is no longer proposing rules on this topic and has determined to provide additional clarity regarding ORS 459A.929 through its statutory obligation to establish and maintain an approved list of contamination reduction programming elements.

Topic: Contamination Reduction Programming Elements - Additional Questions

Comment: Commenter provided questions for DEQ on contamination reduction. Commenter number(s): 23

Response: No changes were suggested. DEQ is no longer proposing rules on this topic and has determined to provide additional clarity regarding ORS 459A.929 through its statutory obligation to establish and maintain an approved list of contamination reduction programming elements.

Topic: Contamination Reduction Programming Elements - Aerosols as Hazardous Contaminants

Comment: Commenter suggests that DEQ remove the reference to aerosol containers in this section. Commenter number(s): 31

Response: DEQ is no longer proposing rules on this topic and has determined to provide additional clarity regarding ORS 459A.929 through its statutory obligation to establish and maintain an approved list of contamination reduction programming elements. DEQ will consider the comments during implementation.

Topic: Contamination Reduction Programming Elements - Clarify Targeted Feedback

Comment: This section is so heavily weighted in favor of the non-complying customers as to render the contamination reduction programming ineffective and leaving much of the language open to interpretation. On page 57 under (3)(b), the rule language should be revised to require communication to the customer only (owner or property manager), with the requirements that the customer communicate with the tenants. Commenter number(s): 20

Response: DEQ is encouraging local governments and their designated service providers to lead with culturally-specific education and feedback to improve the quality of recycling. Consequences should be applied only when great care has been taken to ensure that recyclers understand the system and have agency over what is in their container. This may require

developing new approaches; the PRO will be helping to pay for local governments and service providers to innovate and learn. However, DEQ is no longer proposing rules on this topic and has determined to provide additional clarity regarding ORS 459A.929 through its statutory obligation to establish and maintain an approved list of contamination reduction programming elements. DEQ will consider the comments during implementation.

Topic: Contamination reduction programming elements - Appreciate High Bar for Consequences

Comment: We appreciate that a high bar is set including multiple rounds of documentation and notification before the possibility of a financial or service consequence for recycling customers. Commenter number(s): 23

Response: Thank you for this comment.

Topic: Contamination Reduction Programming Elements - Compliance Consequences

Comment: As written, section (4) is unlikely to result in any multifamily customer/tenant seeing a financial or service consequence for contamination. The goal is to help generators be successful and consequences are not punitive but there are natural consequences to actions, and it should apply to customers and tenants, just as it applies to producers, processors, local governments and service providers. This entire section needs to be tightened up to have real value in contamination reduction efforts. Commenter number(s): 20

Response: DEQ is encouraging local governments and their designated service providers to lead with culturally-specific education and feedback to improve the quality of recycling. Consequences should be applied only when great care has been taken to ensure that users understand the system and have agency over what is in their container. This may require developing new approaches; the PRO will be helping to pay for local governments and service providers to innovate and learn. However, DEQ is no longer proposing rules on this topic and has determined to provide additional clarity regarding ORS 459A.929 through its statutory obligation to establish and maintain an approved list of contamination reduction programming elements. DEQ will consider the comments during implementation.

Topic: Contamination Reduction Programming Elements - Contamination Consequences

Comment: Suggest emphasizing robust community engagement and education over financial penalties for residents with high continuous contamination. Consequences for contamination may lead to an inequitable system. Suggests that DEQ require producers to host educational public workshops to engage with communities and to tailor materials to the community needs. Commenter number(s): 16

Response: DEQ agrees that leading with education and culturally-responsive outreach is best and that consequences, if inequitably applied, can harm vulnerable populations. However, DEQ is no longer proposing rules on this topic and has determined to provide additional clarity regarding ORS 459A.929 through its statutory obligation to establish and maintain an approved list of contamination reduction programming elements. DEQ will consider the comments during implementation.

Topic: Contamination Reduction Programming Elements - Contamination Threshold

Comment: The proposed 25% contamination threshold at rule 340-090-0035(3)(a)(B)(ii) is too high given the 5% contamination standard set for CRPFs, and as such should be revised downward. Commenter number(s): 28

Response: Consequences are intended to be applied in exceptional cases to customers that contribute to significant and repeated contamination despite education and feedback. The levels of contamination from those customers will be higher than the overall incoming mix that enters processing facilities. And the processing facilities are supported in removing contamination to ensure clean and marketable bales. DEQ is no longer proposing rules on this topic and has determined to provide additional clarity regarding ORS 459A.929 through its statutory obligation to establish and maintain an approved list of contamination reduction programming elements. DEQ will consider the comments during implementation.

Topic: Contamination Reduction Programming Elements - 25% Threshold is Too High

Comment: The 25% threshold is too high, and beyond DEQ's most recent inbound contamination study. It does not make sense to set a number beyond the goal number of inbound contamination. The rule should state contamination of 10% by volume will trigger consequences. Commenter number(s): 20

Response: Consequences are intended to be applied in exceptional cases to customers that contribute to significant and repeated contamination despite education and targeted feedback that is responsive to the needs of diverse populations. The levels of contamination from those customers will be much higher than the average contamination in the overall incoming mix that enters processing facilities. However, DEQ is no longer proposing rules on this topic and has determined to provide additional clarity regarding ORS 459A.929 through its statutory obligation to establish and maintain an approved list of contamination reduction programming elements. DEQ will consider the comments during implementation.

Topic: Contamination Reduction Programming Elements - Determining Contamination

Comment: Under (3)(B)(ii), is unclear who decides if 25 percent of the material by volume is not on the Uniform Statewide Collection List. Could this be the driver, or from a route camera or

other artificial intelligence options? The rule language should be revised to allow more flexibility in determining the presence of contamination. Commenter number(s): 20

Response: The proposed rule language already allows for the flexibility for local governments and their service providers to determine how best to assess and document the presence of significant contamination. DEQ is no longer proposing rules on this topic and has determined to provide additional clarity regarding ORS 459A.929 through its statutory obligation to establish and maintain an approved list of contamination reduction programming elements. DEQ will consider the comments during implementation.

Topic: Contamination Reduction Programming Elements - Evaluation of Corrective Measures

Comment: Add requirements regarding corrective measures by: 1) describing how revenue from collective fines is used, and 2) requiring five-year record retention for all fines and consequences by address. Commenter number(s): 29

Response: DEQ is no longer proposing rules on this topic and has determined to provide additional clarity regarding ORS 459A.929 through its statutory obligation to establish and maintain an approved list of contamination reduction programming elements. DEQ will consider the comments during implementation.

Topic: Contamination Reduction Programming Elements - Financial and Service Consequences

Comment: Ensure financial and service consequences for recycling bin contamination are not punitive, they should be a last resort and should be applied with discretion and oversight by DEQ and local governments. Commenter number(s): 29

Response: DEQ is no longer proposing rules on this topic and has determined to provide additional clarity regarding ORS 459A.929 through its statutory obligation to establish and maintain an approved list of contamination reduction programming elements. DEQ will consider the comments during implementation.

Topic: Contamination Reduction Programming Elements - Penalty Effectiveness

Comment: Commenter would like to see data around financial penalties being successfully applied as part of this policy decision. An incentive-based system is more in line with their equity strategies. Their staff have consistently provided enhanced education rather than monetary or service consequences for recycling contamination issues and they continue to advocate for an educational reinforcement approach that is tailored to specific groups. Commenter number(s): 22

Response: DEQ is no longer proposing rules on this topic and has determined to provide additional clarity regarding ORS 459A.929 through its statutory obligation to establish and maintain an approved list of contamination reduction program elements.

Topic: Contamination Reduction Programming Elements - Opportunity to Remedy

Comment: Suggests that "opportunity to remedy" under (3)(a)(C) allow for operational flexibility. This could include leaving a contaminated container until the contamination is removed, or taking the contaminated container full as garbage and allowing the customer to ensure that the next set-out or load is free of contamination, or other options that may emerge. Commenter number(s): 23

Response: DEQ is no longer proposing rules on this topic and has determined to provide additional clarity regarding ORS 459A.929 through its statutory obligation to establish and maintain an approved list of contamination reduction programming elements. DEQ will consider the comments during implementation.

Topic: Contamination Reduction Programming Elements - Equity of Consequences

Comment: Commenter believes that fines will disproportionately affect low-income households. It does not seem to be an equity-centered approach. Ensure that fines are a last-resort measure and are only corrective and not punitive. Require the garbage and recycling collection companies to track and report on which addresses received fines and how the revenue from fines is used. This would allow for evaluation of any potential equity concerns for communities that may be disproportionally impacted by contamination fines and service penalties. Any penalties or fees assessed should be done through a prescribed process which is consistently applied statewide. DEQ should provide direction as to what specific communication steps need to be taken by service providers when notifying an account holder, and guidance on when fees are to be applied and/or reversed. Further defining is needed on how any penalties (specific dollar amounts) should be applied to a commercial, multi-family or residential customer. Commenter number(s): 22

Response: ORS 459A.929(1)(c) requires DEQ to establish and maintain a list of approved contamination reduction program elements, including standards for providing financial or service consequences to generators that are significant and repeated sources of contamination and that continue to contaminate separated recyclables after receiving feedback that is responsive to the needs of diverse populations. However, DEQ is no longer proposing rules on this topic and has determined to provide additional clarity regarding ORS 459A.929 through its statutory obligation to establish and maintain an approved list of contamination reduction programming elements. DEQ will consider the comments during implementation.

Topic: Contamination Reduction Programming Elements - Shared Collection Bins

Comment: Clarify (3) to ensure generators that share a collection bin are not impacted by consequences from contamination caused by an out-of-compliance generator. Commenter number(s): 29

Response: DEQ is no longer proposing rules on this topic and has determined to provide additional clarity regarding ORS 459A.929 through its statutory obligation to establish and maintain an approved list of contamination reduction programming elements. DEQ will consider the comments during implementation.

Topic: Contamination Reduction Programming Elements - Significant Contamination (1)

Comment: Commenter suggests that significant contamination as defined in (3)(a)(B)(i) should also include one or more of these non-hazardous items, such as any amount of putrescible or organic waste (e.g., food, yard debris) or any bagged recycling. Commenter number(s): 23

Response: DEQ is no longer proposing rules on this topic and has determined to provide additional clarity regarding ORS 459A.929 through its statutory obligation to establish and maintain an approved list of contamination reduction programming elements. DEQ will consider the comments during implementation.

Topic: Contamination Reduction Programming Elements - Significant Contamination (2)

Comment: Commenter suggests updating the last sentence in (3)(a)(C) with the language "or at least six times within a 12- month period" so that it reads, "To qualify as repeated, recycling contamination must be 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." Commenter number(s): 30

Response: DEQ is no longer proposing rules on this topic and has determined to provide additional clarity regarding ORS 459A.929 through its statutory obligation to establish and maintain an approved list of contamination reduction programming elements. DEQ will consider the comments during implementation.

Rule 340-090-0630 Recycling Acceptance Lists

Topic: Recycling Acceptance List - Definition of "Polyethylene Film and Packaging"

Comment: Simplify the definition of "polyethylene film" at 340-090-0630(3)(d)(A)-(C) to represent a more appropriate level of detail and more appropriate thresholds. Specifically, the definition could read: "Polyethylene film and packaging that is designed to be compatible with

the North American recycling stream based on the APR Design® Guide, Recyclability Recognition program, or equivalent." This reduced level of detail would better match that of other plastic formats in the acceptance list, and recognizes the fact that the specifics of package design are not visibly discernable at collection points (and as such, it may be ineffective to detail the packaging composition in these rules). Commenter number(s): 28

Response: DEQ did not update language to include the suggestion. DEQ does not generally point to definitions that are owned or controlled by other organizations, as such definitions could change without review/approval by the state, with unintended consequences to the State.

Topic: Recycling Acceptance Lists - Add Additional Plastic Formats to the USCL

Comment: Broaden the local government recycling acceptance list (OAR 340-090-0630(2)) by including a broader category of PET and PP plastic cups and containers. The inclusion of only bottles and tubs is not consistent with common sorting practices or end market acceptance standards. Commenter number(s): 26

Response: DEQ did not make changes in response to this comment. The material acceptance lists were subject to the first Recycling Modernization Act rulemaking. While the acceptance list section of the rules, OAR 340-090-0630, is reopened in the current rulemaking, DEQ would not edit these lists on the basis of public comment unless substantial new information was brought to DEQ's attention.

DEQ generally expects more plastics to be added to the system over time, as the PRO(s) looks to achieve the plastics recycling rates laid out under ORS 459A.926.

Topic: Recycling Acceptance Lists - Add Clear and Light Blue PET Bottles to the USCL

Comment: Expand the PET #1 bottles category on the USCL at 340-090-0630(2)(j)(A)(i) to include "clear and light blue only." Light blue bottles can improve the quality of the post-consumer recycled content. The benefits of capturing the light blue material volumes for recycling (vs. landfill) will far outweigh the potential detriment of occasional darker blue bottles, which are estimated to make up a fraction of a percent of the PET bottle stream. Since many plastic beverage bottles fall into the clear to light blue category, expanding this definition would arguably be the simpler path for effective education, reducing the need for constant consumer evaluation of their bottle color. Commenter number(s): 28

Response: DEQ did not make changes in response to this comment. The material acceptance lists were subject to the first Recycling Modernization Act rulemaking. While the acceptance list section of the rules, OAR 340-090-0630, is reopened in the current rulemaking, DEQ would not edit these lists on the basis of public comment unless substantial new information was brought to DEQ's attention.

DEQ notes that in its second draft program plan, CAA has proposed adding clear blue and green PET bottles to the USCL, which is possible for the PRO to do through the program plan process pursuant to ORS 459A.914(4)(b).

Topic: Recycling Acceptance Lists - Adding Materials to USCL

Comment: Commenters suggested that aluminum foil and pressed foil products, empty non-hazardous aerosol cans, HDPE can carriers, and single-use paper and plastic cups could be added to the USCL. Commenters also suggested that spiral-wound containers be added to the USCL if there are responsible end markets. Commenter number(s): 22, 23, 29, 59

Response: DEQ did not make changes in response to this comment. The material acceptance lists were subject to the first Recycling Modernization Act rulemaking. While the acceptance list section of the rules, 340-090-0630, is reopened in the current rulemaking, DEQ would not edit these lists on the basis of public comment unless substantial new information was brought to DEQ's attention.

Topic: Recycling Acceptance Lists - Adding Materials to USCL (Thermoforms)

Comment: Commenter recommends that PET thermoform containers be added to the local government recycling acceptance list (i.e., the Uniform Statewide Collection List). Commenter number(s): 26

Response: DEQ did not make changes in response to this comment. The material acceptance lists were subject to the first Recycling Modernization Act rulemaking. While the acceptance list section of the rules, 340-090-0630, is reopened in the current rulemaking, DEQ would not edit these lists on the basis of public comment unless substantial new information was brought to DEQ's attention.

Topic: Recycling Acceptance Lists - Alternative Collection Programs

Comment: Commenter suggests that DEQ clarify whether or not the proposed rules would allow for the alternative practice of commingled collection of materials such as glass and household batteries. Commenter number(s): 22, 29

Response: No changes are needed. OAR 340-090-0640(6) already provides a clear path for PRO proposal and DEQ consideration of alternative approaches to meeting the convenience standard for collection of materials on the PRO Recycling Acceptance List.

Topic: Recycling Acceptance Lists - Alternative Collection Programs, Fees

Comment: Commenter asks DEQ to clarify whether or not the proposed rules allow for additional curbside recycling collection programs (such as Washington County's Recycle+ program) as an opt-in fee-based program which includes PRO acceptance list materials. Commenter number(s): 22, 29

Response: The proposed rules would allow programs such as Recycle Plus to continue to collect materials on the PRO Recycling Acceptance List. However, such programs may not meet the criteria in OAR 340-090-0640(6) for alternative approaches to meeting the convenience standard for collection of materials on the PRO Recycling Acceptance List.

Topic: Recycling Acceptance Lists - Amend 2-inch Size Threshold for Plastic Bottles and Tubs

Comment: Build flexibility into the Uniform Statewide Collection List categories for plastic bottles and plastic tubs at OAR 340-090-0630(2)(j)(A)-(B) in terms of how the two-inch size threshold applies. There are smaller articles that can be successfully sorted at commingled recycling processing facilities according to the APR's "Evaluation of the Size Sorting Potential for Articles with at Least 2 Dimensions Less than 2 Inches" sorting potential test method. DEQ should add language that would allow for exceptions when successfully evaluated by APR, and would allow for the PRO and other stakeholders to educate consumers to properly recycle these approved formats. Commenter number(s): 28

Response: DEQ did not make changes in response to this comment because during first RMA rulemaking DEQ eliminated the use of the "less than 6 ounces" language describing small-format plastics, replacing the language with "at least two inches in each of two or more dimensions," per the recommendations from several entities including the Association of Plastics Recyclers. DEQ studied the possibility of referencing the "Evaluation of the Size Sorting Potential for Articles with at Least 2 Dimensions Less than 2 Inches" but found the language to be too difficult to communicate to the public.

Also, DEQ in statute or rule typically aims to not to tie a process or a requirement to a certain source or entity, due to the possibility of that source or entity going away.

As Oregon's CRPFs modernize to efficiently and effectively handle a broader variety of material, if smaller-format plastics are expected to be added to the USCL - either by DEQ (through rulemaking) or the PRO (through DEQ's approval of a program plan or program plan amendment) - DEQ can consider at that time whether or not the "at least two inches in each of two or more dimensions" language needs to be revisited.

Topic: Recycling Acceptance Lists - Amend Definition of "Tub"

Comment: Commenter suggests DEQ revise the second sentence of the definition of "tub" at 340-090-0630(1)(m) to read as follows: ""Tub" does not include non-bottle PET containers other

than those with screw-on closures.”” This would replace the original wording, which read as follows: ““Tub” does not include a clamshell or similar container with a lid that is affixed to the base using a hinge or similar mechanism.”

The revised wording would allow for acceptance of polyolefin clamshells (e.g., a polypropylene foodservice container), as well as the occasional PET tub (e.g., a gelato container with a screw-on closure), and would fulfill the presumed intent of the definition to include various tub formats, primarily polyolefin, which can be thermoformed or injection molded, while excluding PET and similar look-alike thermoformed (clamshell) material. Commenter number(s): 28

Response: DEQ did not make changes in response to this comment. The Uniform Statewide Collection List does not currently include PP foodservice ware. Pursuant to the rules adopted by the Environmental Quality Commission in November 2023, PET tubs (e.g., gelato container with screw-on closure) are already on the list.

Topic: Recycling Acceptance Lists - Exclusion of Polycoated Paperboard and Paper Cups on USCL

Comment: Commenter suggests that the exclusion of polycoated paperboard and paper cups from the USCL is inconsistent with data shared by AF&PA on regional and national collection of the material, and regional acceptance by mills. Commenter number(s): 51

Response: DEQ did not make changes in response to this comment. The material acceptance lists were subject to the first Recycling Modernization Act rulemaking. While the acceptance list section of the rules, OAR 340-090-0630, is reopened in the current rulemaking, DEQ would not edit these lists on the basis of public comment unless substantial new information was brought to DEQ’s attention.

Polycoated paperboard and paper cups were not added to the USCL during the first rulemaking due in part to the potential impact that inclusion of these materials would have on commingled recycling processing facilities and their access to markets. At present, only one Pacific Northwest paper mill will accept these materials in a mixed paper bale. DEQ notes that trial collections of polycoated paperboard and paper cups have been proposed by CAA in its program plan. This proposal will undergo review and consideration by the producer responsibility organization, DEQ and the Recycling Council, and include a public comment process.

Topic: Recycling Acceptance Lists - Inclusion of Can Carriers on USCL

Comment: 4-Pack and 6-Pack carrier handles should be moved from the PRO Recycling Acceptance List onto the Uniform Statewide Collection List (i.e., the Local Government Recycling Acceptance List). Commenter number(s): 19

Response: DEQ did not make changes in response to this comment. The material acceptance lists were subject to the first Recycling Modernization Act rulemaking. While the acceptance list

section of the rules, OAR 340-090-0630, was reopened in the current rulemaking, DEQ would not edit these lists unless substantial new information was brought to DEQ's attention.

Topic: Recycling Acceptance Lists - Molded Pulp Packaging

Comment: Replace "molded pulp packaging, excluding food serviceware that is designed to be in direct contact with food" with "molded pulp packaging, excluding food service take out containers." This will be more understandable to regular people compared with the current language. Commenter number(s): 20

Response: DEQ did not make changes in response to this comment because the intent behind adding the words "excluding food serviceware that is designed to be in direct contact with food" is to allow molded pulp packaging such as trays for hot beverage cups to be included on the Uniform Statewide Collection List. DEQ is concerned that molded pulp beverage trays could be considered take out containers by some generators. The reference to direct contact with food is to add clarity.

Topic: Recycling Acceptance Lists - PRO Recycling Acceptance List

Comment: Clarify why "through recycling depot or mobile collection events" is proposed for deletion in 340-090-0630(3). Commenter number(s): 20

Response: Deleting "through recycling depot or mobile collection events" allows more flexibility for the PRO to use different collection methods to collect materials listed on the PRO Recycling Acceptance List.

Topic: Recycling Acceptance Lists - Materials Lists Process

Comment: Commenter suggests that DEQ's 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. Commenter number(s): 51

Response: DEQ did not make changes in response to this comment. The process to determine the materials lists (Uniform Statewide Collection List and the PRO Recycling Acceptance List) proposed to the EQC involved a recycling materials technical workgroup of industry professionals that spent roughly a year addressing a variety of materials (working evaluation of materials can be found here,). In addition, DEQ received input from the Recycling Council, the Rulemaking Advisory Council and the public (through the draft rule language public comment process).

The information that was provided by the AF&PA, among others, associated with the Request for Information DEQ issued during the Materials List project, provided information addressing statutory criteria under ORS 459A.914(3) that helped to determine which materials to propose for inclusion on the USCL. Initially, DEQ's evaluation of paper cups was positive and DEQ

proposed the inclusion of paper cups on the USCL. But evidence provided to DEQ by the Recycling Council and through the draft rule language public comment process was strong enough for DEQ to reverse that decision. Certain polycoated packaging (excluding cartons) was not proposed for inclusion onto the USCL.

Through the program plan review/approval process, and as a part of the materials on-ramping process laid out under ORS 459A.914(4)(b), Circular Action Alliance has proposed the commingled, trial collection of polycoated paper packaging and single-use cups (trial would need to meet the requirements laid out under ORS 459A.914(6)). DEQ, CAA and the Recycling Council are all involved in the program plan review process. That process also includes a public comment period.

Topic: Recycling Acceptance Lists - USCL Off-ramp (1)

Comment: Commenter suggests that 340-090-0630(6) be updated to recognize that a local government interested in pursuing this option must consult with all PROs before submitting a request. Commenter number(s): 30

Response: A rule change is not needed, as PROs are already in conversations with local governments and may request additional consultation at any time.

Topic: Recycling Acceptance Lists - USCL Off-ramp (2)

Comment: Clarify whether the local governments' actions under an approved request to keep collecting a PRO Recycling Acceptance list material commingled would be eligible for PRO reimbursement. Commenter number(s): 30

Response: DEQ did not make changes in response to this comment because an approved request to continue to collect PRO materials in the commingled recycling until the PRO has met the convenience standard does not alter a local government's eligibility for PRO funding pursuant to ORS 459A.890(2), which applies to all covered products.

Topic: Recycling Acceptance Lists - Uniform Statewide Collection List

Comment: Remove from the Uniform Statewide Collection List all items that do not have producers obligated under the RMA, including gift wrap, scrap metal, medicine boxes and paperback books. This would limit free ridership and mitigate the damage that scrap metal can cause to processor sorting equipment, resulting in scrap metal being a material for which the risks of inclusion on the USCL outweigh the benefits. Commenter number(s): 46

Response: The proposed rules will continue to retain the ability to list materials on the USCL even if they do not have obligated producers if recycling of the material has potential for environmental benefits.

Topic: Recycling Acceptance Lists - Split Jurisdiction for Glass

Comment: Reconsider the decision to split responsibility for glass among local governments (for commercial glass in metro areas) and PROs (for all other glass). This decision seems to lack adequate justification and presumes that it is possible to differentiate whether a discarded glass bottle is from a commercial or a non-commercial source. Commenter number(s): 50

Response: The material acceptance listing of glass was subject to the first Recycling Modernization Act rulemaking. While the acceptance list section of the rules, 340-090-0630, is reopened in the current rulemaking, DEQ would not edit a listing from rulemaking 1 on the basis of public comment unless substantial new information was brought to DEQ's attention. As noted in the materials pertaining to material lists and response-to-comment from the first rulemaking, split responsibility for glass among local governments and PROs in 340-090-0630(2) and (3) was proposed on the basis of two sets of modeling of environmental and financial benefits and impacts of different scenarios for glass collection (on-route vs depot collection). Because glass is breakable and cannot be easily commingled with other recyclables, on-route collection in this state involves additional environmental and financial impacts associated with transportation. Ultimately, the EQC decided to require local governments in the metro area to collect glass on-route from commercial entities, such as bars and food cart restaurants, because these commercial entities tend to cluster closer to each other, allowing for more efficient on-route collection (fewer truck miles), and because the Portland area is close to glass processing and end markets, further reducing transportation impacts. All other glass throughout the state is on the PRO depot list, although local governments may choose to collect it on-route, so long as they don't commingle it with other materials.

As for the concern that it is not possible to differentiate a commercial-origin from a non-commercial-origin glass bottle on sight alone, such differentiation is not needed to implement the rules as written. Under these rules, local governments are required to collect glass on-route from commercial generators, and the PRO must set up a collection point network that is sufficient to meet convenience standards, performance standards, and collection targets for glass overall.

Rule 340-090-0640 Convenience Standards

Topic: Convenience Standards - Alternative Compliance

Comment: Commenter suggests that (6)(c)(D) be deleted altogether, stating "As there is no evaluation of the default convenience standards based on environmental outcomes, this proposed assessment is unjustified." Commenter number(s): 30

Response: DEQ conducted an extensive evaluation of the environmental and economic outcomes of different scenarios with respect to material listings on the USCL and the PRO Recycling Acceptance list, and how the materials were to be collected, as part of rulemaking 1 – see Economic Assessment (Scenario Analysis):The study provides a baseline for assessing the environmental outcomes of a PRO alternative compliance proposal.

Topic: Convenience Standards - Base and Enhanced Convenience Materials

Comment: Reconsider the "base" and "enhanced" terms in the convenience standard rules at 340-090-0640. The separation of materials into "base" and "enhanced" categories has led to proposed nomenclature from CAA in which 'base' depots will accept the most materials and 'enhanced' depots will offer more locations but access to a smaller subset of materials, the reverse of what a customer would expect (i.e., that an enhanced depot would accept more materials, not less). Commenter number(s): 23

Response: DEQ will take this comment into consideration in program plan review and implementation. While the PRO must provide more collection points for enhanced convenience materials than for base convenience materials, it need not use this nomenclature in a public-facing capacity.

Topic: Convenience Standards - Depot Signage

Comment: Suggests that depots should include signage clearly indicating that the collection services being provided are provided under the guidance of Oregon's Plastic Pollution and Recycling Modernization Act administered by DEQ, contact information for the PRO for users to report issues (particularly if the depot is not staffed during all operation hours), and links to information about the law such as a DEQ website. Commenter number(s): 23

Response: DEQ will take this comment into consideration in program plan review, when assessing the PRO's proposal for how to operate a network of collection points that will meet performance standards.

Topic: Convenience Standards - On-Route Collection

Comment: Suggests rule 340-090-0640 should be amended to explicitly allow for on route collection as meeting any convenience standard for the commercial sector, residents, independently or together depending on the scope of collection. Commenter number(s): 23

Response: ORS 459A.896(1)(d) allows PROs to collect and recycle PRO Recycling Acceptance List items in a manner that meets the convenience standard by "making other arrangements for the collection of the covered product as described in a producer responsibility program plan." This statute is further clarified by OAR 340-090-0640(6), which sets out the criteria by which DEQ would assess a proposal for alternative compliance with the convenience standard. DEQ sees no need to further clarify or constrain the types of approaches that could be proposed as alternative compliance by the PRO in the program plan; the existing language allows the PRO to propose on-route collection.

Topic: Convenience Standards - Supplemental Collection Service

Comment: Clarify that, in accordance with ORS 459A.896(1)(d), a producer responsibility organization may use other arrangements, including a supplemental collection service, for the collection of covered products to meet collection targets, convenience standards and performance standards, as well as to meet the requirement to provide enhanced access to recycling of materials on the producer responsibility organization acceptance list for populations that may otherwise find it difficult to participate in service at collection points. Commenter number(s): 17

Response: The suggested change is not necessary. The PRO can partner with a supplemental collection service to meet the convenience standard without the suggested change.

Topic: Convenience Standards - On-Route and Depot Collection of Glass

Comment: 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 Recycling Modernization Act. Commenter number(s): 35

Response: DEQ expects that collection of glass in Oregon will be a combination of on-route collection (primarily in metro areas) and depot collection. This is subject to the PRO's program plan for how to meet the convenience standards, performance standards, and collection targets for PRO Recycling Acceptance list materials, which is not yet finalized, but aligns with the vision that CAA laid out in its first draft plan. This plan does not entail reliance upon depots as the sole option for recycling glass. It will involve reimbursement of some proportion of local government costs for continued on-route residential glass collection, but not reimbursement of the entire amount.

Topic: Convenience Standards - On-Route Glass Alternative Compliance (1)

Comment: Clarify where in the Recycling Modernization Act it is indicated that local governments can no longer collect PRO-list materials, and therefore should be required 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. 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. Commenter number(s): 35

Response: There is no requirement in the Act that local governments discontinue source segregated collection of glass, and based on feedback from local governments, we expect that many will continue to offer such a service. Rules allow for this option in part because they do not prohibit it. There are two mandated recycling acceptance lists are created through the Recycling Modernization Act pursuant to ORS 459A.914(1)(a) and (b), one managed by local governments under the existing Opportunity to Recycle framework (e.g. the commingled recycling system), and one termed the PRO Recycling Acceptance List to be managed by the PRO in accordance

with ORS 459A.896(1) through a network of collection points and through "other arrangements" that meet convenience standards, performance standards, and collection targets set in rule. In setting up the collection point network for PRO Recycling Acceptance List materials, the PRO must collaborate with existing depots where possible, meaning that often the PRO will be collaborating with local governments (through local government depots) to collect the materials.

Glass straddles both lists in that commercial glass has been assigned in the first rulemaking as a responsibility of local governments in the Metro wasteshed, while residential glass throughout the state and commercial glass outside of the Metro wasteshed have been assigned to the PRO.

The PRO's use of "other arrangements" to collect PRO Recycling Acceptance List materials could include on-route collection of glass and would be achieved through an alternative compliance proposal in the PRO's program plan, pursuant to rule 340-090-0640(6). The PRO could propose to financially support ongoing curbside collection of glass by those local governments that currently collect it as part of an alternative compliance proposal, and CAA, the prospective PRO in Oregon, has indicated in its first draft program plan that it intends to do so. If such a proposal would meet the criteria for alternative compliance proposals outlined at rule 340-090-0640(6)(c), DEQ will approve it, and it would result in continued on-route collection in metro areas and depot collection in rural areas that previously had no recycling of glass.

Topic: Convenience Standards - On-Route Glass Alternative Compliance (2)

Comment: Clarify that 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. Local governments that have built out curbside collection of glass should maintain those collection methods and ratepayers should continue to pay for the benefit of curbside collection where it exists today. Commenter number(s): 35

Response: The PRO must provide for the collection and responsible recycling of covered products on the PRO Recycling Acceptance List in a way that meets collection targets, convenience standards and performance standards, pursuant to ORS 459A.896(1). The PRO may meet the convenience standards through the operation of a sufficient number of collection points pursuant OAR-340-090-0640(2), or it can propose other arrangements such as providing financial support for local government-run on-route collection as part of an alternative compliance proposal pursuant to OAR-340-090-0640(6)(c). If such a proposal is accepted, the PRO will be subject to a reduced number of required, fixed collection points.

Collection point service for PRO Recycling Acceptance List materials has to be provided free of charge to the public, pursuant to OAR-340-090-0650(1)(b). Paid on-route collection cannot substitute for free depot service. As such, for PRO materials not currently included in a local government subscription bundle, the local government may require greater, or full, subsidization from the PRO to be able to provide the service at no additional cost to ratepayers (and allow the PRO to count the service toward reduced convenience standards). If the alternative compliance proposal will result in increased rates being charged to ratepayers, DEQ would not approve the

proposal, pursuant to the equitable service criterion for review of alternative compliance proposals at 340-090-0640(6)(c)(B).

However, if the material is already included in a subscription bundle (e.g. glass in the metro areas), the PRO and the local government may negotiate a mutually-agreeable reimbursement amount that allows the existing on-route collection to continue with no increased costs for ratepayers. This would enable a successful alternative compliance proposal in terms of meeting the equitable access criterion.

Rule 340-090-0670 Responsible End Markets

Topic: Responsible End Markets

Comment: The commenter feels that there is lack of clarity and consistency in the definition of "responsible end market" throughout the rule. Commenter number(s): 40

Response: DEQ would need more specific information regarding where the commenter perceives lack of clarity and consistency to respond to this comment.

Topic: Responsible End Markets - 60% Yield Threshold (1)

Comment: Moisture must be accounted for in the yield threshold. A typical HDPE milk bottle weighs 80-90 grams, and when recycled, often contains residual liquid, roughly two teaspoons of residue milk at about 10 grams. This means a bale of milk bottles could have up to 10% liquid weight that is washed away during reclamation. This is also the case for a material such as color HDPE where residue bottle contents (such as soaps, detergents) are more viscous and harder to completely remove from the container. Commenter number(s): 28

Response: Pursuant to OAR-340-090-0670(2)(c)(C), moisture may be accounted for in calculation of yield (to compare with the 60% minimum yield threshold) by applying a reduction to the denominator. DEQ has not proposed a moisture threshold for outgoing bales as part of the CRPF permit standards, considering that the problem of moisture is mostly addressed through the market (buyers pay more for dry bales). There is not a fixed limit for applying a moisture deduction to the yield calculation.

Topic: Responsible End Markets - 60% Yield Threshold (2)

Comment: Amend the 60% yield threshold language in OAR-340-090-0670 to allow byproducts that are different from the primary bale contents to count toward the 60% threshold, e.g., polyolefin cap material that is separated and sold as a saleable byproduct of PET bottle reclamation. These materials are recycled responsibly, and the regulations should encourage utilization of byproducts when feasible. Commenter number(s): 28

Response: With respect to the particular example cited, PET bottles and caps are listed together on the Uniform Statewide Collection list as a unified entry (see 340-090-0630(2)(j)(A)). The

caps' weight counts toward the denominator and recycling of caps counts toward the numerator in the yield calculation.

For some materials that are specifically enumerated at 340-090-0670(2)(c)(D)(i)-(v), yield must be measured individually for each material when mixed together in a bale. This is aligned with the overall intent of the 60% yield threshold to ensure that materials accepted for recycling in Oregon are actually recycled at the end market rather than diverted to landfill. Caps and bottles are not among those materials for which separate calculation is required, nor are caps considered contamination when together with bottles.

Topic: Responsible End Markets - 60% Yield Threshold (3)

Comment: Consider moving the 60% yield threshold to the program plan process, as setting these limits in rulemaking could be challenging as packaging and recycling processes evolve. Commenter number(s): 28

Response: The program plan must contain the PRO's proposed verification standard, which will provide the detailed performance criteria and performance indicators built upon the "responsible" definition at 340-090-0670(2)(b). Details for how the 60% threshold will be verified will be included in this standard, and are a part of the program plan review process. Generally, DEQ understands that the 60% threshold is quite low for most materials, and does not anticipate that meeting this threshold will pose many challenges and do not merit a change to the proposed rule.

Topic: Responsible End Markets - 60% Yield Threshold (4)

Comment: Remove the 60% minimum yield threshold requirement set forth in OAR 340-090-0670 and replace it with an existing industry standard. This threshold is particularly unnecessary with respect to the paper industry, which already has well established and recognized voluntary standards. Implementation of this threshold 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 – e.g., Forest Stewardship Council, Sustainable Forestry Initiative, Recycled Materials Association. Creating a new standard through DEQ and the PRO will only create confusion among stakeholders about which standards should be adhered to for purposes of compliance with Oregon regulations. Commenter number(s): 51

Response: The purpose of the 60% minimum yield threshold in the "responsible" standard is to address the potential of a minority bale component being diverted to disposal by the end market even though it is on a material acceptance list in Oregon. This could happen in the universe of paper with aseptic cartons in mixed paper bales, many of which are currently exported abroad where mills are less likely to be adhering to voluntary industry standards, and it represents a reputational risk for Oregon's recycling system. Materials for which there is potential for such diversions to occur are designated for individual measurement of yield against the threshold pursuant to rule 340-090-0670(2)(c)(D) – so for a bale of mixed paper and aseptic cartons, the

yield of both materials needs to be measured against the 60% threshold.

Topic: Responsible End Markets - Community Input in Verifications

Comment: Ensure that feedback of communities impacted by end markets is directly incorporated into the responsible end market certification process, and that the feedback subsequently transmitted to DEQ. Commenters additionally recommended that community engagement should be part of all initial verifications, with continuous opportunity to provide feedback also built into auditing. Commenter number(s): 16, 29

Response: Enabling input from communities adjacent to end markets and other downstream facilities that process Oregon's recyclables is an important part of ensuring that Oregon's recyclables go to responsible end markets. The PRO's annual report is subject to public comment and must contain, pursuant to ORS 459A.887(2)(q), a summary of quarterly disposition reporting and a description of the adequacy of responsible end markets. CAA has also proposed to establish a pathway for whistleblower input on market verifications in its second draft program plan.

Topic: Responsible End Markets - Definition of "End market" for Glass

Comment: Treat a 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 of non-glass contamination from the primary commingled recycling processing facility (and there should be reporting rules associated with this secondary processing). Glass processing, or beneficiation facilities are as much a necessary step to prepare recycled material for remanufacture but are not clearly necessarily treated as a Commingled Recycling Processing Facility under the rules. Commenter number(s): 50

Response: Beneficiation plants are treated as intermediary supply chain facilities subject to the "responsible" standard pursuant to OAR 340-090-0670(2)(a)(B). Functionally they are not so different from the end market (e.g., Owens-Brockway bottling plant) in terms of potentially needing attention and funding from the PRO for the PRO and/or CRPFs to meet their obligation to send materials collected for recycling in Oregon to responsible end markets. If a beneficiation plant, just like a bottling plant, processing Oregon-originated glass collected for recycling is not meeting the "responsible" standard, a practicable action must be undertaken, pursuant to OAR 340-090-0670(5).

Beneficiation plants are not commingled recycling processing facilities under the rules proposed in this rulemaking, and as such are not eligible to receive the Processor Commodity Risk Fee and the Contamination Management Fee from the PRO. Only CRPFs meeting the requirements under ORS 459A.905(2)(a) are eligible for PCRF and CMF funding. A beneficiation facility downstream of a CRPF also does not meet the definition of a limited sort facility under proposed OAR 340-093-0030(65)(a), which reads:

"(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…"

The problem of contamination in the recycling system is primarily addressed with generator-facing contamination reduction programming done by local governments with financial support of the PRO, and through compensation of CRPFs by the PRO (via the CMF and the PCRF) that enables processors to meet new permit performance standards, including capture rates and a 5% contamination threshold for outbound bales. The Act did not envision PRO payments for contamination reduction further down the recycling supply chain, and as such DEQ did not propose any rules regarding reporting with respect to secondary processing by downstream supply chain entities besides limited sort facilities.

Topic: Responsible End Markets - Disposition Reporting (1)

Comment: Explicitly allow for rounding of tonnages in disposition reporting. Some commodities are collected and consolidated regionally, rather than just in-state, and many recyclers are unlikely to be able to provide specific data to Oregon locations. This particularly applies to depot collection; store take-back that may involve regional, multi-state reverse distribution hubs; and other smaller quantity material types where loads picked up in Oregon may be consolidated with loads from nearby states. This is similar to how haulers may cross city or county lines in collecting recyclables. As a result, the data have some inherent rounding that should be recognized under the reporting details. Commenter number(s): 28

Response: DEQ thinks that the existing language addresses this comment. OAR-340-090-0670(6)(c)(B)(ii), allows PROs to use the mass balance rolling average percentage accounting methodology when Oregon-origin materials are consolidated together with materials from other states. Applying this method involves calculating average tonnages coming into a supply chain node from Oregon and from other locations rather than exact amounts (and then apportioning the outputs proportionally).

Topic: Responsible End Markets - Disposition Reporting (2)

Comment: Simplify or eliminate the disposition reporting requirements for polyethylene film (e.g. for PRO Recycling Acceptance list materials). It is not possible to pinpoint each load from Oregon or a specific location because of the consolidation process. Reasonable expectations must be placed on the downstream entities on the basis of actual operations data and discussions with responsible recyclers. Commenter number(s): 24

Response: Pursuant to proposed rule OAR-340-090-0670(6)(c)(B)(ii), disposition of tonnages of Oregon-origin PRO Recycling Acceptance List materials through to the end market, which must be reported to DEQ quarterly by the PRO, can be accounted for when materials from Oregon mix with materials from other states through the use of rolling average mass balance accounting. This means that mixing can occur and facility floor plans and consolidation practices need not be

changed; rather, inputs from Oregon merely need to be attributed proportionally to outputs. DEQ made no changes on the basis of this comment; the commenter has not demonstrated that the approach outlined in the current rule language is unreasonable.

Topic: Responsible End Markets - Exclusions from the Verification Standard

Comment: Ensure there is sufficient tracking and enforcement of environmentally sound management should any instances arise wherein the entity with physical possession of materials does not also have legal possession. It is important to ensure that all physical handlers of material are meeting the "environmentally sound" standard, including willingness to be audited and monitored, avoiding release into the environment, and demonstrating an adequate emergency response and environmental health, safety and management plan from the point the material is collected to the time it is received at the end market. Commenter number(s): 16, 29, 59

Response: DEQ did not make changes in response to the comment regarding that all end markets and other downstream entities that physically handle material need to be verified for environmental soundness as part of the responsible end market verification process. The exclusion language at 340-090-0670(3)(g) already does not allow any exclusion for environmental soundness for markets that take physical possession of materials.

Topic: Responsible End Markets - Implementation of the Responsibility Standard by a PRO (1)

Comment: Amend 340-090-0670(3)(b) to require the PRO to obtain screening assessments and conduct responsible end market verifications for covered products collected by a supplemental collection service outside of a contract with the PRO. This suggested change is linked with another suggested change to rule 340-090-0660 that would require supplemental collection services to report their collection volumes to the PRO. Commenter number(s): 17

Response: Pursuant to ORS 459A.896(2)(a), the PRO must ensure, to the extent practicable, that four categories of materials listed at ORS 459A.869(7) and collected for recovery in Oregon go to responsible end markets. For the subset of these materials that pass through commingled recycling processing facilities, the obligation is jointly held with the processing facilities, pursuant to ORS 459A.955(2)(h). The rule 340-090-0670 clarifies how this obligation applies specifically to the PRO, with 0670(3) indicating deadlines by which screening assessments and verifications must be conducted for each market and other downstream entity that takes legal or physical possession of the materials. To practicably ensure that covered products collected by supplemental collection services outside of a contract with the PRO are going to responsible end markets, the PRO must receive voluntary disposition reporting from the supplemental collection service, reporting that indicates where materials are going (i.e., which facilities need to be verified by the PRO). The commenter suggests making this reporting mandatory in another of its suggested changes, to rule 340-090-0660 (which regards collection targets that the PRO must meet for materials on the PRO Recycling Acceptance list). However, 0660 (like 0670) clarifies a statutory obligation specifically on the PRO, not another entity, and as such obligations on supplemental collection services cannot be inserted into these rules (furthermore, rule 0660 is not

re-opened in the current rulemaking, and as such the suggested change was out of scope). Because the suggested change would be contingent on voluntary reporting on the part of supplemental collection services, DEQ will not insert an explicit requirement to verify the markets used by these services into rule 0670(3). DEQ expects that, if supplemental collection services are collecting materials that belong to one of the four categories of materials listed at ORS 459A.869(7), the PRO will approach the services to explore whether collaboration is practicable.

Topic: Responsible End Markets - Implementation of the Responsibility Standard by a PRO (2)

Comment: Clarify how end markets will be determined as "willing to be audited and monitored" and having "adequate emergency response and environmental health, safety, and management plans." Commenter number(s): 29

Response: The program plan must contain the PRO's proposed verification standard, which will provide the detailed performance criteria and performance indicators built upon the "responsible" definition at 340-090-0670(2)(b). Details for how willingness is to be audited and monitored and how adequacy of environmental health, safety and management plans is to be assessed will be contained in that standard, which will be subject to DEQ review and approval (as well as Oregon Recycling System Advisory Council review and public comment) as part of the program plan process.

Topic: Responsible End Markets - Market Information and Transparency (1)

Comment: Make information covering material tracking from collection to end market transparent and available to local governments and the public. Commenter number(s): 59, 16, 29

Response: The Responsible End Market obligation rules (OAR-340-090-0710) were adopted during the first RMA rulemaking and address proprietary information related to disposition reporting. These rules were not re-opened in the current rulemaking, meaning that this comment is potentially out of scope of this rulemaking, although rules for how disposition reporting is to be performed by PROs and by commingled recycling processing facilities are a part of this rulemaking. Rule 340-090-0710(4)(d) clarifies that the list of end markets that process Oregon's recyclables, the type of material that each end market processes, and the tonnages processed if aggregated by destination country, are not considered proprietary information. Whether DEQ or the PRO will publish this information for the purposes of public education and outreach is an implementation decision, and DEQ will take the commenter's recommendation into consideration.

Topic: Responsible End Markets - Market Information and Transparency (2)

Comment: With respect to information on where materials collected for recycling go, DEQ should develop best practices and guidelines for how jurisdictions engage with their

constituencies, providing plain language adaptations of federal guidelines and using the Americans with Disabilities Act (ADA) to address accessibility concerns. DEQ should specifically prioritize the following:

- Translation of outreach materials to the five most commonly spoken languages in the local community (using existing voter pamphlets to understand what languages are needed and have already been identified by the state);
- Outreach materials that are accessible to those with hearing and vision impairments;
- Outreach materials using images that are culturally relevant to each community; and
- Providing mandated opportunities for feedback from the public via phone, email, online, and in-person. Commenter number(s): 16

Response: DEQ will take this comment into consideration during implementation.

Topic: Responsible End Markets - Plastics End Markets

Comment: Do not extend the "end market" definition for plastic going into food and beverage packaging and children's product applications at rule 340-090-0670(1)(e) one step further (i.e., to the producer of the next product from recycled plastic) than that for plastic going into other applications (i.e., producer of flake, pellet, or other resin material). The extended end market definition will force recyclers to breach confidentiality agreements with customers due to the need to disclose customers' names and the applications in which they are using the recycled plastic material. This and the added administrative burdens and costs may result in customers choosing to buy feedstock from Asian markets not subject to the same stringent requirements, thus reducing the competitiveness of North American plastic recyclers.

The PRO could also face complications in securing collaborations to build out the collection point network to collect PRO Recycling Acceptance list materials, in association with downstream entities not wishing to be subject to the verification and auditing requirements. The definition for "end market" for plastic going into food and beverage and children's toys applications is furthermore inconsistent with how "end market" is being defined for other commodities in 340-090-0670(1) – only for plastic is the end market the producer of the next product.

Plastic is furthermore being singled out for concern with respect to toxicity when other materials also have toxicity issues such as PFAS coatings on paper and BPS liners of aluminum cans. Any manufacturer of food and/or beverage packaging that purchases or uses flake or pellets purchased from a plastic reclaimer that is sourcing materials from an Oregon recycler has obtained a letter of non-objection from the US Food and Drug Administration that confirms it has appropriate processes in place to protect public health. This is technically voluntary, but it is the industry standard. The approach is similar to how the FDA handles other issues, such as federally regulated Food Contact Notifications (FCN) – the FDA reviews and if it does not object to the submission, this allows the product to enter the market. An additional concern with

respect to feasibility lies with the lack of a commonly-used chain of custody certification or process currently in place in recycling markets. Such a system must be fully developed and tested to address the numerous challenges and barriers that inhibit accurate information sharing on the movement of recycled plastic material.

Finally, DEQ is out on its own here in terms of an EPR program subjecting plastic converters to verification. Commenters suggested that these regulations would be more appropriately housed in a regulation focused on plastic production rather than plastic recycling. Commenter number(s): 46, 13, 37, 40, 14, 18, 26, 28, 32

Response: Note that OAR 340-090-0670, adopted by the Environmental Quality Commission in November 2023 was reopened in the current rulemaking to align the rule language related to the PRO responsible end market obligation with the sister requirement borne by commingled recycling processing facilities (and the subject of rule 340-96-0310). The end market definitions at OAR 340-090-0670(1) were not a focal subject of the second rulemaking, and as such will not be revised unless substantial new information not examined in the first rulemaking is brought to the attention of DEQ. These comments contain some, but not substantial, new information.

With respect to individual supporting rationales for the suggested change, DEQ encourages the commenters to review response to comment from the first rulemaking, where detailed DEQ responses for most of these comments can be found.

While the commenters provide some compelling justification for their suggestion (particularly with respect to impacts on market competitiveness and PRO depot collaborators), it is not enough to overcome DEQ's concerns that motivated the original rule. In the first rulemaking, DEQ responded to many of the concerns by adding rule 340-090-0670(2)(h) which allows the PRO to request in its program plan variance to the required components of market verifications. If future experience results in significant disruptions to plastics recycling, the PRO has the ability to ask for a variance for end markets for plastic going to food and beverage and children's product applications, and DEQ also has the ability to propose a modification to rules.

Topic: Responsible End Markets - REM Verification/Auditing

Comment: Commenter suggests that DEQ take more of a leadership/oversight role over the auditing and verification of responsible end markets, stating "Relying heavily on the PRO to self-verify and audit responsible end markets could result in conflicting variables of cost and integrity." Commenter number(s): 23

Response: The rule language at 340-090-0670(3) allows for either verification of markets by a PRO, or certification by a third party whose standard has been approved by the Environmental Quality Commission. A benchmarking of existing standards operating in the recycling sector, conducted in the context of the current rulemaking, did not find any that cover all aspects of Oregon's "responsible" standard as defined in rule at OAR 340-090-0670(2). Consequently, the program will begin with the PRO conducting market verification.

DEQ considers that a third-party approach could mitigate risk of conflict of interest weakening application of the standard, and hopes that the certification industry will see an opportunity here and develop standards that cover Oregon's "responsible" definition comprehensively.

PRO verification will be subject to DEQ oversight through the PRO plan and annual report process, and the random bale auditing rules at OAR 340-090-0670(4) explicitly allow DEQ to deploy trackers to audit the PRO's disposition reporting. DEQ also has authority to conduct additional assessment and verification of the PRO's compliance.

Topic: Responsible End Markets - Recycled Content Demand

Comment: Design the responsible end market obligation in such a way as to increase demand for post-consumer recycled content. Commenter number(s): 18

Response: The Recycling Modernization Act statute includes statewide plastics recycling goals of 25% in 2028 and 50% in 2040 that the PRO must achieve. For packaging to be recyclable in Oregon investments are needed in end markets, so that a material can meet the 12 statutory criteria at ORS 459A.914(3) to be added to the Uniform Statewide Collection List either through rulemaking or through the PRO program plan–see the program plan "onramp" lever at ORS 459A.914(4)(b)). DEQ considers that the law does increase demand for post-consumer recycled content. However, the Recycling Modernization Act is not just a "recycle more" law, it is also a "recycle better" law. And that is where a robust responsible end market obligation comes in–the purpose of this particular obligation is not to increase recycling, but to ensure that recycling of Oregon-origin materials is environmentally beneficial.

Topic: Responsible End Markets - Standard for Responsible End Markets and Entities Requiring Verification

Comment: Replace the word "downstream" in rule 340-090-0670(2)(a) with "upstream," which the commenter considers to mean "following after" another entity in the supply chain. Commenter number(s): 19

Response: The word "downstream" in the context of a product's life cycle is commonly-understood to signify proximity to end-of-life or final disposition, and it is used in this respect at OAR 340-090-0670(2)(a). For example, in a recycling supply chain for plastic in which material travels from a commingled recycling processing facility to a broker to a reclaimer to a converter, the broker is downstream of the CRPF, the reclaimer is downstream of the broker, and the converter is downstream of the reclaimer. As DEQ considers the term to be commonly-understood, and because the rule provides clear context (entities that receive material . . . downstream of the CRPF or PRO collection point), DEQ did not make any changes to address the comment.

Topic: Responsible End Markets - Support Local Markets

Comment: Amend the responsible end market rules to make for a simplified, more streamlined process for recyclers and to support and prioritize local responsible recyclers rather than lumping them with bad actors. Commenter number(s): 18, 28

Response: DEQ cannot establish a standard that would apply unequally to different markets based on their location because that could be construed to interfere with interstate commerce. All end markets and other downstream entities that legally or physically possess materials collected for recycling in Oregon need to meet a singular standard. Domestic markets likely have an advantage over some distant markets in terms of meeting the environmentally-sound component of the "responsible" standard, because they are needing to comply with more stringent air and water requirements than is the case in some other jurisdictions. The PRO can also build risk assessment based on end market location into its verification process – for example, by having location be factored into the frequency of on-site versus desktop audits.

Topic: Responsible End Markets - Verification Standard

Comment: The responsible end market verification process needs to be simplified and streamlined (for example, it could resemble something like an OSHA checklist) in order to fast-track responsible, domestic recyclers, and should also be better-integrated with business operations and real-world data. The program should be incentivizing and expanding responsible domestic markets; instead, the law contains no benefits for recyclers and rather imposes substantial regulatory and administrative burdens on markets. Commenter number(s): 24

Response: DEQ did not make changes in response to this comment. Addressing the environmental and public health impacts of end markets was a major impetus for the Recycling Modernization Act, and many interested parties would like to see comprehensive reform and modernization of the recycling system, including end markets, so that Oregon residents can be certain that their recycling is achieving environmental benefits rather than harm. The RMA requires PROs and commingled recycling processing facilities to send materials that they collect for recovery in Oregon to responsible end markets. If an end market does not want to collaborate with these obligated entities to prove that it meets the "responsible" standard, it can choose to do so and forgo receiving material from Oregon. PROs must take practicable actions, including investments to improve existing and develop new end markets, to fulfill their obligation to send materials to responsible end markets. While the PROs will want markets to take these costs upon themselves, ultimately the regulatory obligation lies with the PROs, which gives markets negotiating leverage. Furthermore, Colorado and California have enacted similar responsible end market provisions, and as such meeting Oregon's "responsible" standard will likely help a market to secure access to growing supplies from these states as well.

Topic: Responsible End Markets - Yield Threshold for Shredded Paper

Comment: Retain a 60% minimum yield threshold for shredded paper, and remove the proposed language at rule 340-090-0670(2)(b)(D)(i) lowering the threshold to 50% for this specific material. Commenter number(s): 20

Response: DEQ reduced the yield threshold for shredded paper to 50% on the basis of specific information from end markets illustrating that yields for the material commonly fall below 60%. Because, according to DEQ's assessment underpinning the listing of shredded paper on the PRO Recycling Acceptance list, recycling of shredded paper is beneficial regardless of yields below 60%, DEQ proposed to apply a lower yield threshold on a material-specific basis to shredded paper.

Topic: Responsible End Markets - Yield Thresholds for Shredded Paper and Cartons

Comment: Provide a rationale for the addition of subparagraph 340-090-0670(2)(b)(D)(i), which provides a separate yield requirement for certain paper types. Commenter number(s): 30

Response: DEQ proposed to reduce the yield thresholds to 50% for shredded paper processed into high-grade office paper and cartons processed into tissue based on specific information from end markets illustrating that yields commonly fall below 60%. Because, according to DEQ's assessments underpinning the material acceptance listings of shredded paper and carton, recycling of these materials is beneficial regardless of yields below 60%, DEQ proposed to apply lower yield thresholds on a material-specific basis to the two materials.

Topic: Responsible End Markets - Yield and Requirements for Material-Specific Evaluation

Comment: Remove the requirement from subparagraph OAR 340-090-0670(2)(c)(D)(v) that yield be calculated separately for 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 is unnecessary and excessive to require this additional yield calculation. Commenter number(s): 30

Response: The purpose of the 60% minimum yield threshold in the "responsible" standard is to address the potential for a minority bale component being diverted to landfill by the end market even though it is on a material acceptance list in Oregon. This could happen, for example, with aseptic cartons in mixed paper bales, or PET thermoforms in a PET bale, and it represents a reputational risk for Oregon's recycling system. Materials for which there is potential for such diversions to occur are designated for individual measurement of yield against the threshold pursuant to OAR 340-090-0670(2)(c)(D) – so for a bale of mixed paper and aseptic cartons, the yield of both materials needs to be measured against the 60% threshold. This section of the rules cross-references the material acceptance listings in OAR 340-090-0630(2)-(3) in designating which materials require individual measurement of yield against the threshold when they are mixed together with other materials in a bale.

The citation in question allows DEQ to account for materials that could be added to the USCL via the program plan or otherwise recycled (through trial collection, for example) as part of the PRO's program to count them toward the statewide plastics recycling goal. These materials would not immediately appear in the material acceptance listings in rule, if at all, and as such if DEQ considers individual measurement of yield necessary for one of these materials, DEQ needs a mechanism in rule to do so. OAR 340-090-0670(2)(c)(D)(v) is that mechanism. A relevant example would be PET thermoforms, which the PRO has indicated that it intends to add to the USCL during the first program plan period. PET thermoforms are often mixed with PET bottles and, depending on the reclamation pathway, may be diverted to landfill by the end market. By designating PET thermoforms as requiring individual verification of yield, end markets would not be able to landfill PET thermoforms while we tell Oregonians that they are accepted for recycling.

Verification of yield can be performed with a simple spot-checking, site-visit approach. As such, DEQ has not made changes to address the comment.

Topic: Responsible End Markets - Alignment with Statutory Intent

Comment: The commenter expresses concern with respect to the extent of the regulations' potential impacts on the recycling of paper and paper-based packaging, and whether or not that conforms to intent of the statute. The proposed rules will create barriers to markets for recyclable paper and paper-based packaging generated in Oregon. This conflicts with the intent of the Act to create a framework for identifying problems and solutions for materials with low recycling rates.

Specifically, several aspects of the rules, including PRO verifications and annual auditing, screening assessments, and on-site audits, are not mentioned in the Act. The commenter furthermore considers that the regulations subject entities downstream of CRPFs to obligations similar to (and, in certain circumstances, more onerous) than those imposed on CRPFs, whereas the Act does not authorize or mandate direct regulation of downstream entities. Commenter number(s): 51

Response: DEQ considers that, with the proposed rules on responsible end markets at OAR 340-090-0670 and 340-096-0310, it has strictly followed the statute's material-neutral focus on environmental impacts, public health impacts, and worker health and safety impacts of recycling explicit within the definition of "responsible end market" at ORS 459A.863(29). Regarding the concern that requirements were introduced in rule that exceed statute, it is common practice that statutes establish a framework for regulation and rulemaking fills in the implementation details.

Topic: Responsible End Markets - Definition of "End Market" for Glass

Comment: Reconsider defining "end market" on a material-specific basis, with the end market the producer of recyclate for some materials (e.g. metal) and the user of the recyclate to make a new product for others (e.g. glass), as this may give some materials a competitive advantage over other materials. Commenter number(s): 50

Response: DEQ defined "end market" in a material-specific way to encompass the most significant 1. environmental impacts, 2. public health impacts, and 3. worker health and safety impacts within each material-specific recycling supply chain under the scope of these rules; this aligns with the direction provided by the legislature in the definition of "responsible end market," where these three concerns are explicitly prioritized. The obligation to send materials to responsible end markets lies with PROs and commingled recycling processing facilities (CRPFs), and the obligation to fund practicable actions that enable success in meeting this obligation lies with the PRO (even if a CRPF funds an action such as a market improvement, the PRO will ultimately pay for it, through the processor commodity risk fee paid by the PRO to the CRPFs).

There could conceivably be differences in producer fees charged for different material categories in connection with how "end market" is defined variously for different materials, but it has not been demonstrated that, just because the "end market" definition stretches forward to the producer of the next product for certain materials, there will be a need for more practicable actions focused on those materials. The magnitude and quantity of needed practicable actions will be a function of how responsibly the various supply chains are currently operating. DEQ would also recommend that the commenter review Circular Action Alliance's draft program plan, including the budget at Appendix E. The budget for responsible end markets relative to other program elements is quite modest, amounting to approximately 1% of the overall budget. This would suggest that the commenter's concerns about competitive advantage and substantial fee differentials may not be warranted.

Topic: Responsible End Markets - Implementation of the Responsibility Standard by a PRO (1)

Comment: Do not require the PRO to oversee verification and auditing of end markets. This 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. Commenter number(s): 51

Response: The obligation to ensure that materials flow to responsible end markets is explicitly a PRO obligation in statute (ORS 459A.896(2)), and among parties interested in the Act's implementation, PROs are arguably best-qualified to play a leading role in the implementation of this obligation. Many PROs around the world working in other jurisdictions offer material tracking and auditing services, and there are PROs active in other jurisdictions' packaging programs that conduct end market auditing.

Topic: Responsible End Markets - Implementation of the Responsibility Standard by a PRO (2)

Comment: 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. Commenter number(s): 35

Response: The proposed rule places no requirements directly on end markets and other downstream entities that process Oregon's recyclables, some of which are located outside of Oregon. Obligations are rather on the PRO and on commingled recycling processing facilities to ensure that Oregon-origin materials go to responsible end markets. Furthermore, all supply chain entities are to be verified or third-party certified against a singular standard, with no preference or free-pass for in-state facilities in order to not interfere with commerce across state boundaries.

Topic: Responsible End Markets - Implementation of the Responsibility Standard by a PRO (3)

Comment: Require PROs and commingled recycling processing facilities to coordinate on obtaining self-assessments and verifications of supply chain entities, rather than merely allowing them to do so to avoid duplication of effort. Commenter number(s): 50

Response: Commingled recycling processing facilities may not wish to share with competition information about where their materials go for downstream processing. DEQ does not propose requiring them to coordinate with one another to ensure that the same end market or other downstream entity is not being asked to fill out the same self-attestation form twice. Rather, they may choose to do so.

Topic: Responsible End Markets - Implementation of the Responsibility Standard by a PRO (4)

Comment: Clarify what an Environmental Quality Commission-approved third-party certification is with respect to the responsible end market standard. Commenter number(s): 50

Response: Pursuant to OAR 340-090-0670(3)(a)(B), a Producer Responsibility Organization can implement the "responsible" standard with respect to end markets and other downstream entities either by conducting its own verification of the entities, or by obtaining third-party certification from an Environmental Quality Commission-approved standard. DEQ explored proposing third-party certification standards for approval in rule as a part of this rulemaking, but as presented at the CRPF Technical Workgroup meeting, found no standard that adequately covered all aspects of the "responsible" standard:

The program will start with PROs verifying all markets and other downstream entities that receive materials designated in ORS 459A.869(7). In a future rulemaking, should the certification industry develop a standard that benchmarks well against Oregon's "responsible" definition in rule, DEQ may propose an existing third-party standard for EQC approval.

Topic: Responsible End Markets - Implementation of the Responsibility Standard by a PRO (5)

Comment: Define what a screening assessment is with respect to the responsible end market obligation. Commenter number(s): 50

Response: According to OAR 340-090-0670(3)(a), to implement the "responsible" standard, the Producer Responsibility Organization must first obtain screening assessments from each market and other downstream entity that processes Oregon-origin materials collected for recycling, and then must either conduct a detailed verification or a third-party certification. DEQ is to provide the screening assessment form, and published a draft version of the form in May 2023 as part of the Internal Management Directive for Producer Responsibility Organizations, page 60. The form basically asks each downstream entity to pledge that they meet the "responsible" standard, and asks the PRO to corroborate that it believes the pledge to be true. By requiring self-attestation forms of each market, DEQ and other interested parties have at least some assurance of responsible operations between the program start and the July 1, 2027, deadline by which verifications of all downstream entities must first be completed.

Topic: Responsible End Markets - Practicable Actions for Glass

Comment: Instead of developing new markets for glass (e.g. as a practicable action pursuant to OAR 340-090-0670(5)), DEQ and the PRO should focus attention on improving the infrastructure for aggregation and storage of collected glass, resulting in a hub and spoke collection system that can feed into existing markets and that could be operated at a lower cost, with resultant lower EPR fees for glass producers. This would allow for the material to play an increased role in the Oregon packaging portfolio. Commenter number(s): 50

Response: The Recycling Modernization Act is material-neutral and does not have an underlying goal of increasing one material or another's predominance in the Oregon packaging portfolio, although it is concerned with material choice in as much as material choice relates to the environmental impacts of packaging, and it is a goal of the Act to reduce those impacts. As it is material-neutral, statute does not guide DEQ, or the PRO, to incentivize or mandate investment in a particular type of infrastructure merely to boost the use of a particular material relative to others.

Glass producers could advocate within the PRO for investment in infrastructure for aggregation and storage of collected glass.

Topic: Responsible End Markets - Responsible Standard (1)

Comment: A domestic end market should be considered to meet the "responsible" standard if it meets the regulatory standards in its jurisdiction and that can be confirmed by the regulatory standards of that state. The definition of "responsible" as it currently stands 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. Commenter number(s): 50

Response: The obligation to send materials collected for recycling in Oregon to responsible end markets lies with the commingled recycling processing facilities and the Producer Responsibility Organization (PRO), not with the end markets and supply chain entities themselves. As such, DEQ is not creating regulatory conflicts with other states. End markets and supply chain entities, within and outside of Oregon alike, may choose to forgo Oregon-origin feedstock if they do not

wish to be subject to the "responsible" standard. If they do rather wish to process Oregon-origin materials, they must all be held to the same "responsible" standard. In order to avoid interfering with interstate or international commerce, DEQ cannot entertain the commenter's suggestion that US markets be held to different standards with respect to compliance.

Topic: Responsible End Markets - Responsible Standard (2)

Comment: Clarify the requirement with respect to the "responsible" standard regarding willingness to be audited and monitored for emissions and disposal: by whom and at what standard? Commenter number(s): 50

Response: DEQ is not proposing any changes to the proposed rule OAR-340-090-0670(2)(b)(C). Willingness to be audited and monitored for sustainability with respect to emissions, disposal, and use of inputs by the PRO or third-party certifiers is a requirement to meet the "responsible" standard. The PRO will propose the standard by which end markets and other downstream entities will be verified in its program plan.

Topic: Responsible End Markets - Responsible Standard (3)

Comment: Commenters recommended that DEQ reconsider the overly ambitious and burdensome screening, tracking and auditing requirements placed on end markets and other downstream entities at rule 340-096-0310 and 340-090-0670. These requirements are likely to reduce markets for recyclable materials from Oregon, giving end markets a binary choice of either refusing Oregon-origin material or taking on burdensome new obligations, and creating no benefits for markets. One commenter suggested replacing 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. The fact that out-of-state commingled recycling processing facilities are allowed to self-certify in some instances pursuant to 340-096-0820(3) is provided as a supporting rationale. Commenter number(s): 50, 51, 57

Response: The recycling industry was the source of international interest in 2018 when China's National Sword policy and resulting investigations revealed that materials collected for recycling in the U.S. were ending up in open burns and released into waterways due to systemic issues such as high contamination, an issue that persists according to DEQ's latest material recovery survey for the year 2023. This issue lies at the heart of the Recycling Modernization Act. Consequently, DEQ did not make changes to the proposed rules in response to this comment.

With respect to replacing the two-step verification process with a single-step certification process, DEQ conducted a benchmarking and found no existing certifications that adequately cover the "responsible" standard; this is why the program will begin with PRO verification. As the standard to be used in verifying markets will be developed and vetted through the program plan process, in contrast to third-party certifications that tend to have very detailed requirements years in the making, the commenter's suggestion that verification is more onerous than certification is not accurate. Concerns about level of burden with respect to the screening

assessment are also unfounded; DEQ has published a draft version of the form and it is quite simple – see page 60. Meanwhile, allowing self-certification with respect to the responsible end market obligation would not ensure robust results, especially when there are an estimated several hundred entities that require verification, some of which are located at distant locations where DEQ does not have regulatory contacts. By contrast, only two out-of-state CRPFs, located in Washington and California, manage material from Oregon; self-certification is more manageable in this context.

Finally, in the first rulemaking, the EQC extended the timeline for completion of market verifications and inserted a temporary variance option for PRO verifications into the rules, in order to address concerns about the requirements imposing burdens that would be hard to manage.

Topic: Responsible End Markets - Responsible Standard (4)

Comment: Remove from the "responsible" standard the requirement that a facility be willing to be named and audited and be willing to be audited and monitored for emissions. This is unreasonably broad. Commenter number(s): 51

Response: The "responsible" standard at 340-090-0670(2)(b) was subject to the first Recycling Modernization Act rulemaking, which concluded in November 2023. While rule 0670 is reopened in the current rulemaking and therefore this standard is subject to reconsideration, DEQ would not edit these rules without substantial new information not previously considered being brought to its attention in public comment.

Lack of transparency in the waste trade industry related to where materials go contributed to the crisis that followed China's institution of the 2017 National Sword policy. This situation revealed that significant quantities of US-origin waste were ending up in environmentally-unfavorable disposition abroad. This is why willingness to be named and audited is explicitly written into the "responsible" definition. As for willingness to be audited and monitored for emissions, DEQ would question how an entity could be verified as environmentally-sound if it is unwilling to make such information available for verification.

Topic: Responsible End Markets - Responsible Standard (5)

Comment: The requirement on a PRO to, as a part of the verification process, develop a list of all local, state, and national laws and treaties applicable to each facility and document any noncompliance with applicable requirements is unreasonably broad. Commenter number(s): 51

Response: DEQ does not consider the requirement to audit facility compliance as part of responsible end market verification to be unreasonably broad. Such a requirement is included in several existing and prominent certifications operating in the waste sector (for example, ISO 14001 entails a full compliance audit with respect to environmental regulations, as does ISO 45001 with respect to occupational health and safety regulations).

Topic: Responsible End Markets - Responsible Standard (6)

Comment: Remove the requirement that verifications be audited annually, as this is unreasonably burdensome. Commenter number(s): 51

Response: It is common practice among third-party certification schemes to conduct annual auditing, with some of the auditing occurring in desktop fashion, which the rules allow, and guidance envisions. Consequently, DEQ does not consider this requirement unreasonable.

Topic: Responsible End Markets - Timelines for Verifications

Comment: Give producers more time to seek new contracts or change current ones with supply chain partners and allow producers to self-report responsible end markets for a period of one or two years after the proposed rules' effective date. The responsible end market rules do not allow producers sufficient time to modify contracts and to certify responsible end markets because the certification process likely will not yet be ready for use at the time of rule adoption. Producers need 1-2 years to comply after rules are adopted. Commenter number(s): 44, 49

Response: The commenter appears to mix up producer and PRO obligations. To comply with the RMA, producers must join a PRO by July 1, 2025; report the quantity of covered products they sell into Oregon; and pay fees based on the amount and types of materials.

Meanwhile, the obligation to send materials to responsible end markets (and to certify REMs) lies with PROs and CRPFs, not with producers. Rules adopted by the Environmental Quality Commission in November 2023 mandate that markets can be verified as "responsible" by the PRO, and prospective PRO Circular Action Alliance is outlining in its program plan its approach to market verification, subject to DEQ review and expected approval in early 2025. Pursuant to OAR 340-090-0670(3), all markets need to be verified by July 1, 2027, meaning that there is considerable time for market verification built into implementation. The rules allow adequate time to verify markets and the procedures for verification of markets will be worked out in a timely process. As for the concern that producers have inadequate time for modification of contracts, it is unclear what contracts, if any, individual producers would need to modify.

RMA implementation is on-schedule. There's no reason to wait to invest in a modern and responsible recycling system for Oregon.

Topic: Responsible End Markets - Yield Threshold for Glass

Comment: Do not count yield loss at landfills toward the 60% yield requirement for glass. 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 the 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 responsible end markets. Commenter number(s): 50

Response: This comment is based upon an inaccurate understanding of how the yield threshold is being applied, and how glass will be collected in Oregon. The 60% minimum yield threshold as described at OAR 340-090-0670(2)(c) applies only to entities downstream of commingled recycling processing facilities, and does not apply to collection, nor to processing at the commingled recycling processing facility, which is held to separate targets, termed capture rates, for how much of the incoming material must successfully be shipped to a responsible end market. If a commingled recycling processing facility diverts some glass to landfill, that is not counted as yield loss for the end market and other downstream supply entities.

Furthermore, there will be no commingled collection of glass in Oregon under the acceptance list rules at OAR 340-090-0630, as glass is not on the Uniform Statewide Collection List. So, the concern about single-stream commingled collection leading to poor-quality material is not applicable.

Finally, DEQ understands that currently actual yields in the glass industry are generally well over 60%.

Rule 340-090-0690 Waste Prevention and Reuse Fee

Topic: PRO fees

Comment: DEQ should not continue to require the PRO to expend resources until after the program starts on July 1, 2025. Senate Bill 582 does not authorize DEQ to require producers to reimburse costs incurred in advance of when their membership begins. Commenter number(s): 35

Response: This comment does not contain a specific suggested change to the rules.

Section 59, chapter 681, Oregon Laws 2021, provides that the PRO submits its first draft program plan by March 31, 2024, with development of further drafts proceeding before the July 1, 2025, start date according to the schedule outlined at ORS 459A.878. According to ORS 459A.884(1), producer fees must be sufficient to meet the financial obligations of the PRO under ORS 459A.860-975. It is DEQ's opinion that this encompasses costs associated with plan development.

Topic: PRO fees -Program Plan Review and Annual Administration Fees

Comment: DEQ should provide transparency into how the annual administration and program plan review fees were determined and should amend these fees to more accurately reflect the costs to DEQ. It is unclear from the proposed regulations how these amounts were determined and how the proposed amounts accurately cover DEQ's resources assigned to address aspects pertaining to the implementation of the Plastic Pollution and Recycling Modernization Act. The plan review fee of $150,000 appears excessively high, contrary to statutory requirements. And 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. Commenter number(s): 38

Response: The annual administration fee and program plan review fee have already been set in rule during the first rulemaking on the Recycling Modernization Act, which concluded in November 2023. While the section of the rules pertaining to these fees is reopened in the current rulemaking, no changes are proposed to the contents in question, and DEQ would not propose revisions on the basis of public comment unless substantial new information were to be brought to the agency's attention. This comment does not bring such information to the agency's attention. DEQ provided transparency into how the fees were determined during the first rulemaking, and DEQ advises the commenter to review relevant Rulemaking Advisory Committee materials and responses to public comment. DEQ would also note that the rules allow DEQ to lower the annual administration fee in a given year if the full amount is not needed for DEQ to fulfill its oversight, implementation and enforcement roles.

Links to relevant rulemaking materials from the first rulemaking:

Rule Concept 1: Fees
Rule Concept 3: Annual Administration Fees
Response to Comments from rulemaking 1

Topic: Waste Prevention and Reuse Fee - Administer Fee Evenly Throughout State

Comment: Suggest that Waste Prevention and Reuse Fee be administered evenly throughout the state based on population. Also suggest that funding be used strategically based on community engagement and climate impacts with local government involvement. Commenter number(s): 23

Response: The proposed rules specifically relate to the fee that will support the program's implementation. DEQ plans to consider community engagement and environmental impacts (including climate) during implementation. DEQ will consider the suggestion during the implementation phase. As this comment does not propose changes to the rule language, the rules will remain as currently drafted.

Topic: Waste Prevention and Reuse Fee - Amend Annual Fee Language from 'Lower' to 'Higher'

Comment: Amend proposed Fee language to propose annual fee is 'higher' of $15 million or 10% of the three-year average of PRO annual expenditures. Commenter number(s): 21

Response: According to ORS 459A.941(4), the fee charged to any producer responsibility organization may not exceed 10% of the three-year average of the organization's annual expenditures. This statutory requirement means that DEQ cannot change the rule language as suggested by this comment.

Topic: Waste Prevention and Reuse Fee - Dispersal and Evaluation Process for Projects

Comment: Requests that DEQ establish a more robust process through which funding for projects is dispersed and evaluated. Suggests public consultation with interested parties on administrative parameters. Advises that a more robust process would answer questions about waste prevention and reuse fee. (6 questions attached). Commenter number(s): 46

Response: Proposed rules specifically relate to the fee that will support the program's implementation. DEQ will consider the suggestions during the implementation phase. As this comment does not propose changes to the rule language, the rules will remain as currently drafted.

Topic: Waste Prevention and Reuse Fee - Eliminate $15 Million Cap from Waste Prevention and Reuse Fee

Comment: Eliminate cap on Fee, which is already limited to 10% of the three-year average of overall program costs in statute. Organizations could support a cap of $15 million per year for the first program plan cycle only. Commenter number(s): 16, 29, 59

Response: DEQ recognizes the importance of building a program designed for long-term success, and estimated the resources and staffing necessary to administer a program of this complexity. The proposed cap is intended to support the program while ensuring DEQ can achieve its goals and administer the program effectively. If there is an identified need for additional funds in the future, the fee could be reassessed in a future rulemaking.

Topic: Waste Prevention and Reuse Fee - Further Engagement

Comment: Request for further discussion and interested party engagement on the means through which the funds will be invested. Commenter number(s): 41

Response: Proposed rules specifically relate to the fee that will support the program's implementation. As the comment does not propose changes to rule language, no updates to the rules will be made.

Topic: Waste Prevention and Reuse Fee - Provision for Accounting of Costs

Comment: Suggests including 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 Fee. Commenter number(s): 31

Response: DEQ will consider this comment during program implementation planning. Under ORS 459A.950, all money from the waste prevention and reuse fund may be used only for the purposes described in ORS 459A.941. The proposed rule language is already in alignment with statutory requirements and Oregon's standards regarding accounting and transparency.

Topic: Waste Prevention and Reuse Fee - Prioritize Most Cost-Effective Cost Proposals in Waste Prevention and Reuse Fee

Comment: Suggests adding to (4) that grant proposals that are the most cost effective will receive priority for funding. Commenter number(s): 30

Response: Per ORS 459A.941(3), DEQ must consider environmental benefits, human health benefits, social and economic benefits, cost-effectiveness, and the needs of economically distressed or underserved communities when providing grants and loans. The proposed rule language is already in alignment with statutory requirements. Cost-effectiveness, along with the other mandated criteria, will be evaluated during program implementation.

Topic: Waste Prevention and Reuse Fee - Assess Prior Use of Waste Prevention and Reuse Fee

Comment: Requests DEQ conduct a regular lookback assessment on prior use of funding every five years. Commenter number(s): 30

Response: Planning for the program supported by the waste prevention and reuse fee includes evaluation and monitoring to assess its impact and effectiveness. DEQ will consider this in our program implementation planning. However, rule language will not be updated as this input pertains to the implementation phase of the program.

Topic: Waste Prevention and Reuse Fee - Set Funding Cap for Specific Eligible Activities (a) and (n)

Comment: Set 5% cap on total funds expended each year for DEQ's administrative expenses and indirect costs and overhead (subparagraph (a) and (n) of eligible activities). Commenter number(s): 30

Response: Under ORS 459A.941, DEQ must set a fee to cover costs to support the program established. There is no provided basis for the suggested cap and setting such a cap may limit our ability to cover our costs. DEQ has opted not to incorporate the suggested changes into the rule language as the current rules are in alignment with statutory requirements.

Topic: Waste Prevention and Reuse Fee - Align with the Bottle Bill Refillable Bottle Program

Comment: DEQ should synchronize with the Bottle Bill's refillable bottle program by applying deposits to those beverage containers that are covered under the Recycling Modernization Act, and by allowing the PRO to manage the deposits and to [presumably] make refillable bottles available to member producers for packaging of their products and manage reverse logistics for

the refilling of those bottles. 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 a high-enough level of return rate for a successful reusable packaging program. Commenter number(s): 50

Response: As this comment does not propose changes to the rule language, DEQ did not make changes to the draft rules. DEQ will seek input and proposals for addressing refillable packaging during the implementation phase of the program that will be supported by the waste prevention and reuse fee.

Rule 340-090-0700 Market Share

Topic: Market Share - Methods for Calculating Market Share

Comment: The methods for calculating market share at 340-090-0700(1) using weight alone, which are to be used for identifying the top 25 "large producers," will unfairly subject glass producers to the large producer disclosure requirement because glass is the heaviest material that will be processed. It also does not comport with the requirement at ORS 459A.884(1) that producer fees for particular products are proportional to the costs incurred by those specific products. Commenter number(s): 35

Response: The issue raised here was subject to the first rulemaking, which concluded in November 2023. While OAR 340-090-0700 is technically reopened in the rulemaking for changes to other sections, the content of OAR 340-090-0700(1) has not been edited, and DEQ would not reconsider it unless substantial new information was brought to bear in public comment.

Simple market share, described at OAR 340-090-0700(1), is not used for any fee-setting applications, but rather to determine the identity of Oregon's "large producers" and to apply the 10% minimum market share threshold to operate as a PRO in Oregon. The Rulemaking Advisory Committee and interested parties in the first rulemaking recommended that a simple, weight-based approach to market share for purposes besides attribution of system costs among PROs (were there to be multiple PROs operating in Oregon), which has a direct impact on producer fees, would be most appropriate and understandable to all stakeholders.

Modified market share, described in OAR 340-090-0700(2), is to be used for attribution of system costs among multiple PROs and is calculated with the use of material-specific unit factors that represent the proportion of system costs that different materials represent. The use of these unit factors is intended to ensure that system cost attribution among multiple PROs is done in a way that does not result in cross-subsidization among producer fees.

Topic: Market Share - Definitions

Comment: Provide definitions for "market share" and "modified market share," as well as "interim," "preliminary," and "final" market share. Commenter number(s): 31

Response: Market share is defined in ORS 459A.863(13) as "a producer's percentage of all covered products sold in or into this state during a specified time period, as calculated in accordance with methods established by the commission by rule." In rulemaking 1, the Environmental Quality Commission established two methods for calculating market share, one for simple market share of a producer of a PRO, the method for which is provided at rule 340-090-0700(1). Simple market share is used to apply the 10% minimum threshold for a PRO to operate in Oregon, and to identify the top 25 "large producers" in Oregon. The method for modified market share is laid out at rule 340-090-0700(2), and is to be used for dividing system costs among multiple PROs. As Oregon only has one prospective PRO in the system presently, the modified market share methodology will not be used for the time being, but it exists in rule to accommodate the entry of another PRO should this occur in the future.

The terms "interim," "preliminary," and "final" refer to iterations of the supply data reported by the PRO to DEQ (or to the interim coordination body if there are multiple PROs), and the market share calculations that are generated with the data. These supply data are also used by the PRO to set producer fees. "Interim" is a term only used in the first year of the program, because it is the only year for which data from one year prior, 2024, are being used to set fees for the subsequent year, 2025. From 2026 onward, a regular schedule of supply reporting and terminology takes hold. On July 1 of each program year (let's use 2026 as an example), PROs report producer supply data for the previous year (2025) to DEQ. These data are used to calculate "preliminary market share" and "preliminary modified market share" (if there are multiple PROs) for the next program year of 2027. These data are also used by the PRO to set fees for the subsequent program year (2027). By March 31, 2027, PROs must submit a corrected version of their 2025 supply data to DEQ. From these data, final market share and final modified market share will be calculated. In a multi-PRO situation, any change between preliminary and final modified market share will result in reconciliation of system costs among the PROs.

DEQ considers that the methodologies, purposes, and timing of these calculations are laid out in rule 340-090-0700; as such, DEQ did not implement changes in response to this comment.

Topic: Market Share - Producer Fee Deadline

Comment: A reasonable deadline should be given for the PRO to formalize fees to give manufacturers adequate budgeting time. Commenter number(s): 41

Response: There is no deadline in statute or proposed rule by which time the PRO must fix the fee amounts for a given year and charge the fees to member producers; the PRO has flexibility to set these deadlines in a way that is amenable to member producers and generates adequate revenue to cover system costs, a requirement pursuant to ORS 459A.884(1). CAA has indicated, however, that for the program year of 2026 onward, it intends to announce fee rates by October 1 of the preceding year, and then charge the fees on a quarterly basis. For the first program year of

2025, producers will see updated fee amounts in CAA's third draft program plan, slated for submission in mid-December, 2024. These fee amounts will be fine-tuned in 2025 based on producer supply data submitted by the pre-registration deadline of March 31, 2025, and a finalized version of the fee schedule will be issued in June 2025.

Topic: Market share - Producer Market Share

Comment: Clarify if market share data pertaining to the large producers will be publicized and, if so, what information about companies will be shared? Commenter number(s): 48

Response: Pursuant to OAR 340-090-0710(3)(c), DEQ will periodically publish the list of large producers in alphabetical order, which is information that has been set off limit in rule from consideration as proprietary.

This will serve as notification to the large producers that they must fulfill their additional disclosure obligation pursuant to ORS 459A.944(2).

Rule 340-090-0810 Local Government Compensation and Invoicing

Topic: LG Compensation and Invoicing - Eligible Expenses

Comment: The commenter suggests that there be a mechanism to have the PRO directly reimburse the garbage and recycling collection companies, otherwise some local governments will need to establish a payment process, which would include additional administrative and financial analyst support. It is not clear if those costs would be reimbursable. Alternatively, a wasteshed approach that releases local governments and cooperative cities from additional financial management burdens would be supportive. Commenter number(s): 22

Response: There is a mechanism under ORS 459A.890(10) that allows local governments to designate a service provider or other person authorized by a local government to receive payment directly from the PRO. No changes are needed in the rules.

Topic: LG Compensation and Invoicing - PRO Plan Alignment with Annual Rate Review

Comment: Local governments complete an annual rate review process. The PRO plan should outline a mechanism for wasteshed level assessment of operating and processing costs to be available for inclusion in the annual rate review process, with a deadline of March 1 for the full prior year's data. This data should be searchable by collection company and jurisdiction. Commenter number(s): 22

Response: DEQ has received many requests from local governments for detailed and timely data about payments made from the PRO to recycling processors. DEQ will take this into consideration during the program plan review.

Topic: LG Compensation and Invoicing - Use of Contamination Reduction Funding

Comment: Suggests that DEQ add rule language that limits the use of contamination reduction funding to technology and systems that have the primary purpose of reducing contamination, not other uses – like overcapacity garbage container fees. Commenter number(s): 29

Response: Statute requires DEQ to evaluate contamination-reduction methods and establish an approved list. Local governments are required to implement a program using the approved methods or methods that are at least as effective. Statue states that the costs of implementing those contamination reduction programs required by ORS 459A.929 are eligible costs under ORS 459A.890(4)(a). Statute does not state that the contamination-reduction technology cannot be used for other purposes if it is an effective, approved approach to reducing contamination.

Topic: Local Government Compensation and Invoicing - Advanced Funding

Comment: Commenter suggests that (5) be updated to include language that empowers the PRO(s) to review such requests and grant them if appropriate. Commenter number(s): 30

Response: This rule language is intended to provide certainty for both PROs as well as local governments and their designated service providers to help with budgeting and planning. Giving the PRO discretion to deny advance funding runs contrary to that intent, so DEQ is not making the change requested.

Topic: Local Government Compensation and Invoicing - Contamination Reduction Programming Funding

Comment: To streamline and make a more efficient use of contamination reduction funds, local governments should be able to a) work directly with the PRO to identify appropriate strategies for reducing recycling contamination, b) receive advanced funding annually for achieving results, and c) annual reporting following fund allocation. Commenter number(s): 23

Response: ORS 459A.929 requires DEQ to evaluate cost-effective methods for reducing contamination and establish and maintain a list of approved contamination reduction programming elements that local governments and their designated service providers can use to establish and implement their required contamination reduction program. Both statute and adopted rules affirm local government ability to request advance funding from the PRO to implement their contamination reduction program.

Topic: Local Government Compensation and Invoicing - Funding Process

Comment: Suggests that DEQ explore options that would streamline funding processes on behalf of cities, counties, and PRO. Examples include a statewide contract, agreement or

template that allows cities, counties, or their service providers to simplify, streamline their agreements or reliance on a DEQ-sponsored list. Commenter number(s): 23

Response: DEQ will consider this comment during implementation.

Topic: Local Government Compensation and Invoicing - Funding and Reimbursement

Comment: Commenter suggests that (2) be updated to add a provision that requires 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. Commenter number(s): 30

Response: No changes are needed. ORS 459A.929 already requires DEQ to evaluate the cost-effectiveness of various methods of contamination reduction and establish and maintain a list of approved contamination reduction programming elements. Local governments and their designated service providers are required to establish and implement a contamination reduction program that includes elements from DEQ's approved list.

Topic: Local Government Compensation and Invoicing - Population Level

Comment: Commenter suggests the population level required for up-front cost reimbursement be removed. Commenter number(s): 22

Response: The proposed rule language allows advanced funding to all communities, but specifies clearly that smaller communities may request and receive up to two years of funding in advance to accumulate an amount that allows for more flexibility and effectiveness.

Topic: Local Government Compensation

Comment: The July 1, 2025, implementation date results in an unfunded mandate. Commenter number(s): 22

Response: ORS 459A.929(2) requires local governments to establish and implement a program to reduce recycling contamination. Please note subsection (3), which states that local governments may not be required to provide contamination reduction programming if doing so would require the use of funds other than advance funding or reimbursements available under ORS 459A.890(4). Local governments may request PRO funding to begin establishing and implementing a program beginning July 1, 2025.

Rule 340-090-0820 Processor Commodity Risk Fee

Topic: CRPF Fees - 2027 to 2028 Costs

Comment: Commenter requests additional clarification as to why the commingled recycling processing facility fees (Contamination Management Fee and Processor Commodity Risk Fee) for 2027 are greater than 2028. Commenter number(s): 41

Response: The reason the two fees are greater in 2027 than in 2028 is largely based on anticipated program costs for equipment.

With stricter capture rates under the new CRPF permit program taking effect on Jan. 1, 2028, additional investments in new equipment are expected to be made. DEQ's contractor, Crowe, LLP estimated there will be initial investment $25,332,335 costs for new equipment in 2027. After this initial investment, it is anticipated that equipment-related costs for 2028 will decrease to $12,601,602.

These costs were built into the calculation to determine the statewide average, per-ton operating cost under the Processor Risk Commodity Fee, which is the fee rate under OAR-090-0820(2).

Anticipated program costs for the PCRF can be seen in exhibit 17 (page 27) of the Study Results: Processor Commodity Risk Fee/Contamination Management Fee Report. Anticipated program costs for the CMF can be seen in exhibit 18 on page 28.

Topic: Processor Commodity Risk Fee

Comment: Commenter raised issues regarding how glass may be handled by the PCRF and the fact the material is defined as a contaminant with respect to the PCRF and the Contamination Management Fee. Commenter number(s): 50

Response: DEQ did not update language based on the suggested change. Costs associated with removing and disposing or recycling glass would not be covered by the Processor Commodity Risk Fee but rather by the Contamination Management Fee, and how glass will be invoiced can be found under proposed rule 340-090-0830(4)(c).

Also, though glass is recyclable and desirable by end markets, because glass is not a material eligible for commingled collection on the Uniform Statewide Collection List, it would be considered contamination, per the proposed definition of 'Eligible material' under 340-090-0830(4)(a)(A).

Regarding glass being represented under the weighting factor category "Other Materials (including contamination)," as proposed under 340-090-0820(3)(b)(A)(ix), this is because glass is considered a contaminant due to the reasons previously stated.

Topic: Processor Commodity Risk Fee - Average Commodity Value

Comment: Commenter suggests that DEQ and/or the PRO establish a petition process to address extenuating circumstances that may include formal feedback from material trade groups or other identified experts on the circumstances and their impacts. Extenuating circumstances includes, but may not be limited to, an unexpected plant(s) shutdown that impacts the purchasing of bales or an event that triggers a fast-acting market change, such as a natural disaster. Commenter number(s): 28

Response: DEQ cannot make the change proposed, as fees established in rule cannot be changed (outside of rulemaking) by a process that is subject to administrative discretion. This is why processes that DEQ will be required to undertake, such as determining the average commodity value or updating the weighting factors on a quarterly basis (associated with the ACV), are described in an unambiguous manner.

Topic: Processor Commodity Risk Fee - Scrap Pricing Indices

Comment: Commenter suggests that, 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. Commenter number(s): 51

Response: DEQ did not update language based on the suggest change. The scrap pricing indices proposed in rule were recommended by Crowe, LLP, DEQ's contractor for the CRPF Fees study work. Information about the scrap pricing indices is found on page 44 of the CRPF Fees Report.

Numerous scrap pricing indices that could be used for determining the average commodity value were evaluated. For reasons detailed by Crowe in the report, RecyclingMarkets.net and the Waste Paper Composite Index were the recommended options. Additionally, this recommendation was presented to the DEQ Commingled Recycling Processing Facility Technical Workgroup and the Rulemaking Advisory Committee and received no objections.

Topic: Processor Commodity Risk Fee - Weighting Factors

Comment: Commenter suggests that DEQ has a specific indexed commodity value and dedicated bale specifications for polypropylene, as it would be consistent to have the risk fee for PP based on its commodity value, rather than a mixed plastic value. Commenter number(s): 26

Response: DEQ did not make changes in response to this comment. The weighting factors being proposed for use with the Average Commodity Value determination process were created from compositional data from the Inbound Commingled Recycling study that DEQ undertook throughout 2023. To establish a new PP weighting factor would require DEQ to estimate the magnitude of that category, as it was not included in the study.

Rule 340-090-0830 Contamination Management Fee

Topic: CRPF Fees - 2027 to 2028 Costs

Comment: Commenter requests additional clarification as to why the commingled recycling processing facility fees (Contamination Management Fee and Processor Commodity Risk Fee) for 2027 are greater than 2028. Commenter number(s): 41

Response: The reason the two fees are greater in 2027 than in 2028 is largely based on anticipated program costs for equipment-related costs.

With stricter capture rates under the new CRPF permit program taking effect on Jan. 1, 2028, additional investments in new equipment are expected to be made. DEQ's contractor, Crowe, LLP estimated there will be initial investment $25,332,335 costs for new equipment in 2027. After this initial investment, it is anticipated that equipment-related costs for 2028 will decrease to $12,601,602.

Anticipated program costs for the PCRF can be seen in exhibit 17 (page 27) of the Study Results: Processor Commodity Risk Fee/Contamination Management Fee Report. Anticipated program costs for the CMF is available on page 28 in exhibit 18.

Topic: Contamination Management Fee

Comment: Commenter suggests changes to how the Contamination Management Fee works for commingled recycling processing facilities. Commenter number(s): 19

Response: DEQ did not make changes in response to this comment because the suggested changes provided by the commenter appear to be based on a misunderstanding of how the Contamination Management Fee works.

Covered products are materials that are both recyclable and non-recyclable. Many covered products are not recyclable. For the purposes of the CMF, any covered product that is not on the USCL, or any material that has been improperly prepared for recycling to the point that the material is difficult to handle or market, would be seen as contamination. CRPFs could 1) let all eligible covered product contamination flow into the residual stream and claim CMF funding; or 2) let non-recyclable covered product contamination flow into the residual stream and, process and market to a responsible end market the recyclable covered product contamination that the facility knows it can sell. Option 2 incentives the recycling of materials that can be recycled, even if those materials are not on the USCL.

The commenter also notes that "Materials that are disposed of and sent to a landfill and are not covered materials should be eligible for the Contamination Management Fee." This would be unfair to make the PRO provide per-ton CMF funding for materials that are not covered products such as hoses, bowling balls and diapers. In addition, the commenter's proposal runs contrary to statute, which limits CFM payment to covered products. That said, there is a documented cost to facilities to handle those forms of non-covered product contamination and the costs associated with the removing and disposing of such materials were built into the calculation to determine

the statewide, average per-ton operating cost fee rate associated with the Processor Commodity Risk Fee (see OAR 340-090-0820(2)).

Topic: Contamination Management Fee - Frequency of Fee Review

Comment: Consider updating OAR 340-090-0830(5)(b) to "DEQ shall review the fee at least once every three years, but no more frequently than once per year." Commenter number(s): 46

Response: The proposed rule language is consistent with statute. ORS 459A.920(5) states, "DEQ shall review the contamination management fee at least once every five years. DEQ may not review the contamination management fee more frequently than once per year." This language must remain aligned. Language under both statute and the proposed draft rule already provides DEQ some flexibility as to how often subsequent reviews occur, as long as it does not occur more frequently than once per year. The option of undertaking the review every three years exists within both the statutory and the draft rule language.

Topic: Contamination Management Fee - Handling of Glass

Comment: Commenter suggests that DEQ not consider glass a contaminant. Commenter also questions whether or not the proposed 2025 contamination fee for glass of 75 percent of the fee rate is too high when the CRPF will do not additional work to recycle the material. Commenter number(s): 50

Response: DEQ did not update language based on the suggested change. Though glass is recyclable and desirable by end markets, because glass is not a material eligible for commingled collection on the Uniform Statewide Collection List, it would be considered contamination, per the proposed definition of 'Eligible material' under 340-090-0830(4)(a)(A).

Also, the commenter misunderstood how Contamination Management Fee funding will be provided for glass (i.e., covered product contamination) that's recycled. CRPFs will not get 75% of the fee rate (see 340-090-0830(2) for proposed fee rates) for each eligible ton of glass transported to a responsible end market. Though glass is not an acceptable material in the curbside/on-route commingled stream, it still shows up in the inbound stream and CRPFs do their best to remove as much glass as possible.

According to data from DEQ's 2023 Inbound Commingled Recycling Study, of all the glass that does show up in the commingled stream, 75% of it is covered product. Thus, what the language under (4)(c)(A) is saying is that CRPFs will simply invoice for CMF funding for 75% of the total tons of glass handled and recycled at a responsible end market. This relieves CRPFs of the need to estimate how much of the glass tonnage was covered product vs non-covered product,

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Topic: Contamination Management Fee - Reporting by CRPFs

Comment: Commenter is suggesting (5)(a)(C) be updated to read: "(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." Commenter number(s): 46

Response: DEQ did not update the rule language based on the suggested change. Updating the proposed language with the suggested change could create financial burden on CRPFs, as the cost of assessing outbound residual material by CRPFs, for the purposes of generating and reporting data on certain covered material types, was not evaluated in the CRPF fees report.

The PRO(s) could propose such an effort in its program plan or via a program plan amendment.

Rule 340-090-0840 Covered Products

Topic: Covered Products - General Lack of Support for Exemptions (1)

Comment: The commenters do not support any exemptions for specific types of packaging or products, i.e., they do not support the proposed rules at 340-090-0840(2). They are concerned with the potential for free-ridership and see no logical basis for the proposed exemptions when the RMA does not include a design mandate. Exemptions rather should only be granted when there is a need to create strong financial incentives among producers. Producers that face challenges with changing their packaging due to federal laws could perhaps be exempted from eco-modulated fees to avoid their having to pay unavoidable penalties, but beyond this, they should be required to participate in the program. Commenter number(s): 16

Response: The Recycling Council and the Rulemaking Advisory Committee both advised on the process of reviewing exemption requests and proposing exemptions on their basis. DEQ used a focused, surgical approach for the development of these rules. DEQ also considers it appropriate to exempt when an entire class of products is not imposing system costs on the PRO because it is being diverted away from the commingled system, is covered by another EPR program, or is being diverted and disposed of outside of the state.

Topic: Covered Product Exemptions - General Lack of Support for Exemptions (2)

Comment: Exemptions should be as limited as possible 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. Commenter number(s): 34

Response: DEQ used a surgical process to solicit and consider exemption requests, aiming to limit exemptions to materials that meet specific criteria, chief among them avoidance of the commingled recycling system. Materials that entirely avoid the commingled system, neither as materials accepted for recycling nor as contaminants, do not impose program costs on the PRO and can justly be exempt from the law. However, in Oregon, where there is a single commingled

recycling system that processes both commercial and household waste, it is a relatively narrow set of materials that are segregated from this system.

As for the idea that compliance requirements could be phased-in over time for particular industries facing specific challenges, DEQ has not proposed such rules, as the obligations for producers under the Recycling Modernization Act (1. join a PRO, 2. report data, 3. pay fees) are fairly simple, and all producers should be able to comply from the start date.

Topic: Covered Products - Exemption for Agricultural Chemicals (1)

Comment: Broaden the rule language at 340-090-0840(2)(d) pertaining to exemptions for agricultural chemicals in order to exempt all pesticides, fertilizers, and agricultural amendments as defined in Oregon statute. The commenter cited the following rationales: 1. A broader exemption would be in alignment with and would clarify the existing statutory exemptions for products used on farms and nurseries. 2. A broader exemption would harmonize with other state EPR programs 3. These products are exempt in other states due to health and safety considerations (protection of health and safety of workers at depots and recovery centers, and ensuring that agricultural chemicals and containers that by law require triple rinsing or not recycling do not enter the recycling stream). 4. Through the ACRC and other industry recycling programs, the majority of these products already bypass the commingled system and end up in responsible end markets. 5. The Recycling Council supports the proposed exemption, 6. Consumer/household use products are estimated to be 1% or less of the overall market – as such, limiting the exemption to commercial products will not have a major impact on or gain to the program. 7. The categories of agricultural chemicals currently proposed for exemption at 340-090-0840(2)(d) represent a small proportion of commercially-used containers (less than 1%). Commenter number(s): 10

Response: DEQ did not make changes in response to this comment for the following reasons:

1. "These exemptions would help clarify the existing statutory exemption for products used on farms and nurseries." – The statutory exemptions for items used on or sold at farms, and for items used by commercial nurseries, is clear and contingent upon where the item is used or sold. The proposed broadened scope for 340-090-0840(2)(d) would not clarify the scope of the existing statutory exemption; it would rather broaden what agricultural products would qualify for the exemption to encompass products used by households, which are clearly not part of the statutory exemptions in question.

2. "The broader exemption would provide harmonization with other state programs like Colorado and likely Washington" – DEQ aims to harmonize with other states when statutes are aligned and benefits can be realized (for the environment, for interested parties, etc.), but it does not make sense to harmonize in all cases. Furthermore, in a federalist system like that of the United States, it is not unusual for states to have different requirements; this is commonplace in regulations applying to many different industries.

3. "There are health and safety reasons why other states have exempted these products, including protection of health and safety of workers at depots and recovery centers, and ensuring that

agricultural chemicals and containers that by law require triple rinsing or not recycling do not enter the recycling stream." Exemption of producers from the need to pay fees for these products has no bearing on how the products will be handled by users – they may still enter the commingled stream, where they will be considered contamination under Oregon's definition of "contaminant" and material acceptance list rules (see ORS 459A.863(4)(a) and OAR 340-090-0630(2)(j)), regardless of whether or not they have been triple-rinsed.

4. "Through existing industry recycling programs such as ACRC and others, the majority of these products already bypass the commingled system and end up in responsible end markets." – DEQ has proposed an exemption at proposed rule 340-090-0840(2)(d)(D) specific to commercial-use, rigid HDPE containers produced by ACRC members and eligible for ACRC collection, contingent upon ACRC maintaining a robust collection network and providing evidence of recycling the materials at responsible end markets. This is a more targeted approach than a blanket exemption that would presume, a priori, continued robust ACRC collection, ACRC recycling at responsible end markets, and ACRC capturing the majority of the products (despite representing a subset of producers operating in the sector and focusing exclusively on commercial-use rigid HDPE containers).

5. "The Recycling Council expressed support for the exemption" – While the Recycling Council has a statutory role in advising on exemptions in rule, it is not a decision-making body with respect to rules; that is rather the Environmental Quality Commission. Notwithstanding, the commenter does not accurately reflect the Council's opinion. The Recycling Council voted on a proposal to expand the scope of a proposed exemption limited to restricted-use pesticides sold to commercial applicators to encompass all commercial-use agricultural chemicals (i.e., a smaller scope than that which the commenter is advocating for). The voting result was split and some respondents particularly expressed concerns about the potential for residential-use products to be included in the exemption. The poll results are available here.

6. "Consumer/household use products are estimated to be 1% or less of the overall market" It is DEQ's understanding that 50-60% of products regulated under the Federal Insecticide, Fungicide, and Rodenticide Act are intended for commercial-use and 40-50% are intended for household use.

7. "The current additional categories proposed in the rulemaking for exemption related to these products represent only a small proportion of commercial use products." It is DEQ's understanding that ACRC represents producers that account for approximately 80% of the commercial-use agricultural market, and that 80% of what those producers sell is packaged in rigid HDPE packaging, which ACRC collects. DEQ disagrees with this rationale; the exemption proposed in 340-090-0840(2)(d)(D) potentially comprises a large proportion of commercial-use agricultural products.

Topic: Covered Products - Exemption for Agricultural Chemicals (2)

Comment: Further limit the agricultural exemption to commercial use products only. The agricultural exemption may result in agricultural chemical package producers not paying their

share of system costs for their products that continue to be in the RMA recycling system. Commenter number(s): 29

Response: The concerns of inequity in terms of which producers bear system costs were echoed by the Recycling Council and the Rulemaking Advisory Committee when reviewing exemption requests that informed the proposed exemptions. DEQ endeavored to limit the exemptions to products that meet strict criteria, chief among them products likely to avoid the commingled system (due, for example, to recovery through private recycling arrangements, most commonly used in business settings). DEQ considers that this criterion is upheld fairly well by the carefully-defined four categories of agricultural chemical packaging that are proposed for exemption. Restricted-use pesticides sold to commercial applicators will definitely be used by businesses (e.g. commercial applicators). Returnable or refillable intermediate bulk containers, asset totes, drums, and kegs would, by virtue of the product type, generally only be used in commercial settings. The same goes for the exemption for Ag Container Recycling Council (ACRC) member producers for their commercial-use agricultural chemical packaging - it is limited to containers eligible for collection by ACRC, which is a program applied to commercial packaging only.

Topic: Covered Products - Exemption for Agricultural Chemicals (3)

Comment: Broaden the agricultural chemical packaging exemptions to include all pesticide products subject to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The more-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 will unintentionally penalize companies instead of encouraging the adoption of new, more sustainable innovations for pesticide product packaging. 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. A broader exemption will also recognize that producers face restrictions under FIFRA in terms of ability to change their packaging, and would harmonize Oregon's law with those of California and Colorado. Commenter number(s): 31

Response: DEQ did not make changes in response to this comment, which exhibits a conflation of two separate questions: 1. "is the product a "covered product?" meaning that producers need to pay fees for it, and 2. "is the material accepted for recycling?" Regardless of whether producers pay fees for these products, pursuant to rule 340-090-0630(2)(j), plastic packaging that was used to contain pesticides, herbicides, or other hazardous materials is not on the Uniform Statewide Collection List. As such, these materials are considered a contaminant in Oregon's commingled recycling system. This is the case whether the producers of these products pay fees to a PRO for them. Consequently, consumer and worker confusion about how to dispose of and manage these products is entirely unaffected by how narrow or broad the exemption is for producers.

The commenter cites federal limitations on producer ability to redesign agricultural chemical packaging; Oregon's law includes no redesign mandate, and as such producers may comply

simultaneously with Oregon's law and with FIFRA; there is no contradiction between the two laws.

Finally, with respect to the commenter's call for harmonization among states in terms of whether or not agricultural product packaging is considered covered product, DEQ staff understand that the states with existing packaging EPR laws handle the material variously (e.g. California, Colorado, and Minnesota have statutory exemptions for packaging that contains FIFRA-regulated products, while Maine does not); as such, it is not possible at present to harmonize across all five states. Furthermore, as each of the state laws have different objectives, it may not make sense to pursue harmonization on all fronts.

Topic: Covered Products - Exemption for Agricultural Chemicals Produced by ACRC Members (3)

Comment: Expand the scope of the exemption for ACRC member producers to encompass "other products" produced by ACRC or its member producers. This is one of two options put forth by the commenter to address the fact that adjuvants and surfactants are missing from the draft exemption language at 340-090-0840(2)(d)(D) for rigid HDPE packaging of commercial-use agricultural chemicals produced by members of the Ag Container Recycling Council. The full scope of products collected by ACRC is pesticides, animal health, specialty pest control, micronutrient, biologicals, fertilizer, and adjuvant/surfactant products. All of these items except for adjuvants and surfactants are encompassed in the proposed exemption. These are the products that are mixed with the other listed products (like pesticides) to help the chemicals spread on the leaf of the plant for proper protection or absorption. They are essential to agricultural practices. Wherever these products are sold or used on farms or nurseries, they would also be exempt by way of 459A.863(6)(b)(K and L). However, in other applications like golf courses, forestry, vegetation management, etc., there would still be a gap – they would seem to not be exempt. Commenter number(s): 8, 28, 52, 57

Response: The proposed rules are designed to ensure that this exemption is applied exclusively to products sold in packaging likely to be collected by ACRC – i.e., commercial-use products used in agriculture and agriculture-adjacent sectors. The suggested change to the rule language could broaden the scope to encompass products produced by ACRC member producers but unlikely to be collected in large volumes through ACRC's collection system because they are used in other sectors (for example, products such as disinfectants). DEQ did not change the rule language in response to this suggestion. If the scope of materials collected by ACRC changes in the future, ACRC can request a subsequent rule change

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Topic: Covered Products - Exemption for Durable Packaging for Durable Goods (1)

Comment: Remove the reference to the product lifespan ("three or more years") from the exemption for packaging that is used for long-term storage. The lifespan of a product is immaterial to whether packaging is actually used or usable for storage in the long term. Commenter number(s): 30

Response: DEQ has retained a lifespan requirement for the product contained within the packaging in order to qualify for this exemption, and has not made the change requested by the commenter. Rule language did change in response to another comment, and application of a U.S. Department of Commerce definition of "durable good" is now proposed, but that definition also sets a threshold of a three-or-more-year lifespan. Including a limit for both lifespan of the packaging and the product contained within it is essential for limiting the exemption to true storage items rather than opening the door for producers to potentially make a case for its applicability to packaging of fast-moving consumer goods such as food, for example, the packaging for which can persist without degrading for a very long time.

Topic: Covered Products - Exemption for Durable Packaging for Durable Goods (2)

Comment: Provide examples of "packaging" and "product" referenced in this statement at rule 340-090-0840(2)(a): "packaging that is used for the long-term (five or more years) storage of a product with a lifespan of three or more years." Commenter number(s): 48

Response: A relevant example of packaging that would qualify for this exemption would be an ornament box that contains a Christmas ornament, or a durable plastic storage tote used to contain clothing.

Topic: Covered Products - Exemption for Durable Packaging for Durable Goods (3)

Comment: Clarify whether there are specific metrics that DEQ will look at to assess the lifespan of a product or packaging. Commenter number(s): 48

Response: In response to another comment, DEQ has edited the language of this rule to replace "product with a lifespan of three or more years" with "product that meets the definition of "durable good" as defined by the Bureau of Economic Analysis, United States Department of Commerce, in its online glossary. If the Bureau of Economic Analysis or another federal government body, such as the Environmental Protection Agency, has already classified a good as a "durable" or "nondurable good" according to the glossary definition, the PRO should recognize that classification for the purposes of implementing this exemption. If the federal government has not published an opinion on a particular product, the PRO should endeavor to apply the "durable good" definition consistently with existing classifications for other products. Should any disputes arise between a producer and a PRO as to the application of the "durable good" definition, DEQ could make a determination.

As for assessment of the lifespan of the packaging (i.e., whether or not it is five years or more), in the case of a dispute among a producer and a PRO, relevant evidence and metrics that DEQ could take into account would include results of product fatigue and environmental testing and supply chain data indicating the average number of reuse or refill cycles of a product and the duration of each cycle. The producer could provide such information for DEQ's consideration.

Topic: Covered Products - Exemption for Non-OTR Collection from Residential Generators

Comment: Amend proposed rule 340-090-0840(3)(a)(B) to clarify that collection by a supplemental collection service (which the commenter proposes to define as "a service that collects source separated materials, including covered products, for reuse or recycling, not collected by a collection service franchise holder under ORS 459A.085") is an example of a collection service not provided under the opportunity to recycle. Commenter number(s): 17

Response: Collection from residential generators by a supplemental collection service (as defined by the commenter) is an example of a collection service not provided under the opportunity to recycle. However, no change to proposed rules is necessary, as the existing language in 340-090-0840(3)(a)(B) is adequately broad to encompass supplemental collection service.

Topic: Covered Products - Exemptions for Medical Packaging

Comment: Further limit the exemptions for medical packaging. The proposed medical packaging exemptions may result in medical packaging producers not paying their share of system costs for their products that continue to be in the RMA recycling system. Commenter number(s): 29

Response: Covered product exemptions may result in inequities in terms of who among producers bears system costs. These concerns were echoed by the Recycling Council and the Rulemaking Advisory Committee when reviewing exemption requests that informed the proposed exemptions. DEQ endeavored to limit the exemptions to products that meet strict criteria, chief among them products likely to avoid the commingled system (due, for example, to recovery through private recycling arrangements).

DEQ considers that this criterion is upheld by the proposed exemption for packaging used to manage infectious waste, as infectious waste is managed in a separate waste system in Oregon. With respect to the proposed exemption for medical device packaging, DEQ lacks comprehensive data on the proportion of these products that are primarily used in healthcare facilities with private recycling arrangements vs primarily used by residential consumers. Such information would allow DEQ to better assess whether the proposed exemption language targets materials that are likely to avoid the commingled system.

Topic: Covered Products - Inclusion of Garbage Bags Among Items Used for Storage

Comment: Two commenters recommended removal of "garbage bags" from the list of materials used in storage at rule 340-090-0840(1) because they are not packaging, and one recommended adding single-use garbage bags to the list of exemptions in rule from the definition of "covered product" at 340-090-0840(2). Supporting rationales provided by commenters were as follows: 1. inclusion of garbage bags as packaging is an overly broad interpretation of the statute. 2. While

the other items listed as examples of materials used in storage in 340-090-0840(1) are designed and marketed for use in storage and moving applications, garbage bags are intended for the disposal of waste. 3. The purpose of extended producer responsibility programs is to incentivize circularity of covered items, but it is unlikely that garbage bags can achieve circularity because their intended use is for conveying waste to landfill. 4. EPR is a fee for (recycling) service according to OECD, UN, WWF, and Ellen MacArthur Foundation. Because the service is not applicable for garbage bags, producers of garbage bags should not have to pay for the service. Commenter number(s): 46, 11, 25

Response: DEQ did not revise the rule language in response to this comment for the following reasons:

1. "Inclusion of garbage bags as packaging is an overly broad interpretation of the statute" – Statute clearly includes single-use bags in the definition of packaging at ORS 459A.863(18)(b). Furthermore, bags are broadly used for "containment" purposes, and as such meet the definition of packaging pursuant to ORS 459A.863(18)(a).

2. "While the other items listed as examples of materials used in storage in 340-090-0840(1) are designed and marketed for use in storage and moving applications, garbage bags are intended for the disposal of waste" – Garbage bags are sometimes used for storage; as such, DEQ included them among materials used for storage so as to apply the three-tiered producer definition for storage items from proposed rule 340-090-0860(2) to them (because the three-tiered producer definition for items sold at physical retail at ORS 459A.866(1)(a) focuses on the manufacturer of the item contained in packaging, it cannot be applied to packaging that reaches the consumer empty, which requires an adapted version of the three-tiered producer definition in rule). DEQ could rather have broken out garbage bags as a separate subcategory of packaging with a separate three-tiered definition (to reflect that they are sometimes but not always used for storage), but the result would be the same – they are a covered product per ORS 459A.863(18)(b) and as such producers need to pay fees for them.

3. "The purpose of EPR programs is to incentivize circularity of covered items, but it is unlikely that garbage bags can achieve circularity because their intended use is for conveying waste to landfill. While the law does include an incentive for producers to produce recyclable products (ORS 459A.884(3)(a) – the PRO must charge higher fees for recyclables vs. non-recyclables on a ton-weighted average basis), non-recyclable packaging, food serviceware and paper are covered products alongside recyclable items. One reason for this is that non-recyclables appear in the commingled system as contamination, and as such producers of these materials should pay for improvement of the system. This applies to garbage bags just like other non-recyclables.

4. "EPR is a fee for recycling services that are not applicable to garbage bags (as a nonrecyclable product)" – This opinion does not conform with statute; producer fees are to be used primarily for improvement of the state's recycling system, but a product's status as a "covered product" (for which a producer must pay fees) is not tied to whether or not the material is accepted for recycling.

5. Garbage bags are observed as a common contaminant at Oregon commingled recycling processing facilities; some waste generators mistakenly use garbage bags to contain recyclable

materials prior to placing them in the recycling cart. This creates significant challenges for CRPFs and may cause significant volumes of recyclables to be lost - producers of garbage bags arguably share in some responsibility for the generator-facing contamination reduction programming that the PRO will fund in order to reduce this behavior, and the subsidies which the PROs will pay to CRPFs to compensate them for their costs including their costs associated with garbage bags.

Topic: Covered Products - Producer Inability to Know How Products are Used

Comment: Establish a reporting requirement for users of food serviceware to the obligated producer (the entity that sells the food serviceware to them as in the definition above). Without such a requirement obligated parties will lack the information needed for compliance and accurate reporting. Commenter number(s): 26

Response: DEQ did not make changes in response to this comment. Ultimately the obligation to join a PRO, report data on product volumes, and pay commensurate fees lies on the obligated producer as defined at ORS 459A.866 and clarifying rules at 340-090-0860. Producers can write into contracts with downstream supply chain entities the need to report back data needed for compliance, and can otherwise work with supply chain partners to set up systems to generate these data. Pursuant to ORS 459A.869(3), if it is more convenient for a downstream partner to report the data and pay fees for a product, a producer may make arrangements to have the partner business bear the obligation (if the arrangement is mutually agreed upon). In cases where the obligated producer is separated from the use of the product by one or more intermediary nodes in the supply chain, producers may also pro-rate their national sales for Oregon's population pursuant to OAR 340-090-0700(1)(d).

Topic: Covered Products - Definition of Packaging

Comment: Clarify in rule that communications papers (envelopes, file folders) are printing paper rather than packaging. In a July 16 webinar, DEQ represented that some communications papers are packaging, not paper. – It makes no sense to categorize material that flows the same way through a material recovery facility and ends up in the same commodity bale into different categories. Commenter number(s): 51

Response: Statute clearly defines file folders as packaging pursuant to ORS 459A.863(18)(a)(C), and DEQ interprets envelopes used in shipping also to fall under the "packaging" definition pursuant to the same sub-paragraph. This interpretation is reinforced by ORS 459A.866(1)(b), which describes obligation for packaging used to ship products to consumers by remote distribution – envelopes are used for this purpose, and therefore some envelopes are packaging.

Generally, the three broad categories of products covered under the Act – packaging, printing and writing paper – are important solely for the assignment of producer obligations. Each of these three categories of products have their own producer definitions at ORS 459A.866. Whether or not materials from two or more of these categories end up in the same bale during

end-of-life management is inconsequential; the obligated producer definitions are a function of how these materials are produced and distributed. A different set of material categories is used to set producer fees, and this categorization does take into account the end-of-life management of the materials, in order to ensure that the fees paid by producers of one material do not cross-subsidize the fees paid by producers of another material.

Topic: Covered Products - Exemption for Architectural Paint

Comment: DEQ should 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. Commenter number(s): 38

Response: The exemptions proposed at rule 340-090-0840(2) are additive upon rather than replacing those written into statute at ORS 459A.863(6)(b)(A)-(Q), including the exemption at paragraph (I) for architectural paints collected by the Paint Care program; effectively, in proposing additional exemptions in rule DEQ is implementing paragraph (R) – "Any other material, as determined by the commission by rule, after consultation with the Oregon Recycling System Advisory Council."

DEQ did not make changes in response to this comment because there is no need to clarify in rule that the statutory exemptions still apply.

Topic: Covered Products - Exemption for Business-to-Business Packaging

Comment: Exempt packaging material intended solely for use in business-to-business transactions. Colorado provides an exemption for this category of packaging because businesses are not consumers. This exemption would promote and streamline compliance requirements while encouraging commerce and the transport of goods. Commenter number(s): 38

Response: Oregon's statute is different from Colorado's, and commercial waste, if not subject to a product-specific exemption, is in scope of the Recycling Modernization Act, because the state's comprehensive commingled recycling system collects and processes both residential and commercial recyclables. Product-specific exemptions that exempt some commercial waste from the Act include exemptions for rigid pallets, some specialty packaging used exclusively in manufacturing or industrial processes, and materials collected and recycled outside of Opportunity to Recycle,

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Topic: Covered Products - Exemption for Dietary Supplements

Comment: Expand the statutory exemption for dietary supplements in rule. The statutory exemption 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. Commenter number(s): 42

Response: When it formulated the language to ORS 459A.863(6)(b)(O), the legislature determined the extent to which dietary supplement producers should be exempt from the law.

DEQ also did not receive a request to extend this exemption during the rulemaking.

Topic: Covered Products - Exemption for Hazardous or Flammable Product Packaging

Comment: 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. This exemption would promote and streamline compliance requirements while encouraging commerce and the transport of goods. California and Minnesota both provide an exemption for packaging of products regulated by OSHA under 29 CFR. Commenter number(s): 38

Response: Harmonization with other states EPR programs was not one of the criteria for consideration of exemption requests from producers as a part of this rulemaking process. It is not unusual for states to have different requirements; this is commonplace in regulations applying to many different industries. Furthermore, with particular respect to products regulated under Title 29, Maine and Colorado have taken a different approach from California and Minnesota.

Packaging of hazardous and flammable items, even if not included in acceptance lists, may still show up in the system as contamination, creating financial burdens to the system that should be borne by the producers of the products.

Topic: Covered Products - Exemption for Medical Devices (1)

Comment: Do not exempt Class II medical devices that are labeled as sterile and have a 510(k) premarket notification on file with the federal Food and Drug Administration. This subset of devices includes common consumer goods such as contact lens solution and blood lancets (photos were provided in Appendix) that can easily be innovated to maximize their sustainability. Packaging from these everyday household staples will end up in Oregon's recycling system regardless of its exemption status, and will therefore represent common free rider contamination in the system. DEQ should require medical packaging producers to pay their fair share of system costs. Commenter number(s): 16

Response: It was DEQ's intent to target the exemptions for medical devices predominantly toward devices that are used in medical settings, where packaging may be recovered through private recycling arrangements and thus may be recycled outside of the commingled system.

Topic: Covered Products - Exemption for Medical Devices (2)

Comment: Expand the proposed exemptions for medical device packaging to encompass packaging of all Class II medical devices and all Class I medical devices that are predominantly used in a healthcare setting or prescribed by a healthcare provider. The partial exemptions as proposed fail to exempt thousands of lifesaving medical devices critical to patient care. The rules

also fail 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. With specific respect to the partial proposed exemption for class II devices, it 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 if the exemption goes forward as is. These products include important aspects like tubing, and adaptors, as well as pumps and stents. Also, limiting the Class II exemption to those labeled sterile is arbitrary, as there are many other device characteristics that must be considered when designing packaging. Furthermore, many devices must be sterilized on site before procedures, and such devices will not be captured in this exemption.

As for Class I device packaging, it is not proposed for exemption at all, despite the legislature directing the Environmental Quality Commission to implement such an exemption in rule. Several Class I devices are routinely used in a healthcare setting and are essential to the healthcare system. Exempting packaging Class I devices that are predominantly used in a healthcare setting or prescribed by a healthcare provider would align with the approach used in California in the Responsible Battery Recycling Act, and broader exemptions for medical device packaging would align with California's and Colorado's packaging EPR statutes. Commenter number(s): 36

Response: DEQ took a surgical and criteria-based approach to the process of granting additional exemptions for products in rulemaking, which the agency considered generally an approach befitting of rulemaking and, with specific respect to an exemption for medical device packaging, in alignment with the legislature's recommendation to pursue an exemption but target it toward devices that are not commonly sold over the counter.

As part of the exemptions rulemaking process, specific criteria were issued by which exemption requests from producers and other parties were to be assessed, and those criteria and DEQ's assessments of requests received were consulted upon with both the Oregon Recycling System Advisory Council (as review of exemptions in rule is a statutory role of the Council) and the Rulemaking Advisory Committee. Chief among criteria for exemption is whether or not a material is likely to avoid the commingled recycling system, landing there neither as a material accepted for recycling nor as a contaminant. With respect to medical devices, this would likely apply to only a small subgrouping of packaging of those medical devices that are sold to hospitals in Oregon that have private recycling arrangements. DEQ initially proposed an exemption narrowly targeted toward the packaging of these devices, but feasibility of implementation was cited as a concern (it would be difficult for producers to keep track of the quantity of their devices that were used in those hospitals, as well as to keep track of the status of the recycling programs at the hospitals).

Ultimately, DEQ proposed to use medical device classes (Food and Drug Administration classes that represent the degree of risk that a device poses to a user), presence/absence of FDA clearance of a 510k premarket notification for a device, and whether or not a device is sold labelled sterile as the characteristics by which the exemption is to be granted for the packaging of a subset of medical devices. These limiting characteristics are intended to narrow the exemption to packaging of those devices most likely to be used in healthcare settings (some of which have private recycling arrangements). These are all device characteristics that are logged on FDA

databases, and producers should be readily able to sort their supply data to parse out the subset of devices that qualify.

For Class III devices, which pose the most risk to a patient, DEQ agreed with exempting the entire class under the presumption that very few of these products are used outside of healthcare settings. Meanwhile, class II devices, which pose moderate risk to patients, are a mixed set, with some of these devices used predominantly in healthcare settings and some, like contact lens solution, predominantly used in residential settings (with the packaging likely to end up in the commingled recycling system). As such, DEQ proposed to narrow the exemption for class II devices to those that are labeled sterile and for which the FDA has cleared a 510k premarket notification. DEQ did not propose the packaging of any class I devices for exemption because many of these devices are used predominantly in residential settings due to the class I (lowest risk) designation, which DEQ presumes to correlate with ability to sell the products over the counter.

DEQ also considered limiting the exemption to packaging of "those devices that are predominantly used in healthcare settings," but feasibility for producers to make these distinctions and for enforcement against misreporting is questionable.

Topic: Covered Products - Exemption for Medical Devices (3)

Comment: Exempt packaging of all medical devices (Classes I, II, and III). Class I medical devices were overlooked in the proposed rule language. All Class I medical devices, including those commonly used by consumers like floss and bandages, are subject to rigorous federal packaging regulations just like Class II and III devices. Many Class I devices are also 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. Commenter number(s): 42

Response: See DEQ's response to a closely-related comment which sought exemption for packaging of all Class II devices and Class I devices predominantly used in healthcare settings or prescribed, which contains content relevant to this comment.

The fact that device packaging is regulated by the FDA does not interfere with a producer's ability to comply with Oregon's law, which contains no redesign mandates. As for the vital nature of these devices for public health and the growing importance of home health in the healthcare industry, these characteristics do not comport with the criteria by which DEQ considered exemption requests as part of the rulemaking process, with the chief criterion for exemption whether or not a product was likely to avoid the commingled recycling system and therefore not pose costs to the PRO. Products that are used by consumers in their homes are much more likely to enter the commingled system, either as items accepted for recycling or as contaminants, and it is fair that producers pay a share of the system improvements needed to better manage the material.

Topic: Covered Products - Exemption for Non-OTR Collected Materials (1)

Comment: Clarify that producers of materials collected outside of the Opportunity to Recycle, who are in good standing, will not be impacted by the noncompliance of others – e.g. the markets that recycle the material. It is understandable that producers will need to pay a reasonable fee to the PRO to verify the markets where the materials are recycled. However, producers who pay the 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. Commenter number(s): 39

Response: The proposed rule at 340-090-0840(3)(c) clarifies that a PRO verification or third-party certification by an EQC-approved standard is required in order for a producer to demonstrate that its covered products are eligible for the exemption for materials collected outside of Opportunity to Recycle (e.g. the exemption ORS 459A.869(13)). With no third-party standard currently approved by EQC, materials will need to go to PRO-verified markets in order to be eligible for the exemption. If in the verification process it is found that materials are not going to a responsible market, the producer will be materially impacted because the producer will no longer be able to claim the exemption for the material. Statute states that that a producer's material must meet all three qualifying criteria (collection outside OTR, no separation at a processor, and recycled at a responsible end market) in order for the material to be exempt.

The commenter considers that the producer should not be materially impacted by the outcome of market verification because the collection and management of the materials is the responsibility of the PRO, not the producer. This exemption is for materials that are collected and managed outside of both the commingled recycling system and the PRO collection point system. This exemption exists because these materials are not imposing system costs on the PRO, and as such producers need not contribute to system costs for them.

Topic: Covered Products - Exemption for Non-OTR Collected Materials (2)

Comment: The commenter expressed appreciation for the exemption for materials collected outside of Opportunity to Recycle placing limits on the amount of durable goods and appliance packaging that are subject to fees. The commenter cited this example as "one of the few, if only, examples of cost containment for producers of non-consumable goods or durable goods." To support their point, the commenter outlined some of the limiting factors for selecting the right packaging in the appliance industry – e.g. packaging must withstand wide swings in temperature and humidity and protect delicate finishes, and transportation must be efficient. In light of these factors, the commenter considers EPS and PE film packaging to be the right choices as packaging materials for this industry. Commenter number(s): 39

Response: DEQ encourages producers to, in advance of the program start, explore the question of whether their materials are likely to meet the three qualifying criteria for this exemption at

ORS 459A.869(13)(a)(A)-(C), with particular focus on the responsible end market criterion. When considering the listing of expanded polystyrene and polyethylene film on the PRO Recycling Acceptance list during the first RMA rulemaking, DEQ noted that there are market limitations for expanded polystyrene with respect to market accessibility, stability, maturity and viability. See this link for qualitative assessment results for EPS and PE film associated with the listing of these materials on the PRO Recycling Acceptance List.

Topic: Covered Products - Exemption for Non-OTR Collected Materials (3)

Comment: If certain types of packaging (one commenter cited tertiary packaging, another lubricant packaging) are already being managed through existing recycling streams, these systems should remain intact, and these materials should be exempt. Commenter number(s): 41, 43

Response: The commenters' suggestion is addressed by statutory exemption ORS 459A.869(13) for material collected outside of Opportunity to Recycle and further clarified at proposed rule 340-090-0840(3). Note that materials must meet three conditions (ORS 459A.869(13)(a)(A)-(C)) to qualify for this exemption and a producer must demonstrate that these conditions are met. Reporting guidance for producers is expected to be issued later this year to clarify how this demonstration is to be formalized.

Topic: Covered Products - Exemption for Non-OTR Collected Materials (4)

Comment: Develop a clear process for implementation of the exemption for materials collected outside of Opportunity to Recycle, 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. The objective of this process would be to provide producers with compliance assurance and provide prospective PRO Circular Action Alliance with program scope clarity. Commenter number(s): 43

Response: This comment will be considered in the guidance to be issued by the prospective PRO later this year that may address the commenter's concerns.

Topic: Covered Products - Exemption for Non-OTR Collected Materials (5)

Comment: Remove the responsible end market verification requirement at rule 340-090-0840(3)(c) that effectively subjects material exempted under this section to all reporting and auditing requirements that covered products are held to. This does not align with the legislative intent of the exemption to recognize that the majority of paper and paper-based packaging is recycled through efficient source-separated collection programs at industrial, commercial, and institutional generators, arrangements that are functioning well and do not require further bureaucratic oversight. Commenter number(s): 51

Response: The statutory language at ORS 459A.869(13) indicates that producers must demonstrate that their material qualifies for the exemption, and that one of the criteria for the exemption is that materials are recycled at responsible end markets. As such, DEQ interpreted statute to suggest that these markets must be verified or certified "responsible" and proposed as such in rule 340-090-0840(3)(c).

Many of the pulp mills that receive material collected outside of Opportunity to Recycle also receive material recycled through the commingled system; as such, they will be verified by the PRO regardless of producers seeking to claim exemptions for product that go to these mills.

DEQ and CAA are developing a reporting protocol to be associated with claiming this exemption.

Topic: Covered Products - Exemption for Original Automotive Equipment Packaging

Comment: Exempt in rule or phase in compliance requirements over time for packaging of automotive original equipment manufacturers (OEMs), including packaging used 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. Automotive original equipment manufacturers already design their packaging materials responsibly and with the goal of optimizing recyclability. The rules amount to an expansion of the Act's scope and would require significant changes to data collection procedures at dealership and distribution facilities, as well as expansion of 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. The proposed rules furthermore do not provide for a transition period to allow time for modifications to existing and acquisition of new contracts. Commenter number(s): 49

Response: The exemptions proposed at rule 340-090-0840(2) are the result of a process that involved development of criteria by which exemption requests from industry would be considered, solicitation and reception of exemption requests, and conferral with the Oregon Recycling System Advisory Council and the Rulemaking Advisory Committee with respect to how well the requests perform against the criteria. The automotive industry did not request an exemption through this process and as such no exemption for this industry's products is proposed. The absence of a proposed exemption for this industry does not amount to a scope expansion; it is rather maintenance of existing scope. Responsible practices of OEM manufacturers with respect to packaging design and choice have no bearing on the obligation to contribute financially to the modernization of the state's recycling system; the choice of recyclable materials will not lead to actual recycling if there is not a sufficient system in place for the collection, sorting and processing of materials.

While compliance with the Act will likely involve changes to producers' data collection practices so that they can report accurate information to the PRO about the covered products that they are selling or distributing into Oregon, producers are allowed to pro-rate national data for Oregon's population and use other approximations as long as they conform with best available estimation methodologies (i.e., producers will be able to comply with the law from the start date even if they do not yet have updated data collection practices in place). Neither the rules in the

current rulemaking, nor the Act in general, require auto dealerships, distribution facilities, and/or OEMs to significantly change their practices with respect to contracting and material choice. Producer obligations under the Act are simple – 1. join a PRO, 2. report data on product sold, and 3. pay fees.

Topic: Covered Products - Exemption for Packaging of Dangerous and Hazardous Goods

Comment: 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. 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.

This exemption would promote and streamline compliance requirements while encouraging commerce and the transport of goods. Commenter number(s): 38

Response: DEQ did not make changes in response to the comment that an exemption in Oregon Administrative Rule should align with the statute governing California's packaging EPR program. It is not unusual for states to have different requirements; this is commonplace in regulations applying to many different industries.

With respect to the Title 49 preemption clause, the basic requirements on producers through Oregon's statute (1. join a PRO, 2. report data, 3. pay fees) are not in conflict with Title 49. As such, the Title 49 preemption does not come into effect because it is possible to comply with both the federal and the state law in question.

Topic: Covered Products - Exemption for Packaging Used for Manufacturing or Industrial Processes

Comment: DEQ should exempt packaging material that is exclusive to manufacturing or industrial processes. This exemption appears in statute but not in rules. Commenter number(s): 38

Response: The exemptions proposed at rule 340-090-0840(2) are additive upon rather than replacing those written into statute at ORS 459A.863(6)(b)(A)-(Q), including the exemption at paragraph (E) for Specialty packaging items that are used exclusively in industrial or manufacturing processes; effectively, in proposing additional exemptions in rule DEQ is implementing paragraph (R) – "Any other material, as determined by the commission by rule, after consultation with the Oregon Recycling System Advisory Council."

DEQ did not make changes in response to this comment because there is no need to clarify in rule that the statutory exemptions still apply.

Topic: Covered Products - Exemption for Tobacco Product Packaging

Comment: Exempt tobacco product packaging from the Recycling Modernization Act, or otherwise account for the unfairness resulting from cigarette producers' inability to quickly adapt their packaging in order to claim ecomodulation bonuses. Producers are constrained due to FDA regulations and the need for premarket notification from the FDA in order to implement any change to the container closure system for tobacco products. Such an exemption would be aligned with the proposed exemption for medical devices, which are presumably proposed for exemption due to the similar requirements with respect to premarket notification and packaging redesign. Commenter number(s): 47

Response: DEQ did not make any changes in response to this comment, as it is premised on a mistaken presumption that exemptions for packaging of certain medical devices are being proposed due to producers of those products being subject to FDA regulations. Proposals for exempting additional products from the definition of "covered product" in rule were generated through the application of a set of fixed criteria to exemption requests received from producers. A chief criterion for consideration of whether a product should be exempt in rule was whether or not the product is likely to evade the commingled recycling system, landing there neither as a recyclable nor as a contaminant.

Tobacco product use occurs predominantly in residential settings, where packaging is more likely to enter the commingled recycling system. Producers of these products should pay their share of improving the system.

As for concerns about unfairness with respect to the ability to pursue ecomodulated fees, DEQ has proposed rules in this rulemaking that would require the PRO to make a bonus available to member producers for evaluation and disclosure of life cycle impacts of their products. A tobacco company could pursue this bonus without implementing a change to their packaging.

Topic: Covered Products - Exemptions for Materials Collected Outside of Opportunity to Recycle and Disposed Outside of the State

Comment: 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. Commenter number(s): 49

Response: The exemptions proposed in rule at rule 340-090-0840(2) are additive upon those in statute at ORS 459A.863(6)(b)(A)-(Q), including the exemption for materials collected and recycling outside of Opportunity to Recycle and the exemption for materials disposed of outside of the state. These products are exempt provided that the producer can adequately demonstrate that the materials are in fact either collected for recycling outside of Opportunity to Recycle (and meet other criteria in ORS 459A.869(13)) or are disposed of outside of the state.

Topic: Covered Products - Exemptions Process

Comment: Clarify the procedure on how producers obtain an exemption – for example, the exemption for products collected and recycled outside of the Opportunity to Recycle, for which clarifying rules appear at 340-090-0840(3). it is unclear what producers would need to provide to ensure their products are categorized correctly under this law. Commenter number(s): 38

Response: Producer reporting with respect to exemptions will be addressed during implementation and is not subject to rulemaking.

The prospective PRO (CAA) is currently developing, in coordination with DEQ, reporting guidance for producers that will include guidance regarding exemptions. The commenter should expect clarity in guidance to be published on this question by the end of 2024.

Topic: Covered Products - Statutory Exemption for Specialty Packaging used in Industrial or Manufacturing Processes

Comment: DEQ should revise the proposed rules to clarify that the exemption for specialty packaging items that are used exclusively in industrial or manufacturing processes at ORS 459A.863(6)(b)(E) encompasses packaging for items shipped for the purpose of repairing products. As these 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. Commenter number(s): 44

Response: Oregon has a single commingled recycling system that processes both household and commercial recyclables. Because of this, commercial packaging including tertiary transport packaging sent from business to business is within the scope of the Recycling Modernization Act, with the exception of products that qualify for specific exemptions listed at ORS 459A.863(6)(b), including the exemption raised by the commenter in this comment. This particular exemption is for *specialty* packaging that is *used in industrial and manufacturing processes,* with the asterisks marking key verbiage with respect to consideration of what types of packaging could fall into this category. Two examples that qualify for this exemption are included in the statute at ORS 459A.863(6)(b)(E)(i)-(ii) – trays that carry component parts that are used to assemble a product, and cores and wraps for packaging sold to a plastic converter or food and beverage manufacturer. As this two-item list in statute is non-exclusive, other types of packaging may also qualify for the exemption, and the commenter opines that packaging associated with items shipped to a manufacturer for the purpose of enabling manufacturer repairs to products should be additionally identified in rule as an example of packaging that qualifies for this exemption.

The commenter appears to suggest that the tertiary transport packaging associated with products to be used in repair should be exempt. Tertiary transport packaging is not "specialty packaging;" it is quite ubiquitous. This packaging is also likely not "used in industrial and manufacturing processes" – the product transported in the packaging is presumably used in the repair process, but some or all of the packaging that contained it is immediately discarded upon the manufacturer receiving the shipment, in contrast to the trays of component parts that workers

actually pull parts from when assembling a product in an assembly line, or the cores of packaging that physically turn in order to apply packaging to a product.

Similar clarifications with respect to other types of packaging that are truly of a specialty nature and exclusively used in industrial or manufacturing processes furthermore are unnecessary because such packaging is already exempt per statute and as such no additional clarification in rule would be necessary (the exemption rules are additive upon exemptions in statute).

Topic: Covered Products - Storage Items

Comment: Remove "plastic storage containers for durable items with and without lids" from the list of example storage items at OAR 340-090-0840(1)(a), as these have been proposed for exemption at rule 340-090-0840(2)(a). Commenter number(s): 46

Response: Durable packaging for durable goods is proposed for exemption from "covered product," but DEQ wished to clarify that durable plastic storage containers for durable items are still considered packaging despite not being considered a covered product. This means that the recycling of these items can be counted toward the statewide plastics recycling goal.

Rule 340-090-0850 2024 Producer Responsibility Organization Annual Reporting

Topic: 2024 PRO Annual Reporting

Comment: With respect to the PRO's annual report requirement and the ability of DEQ to require additional information in annual reporting, pursuant to ORS 459A.887(2)(y), DEQ should require the following additional reporting with respect to the requirement that the PRO funding strategy protect ratepayers from increased costs: 1) require that CAA provide ratepayer protection information to DEQ in a form and manner sufficient to support DEQ's ongoing assessment of PRO or CRPF compliance with ORS 459A.923 (for example, monthly transactional data illustrating tipping fees remaining at $0 and including assessment of any deviations), and 2) in case of a noncompliance with ORS 459A.923, DEQ may request that a ratepayer protection study be included in the annual report. It would need to be conducted in a form, manner and timeline approved by DEQ and that may be shared with impacted local governments. Commenter number(s): 29

Response: DEQ is proposing to add more details to OAR 340-090-0820 regarding requesting transactional data from recycling processors and, to the extent allowed by the law, sharing it with local governments. The PRO does not have an obligation to conduct an evaluation of the impact of its payments to CRPFs. And given that local governments need information on a more than annual basis to inform their ongoing oversight of the recycling collection system, including decision-making about which processing facilities should receive their materials, the annual report is not necessarily the best place for the PRO to report monthly transactional data.

Rule 340-090-0860 Producer Definitions

Topic: Producer Definitions - Producers of Component Parts

Comment: Specify that manufacturers of component parts are not considered producers, because this would further place obligation on the producers that are directing the production, marketing, and sale of the products the RMA is meant to regulate. The commenter proposes to define "component" as "a piece or subpart of covered material that is readily distinguishable from other pieces or subparts with respect to its composition or function." Commenter number(s): 19

Response: The proposed rule language at ORS 459A.866(1)(a) clarifies that the first tier of the three-tiered producer definition for items sold in packaging at physical retail at ORS 459A.866(1)(a), which places the obligation to join and pay fees to a PRO with brand owner-manufacturers, also encompasses brand owners that direct the manufacturing of the packaged items through contract with a manufacturer. The proposed rule language further clarifies that if the brand owner sets specifications for the packaging, that would be considered directing manufacturing. Meanwhile, if the brand owner purchases or orders the item from the manufacturer in the normal course of business, that would not be considered to be directing manufacturing. By characterizing directing manufacturing as such, the proposed rules would place obligation on the party that has control over the packaging by placing responsibility on those with decision-making authority over the covered product. DEQ did not make changes to address the comment.

Topic: Producer Definitions - Service Packaging Producer Definition

Comment: Clarify why an entirely different approach for identifying the producer would be used for service packaging compared to other products. Commenter number(s): 30

Response: Service packaging is generally provided to consumers free of charge at retail establishments rather than sold; as such, the three-tiered producer definition at ORS 459A.866(1)(a) does not fit (it applies to items *sold* at physical retail). For items that are neither sold at physical retail nor remotely distributed, there is a backstop in statute at ORS 459A.866(1)(c) which declares the obligated producer for all other packaging to be the distributor. DEQ's proposal to designate the distributor as the obligated producer for service packaging was intended to align with this piece of statute.

However, there is another category of covered product provided to consumers free of charge at retail establishments (as well as restaurants), and that is food serviceware. In response to other comments, DEQ edited the service packaging obligated producer definition to align with that of food serviceware ("first seller in or into the state"). This will mean that any overlap between the two categories of products will not have meaningful outcomes, as the same producer will be obligated either way. The first seller in or into the state is also often a distributor; as such, the edited definition remains aligned with the statutory backstop.

Topic: Producer Definitions - Tiered Producer Definition for Packaging

Comment: Clarify if the statutory language devoted to identification of the obligated producer at ORS 459A.866 explains how obligation is to be assigned with respect to 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 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? Commenter number(s): 48

Response: Clarifying rule language at 340-090-0860(1) is intended to address the scenario that the commenter describes. This language clarifies that the first tier of the three-tiered producer definition at ORS 459A.866(1)(a), brand holder-manufacturers, includes companies that direct manufacturing and any brands wholly or co-owned by a manufacturer (or a director of manufacturing) according to the United States Patent and Trademark Office. As such, if Company B is directing Company A's manufacturing of the product rather than merely placing an order with Company A for the item in the normal course of business, then Company B is the obligated producer.

Topic: Producer Definitions - Alignment with Statute

Comment: Eliminate section 340-090-0860 entirely. The changes to the producer definition proposed in this section are inconsistent with the statutory language (codified in ORS 459A.863). 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. Commenter number(s): 51

Response: The statutory definition of "producer" at ORS 459A.863(22) cross-references section ORS 459A.866, which most of the producer definition rules clarify. The proposed rules at 340-090-0860(1)(a) clarify that contract manufacturing scenarios that do not involve a licensing agreement belong with tier one of the three-tiered definition for products sold at physical retail. And the producer definitions provided in rule for storage items and service packaging resolve a contradiction in the statute–products that belong to these classes are explicitly called out in statute as within the scope of the law, but they reach the consumer empty and the producer definitions at ORS 459A.866 focus in part on the manufacturer of the product in the packaging. Consequently, clarification in rule was necessary.

Topic: Producer Definitions - Definition of Obligated Producer for Food Serviceware (1)

Comment: Clarify the following scenario: 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? Commenter number(s): 48

Response: The statutory definition of obligated producer for food serviceware at ORS 459A.866(3) places the obligation to join a PRO and pay fees on the person that first sells the food serviceware in or into the state, effectively pushing the obligation upstream in supply chains (i.e., it will often lie with manufacturers and distributors, depending on the scenario in question) rather than downstream (i.e., with restaurants, which are exempt as small producers).

In the particular scenario for which the commenter seeks clarity, the sale from the manufacturer to the Oregon-based grocery store is the first sale in or into the state. As such, the manufacturer is the obligated producer.

Topic: Producer Definitions - Definition of Obligated Producer for Food Serviceware (2)

Comment: Clarify the following scenario: 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 582? Commenter number(s): 48

Response: DEQ cannot provide clarity with respect to the scenario in question, as the commenter does not describe the full supply chain – i.e., what happens to the product after the distributor brings it into the state is left out of the scenario. DEQ recommends that the commenter reach out to Product Stewardship Institute to request the recording of the June 11, 2024, webinar during which DEQ presented multiple scenarios for identifying the obligated producer for food serviceware.

Topic: Producer Definitions - Identification of Obligated Producers

Comment: Delay the requirement on producers to pay fees to a PRO; require only registration on July 1, 2025. The producer identification rules do not adequately address how the PRO or DEQ will identify producers with more than $5 million in global sales. Without this information, the system is being built without knowledge of the cost impact on producers subject to joining the PRO, and costs are likely to aggregate to those producers that do self-identify as obligated, especially because DEQ has no authority to request information from producers who claim to be small producers. This information must first be gathered, and then the program can start in earnest. Commenter number(s): 35

Response: The July 1, 2025, start date of the Act is statutory and out of the scope of this rulemaking. The producer definition rules furthermore do not pertain to enforcement or producer recruitment and as such, these comments are also out of scope of this rulemaking. Producer members are the lifeblood of a PRO; this is a basic premise of extended producer responsibility. The PRO has a direct and clear interest in diversifying its portfolio of members and distributing costs as broadly as possible; as such, it will recruit member producers quite actively, using a

variety of tools to identify possible free riders, such as state business registration records. Commenters may contact the PRO to learn more about its producer registration efforts, which have already made considerable progress.

Topic: Producer Definitions - Producers of Printing and Writing Paper

Comment: Clarify in regulation that fees should be assessed on finished paper products only and not on unprinted paper, which is an intermediate product that would rarely end up in a recycle bin. Commenter number(s): 51

Response: The statutory definition of "printing and writing paper" at ORS 459A.863(20), which comprises a list of printing and writing paper products that includes "paper used for copying, writing, and other general use."

Topic: Producer Definitions - Tertiary Packaging

Comment: Clarify who the obligated producer is for tertiary packaging, including unbranded shipping boxes. The consumer electronics industry has a complex supply chain and tertiary packaging may change multiple times before reaching the end consumer. Commenter number(s): 41

Response: If the product being transported is being sold at physical retail, the three-tiered definition at ORS 459A.866(1)(a) applies to the tertiary packaging, as it does to the secondary and primary packaging – it is generally the obligation of the brand owner-manufacturer of the product (tier one). If the product rather reaches the customer by remote distribution, ORS 459A.866(1)(b) applies to assignment of obligation. The inner packaging containing the product is assigned according to the same three-tiered definition at ORS 459A.866(1)(a), while the tertiary transport packaging is the obligation of whoever applied the packaging.

With respect to tertiary packaging, note that statute exempts reusable pallets and pallet wrap that is applied by someone other than the producer of the palletized products.

Rule 340-090-0870 Producer Pre-Registration

Topic: Pre-Registration - Deadlines

Comment: Eliminate the pre-registration deadline, which is unrealistic and premature. Producers cannot both collect and report data from calendar year 2024, which is already more than half over, while simultaneously participating in the response to comment. Commenter number(s): 51, 60, 55

Response: DEQ does not consider it unrealistic that obligated producers would be ready to report their data on product sold in 2024 on March 31, 2025. These rules are scheduled for EQC consideration 4.5 months prior. Companies generally know the amount of product that they have

sold or distributed, if not for Oregon than nationally and is allowable if state-specific data are unavailable to pro-rate national data for Oregon's population.

Topic: Producer Pre-Registration - 2024 data (1)

Comment: Rescind the rule requiring advance pre-registration by producers with the PRO. DEQ does not have the legislative authority to start the program before July 1, 2025. Commenter number(s): 35, 55, 60

Response: The pre-registration requirement pertains only to submission of data to the CAA to enable right-sizing of fees for supply; it does not allow the PRO to gather fees from member producers prior to July 1, 2025. DEQ advanced this proposed rule under the premise that it may result in yield outcomes lower fees that are in the interests of the collective of producers.

Topic: Producer Pre-Registration - 2024 data (2)

Comment: Remove the requirement on producers to report 2024 data by March 31, 2025. Assessing fees based on 2024 data is not supported by statute and is unfair. Commenter number(s): 55, 60

Response: In regulatory programs and in EPR schemes more specifically, fees are often assessed using historical data.

Topic: Producer Pre-Registration - New Producers

Comment: Add a clause to the registration rule at 340-090-090-0870 to require new producers to register with a PRO within six months of entry into the Oregon market; this would harmonize with California's law, see California Public Resources Code 42051(b)(1). Commenter number(s): 30

Response: DEQ does not consider such a rule to be necessary; once a new producer has sold or distributed more than one metric ton of covered product into the state and has cleared $5 million in global revenues in a calendar year, the producer would not qualify as a small producer pursuant to ORS 459A.863(32) and is out of compliance with the Act if not registered with a PRO.

Rule 340-090-0900 Life Cycle Evaluation Definitions

Topic: Life Cycle Evaluation Definitions - PFAS

Comment: The definition of PFAS is unreasonably broad and should be replaced with distinct chemicals, using the EPA's listing of PFAS in commerce, available in its Toxic Substances Control Act (TSCA) PFAS Reporting Rule. Alternatively, 1. modify the PFAS definition to

exclude fluoropolymers and only encompass chemicals with at least two or more fluorinated carbons. This would focus the standard on PFAS chemistries associated with toxicity and contamination. Fluoropolymers are chemically stable, non-toxic, non-bioavailable, non-water soluble and non-mobile compounds with single fluorinated carbon atoms that are not persistent as typically associated with PFAS chemistries. DEQ could source such a definition from 29 Delaware Code § 8092. –or– 2. use EPA's definition of PFAS at 40 CFR § 705.3, 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. Commenter number(s): 38

Response: The hazardous substances for which DEQ is proposing to require disclosure are those that have been listed as potentially hazardous or of high concern in other consumer products in Oregon. That is the case for PFAS as defined at rule 340-090-0900(30) in cosmetics in Oregon pursuant to the Toxics Free Cosmetics Act.

Topic: Life Cycle Evaluation Definitions - Break-even Point

Comment: Consider replacing "break-even point" with "replacement rate," a term commonly-used in the industry, or "replacement factor," as used in ISO21930:2017 § 7.1.7. Commenter number(s): 32

Response: As defined "break-even point" relates to the point at which the environmental impacts of a reusable product attain parity to a comparable/alternative single use product. The theory behind this concept reflects the fact that, typically, a reusable product requires more initial energy and materials to produce (reflected by its durable and reusable nature) and therefore generates more upfront environmental burdens than a single-use alternative. However, over time, as the product is reused the environmental impacts that accrue after each reuse begin to approach the impacts associated with producing an additional single use item for each reuse cycle, until there is an inflection point.

DEQ reviewed ISO21930:2017 § 7.1.7 and was unable to find a definition for "replacement factor" as noted in the comment. For these reasons, DEQ has opted to retain this term as opposed to the suggested alternatives, as it adequately describes this specific concept in question.

Topic: Life Cycle Evaluation Definitions - Contaminant

Comment: Modify the definition of "contaminant" to indicate that it only encompasses chemicals at concentrations above 100 ppm. Limiting the definition of "contaminant" to chemicals present at concentrations above 100 ppm would be consistent with the requirement that the life cycle evaluation report include a list of contaminant hazardous substances above that level. Commenter number(s): 46, 12

Response: DEQ did not consider it necessary to integrate the 100 ppm threshold for disclosure of hazardous contaminant substances into the definition of "contaminant." There are thresholds built into the disclosure requirement at 340-090-0940(1) – 100 ppm for contaminants, chemical-specific PQLs for hazardous substances – to serve as clear lines for what would be considered

misreporting and potentially subject to enforcement (i.e., failure to list either a hazardous substance or a contaminant present above the relevant threshold).

Topic: Life Cycle Evaluation Definitions - Intentionally-added (1)

Comment: Remove the entire language of 340-090-0900(20)(a) from the definition of "intentionally-added" ("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.") Producers know whether they intentionally added a material regardless of its quantification limit. Commenter number(s): 12, 31

Response: Producers should know when a substance has been intentionally-added in their supply chains. However, it is DEQ's understanding that producers sometimes face challenges to obtain comprehensive information from their supply chain partners, and as such, may benefit from the inclusion of practical quantification limits in the disclosure requirement (e.g. at 340-090-0940(1)), as well as PQL-based distinctions built into the definition of "intentionally-added" at 340-090-0900(21)(a)-(c) for differentiating between "intentionally added" and "contaminant" for certain priority chemicals. These distinctions also are intended to assist DEQ with its enforcement with respect to this reporting.

DEQ did not make changes in response to this comment.

Topic: Life Cycle Evaluation Definitions - Intentionally-added (2)

Comment: "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. Commenter number(s): 40

Response: The suggested definition of "intentionally-added" largely aligns with the definition of this term that DEQ has proposed for inclusion in rule and has revised in response to some other received comments.

Topic: Life Cycle Evaluation Definitions - Intentionally-added PFAS (1)

Comment: "Credible evidence" of unintentionally-added PFAS should be further defined so that producers understand what DEQ would consider credible evidence. As the commenter understands, the proposed threshold for DEQ to presume PFAS as intentionally added is "any total fluorine," and if total fluorine is present 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. Commenter number(s): 25

Response: An example of credible evidence would be documentation that credibly attributes the fluorine to a source besides PFAS. Note that pursuant to rule 340-090-0900(21)(a), use of PFAS as a processing aid, mold release agent, or for other non-material application is considered intentional if PFAS is present in the finished product at a concentration above the PQL. As such proving that PFAS has "only been used as processing aids, mold release agents, and in other non-material applications" will not rebut the presumption if a PFAS PQL has been exceeded (i.e. .001 ppm for both PFOA and PFOS).

Topic: Life Cycle Evaluation Definitions - Intentionally-added PFAS (2)

Comment: Instead of using any total fluorine as the trigger for presuming intentionally-added PFAS, have producers identify and report intentionally-added PFAS by relying on disclosed information from raw materials suppliers, above SDS thresholds with appropriate due diligence requirements. Total fluorine testing does not distinguish the variety of PFAS chemistries from overall fluorine content, resulting in inaccurate and over-inclusive reporting. Commenter number(s): 38

Response: Producers should know what is in their products, but it is DEQ's understanding that suppliers sometimes hold this information confidential. DEQ has proposed a total fluorine trigger for presumption of intentional addition. DEQ is aware that total fluorine testing can capture inorganic fluorine, yielding a false positive, and as such has included a rebuttal presumption option for producers whose products are presumed to contain intentionally-added PFAS.

Topic: Life Cycle Evaluation Definitions - Intentionally-added PFAS (3)

Comment: Do not use total organic fluorine (TOF) as a measurement of PFAS / trigger to presume intentional addition. Not everything that has a fluorine atom is a PFAS, and the language as written will result in an overburden on labs to do analysis. Commenter number(s): 40

Response: At rule 340-090-0900(21)(b), DEQ proposes to use presence of any total fluorine (rather than total organic fluorine) as a trigger for presuming intentional addition of PFAS. Use of total fluorine as an indicator for PFAS is less reliable than use of organic fluorine, but total fluorine is less expensive to test for, and the existing rule language gives producers the option of submitting a written rebuttal to DEQ should DEQ presume intentional addition of PFAS on the basis of enforcement-related testing for total fluorine. Regarding the potential for overburden on labs, the rules at 340-090-0940 do not require producers to conduct testing on their products. There is no requirement to submit testing results as a part of the required disclosure pursuant to rule 340-090-0940(1), and if a producer has thorough oversight over and confidence in what is in their products, they may report based on that knowledge. However, if there are potential gaps in their knowledge (for example, with respect to what a supplier may be doing, or the possible presence of contaminants), testing is a way to address those gaps. And, as DEQ must have tools at its disposal to enforce against misreporting, both with respect to substances present in the

covered product and whether or not they are intentionally-added, there are practical quantification limits and triggers for presumption of intentional-addition included in these rules.

Topic: Life Cycle Evaluation Definitions - Intentionally-Added Flame Retardants

Comment: DEQ should provide scientific evidence to substantiate the assumption that the use of flame retardants is intentional if present in the finished product at a concentration above 1,000 parts per million. Commenter number(s): 41

Response: DEQ based this rule on Washington Ecology's Flame Retardants in General Consumer and Children's Products , which indicates that flame retardants tend to be used at percent levels; as such, it is unnecessary to apply lower thresholds for reporting of intentional use.

Topic: Life Cycle Evaluation Definitions - Life Cycle Assessment

Comment: Add "as defined by the goal and scope of the Life Cycle Assessment" onto the end of the definition of "Life Cycle Impact Assessment" at OAR 340-090-0900(23). Commenter number(s): 32

Response: The definition in question is being sourced from the International Standards Organization (ISO) 14044 standard, and for the sake of alignment, DEQ is not changing the proposed rule.

Topic: Life Cycle Evaluation Definitions - Life Cycle Inventory Analysis

Comment: Add "as defined by the goal and scope of the Life Cycle Assessment" onto the end of the definition of "life cycle inventory analysis" at OAR 340-090-0900(24). Commenter number(s): 32

Response: The definition in question is being sourced from the International Standards Organization (ISO) 14044 standard, and for the sake of alignment, DEQ is not changing the proposed rule.

Topic: Life Cycle Evaluation Definitions - Practical Quantification Limit

Comment: Remove 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. Commenter number(s): 46, 12, 31

Response: It is DEQ's understanding that producers sometimes face challenges to obtain comprehensive information from their supply chain partners, and as such, may benefit from the inclusion of practical quantification limits in the disclosure requirement (e.g. at 340-090-0940(1)), as well as PQL-based distinctions built into the definition of "intentionally-added" at 340-090-0900(21)(a)-(c) for differentiating between "intentionally added" and "contaminant" for certain priority chemicals. These distinctions also are intended to assist DEQ with its enforcement with respect to this reporting.

DEQ did not make changes to proposed rules in response to this comment.

Rule 340-090-0910 Scope and Applicability

Topic: LCA Scope and Applicability - Require the PRO to Give Malus Fees to Producers for Negative Impacts

Comment: Require the Producer Responsibility Organization to collect malus fees (i.e., higher fees) from producers whose life cycle evaluations (either mandatory or voluntary) show substantial negative product or packaging impacts. Global extended producer responsibility programs that over-emphasize bonuses and under-emphasize maluses do not satisfactorily influence packaging design–for instance, under France's packaging EPR eco-modulated fee structure, malus fees account for just 5% of the total value of eco-modulated fees and they are disproportionately applied to paper packaging (roughly 93% of malus fees are applied to paper in France). A recent analysis of France's Anti-Waste and Circular Economy Law conducted by the European Environment Agency revealed that packaging waste has increased over the past four years in France and the program is not on track to meet its recycling or waste reduction targets. Commenter number(s): 16

Response: Statute at ORS 459A.884(4) requires that the PRO's ecomodulation approach includes lower fees for lower impacts and higher fees for higher impacts. As such, the PRO will need to propose in its program plan criteria for attribution of malus fees to producers with higher-impact products. As for requiring in rule a malus applied on the basis of the results of life cycle evaluations conducted either due to the large producer disclosure mandate or to claim an ecomodulation bonus, DEQ did consider this option in the rulemaking, but sees trade-offs in terms of producers potentially choosing not to disclose because they fear negative consequences. This consideration informed rule 340-090-0940(6), whereby a producer that misreports any of the required Additional Environmental and Human Health Information would have to pay back any associated bonus to the PRO, who would also make the incident public. DEQ prefers to maximize evaluation and disclosure, which correlates with producer impact reduction action according to prior DEQ research, by incentivizing it. The PRO can propose in its program plan other criteria by which it could apply maluses to producer fees, for DEQ review and approval. Producer evaluation results can inform the PRO's proposal with respect to criteria for which it would be appropriate to apply malus fees.

Topic: Scope and Applicability - PRO Fee Ecomodulation Obligation (1)

Comment: Single-use consumer packaging should not be eligible for any ecomodulation bonus, even if it is enabling reuse. Commenter number(s): 29

Response: Pursuant to rule 340-090-0910(3)(b), DEQ has proposed to mandate that PROs make a life cycle evaluation-based bonus for substantial impact reduction available to its member producers. This bonus would reward producer actions that achieve 10% or more impact reduction as calculated according to the product category rules at 340-090-0930. A requirement that the bonus be made available in tiered fashion means that greater impact reduction would be rewarded with larger bonuses.

Actions such as moving production facilities to a clean energy grid or reduction to packaging weight could qualify for the bonus if the evaluation demonstrates the requisite 10% or more substantial impact reduction has been achieved, even if the product remains in a single-use format. It potentially counterproductive to require all packaging to reduce impacts through a uniform and singular approach.

Topic: Scope and Applicability - PRO Fee Ecomodulation Obligation (2)

Comment: Create a stronger incentive structure for producers to reduce product impacts, including expanding the application of malus incentives. Tweaks to the status quo will not secure meaningful reductions in environmental harm for future generations. Commenter number(s): 29

Response: Statute at ORS 459A.884(4) requires that the PRO's ecomodulation approach includes lower fees for lower impacts and higher fees for higher impacts. As such, the PRO will need to propose in its program plan criteria for attribution of malus fees to producers with higher-impact products.

This and other DEQ guidance on the ecomodulation topic is available here.

Topic: Scope and Applicability - Substantial Impact Reduction Bonus

Comment: Incentivize material-switching away from plastic and toward reduction and reuse. Commenter number(s): 7

Response: The product category rule at proposed rule 340-090-0930 lays out a method whereby producers would evaluate and disclose the environmental impacts of their packaging in order to receive a discount on their fees, with a larger discount for an evaluation that demonstrates that a producer action, such as moving production facilities to a location with a clean energy grid or transitioning from single-use to reusable packaging, has resulted in substantial impact reduction. The rule in its current iteration is responding to the commenter's suggestion, and no changes were made.

Topic: Scope and Applicability of Life Cycle Evaluation Rules

Comment: Do not apply data from the mandatory large producer disclosures toward fee-setting for medium and smaller producers that may use a narrower set of packaging materials for their products. It is far from understood if the data from these largest producers of covered material is relevant for smaller regional producers. Commenter number(s): 50

Response: DEQ will take the concern regarding applicability of large producer life cycle evaluation results to smaller producers into account during implementation. DEQ does intend to use results from submitted evaluations to refine the product category rules in subsequent rulemakings, but for now these rules do not enable comparability across producers' products, and only before-after comparisons for an individual producer's product. Consequently, if the commenter's concern lies with fairness of direct competition for bonuses among large and small producers due to large producers' access to a greater diversity of packaging materials, this is not a concern relevant to the current iteration of the rules.

Some interested parties have voiced interest in an approach that would establish average impacts for different functional units (for example, various packaging formats that all deliver a gallon of milk), with producers above the average receiving a malus and producers below the average a bonus. While such an approach would enable rewards for historic sustainability improvements, thereby addressing one concern about fairness (that companies that have not endeavored to improve packaging sustainability may have a competitive advantage with respect to the substantial impact reduction bonus), it would put large and small producers in more direct competition and potentially raise another fairness concern.

Topic: Scope and Applicability of Life Cycle Evaluation rules - Identification of the 1% of Covered Products for Mandated Large Producer Evaluation and Disclosure

Comment: Remove from rule 340-090-910(2)(b)(B) the requirement that large producers rank their SKUs by sales in order to determine the 1% of their products that require evaluation and disclosure, and the requirement to conduct a similar ranking and selection of the 1% of SKUs for each subsequent disclosure deadline. Large producers should have the flexibility to select SKUs for evaluation and disclosure that meet the statutory 1% 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. Commenter number(s): 46

Response: DEQ has proposed the required ranking of SKUs by number of units sold or distributed into the state to identify the 1% of products for which evaluation and disclosure is required. The logic here being that a SKU with the greatest number of units sold or distributed into the state has the highest potential for (when considering the scale) for impact reduction.

DEQ's original research found in the Evaluation of Actions to Support Product Environmental Footprinting in the Pacific Northwest (2014) informed the large producer disclosure's inclusion

in statute found that producers conduct LCAs for two main reasons –seeking knowledge to inform decisions and seeking insight into how to change consumer purchasing habits.

Topic: Scope and Applicability of Life Cycle Evaluation rules - Magnitude of Ecomodulation Bonuses

Comment: Require ecomodulated fees to be weighted heavily against the base fees for an EPR program to ensure that program targets are met without needing to amend the statute in future year. Commenter number(s): 16

Response: DEQ could have prescribed in rule the magnitude of the two bonuses that the PRO must make available to member producers for life cycle evaluation and disclosure, pursuant to rule 340-090-0910(3), and could have prescribed a large magnitude relative to base fees, but did not do so. The PRO must, in its program plan, propose these details in a way that meets associated requirements in rule (the substantial impact reduction bonus must be larger in magnitude than the simple evaluation and disclosure bonus, and must be offered in a fashion that delineates up to five tiers of greater fee reduction for greater impact reduction).

Topic: Scope and Applicability of Life Cycle Evaluation rules - Bonus Durations

Comment: Remove the stipulation at 340-090-0910(3)(a)(D) that the simple evaluation and disclosure bonus may only be claimed 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. Commenter number(s): 35

Response: DEQ has removed this one-year cap, to give the PRO more flexibility to work out its approach to ecomodulation in a way that works for its fee structure overall. The PRO will propose the bonus durations in its program plan. However, DEQ still considers that short bonus durations and smaller bonus amounts are most befitting of the simple evaluation and disclosure bonus. DEQ would like to see the PRO encouraging producers to instead pursue larger the substantial impact reduction bonus, which can only be achieved if the evaluation demonstrates that a producer action has substantially reduced impacts of covered products.

Topic: Scope and Applicability of Life Cycle Evaluation rules - Ecomodulation Bonuses (1)

Comment: 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. LCAs 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. Commenter number(s): 50

Response: DEQ wants to avoid delay on incentives for environmentally beneficial action and disincentives for environmentally harmful action related to packaging. As such, DEQ will not delay implementation of its obligation to ecomodulate fees until the second program plan. Furthermore, Circular Action Alliance submitted its second draft program plan on Sept. 27, 2024, and it includes a plan for ecomodulation of fees during the first program plan period.

DEQ agrees with the commenter that it is best to first figure out a workable approach to ecomodulation (i.e., an approach that is actually rewarding environmentally-beneficial actions), and then increase the magnitude of the fee adjustments thereafter. This consideration and others are described in greater detail in the DEQ Guidance on Ecomodulated Fees. As for the critique of Life Cycle Assessment, DEQ disagrees, considering that LCAs can reflect valuable information if they are conducted according to a strict methodology that does not allow the analyst to pre-determine outcomes.

As for the critique of Life Cycle Assessment, DEQ disagrees, considering that LCAs can reflect valuable information if they are conducted according to a strict methodology that does not allow the analyst to pre-determine outcomes. When drafting the rules for Life Cycle Evaluation, DEQ took great care to craft rules with guardrails for "misuse" of LCA and to limit potential gamesmanship. DEQ has also endeavored to ensure that hard-to-account for impacts, such as microplastic pollution and toxics impacts, are accounted for in these rules.

Topic: Scope and Applicability of Life Cycle Evaluation rules - Ecomodulation Bonuses (2)

Comment: Remove the mandates that the PRO make two life cycle evaluation-based bonuses available to member producers. 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 with regulatory requirements over time. Commenter number(s): 46, 61

Response: Full flexibility to pursue ecomodulation as it sees fit may be the way that ecomodulation is handled in some other EPR programs, but Oregon's statute includes some specific requirements that the PRO must meet with its proposal for how to operate ecomodulation, and Oregon's statute also does not preclude that the EQC could mandate in rule aspects of how the PRO should approach ecomodulation to deliver on the requirements.

Topic: Scope and Applicability of Life Cycle Evaluation rules - Evaluation Scope

Comment: Clarify that the LCEs conducted according to these rules focus only on the performance of the packaging and not the covered product. Commenter number(s): 30

Response: OAR 340-090-0910(2)(b)(B) states that large producers' life cycle evaluations of their top 1% of SKUs must include "the product contained or protected by the packaging if it is a covered product." The word "covered product" here is meant to refer to a product covered under the Recycling Modernization Act as defined is ORS 459A.863 6(a)-6(b), such as printing and

writing paper, food serviceware, or a storage item, rather than any product contained in packaging.

If a top 1% SKU for a large producer happens to be a product covered under the RMA, such as a ream of 8.5 x 11 paper, the producer will disclose the impacts of both the paper and any packaging associated with the paper product. If that same producer has among its 1% a non-covered product – let's say a pen – the producer will only evaluate and disclose the impacts of the packaging associated with the pen, not the pen itself.

Topic: Scope and Applicability of Life Cycle Evaluation rules - Notification of Large Producers

Comment: Clarify whether or not the 25 largest producers will be notified by the PRO or by DEQ that they are among the 25 largest producers and subject to additional disclosure obligations. Commenter number(s): 48

Response: OAR 340-090-0910(2)(c) indicates that the first large producer disclosures are due at the end of 2026 and that the list of large producers will be issued on the basis of interim market share. Pursuant to OAR 340-090-0690(2)(d)(A) and OAR 340-090-0700(3), DEQ will calculate producer interim market share and notify the PRO of results no later than by Sept. 1, 2025. Pursuant to OAR 340-090-0710(3)(c), DEQ will also immediately publish the list of large producers in alphabetical order and draw the attention of interested parties, including the producer community, to the list. Large producers will learn of their status from both DEQ and the PRO.

Topic: Scope and Applicability of Life Cycle Evaluation rules - Producers Using the Same Products

Comment: Allow an entity upstream of obligated producers to agree to conduct an LCE on behalf of one or more producers. 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. Commenter number(s): 30

Response: The rules do not preclude a supply chain partner doing a life cycle evaluation on behalf of the obligated producer, who would then turn in the project report to the PRO and DEQ to fulfill their large producer disclosure mandate or when seeking an ecomodulation bonus. If multiple producers are using the same product–for example, the same spiral-wound can–produced by the same manufacturer, multiple producers could submit the same LCE prepared by the manufacturer.

Rule 340-090-0920 Project Report Requirements

Topic: Project Report - Confidential Data

Comment: Clarify what specific information can be omitted from public reports, including examples. 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. Commenter number(s): 46

Response: Generally, DEQ expects that producers will claim their inventory data as confidential, but not the results of analyses on that inventory data. DEQ would additionally note that the project report rules for the life cycle evaluations, specifically the section on confidentiality at 340-090-0920(2), indicate report components that *cannot* be declared confidential to qualify for an associated ecomodulation bonus, but do not list components that *are* confidential. Whether or not information submitted to DEQ and claimed to be confidential would be exempt from disclosure to the public would depend on whether it qualified for an exemption to disclosure under the Public Records Law, such as the trade secret exemption.

Topic: Project Report - Life Cycle Interpretation

Comment: With respect to the required contents for the project report pertaining to life cycle interpretation, clarify the meaning of "full transparency in terms of value-choices and expert judgements." Commenter number(s): 30

Response: This is language borrowed from the normative LCA standard ISO 14044. It means that the analyst must document the rationales (i.e. why) behind decisions that may have impacted the outcome of the assessment, and for which methodological flexibility allowed for one to apply one's expert judgement or value-choices.

Topic: Project Report - Plant-level vs Industry Standard Data

Comment: Direct producers to use industry-wide rather than plant-level data for development of required data inventories, at least during the first cycle of LCEs. The commenter is concerned with the use of plant-level data (referenced at rule 340-090-0920(1)(c)(B)(ii)), 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. Commenter number(s): 30

Response: DEQ would not be in alignment with best practices for life cycle assessment methodologies were it to discourage producers from using primary data if they are available; in fact, a preference for directly measured data is stated in the rules at 340-090-0930(1)(e)(A). As such, DEQ did not edit the rules to incorporate this comment. These rules do not require the producer to submit plant-level data to DEQ–the list of project report contents that must be made public to claim a bonus is listed at 340-090-0920(2), and it includes the life cycle inventory

analysis result and life cycle impact assessment results, but not the underlying (unit process) data.

Rule 340-090-0930 Core Product Category Rules

Topic: Core Product Category Rule - Defining the Functional Unit

Comment: In 340-090-0930(1)(a), define the functional unit as a fixed mass unit of a material type (e.g., 1 ton) per package placed on the market (i.e., use "declared units" rather than "functional units" as the units for which assessment results should be expressed). Declared units are more appropriate than functional units because packaging weight forms the basis for all elements of the EPR program. Commenter number(s): 12

Response: In the rulemaking process, DEQ considered mandating the use of declared units rather than functional units, as this would simplify the method. However, comparisons are not supported when the function of a system is left undefined and instead a declared unit is used as the basis for the analysis. For the purposes of the before-after scenario analysis described in rule 340-090-0930(3)(c) required to qualify for the substantial impact reduction bonus, functional rather than declared units must be used for assessment of impact reduction achieved through producer actions such as material-switching and changing from single-use to reusable packaging. In such instances, two scenarios that feature different amounts of packaging and/or different material types of packaging that deliver the same functional unit should be compared with one another.

DEQ made no changes in response to the comment, and maintains the requirement to express results of assessments conducted under these rules in terms of a functional unit.

Topic: Core Product Category Rule - General Support

Comment: The commenters expressed support for the proposed standards for large producer evaluations and disclosures. The commenters consider these rules to be setting a high bar for evaluation and disclosure, with the resultant transparency in impacts increasing consumer trust in sustainability claims and incentivizing impact reduction actions by producers. Commenter number(s): 16

Response: Thank you for your interest in and support for the life cycle evaluation rules.

Topic: Core Product Category Rule - General Support (5)

Comment: The commenter voiced appreciation for the inclusion of life cycle evaluations for materials as a decision-making tool to quantify environmental impacts. 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. Commenter number(s): 41

Response: Thank you for your interest in and support for the life cycle evaluation rules.

Topic: Core Product Category Rule - LCA-Based Approach to Ecomodulation

Comment: DEQ should support approaches to ecomodulation that are simpler and do not involve producers conducting lifecycle assessment (LCA) studies, so as to incentivize more producers. Such a simpler, attribute-based approach would be more aligned with statute, and the choice of attributes could be informed by LCAs. Other criteria identified in the statute (i.e. choice of material, inclusion of post-consumer recycled content, product-to-package ratio, and recyclability of the packaging material) are the primary determinants of the LCA footprint of packaging regardless of what endpoint you consider (e.g. greenhouse gas, particulates, ocean impacts, etc.). An ecomodulation approach based on these primary determinants would avoid the unnecessary complexity of conducting LCA studies. Commenter number(s): 12

Response: The proposed requirement pursuant to rule 340-090-0910(3) that PROs make two LCA-based ecomodulation bonuses available to member producers does not preclude PROs from proposing to make additional ecomodulation bonuses and/or penalties available to member producers as part of the program plan review process. DEQ did not make any changes in response to this comment; responsiveness to the comment is within the purview of PROs.

Additional bonuses and penalties that a PRO could include in a program plan or plan amendment could be attribute-based, although pursuant to ORS 459A.875(2)(a)(F), the PRO must demonstrate to DEQ in the program plan that the proposed approach will deliver continual reduction to the environmental and human health impacts of covered products.

Prior DEQs research on Popular Packaging Attributes suggests that some packaging attributes commonly used as proxies for environmental impact do not actually have a clear correlation to impact–for example, recyclability. Other attributes do correlate with impact but with limitations–for example, post-consumer recycled content correlates with impact but only when a comparison is made within the same material. Product-to-package ratio and choice of material, included among the factors that a PRO must, pursuant to ORS 459A.884(4)(a)-(e), take into account in developing an ecomodulation approach, certainly correlate with impact, but could be difficult to apply simply within ecomodulation. Product-to-package ratio is ideally optimized (in order to protect the product) rather than merely minimized. And to reward certain types of material switching, the impacts of all materials in the PRO's portfolio need to have been assessed.

Topic: Core Product Category Rule - Life Cycle Evaluation and Disclosure Requirements

Comment: Require producers to justify through a lifecycle analysis they are using materials in their design that provide significant benefits to the environment, do not harm responsible end markets, and in the case of plastic, provide significant reductions in virgin plastic and increased usage of recycled content. Such justifications should be reported to DEQ and be open to public inspection. Commenter number(s): 19

Response: DEQ does not have statutory authority to mandate that producers conduct life cycle assessments to justify their product designs beyond the requirement that large producers evaluate and disclose the life cycle impacts of 1% of their covered products on a biennial basis pursuant to ORS 459A.944. However, the two ecomodulation bonuses for life cycle evaluation and disclosure that DEQ has proposed at 340-090-0910(3), especially the substantial impact reduction bonus, are intended to incentivize environmentally-beneficial design and other impact reduction actions, and as such seem aligned with the commenter's concerns. Pursuant to rule 340-090-0920, both the large producer and the ecomodulation assessments must be reported to DEQ, and a proposed list of data that must be made public to receive one of the ecomodulation bonuses is located at rule 340-090-0920(4).

Topic: Core Product Category Rule - Life Cycle Evaluations - Producer Resources

Comment: Allow pre-existing life cycle analysis work and resources to be used to inform Life Cycle Evaluations, such as the Sustainability Consortium and the European Platform on Life Cycle Analysis. Commenter number(s): 30

Response: Because the product category rules at 340-090-0930 rely heavily upon impact assessment methods drawn from the Product Environmental Footprint Category Rules (PEFCR), prior or ongoing producer engagement in the European Platform on Life Cycle Analysis will likely set up a producer well to conduct a life cycle evaluation under Oregon's product category rules, as will expertise with conducting life cycle assessments conformant to ISO 14040, 14044, and 21930 standards.

Topic: Core Product Category Rule - Life Cycle Evaluations - Reuse and Refill

Comment: The commenter advised that Oregon look at and follow California's lead in terms of incorporating refill along with reuse into its extended producer responsibility program. Commenter number(s): 31

Response: California's regulations underlying the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54) have not yet been finalized at the time of responding to this comment, so DEQ cannot speak with certainty as to the degree of overlap between these proposed rules and California's approach. Furthermore, reuse and refill packaging are appearing in two different contexts in the two state Acts – in California, transition to reuse or refill is being counted toward plastic source reduction targets that the PRO must meet across its member producers, whereas in Oregon, methods are being proposed for material-neutral life cycle evaluation and disclosure (for the purposes of ecomodulation of fees and mandated large producer disclosures) that are specific to reuse and refill products. As such, it may not be appropriate to entirely harmonize the two sets of definitions.

That said, DEQ has proposed separate definitions for "reusable packaging product" and "refillable packaging product" which appear to roughly align with California's statutory definition of "reusable"/ "refillable"/"reuse"/"refill" at PRC § 42041(af), where two separate sub-definitions for reuse/refill by a producer and reuse/refill by a consumer are provided. Both

California and Oregon are also endeavoring to give credit to producers for transition from single-use to reusable and refillable packaging if actual meaningful reduction to environmental impacts is achieved, which is a function mainly of whether or not the product is actually being reused or refilled. California's proposed regulations at §18980.1(a)(34)(E) describe a "break-even point" very similar to Oregon's at rule 340-090-0900(4). In California the number of reuses of a reusable or refillable product must meet or exceed the break-even point in order to claim the product toward the plastic source reduction target; meanwhile, in Oregon, the number of reuses must meet or exceed its break-even point in order to qualify for the substantial impact reduction bonus.

In summary, the two states appear aligned in their overall approach, and as such DEQ made no changes in response to the comment.

Topic: Core Product Category Rule - Life Cycle Evaluations - Working Group

Comment: Convene 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. Alternatively, find another way to solicit feedback on producer experience completing the evaluations and evaluation results, and use the information gathered to adapt the rules over time. Commenter number(s): 32, 53

Response: DEQ will take this suggestion into account in implementation; it is consistent with the approach that DEQ took to this first rulemaking on this topic, in which DEQ consulted with a rulemaking advisory panel and issued to Requests For Information as a part of the process.

Topic: Core Product Category Rule - Plastic Impact Assessment(1)

Comment: Despite approving of the use of a life cycle approach to determine the impact covered materials have on the environment, the commenters are concerned about and propose eliminating the requirement to include impact assessment for plastic in the Product Category Rule. Aluminum, paper, and glass all have well-documented effects on marine life. Either all materials' marine impacts should be similarly accounted for, or the criteria singularly focused plastic should be removed, as they demonstrate a bias against the material; no other material type will have to overcome such a bias and in fact, may benefit from the bias against plastic. Commenter number(s): 19, 25

Response: With respect to physical impacts on aquatic biota (one of two plastics impacts included in the product category rule at OAR 340-090-0930), while small fragments of the other major materials covered under this law may also have deleterious physical impacts on aquatic biota (there are some published studies regarding physical impacts of microcellulose fibers on aquatic biota, for example), the volume of peer-reviewed science focused on these impacts is nowhere near that focused on physical impacts of plastic. There is also no similar effort to that of MariLCA to develop LCA characterization factors to represent these impacts in life cycle

assessment. As such, DEQ considers it justified to leave these impacts (of materials besides plastic) out of the product category rule.

As for toxic impacts (the other plastics impact included in the product category rule) of the various main material types covered under the Recycling Modernization Act, these impacts will ideally at a future time all be adequately accounted for under the human and ecotoxicity impact categories commonly used in LCA (i.e., see rule 340-090-0930(3)(b)(C), (D), and (L)) and with an error small enough for DEQ to include these indicators in the single score methodology for the substantial impact reduction ecomodulation bonus. For now, due to the error in the impact assessment methodologies underlying the three toxicity impact indicators, the best we can do is to require producers to report inventories for these categories, and bar any substantial impact reduction bonuses from being awarded if a producer action has increased impacts pursuant to one of these categories so much as to exceed the error in the underlying methodology. See rule 340-090-0930(3)(c)(A). As such, some of the toxicity impacts of other materials that were cited by the commenter ARE accounted for by the proposed product category rules, however imperfectly. The toxicity impacts of a material that are LEAST accounted for by the three standard LCA toxicity categories are those of plastics. This is because plastics contain thousands of associated chemicals, such as additives. For each of these chemicals' impacts to be accounted for in LCA, their impact on humans and other organisms, their fate when released into the environment, and the likelihood of exposure for humans and other organisms must be understood in order to generate chemical-specific effect, fate, and exposure factors, respectively. While there is work underway in this direction, there is much yet to be done. In summary, DEQ does not consider the required inclusion of plastics impacts to represent a bias against plastic, but rather an advancement in understanding the full impacts of covered products that use plastic. To date these impacts have not been accounted for in LCA methodologies and the preponderance of scientific evidence suggests that the scale of these materials entering the environment warrants further investigation and evaluation. For these reasons DEQ has included these impacts in the requirements.

Topic: Core Product Category Rule - Plastic Impact Assessment (2)

Comment: Reconsider the inclusion of the impact indicators "Plastic physical impacts on biota (MariLCA, PAF m3 day)" and "Plastics leakage inventory value (DEQ, kg)" in impact assessment, as they and the underlying Plastic Footprint Network method to assemble inventory data 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) impact indicators, 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.

One commenter particularly expressed concern with respect to the Plastic Footprint Network methodology and insufficient information at present to know whether it will be adequate or achieve widespread acceptance, as well as potential for PFN to not accurately reflect leakage of plastic from Oregon and impacts of plastic leaked from Oregon. Commenter number(s): 46, 32

Response: One key objective of developing product category rules in this rulemaking is to enable accurate comparisons of the life cycle environmental and public health impacts of products covered under Oregon's Recycling Modernization Act. Without the capacity to make accurate comparisons, producers, DEQ, the PRO, and other interested parties in Oregon's Recycling Modernization Act would be left to operate without a key tool, in terms of both decision-making and measuring progress, for our collective pursuit of the reduction of life cycle impacts of covered products, an underlying goal of the Act pursuant to ORS 459A.860(4).

Producers face key trade-offs when choosing what packaging to deliver their products in; product category rules can serve to provide a level playing field in terms of ability to compare different options that fulfill the same function with one another, and thus inform their decisions. Scaling up, the evaluations disclosed across producers should partially reflect the impact that the law has had on the collective of upstream producer decisions, which, together with the end-of-life interventions that the law is funding, will deliver the impact reduction that the Act targets.

If the methodology for the life cycle evaluations does not account for all of the major environmental impacts of covered products, one of which is plastic pollution, these hoped-for outcomes may not be realized. Even worse, the substantial impact reduction bonus could end up perversely incentivizing producer actions that increase rather than decrease environmental and human health impacts of covered products–particularly, actions that would increase plastic pollution. DEQ considered it important to include in the impact assessment the two impact indicators for plastic, one for physical impacts on aquatic biota that is generated through application of the recently peer-review published MariLCA method, and one that serves as a placeholder for all other impacts of plastic by using the raw leakage volumes as a proxy for its impact.

The novel nature of the MariLCA method, which the commenter appears most concerned about, is accounted for in the low robustness weighting factor applied to the indicator for physical impacts on aquatic biota, which limits the weight that plastic impacts are given relative to other impacts in the overall single-score profile. These weightings, as well as the impact assessment methods used for plastic, are subject to adjustment in subsequent rulemakings as science and LCA methods evolve.

With respect to concerns about the PFN method for developing inventory data, the methodology was developed through an extensive process that engaged a diversity of interested parties from industry and academia. DEQ also intends to work with the creators of PFN to account for Oregon-specific disposition data in the method and therefore more accurately reflect leakage of plastic from Oregon.

Topic: Core Product Category Rule - Producer Reuse vs Consumer Refill

Comment: Ensure the incentive structure sufficiently values producer return/refill systems over the lesser performing at home refillable systems. Commenter number(s): 29

Response: The PRO may propose a fee adjustment for reusable packaging in its program plan for DEQ review and approval.

As for how reuse and refill models are handled in the proposed mandated bonus for substantial impact reduction, in response to other comments, DEQ has added a definition for "refillable packaging product" to 340-090-0900, and has added methods to the product category rule for assessing impacts of these products. Meanwhile, the existing definition of "reusable packaging product" and methods for assessment of their impacts remains in the rules. Refillable packaging is not supported with commercial or publicly-owned infrastructure to enable the highest and best reuse, nor is it returned to a producer or third party after each use, in contrast with reusable packaging products.

The two types of packaging are treated similarly in impact evaluation with one important difference–while producers of reusable packaging products may use projections for return rate and expected number of reuse cycles during a three-year grace period after switching from single-use to reusable packaging, producers of refillable packaging will need to use actual sales data for estimation of the refill rate, because DEQ has more confidence in reusable packaging reaching its break-even point after optimizing reverse logistics, compared with refillable packaging, the success of which hinges entirely on the commitment of the customer to continue refilling the product. This should provide an advantage to reusable packaging products in terms of achieving bonuses for substantial impact reduction.

Topic: Core Product Category Rule - Requirement to Conduct Sensitivity Analysis

Comment: Remove the sensitivity analysis requirement or limit it to a minimal key set of data. Sensitivity analysis conducted across all variables included in an LCA will be overly complex when considering the mix of primary, secondary, and proxy data sources. Commenter number(s): 12

Response: Pursuant to rule 340-090-0930(4)(b), sensitivity analysis for single-use products must be conducted only on variables pertaining to the underlying electricity grid mixture and to the recycling allocation methodology, not all variables included in the assessment (for reusable packaging products, producers must conduct sensitivity analysis on two additional variables, return rate factor and number of reuse cycles). DEQ considers that the sensitivity analysis requirement in its present iteration is limited to a minimal key set of data, and as such made no changes in response to this comment.

Topic: Core Product Category Rule - Requirement to Develop a Plastic Leakage Inventory

Comment: Remove the requirement at rule 340-090-0930(2)(g) to assemble plastic leakage inventory data (and, in turn, the requirement to conduct impact assessment for plastic) because plastic leakage is a shared issue across the supply chain and is not specific to an individual package or supplier. Commenter number(s): 12

Response: Impacts of plastic, as with other impacts mandated for assessment in lifecycle evaluations conducted according to the product category rules and pursuant to rule 340-090-0930(3)(b)(A)-(R), are the result of activities across the supply chain and life cycle of a covered product from cradle to grave. These impacts may not result uniquely from actions under the

direct purview of the producer obligated or incentivized to evaluate and disclose lifecycle impacts of covered products under the Recycling Modernization Act. If the impact does result from the actions of a supplier, the producer may be able to act to address it–by setting specifications for procurement, for example, or by offering to fund improvements at the supplier's facility (e.g. filters for microplastics, for example). These rules do not require such interventions, however; in the case of the ecomodulation bonus for substantial impact reduction, the rules merely incentivize such actions.

As for the opinion that leakage impacts cannot be attributed to an individual package, the Plastic Footprint Network method, mandated for use by producers under these rules to develop leakage inventory data for their products, enables such attribution, with best available data on loss, release, and redistribution rates for different polymers and end-of-life locations (e.g. countries) underlying the method.

Topic: Core Product Category Rule - Requirement to Quantify Upstream Methane Leakage

Comment: Remove the requirement specific to methane leakage because publicly-available lifecycle inventory databases include methane leakage that occurs at various points of the oil and gas supply chain, and because methane in the upstream supply chain is likely less relevant than methane emissions that may occur in different end of life scenarios. Commenter number(s): 12

Response: During the rulemaking, DEQ received input from interested parties indicating that climate impacts of petrochemical processes involved in the production of plastic and other polymer-based products have been underrepresented by up to 30% in conventional life cycle assessments due to not accounting, or accounting inadequately, for the problem of methane leakage. While commonly-used oil and gas lifecycle assessment inventories have recently been updated to apply correction factors for methane leakage at the extraction step, DEQ heard concerns that such updates have not yet been completed for polymer production inventories, although they are expected to be completed by the start date of the RMA. The rule language at 340-090-0930(2)(i) merely requires producers to use the best available data (i.e., the databases that have been updated) when conducting lifecycle evaluations in accordance with Oregon's Life Cycle Evaluation rules.

Generally, the climate impacts of the production of these products are substantially larger than the climate impacts of end of life. While some methane is released from plastic when exposed to solar radiation, much of the carbon remains fixed in the product after use if it is landfilled or mechanically recycled.

Topic: Core Product Category Rule - Software Tools and Databases Used for Outputs

Comment: Take advantage of the existing LCA software and databases that many producers are already using (e.g. those that are accepted under the Partnership for Carbon Transparency Pathfinder Framework). Commenter number(s): 12

Response: DEQ is proposing rules that describe the methodological approach to evaluating covered products. Nothing in the rules prevent the use of existing LCA software and databases, so long as these tools/data are applied in a way that conforms to the rules.

Further, DEQ is proposing that, for 16 of the 18 impacts to be assessed under these rules and pursuant to rule 340-090-0930(3)(b), producers should draw impact assessment methods from the Product Environmental Footprint (PEF) methodology, which is a methodology accepted by the Partnership for Carbon Transparency Pathfinder Framework. As such, producers that have already evaluated their products using the PEF method will be able to leverage their prior work to meet Oregon's requirements. The proposed rules also draw heavily from several International Standards Organization (ISO) standards, namely ISO 14040 and 14044 (with the overall structure of the rules based upon ISO 21930). Familiarity with these methods will also be helpful to producers conducting assessments to conform to Oregon's product category rule (i.e., 340-090-0930).

Topic: Core Product Category Rule - Table of Weighting Factors (1)

Comment: Replace the seriousness weighting and robustness factors for the two plastics impact indicators, which were developed internally by DEQ staff, with weightings developed by an independent panel of scientists and toxicologists. Commenter number(s): 46

Response: The European Commission team that works on the PEFCR methodology, from which all the weighting factors besides those for plastic were derived, may also take action in coming years to account for plastic impacts within its method, and DEQ could potentially in a subsequent rulemaking align its weightings to the revised weightings of PEFCR.

Topic: Core Product Category Rules - Table of Weighting Factors (2)

Comment: Clarify how the impact indicators weighting factors that feed into the single score impact profile for the substantial impact reduction bonus have been calculated. Commenter number(s): 34

Response: Table A at 340-090-0930 indicates the weighting factors for 15 impact indicators that a producer needs to generate a measure for under these proposed life cycle evaluation rules – i.e., these are the impacts that must be assessed. Each impact indicator receives a weighting for seriousness of the impact relative to other impacts on a scale of 0-100 (with all 15 of these weightings adding up to 100), and for robustness of data (rated on an individual basis on a scale of 0-1). For each impact indicator, these two weightings are multiplied together, and then the resultant 15 intermediate coefficients are collectively scaled to 100 to yield the table of final weighting factors. These weightings are applied by producers seeking the substantial impact reduction bonus when normalizing, weighting and aggregating impact assessment results into a single impact score (which forms the basis to evaluate whether or not substantial impact reduction has resulted from a producer action (and whether or not the producer is eligible for the ecomodulation bonus).

For all impact indicators besides the two for plastics, "Plastic physical impacts on biota (MariLCA, PAF m3 day)" and "Plastics leakage inventory value (DEQ, kg)," DEQ adopted the seriousness and data robustness weightings using the survey methodology from Europe's Product Environmental Footprint Category Rules. As the seriousness weightings add up collectively to 100 and the PEFCR methodology does not include impact indicators for plastic impacts, DEQ needed to develop Oregon-specific, custom seriousness weightings for the two plastics impact indicators, and then rescale all of the indicators so that they would add up to 100 – effectively, DEQ inserted two new indicators with Oregon-specific weightings into an otherwise European Union-derived weighting scheme.

To derive the two Oregon-specific seriousness weightings, DEQ conducted surveys that used two different methodologies with a group of subject matter experts employed in the agency's air, water, and land divisions, and then presented successive proposals to the Rulemaking Advisory Committee for feedback. The surveys paralleled those used with LCA experts and regular citizens in Europe to generate the PEFCR weightings. The RAC notably felt that the two plastic impact indicators, added together, should fall in the top five among all impacts, which they do in these proposed rules. As for robustness, the weighting value for the "Plastic physical impacts on biota" was selected in consultation with the MariLCA team, and the value for "Plastics leakage inventory value" is set at a midpoint of the range of weightings applied to the other impact indicators – this reflects the fact that this indicator is operating as a placeholder in the absence of a widely-accepted impact assessment methodology for these impacts, with the raw leakage data standing in as a proxy for the impact of the leakage. To what extent the raw data correlates to impact is unknown, and as such, a midpoint rating is applied.

Topic: Core Product Category Rule - Alignment with Existing Standards

Comment: Align Oregon's product category rules as much as possible with other life cycle inventory, analysis, and reporting principles. Commenter number(s): 32

Response: Oregon's proposed product category rules for the Recycling Modernization Act rely heavily upon impact assessment methods drawn from the Product Environmental Footprint Category Rules (PEFCR), and also borrow principles, requirements and organizing principles from the International Standards Organization (ISO) 14040, 14044, and 21930 standards.

Topic: Core Product Category Rule - Fiscal Impact

Comment: The fiscal impact of the life cycle evaluation rules is excessive for producers. According to figures presented by DEQ, completion of the required life cycle assessments could cost a $2.5 million every two years per large producer. Commenter number(s): 35

Response: The Fiscal Impact Statement indicates that costs associated with a single life cycle evaluation could run as high as $100,000, DEQ does not envision large producers generally paying nearly this much to assess one Stock Keeping Unit, due to having in-house life cycle assessment capacity and existing life cycle assessment results that could be adapted to meet Oregon's requirements, and due to the rules allowing for batch assessments that cover multiple

SKUs. In fact, representatives of likely large producers that participated in the Rulemaking Advisory Committee process and in the Request For Information process that supplied technical advice into the rulemaking process on this topic indicated that they expected that they would be able to fulfill this requirement on a biennial basis with a handful of evaluations and limited budgetary outlay.

Topic: Core Product Category Rule - Informational Module for Return Transportation of Reusable Packaging Products

Comment: Add clarity to rule 340-090-0930(1)(c)(B)(i) with respect to how emissions will be determined for consumers returning reusable packaging, in order to improve practicability of implementation. 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? Commenter number(s): 46

Response: Determinations with respect to the share of transport emissions associated with consumer return to be allocated to the reusable product and distance to collection points would need to be made on a case-specific basis in a way that reflects the distribution and quantity of actual collection points in place for the particular product in question. These determinations are subject to the third-party verification and validation process, and per rule 340-090-0930(2)(b), the producer must disclose any assumptions that underlie inventory development and analysis.

Topic: Core Product Category Rule - Inventory Rules for Hazardous Waste

Comment: With respect to the requirement to report the flow of hazardous wastes pursuant to rule 340-090-0930(2)(f), amend the language to make clear that producers need only report on hazardous wastes clearly attributable to covered products and their own operations or those of direct suppliers. This will resolve a perceived conflict between the hazardous waste reporting requirement and the instructions at rule 340-090-0930(1)(c)(C)(ii) to represent the end-of-life information module by using regional or national averages for the composition of end-of-life dispositions for a given covered product. Commenter number(s): 46

Response: The two sections in question pertain to different elements of the life cycle evaluation process.

OAR 340-090-0930(2)(g) (renumbered from (f)) pertains to the flows of hazardous waste that may be generated at any point across the life cycle of the functional unit, as defined in the system boundary section of the rules (pursuant to OAR 340-090-0930(1)(b)) and information modules section these same rules (pursuant to OAR 340-090-0930(1)(c)). In lay terms, this means that a producer must track and report any flows of hazardous wastes generated at any step of the defined life cycle (e.g. from production, from transport, from use, from disposal).

The other section in question, 340-090-0930(1)(c)(C)(ii), pertains to the disposition of the functional unit itself. Here the rules suggest that a regional or national mix of end-of-life dispositions (e.g. 50% recycled and 50% landfill) should be evaluated.

These two sections seem sufficiently distinct and so DEQ has not amended the language at this time.

Topic: Core Product Category Rule - Requirement to Develop a Plastic Leakage Inventory

Comment: Allow producers to use alternative methods besides the Plastic Footprint Network methodology, as referenced in OAR 340-090-0930(2)(g), to assemble a plastic leakage inventory. The Plastic Footprint Network methodology is considered a nascent guiding document for assessing plastic leakage. Other methods could be used, 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. Commenter number(s): 32

Response: DEQ retained the requirement that producers use the Plastic Footprint Network methodology to assemble a plastic leakage inventory. Life cycle assessment has been criticized for methodological flexibility that could allow analysts to pre-determine outcomes. One of the goals the Life Cycle Evaluation rules for the Recycling Modernization Act was to limit such flexibility (where possible) to enable accurate comparisons (for now, just before-after comparisons of a producer's product, but possibly across producers' products in future iterations of the rules). As such, DEQ's tendency when drafting these rules was to be proscriptive when doing so neither exceeded the capacity of the rulemaking process (an example of this would be a proscriptive approach to how credits for recycling are to be allocated, something that DEQ considered but ultimately did not tackle in this rulemaking), nor imposed infeasible requirements on producers when completing their life cycle evaluations. DEQ considers this to be the case for the requirement to use PFN. This methodology was also developed through an extensive process that engaged a diversity of interested parties from industry and academia–therefore, despite being relatively new, DEQ anticipates that many producers already have experience using PFN that they will be able to leverage when conducting evaluations to meet Oregon's standards.

Topic: Core Product Category Rule - Reuse-Specific Parameters

Comment: Add a disclaimer to the rules that specifies that the requirement for additional impact data for reusable packaging products does not necessarily mean that reusable items have more impacts relative to other packaging formats or materials. Commenter number(s): 30

Response: No additional environmental impact category results are required for reusable covered products. However, the system boundary for reusables includes the use phase (not the case for single use covered products) specifically because of the unique nature of the use phase for a reusable product (e.g. collection, washing and sterilization, redistribution). This requirement is to ensure full accounting for the environmental impacts of a reusable covered product. A single use product does not require these same processes during the use phase and therefore a full accounting of impacts can be captured with upstream production (raw materials, transport, manufacturing, distribution) and downstream management (collection, transport, end disposition).

Topic: Core Product Category Rule - Scenario Comparisons

Comment: 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. Commenter number(s): 51

Response: To ensure methodological robustness, derived much of the content of these rules from existing best-available standards, and worked with a rulemaking advisory panel of life cycle assessment experts to develop the rules. Our approach in drafting these rules was to put in place methodological guardrails to prevent/preempt the concerns raised by the commenter.

Topic: Core Product Category Rule - Selection of Data and Data Quality Requirements

Comment: Require packaging manufacturers to provide toxicity and water quality impacts of the primary, secondary and tertiary packaging to the obligated producers – i.e., impose secondary data requirements for inventory data relevant to toxicity and water quality impacts. This would reduce the need for producers to hire consultants and focus on providing the information related to the covered producer's greenhouse gas footprint. Commenter number(s): 35

Response: DEQ encourages producers to work with their suppliers to obtain measured data specific to their production facilities, as the proposed rules prefer measured over calculated and estimated data, pursuant to rule 340-090-0930(1)(e)(A). DEQ does not have statutory authority to require suppliers to provide these data to the obligated producers; the only mandate to conduct life cycle evaluations lies with large producers, pursuant to ORS 459A.944.

Topic: Core Product Category Rule - Toxicity "Veto Power" Over the Substantial Impact Reduction Bonus

Comment: Remove the "veto power" over substantial impact reduction bonuses that is effectively attributed to the three PEFCR toxicity impact factors in rule 340-090-0930(3)(c)(A) (according to the current language, if the human toxicity cancer and non-cancer impact goes up 1000 times or more, or the freshwater toxicity impact goes up 100 times or more after a producer's impact reduction action, the producer cannot receive a substantial reduction bonus). The commenter agrees with exclusion of the three toxicity impact indicators from the single score profile methodology due to error in the methodologies, and wonders if giving these indicators a veto role is consistent with their exclusion. Clarity with respect to where the 100x and 1000x factors was also requested. Commenter number(s): 46

Response: The exclusion of the three toxicity impact indicators from the single score profile method to be applied for qualification for the substantial impact reduction bonus reflects high uncertainty in the fate, exposure, and effects in the underlying characterization models for these three impact indicators, as documented by Rosenbaum et al. 2008, "USEtox—the UNEP-SETAC toxicity model: recommended characterization factors for human toxicity and freshwater

ecotoxicity in life cycle impact assessment." INTERNATIONAL JOURNAL OF LIFE CYCLE ASSESSMENT, v. 13.

However, when seeking a fee reduction pursuant to OAR 340-090-0910(3)(b), the current rule language requires that these indicators must be reported separately from the single score calculation. And if a producer action results in an increase in environmental impact results for any of these three indicators that exceeds the high end of the precision of the underlying characterization factors (CFs) reported by Rosebaum et al., then a substantial impact reduction bonus should not be granted to the producer even if the single score profile indicates that substantial impact reduction of 10% or more has been achieved. Effectively, these factors (1000x for the human indicators and 100x for the ecotoxicty indicator) represent a threshold for impact increase above which the methods' results are meaningful–i.e., the level of impact is so great as to exceed the noise caused by error in the methodology.

As the "veto power" approach to integrating toxicity into the substantial impact reduction bonus method is based on peer-reviewed science and represents an attempt, albeit insufficient, to account for the important impacts of toxicity, DEQ did not make any changes to the rules based upon this comment.

Topic: Core Product Category Rule - Use of In-House Staff and Software Tools

Comment: Explicitly clarify that producers are allowed to utilize in-house staff (rather than consultants), software solutions, or both to carry out an LCA that meet the requirements of the RMA and the LCE rules. Commenter number(s): 30

Response: DEQ did not make any changes in response to this comment. The rules themselves define what a producer must do, which is to follow the methodology in 340-090-0930-0940 and develop and submit the project report in conformance with 340-090-0920. DEQ does not dictate how producers would staff a project to complete a life cycle evaluation, nor any tools that must be used to fulfill the obligation.

Topic: Core Product Category Rules - Table of Weighting Factors

Comment: In the product category rules, give higher weights to impacts that result from recycling of Oregon-origin materials, such as plastics impacts of recycling, and lower weights to macro-level impacts derived from the European reporting framework. This would be more effective for addressing impacts specific to Oregon's recycling system. Commenter number(s): 34

Response: DEQ did not make changes in response to the comment because 1) the primary focus of ecomodulation is to catalyze life cycle impact reduction (with the greatest potential often being upstream rather than downstream change), and 2) DEQ has adopted a methodology for setting these weightings consistent with the European Union. Key determinants in the weighting are relative impact seriousness (e.g. how widespread, long-lasting, reversible, close to the Earth's carrying capacity, and severe is the impact?) and the robustness of impact assessment results

(e.g. the robustness of the data on emissions and the methodologies for assessing their impacts). Where in the life cycle the impact occurs is not a determinant within this weighting methodology.

Many of the changes implemented through the Recycling Modernization Act channel producer-derived funding toward improving end-of-life management of products through modernization of the state's recycling system. However, the law also seeks to reduce overall life cycle impacts of covered products. As such these rules stipulate a whole life cycle (with some exceptions) scope of evaluation. This scope is important for two reasons. First, to achieve the stated goal of the law pursuant to ORS 459A.860(4) and second, because often upstream impacts (e.g. raw material extraction and primary production) of a product's life cycle are considerably larger than downstream impacts (e.g., impacts of product use, disposal, and end-of-life management). If we were to limit the scope to end of life (e.g. "plastic recycling impacts in Oregon").

Furthermore, evaluating the whole life cycle of covered products across varied environmental impact categories is a core function (and benefit) of the methodology of life cycle assessment. This provides a more holistic view of the environmental concerns associated with the production, use, and disposal of covered products. And thus forms the basis for determining fee adjustments associated with a given covered product. This approach is referred to as "ecomodulation" and requires the PRO to offer fee bonuses (and penalties) to incentivize (or disincentivize) producer actions that reduce (or increase) product life cycle impacts.

The methodology proposed at rule 340-090-0930 for the development of a single score impact profile within which impacts are weighted differently relative to one another will be used as the basis for ecomodulation. The impacts proposed for inclusion in the assessment and for which weightings are proposed in Table A are to be measured across the entire life cycle of the product, not just for production or for end-of-life.

Topic: Core Product Category Rules - Impact Assessment for Reusable Packaging Products

Comment: Broaden definitions and rules where possible to anticipate and allow for a variety of interpretations with respect to calculating reusable packaging product life cycle impacts, and align with existing standards. This approach would recognize that standards for LCA calculations of reusable packaging are still developing, as demonstrated by the need to reference ISO21930:2017 § 7.1.7, a standard intended for "environmental product declarations of construction products and services" rather than for consumer goods products. Commenter number(s): 32

Response: In response to other comments received, DEQ has added definitional and impact assessment methodological content regarding at-home refillable packaging products–the commenter may consider this an example of the broadening desired. Generally, though, life cycle assessment has been criticized for too much flexibility in its methods, allowing analysts to design and scope a study to bias/pre-determine outcomes. One of the goals of the effort to develop a product category rule for the Recycling Modernization Act was to limit such flexibility. The idea that room for "a variety of interpretations" should be built into the method runs contrary to this

approach. Also, the commenter has mistaken DEQ's use of ISO 21930 as the structural backbone of these rules as evidence that LCA standards are underdeveloped with particular respect to assessment of reusable products. ISO 21930 is a particularly comprehensive product category rule and as such was a good option from which to borrow the structure of the rules; it does happen to focus on construction products rather than packaging, as in some ways the construction industry is further along with respect to the development and use of product category rules, including as a part of government policy.

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

Topic: Additional Environmental and Human Health Information - Disclosure of Intentionally-Added and Contaminant Hazardous Substances

Comment: Require disclosure of all intentionally-added substances in the product irrespective of practical quantification limits and hazardous or non-hazardous status, and require disclosure of only *known* contaminants.

The inclusion in these rules of practical quantification limits and disclosure of all 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. Commenter number(s): 46, 12, 31

Response: It is DEQ's understanding that producers sometimes face challenges to obtain comprehensive information from their supply chain partners, and as such, may benefit from the clarity provided by inclusion of practical quantification limits for both intentionally-added and contaminant substances in the disclosure requirement at 340-090-0940(1). These distinctions also are intended to assist DEQ with its enforcement with respect to this reporting.

These rules do not contain a requirement to test, implied or explicit. Some of the language used and much of the hazardous substance list is drawn from the Toxic Free Kids Act, which also does not include a mandate to test.

Topic: EU Sustainability Reporting Standards

Comment: Limit toxics disclosures required under the life cycle evaluation rules to those areas that resonate with existing legislation in other jurisdictions, such as that which is required by EU sustainability reporting standards as is listed in OAR 340-090-0940(5)(b). Commenter number(s): 32

Response: DEQ is retaining the disclosure requirements at 340-090-0940(1)-(4) which is unique to Oregon, pertaining to chemicals that have been designated as potentially hazardous in consumer products (specifically, in children's products and cosmetics, for which Oregon has existing toxics laws). For most of these chemicals, practical quantification limits and acceptable testing methods have been defined in rule in Oregon with the participation of interested parties

specific to Oregon; as such, DEQ considers producer disclosures regarding presence and impact of these chemicals in covered products to be particularly salient, and has proposed particularly these chemicals as a toxics disclosure "starter list" that may be built upon in subsequent rulemakings and tailored to the scope of the Recycling Modernization Act (i.e., to packaging, paper, and food serviceware).

The information yielded through these toxics disclosure requirements may also enable a future, updated version of these rules that better accounts for toxics impacts, which are inadequately handled by life cycle assessment due to high error in the methodology.

Division 93: Solid Waste: General Provisions

Rule 340-093-0030 Definitions

Topic: Definitions - Capture Rate

Comment: Modify the definition of capture rate to recognize material removal at a limited sort facility. Commenter number(s): 20

Response: DEQ did not make any changes in response to this comment because the capture rates at any given CRPF are not based on the compositional makeup of the average inbound ton (see weighting factors associated with the PCRF's average commodity value). Capture rates are expressed as a percentage basis (percentage of material available for capture), not on an absolute basis (tons of material). The capture rates for a CRPF are based on what is actually being accepted by the facility, where capacity and throughput differs from facility to facility. If a limited sort facility removes some amount of cardboard from the commingled stream before selling/transporting the remaining material to a CRPF, it simply means that the CRPF receives less cardboard in total; the CRPF will be required to meet the capture rate on the cardboard that it does accept, whether that's 20,000 annual tons or 200,000 annual tons.

Topic: Definitions - Limited Sort Facility (1)

Comment: Commenter suggests that facilities falling under definition (A) be defined as "secondary processors," as that is a descriptor already used and understood within the wider recycling sector. Commenter number(s): 46, 32

Response: DEQ did not make changes in response to this comment. The language proposed under OAR 340-093-0030(65) was language reviewed and supported by both the CRPF Technical Workgroup and the Rulemaking Advisory Committee.

Topic: Definitions - Limited Sort Facility (2)

Comment: Commenter suggests that 93-0030(65) be updated to read:

"Limited Sort Facility" means a facility that: (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) Does not meet conditions (B)-(D) under OAR 340-096-0300(2)(a); and (c) Meets the following requirements: (A) Markets removed materials to responsible end markets, meeting the requirements of OAR 340- 096-0310; (B) Manages contaminants in those removed materials to avoid impacts on other waste streams or facilities; (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 (D) Sends remaining materials to a commingled recycling processing facility that meets the requirements under ORS 459A.905(2)(a) (E) Obtains a disposal site permit from DEQ.

"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. Commenter number(s): 46, 32

Response: DEQ did not make changes in response to this comment. The language proposed under OAR 340-093-0030(65) was language reviewed and supported by both the CRPF Technical Workgroup and the Rulemaking Advisory Committee. Regarding the concern that DEQ will permit out-of-state limited sort facilities downstream from CRPFs, DEQ does not have the authority to permit out-of-state facilities, most notably limited sort facilities that are acting as secondary processors to in-state, permitted commingled recycling processing facilities.

Topic: Definitions - Reload Facilities

Comment: There should be a clarification to the definition of "Reload Recycling Facility," to distinguish it from "Commingled Reload Recycling Facility" and "Commingled Recycling Facility." In order to better effectuate the use of these two different terms for facilities, we suggest additions to the definition of "Reload Recycling Facility" in OAR 340-093-0030 to clarify that it handles "source separated materials," including "covered products" and "recyclable materials." Also propose to add "reload recycling facility" to category levels for permit action in OAR 340-093-0105. Commenter number(s): 17

Response: DEQ did not make changes in response to this comment. The definitions of "Recycling reload facility" and "Commingled recycling reload facility" proposed under OAR 340-093-0030 is language already established in statute under ORS 459A.863(27) and ORS 459A.905(1). DEQ proposes to add these definitions under OAR 340-093-0030 due to each of the facilities' relevance to limited sort facilities. The proposed definition of 'Limited sort facility' can be found under 340-093-0030(65). DEQ cannot add language that would contradict or be different from what is already in statute.

Topic: Definitions - Requirements for RRFs and CRRFs

Comment: Commenter asked how DEQ, or the PRO, will ensure that recycling reload facilities and commingled recycling reload facilities are managing all materials appropriately under the

RMA, especially since neither facility is required to have a solid waste disposal site permit issued by DEQ. Commenter number(s): 20

Response: DEQ already has the authority to permit recycling reload facilities and commingled recycling reload facilities, both of which are defined in ORS. To date, DEQ has not seen an environmental reason to permit facilities that were simply undertaking the process of receiving recyclable material and reloading that material into a larger container for transport to a commingled recycling processing facility or local end market (most notably a local market for cardboard).

Topic: Definitions; Source Separate

Comment: Support for amended definition. Commenter number(s): 20

Response: Thank you for the comment.

Rule 340-093-0160 Place for Collecting Recyclable Material

Topic: Place for Collecting Recyclable Material - Effective Date of Requirement

Comment: Commenter suggests (1) be updated to read: "All solid waste permittees shall ensure that 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)." Commenter number(s): 30

Response: The suggested language is unnecessary since the requirement would not take effect until July 1, 2025. Any type of collection of the local government recycling list, including the Uniform Statewide Collection List, does not take effect until July 1, 2025.

Division 96: Solid Waste: Permits Special Rules For Selected Solid Waste Disposal Sites, Waste Tire Storage Sites And Waste Tire Carriers

Rule 340-096-0300 Commingled Recycling Processing Facilities and Limited Sort Facilities

Topic: Commingled Recycling Processing Facilities and Limited Sort Facilities - Assessment of Performance Standards

Comment: Commenter suggests that assessments of performance standards under (5)(c) take place annually, at a minimum. Commenter number(s): 46, 32

Response: DEQ did not make changes in response to this comment. The language currently proposed in rule does allow for more frequent assessments to occur with the inclusion of "at least." The proposed language in OAR 340-096-0300(5)(c) currently reads:

"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, 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."

Ideally, over time, more CRPFs will be using a DEQ-approved alternative evaluation method assessment, providing DEQ with assessment-related data on a much more frequent basis.

Topic: Commingled Recycling Processing Facilities and Limited Sort Facilities - Assessments, Comparison Study

Comment: Commenter suggests that a CRPF consult with the PRO(s) about the nature of the comparison study (under (5)(d)) before undertaking it. Commenter number(s): 30

Response: DEQ did not make changes in response to this comment. The language under (5)(d) already requires the comparison study, including comparison methodology, to be reviewed and approved by DEQ.

Topic: Commingled Recycling Processing Facilities and Limited Sort Facilities - Capture Rates

Comment: Commenter suggests DEQ review Figure 11 (MRF Capture Rates) of The Recycling Partnership's 2024 State of Recycling Report, to determine if any of the capture rates proposed under 340-096-0300, Table A, should be updated.

Commenter suggests that, instead of fixed capture rates, which have been proposed under Table A in association with (3)(a)(B), DEQ should instead have a range of acceptable rates with incentives for higher performance. Commenter number(s): 28, 30

Response: DEQ did not make changes in response to this comment. The capture rates as proposed could be seen as a minimum rate to achieve; they establish the low end of a de facto range. Providing "incentives for higher performance," which DEQ is assuming means financial incentives, is not an activity DEQ can undertake. Also, the producer responsibility organization isn't responsible for providing "incentives for higher performance" with respect to achieving capture rates, because regulating the performance standards established under the new commingled recycling processing facility permit program is a DEQ responsibility, not a PRO responsibility.

Note that the funding CRPFs receive from the Processor Commodity Risk Fee will be used to cover the costs of owning and operating a processing facility, including meeting the requirements of the new permit program (i.e., achieving capture rates and the outbound contamination rate).

Topic: Commingled Recycling Processing Facilities and Limited Sort Facilities - Capture Rates (Lowering of Rate for Cartons)

Comment: Revise July 1, 2025 capture rate for cartons to be 70%, instead of the 78% July 1, 2025 rate proposed in rule. Commenter number(s): 15

Response: DEQ did not makes changes in response to this comment. The capture rates proposed under 340-096-0300(3)(a) were created taking into account several resources: Capture rates proposed by Cascadia Consulting Group/Circular Matters, as part of the Material Lists project during the first rulemaking, capture rates determined via DEQ's 2009 and 2023 Outbound Commingled Recycling studies, and, input from industry experts, including The Recycling Partnership. DEQ also received input on capture rates from members of DEQ's CRPF Technical Workgroup.

In the future system, DEQ will undertake assessments at the CRPFs to determine a facility's compliance with the performance standards (capture rates and outbound contamination rate). The data received from those assessments could be used by DEQ to increase or decrease any given capture rate, with that process happening through a subsequent rulemaking process.

Topic: Commingled Recycling Processing Facilities and Limited Sort Facilities - Frequency of Performance Standard Assessments

Comment: Commenter is suggesting that (5)(c) be updated to read: "(c) Each permitted commingled recycling processing facility must undergo at least one unannounced conventional evaluation method assessment within 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. 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 for comparative data purposes. Commenter number(s): 46, 32

Response: DEQ will not be updating the language based on the suggested change. The language currently proposed in rule does allow for more frequent assessments to occur with the inclusion of "at least." The proposed language in OAR 340-096-0300(5)(c) currently reads:

"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, 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."

Ideally, over time, more CRPFs will be using a DEQ-approved alternative evaluation method assessment, providing DEQ with assessment-related data on a much more frequent basis.

Topic: Commingled Recycling Processing Facilities and Limited Sort Facilities - Further Processing of Materials

Comment: Commenter suggests that, on page 127 for clarity purposes, the second to last sentence in (3)(a)(B) should state, "by capturing the materials at its own facility or directing materials to a Limited Sort Facility (for secondary processing) that…" Commenter number(s): 20

Response: DEQ will not be updating language to include the suggested change, as secondary processing can be undertaken at both a commingled recycling processing facility (downstream of the first commingled recycling processing facility) and a limited sort facility that is downstream of a CRPF.

Topic: Commingled Recycling Processing Facilities and Limited Sort Facilities - Outbound Contamination Rate

Comment: Commenter questions where 5% rate originated from and suggests that rate should match the reality of current inbound contamination (2023 Inbound Commingled Recycling Study results puts this rate at 15.5%). Commenter also suggests rate not take effect until Jan. 1, 2028. Commenter number(s): 20

Response: The following was taken into account in the creation of the proposed "must not contain more than 5% contamination" rate: Data from DEQ's 2009 and 2023 Outbound Commingled Recycling studies; acceptable contamination levels associated with model bale specifications published by the Association of Plastics Recyclers; acceptable contamination levels associated with bale grades listed in the Institute of Scrap Recycling Industries' "Scrap Specifications Circular;" and, roughly two dozen conversations DEQ had with fiber and plastics end-markets located across the US. Markets were asked their thoughts on inbound contamination, including what they felt was an acceptable level of inbound contamination.

Beginning July 1, 2025 (though invoicing will not occur until Aug. 1, 2025), CRPFs will receive Contamination Management Fee funding for the removal and disposal (or, in some cases, recycling) of covered product contamination showing up in the inbound commingled recycling stream. That will have a big impact on the quality of outbound material. Note that costs relevant to handling non-covered product contamination were built into Crowe's establishment of the statewide average per-ton operating cost (as part of the Processor Commodity Risk Fee). But, with facilities operating in accordance to capture rates (a requirement of the new CRPF permit), the improvements that facilities make, in order to achieve those capture rates, will ensure that less recyclable material is ending up in the wrong bale (e.g., aluminum cans in mixed paper

bales). That will have an even bigger impact on the quality of outbound bales from Oregon CRPFs.

Rule 340-096-0310 Responsible End Markets

Topic: Responsible End Markets – Standard (1)

Comment: The two-step process for commingled recycling processing facilities to implement the "responsible" standard is not required by and inconsistent with the Act, which mandates that CRPFs need to either certify or report disposition. Commenter number(s): 51

Response: The rules proposed at OAR-340-096-0310(1) are, in the opinion of DEQ, consistent with the statutory obligation at ORS 459A.955(2)(h) that commingled recycling processing facilities must either report disposition or certify end markets. As a part of the current rulemaking, DEQ conducted a benchmarking seeking an existing certification that benchmarks well against DEQ's "responsible" standard as defined in the first rulemaking at rule 340-090-0670(2)(b). Finding no existing certification that performed well, DEQ proposed that CRPFs must start the program reporting their disposition, and must ensure that they are sending materials to markets verified as "responsible" by the PRO. As part of the disposition reporting, pursuant OAR-340-096-0310(2)(a)(A) CRPFs must submit screening assessments to DEQ for all downstream entities that receive CRPF-origin materials. DEQ sees this as part of the disposition reporting. Furthermore, the requirement to generate screening forms from downstream entities was developed in the first RMA rulemaking as a way of giving some initial assurance to local governments and other interested parties at the start of the program that markets are responsible, allowing the PRO to have a longer timeline within which to verify the markets.

DEQ considers that this screening assessment requirement is reasonable, especially in light of the simple nature of the draft form (see page 60). Furthermore, OAR-340-096-0310(1)(e) allows CRPFs to coordinate with the PRO and potentially convince the PRO to tackle much or all of the burden with respect to gathering the screening forms from the downstream entities.

Topic: Responsible End Markets - Standard (2)

Comment: Remove the annual audit and third-party certification requirements for entities downstream of CRPFs. It is unnecessary given that CRPFs, which are intended to be directly regulated under the Act, are not subject to the same requirement. Commenter number(s): 51

Response: Statute is clear that commingled recycling processing facilities are to be permitted, with the permit requirements spelled out at ORS 459A.955(2)(h) and to be further clarified in rule. One of the permit requirements is to ensure that materials go to responsible end markets, either through certification of the markets to an EQC-approved standard, or by reporting disposition. Nowhere in the rules is it specified that CRPFs and end markets are to be held to the same requirements; on the contrary, two different sets of requirements are foreseen.

Topic: Responsible End Markets - Verification of End Markets

Comment: Commenter suggests DEQ provide more detail around the requirement for a CRPF to "ensure" verification of end markets, as it is unclear what is expected of CRPFs at this stage. Commenter number(s): 30

Response: CRPFs must ensure that all downstream entities described in OAR 340-090-0670(2)(a)(A)-(E) that their materials are flowing to have either been PRO-verified or third party-certified. Only PROs can conduct verifications and no third-party certification has been approved by the Environmental Quality Commission; as such, at the start of the program, CRPFs will merely need to check that the downstream entities have been PRO-verified (and the pre-check screening forms, which the CRPFs are required to collect from downstream entities prior to the start date) by the requisite deadlines, and CPRFs will also need to report their material disposition to DEQ on a quarterly basis, so that DEQ can pass to the PRO an anonymized list of end markets and other downstream entities that require verification.

If the EQC approve a third-party certification for use in the future, CRPFs at that point could proactively pursue certification of their markets, and then they would be relieved of their obligation to report disposition to those markets (note ORS 459A.955(2)(h) – CRPFs must either report disposition or certify).

As such "ensure" at rule 340-096-0310(1)(a)(B) at a minimum means checking the downstream entities' verification status. DEQ did not feel that further clarifying language was needed in the rules, and as such made no changes.

Rule 340-096-0820 Commingled Recycling Processing Facility Certification Program

Topic: Commingled Recycling Processing Facility Certification Program - CRPF Qualifications

Comment: Commenter suggests DEQ clarify that out-of-state CRPFs must also meet the same qualifications that separate an in-state CRPF from a Limited Sort Facility. Including pre-sort, two-stream, and the 95% threshold for fiber sent to responsible end markets, all qualifications found under OAR-340-096-0300(2) "Permit eligibility." Commenter number(s): 29

Response: DEQ will not be making any changes to the language based on the suggested change. The language proposed under 340-096-0300(2) is specific to in-state facilities and sets certain eligibility requirements for facilities to become permitted under the new commingled recycling processing facility permit program. The language as proposed ensures that a limited sort facility cannot be become a CRPF unless it meets the eligibility requirements listed under 96-0300(2).

DEQ cannot establish similar permit eligibility requirements for out-of-state facilities, as DEQ does not have the authority to permit facilities in other states. Thus the need for the CRPF certification program, which DEQ will work with a third-party certifier(s) to oversee. Out-of-state CRPFs will have the option to become certified or certify (to DEQ and/or the third-party certifier) that the facility meets the requirements of the certification program without actually

holding a certificate. DEQ also cannot permit limited sort facilities operating outside the State of Oregon, regardless of whether that facility is upstream or downstream of the CRPF.

Topic: Commingled Recycling Processing Facility Certification Program - Concern Program will Violate the U.S. Commerce Clause

Comment: There is no suggested change recommended by the commenter. Commenter merely notes they are gravely concerned the CRPF certification program will have the effect of requiring the use of in-state recycling processing facilities to the detriment of out-of-state facilities. Commenter number(s): 44

Response: DEQ did not make changes in response to this comment because no specific change was proposed.

Topic: Commingled Recycling Processing Facility Certification Program - Cost of Follow-Up Assessments

Comment: Commenter suggests additional language be added to (6)(g) to clarify the financial obligation and reimbursable status of costs associated with follow-up assessments. Commenter number(s): 30

Response: DEQ did not make changes in response to this comment, as the clarification suggested will be included in the protocols that DEQ will establish and the third-party certifier will use when working with the out-of-state commingled recycling processing facilities. This language is noted under (6)(g), which reads "The commingled recycling processing facility shall implement the follow-up assessment in accordance with the DEQ approved protocols and schedule." And, as DEQ has previously stated, CRPFs will not be able to seek reimbursement from the PRO (via the Processor Commodity Risk Fee) for costs associated with follow-up assessments, as covering costs associated with non-compliance is not a PRO responsibility.

DEQ will cover the costs of the initial conventional evaluation method assessments undertaken at out-of-state CRPFs, with a third-party certifier or a contractor to a third-party certifier conducting those assessments. In the case of a follow-up assessment(s), an out-of-state CRPF would have the option of using the contractor to the third-party certifier or hiring their own contractor. If the CRPF was to hire its own contractor to conduct the follow-up assessment(s), that contractor would have to operate in accordance with the protocols approved by DEQ.

Rule 340-096-0840 Living Wage and Supportive Benefits

Topic: Living Wage and Supportive Benefits - Concerns with Employment and Pay Equity Laws

Comment: Concerns with how this definition of 'worker' may conflict with current or future employment or pay equity laws. Commenter number(s): 20

Response: Review of the proposed rules and definitions by the Oregon Department of Justice found no current law at the state or federal level that would conflict on a basis of pay equity. As with all rulemaking at DEQ, the rules will be reviewed once every five years for necessity and accuracy, so any future changes in state or federal employment law will be considered as part of that review.

Topic: Living Wage and Supportive Benefits - DEQ Should Remove this Requirement from the Rules

Comment: There is 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. Commenter number(s): 44

Response: ORS 459A.905(2)(c) states that a "local government, the local government's service provider or a commingled recycling reload facility may not deliver to a commingled recycling processing facility commingled recyclables that were collected pursuant to the uniform statewide collection list established under ORS 459A.914 unless [t]he processor provides workers at the facility with a living wage and supportive benefits, as defined by the rule by the Environmental Quality Commission." This is clear delegated authority for DEQ to propose these rules regarding wages and benefits for EQC consideration.

ORS 459A.905(2)(c) as excerpted above is effective Jan. 1, 2027, and the proposed rules related to living wages and supportive benefits will have an effective date of Jan. 1, 2027, to ensure alignment with the statutory requirements.

The comparison of the proposed living wage and supportive benefit rule language to the required minimum wages provided to workers in other high-cost jurisdictions, is noted; however, the comparison to the minimum wage of high-cost locations ignores the statutory direction of ORS 459A.902(2)(c) that the relevant facilities provide a "living wage" to workers as defined in rule. At the time of the rule proposal, DEQ is not aware of any localities in Oregon or other states currently using a living wage as a proxy for their minimum or prevailing wages. Berkley, CA, has a minimum wage of $18.67, effective July 1, 2024, for all workers under its local ordinance; however, this minimum wage is not based on a living wage, as is explicitly required by the statute informing these proposed rules in Oregon.

Additionally, as part of the development of these proposed rules, DEQ evaluated the Oregon Bureau of Labor and Industry's Prevailing Wage laws and handbook to compare the proposed living wages for CRPF sort line workers to that of other occupations hired for public works

projects that may engage in similar tasks. DEQ's evaluation of those tasks showed that workers employed under the definition of Laborer Group 1, which includes work classifications similar to the tasks performed by CRPF sort line workers, earn a base rate of $36.11, which is above the proposed living wage for all locations. A comparison could also be made with Laborer Group 3, specific to flaggers on road projects, due to the less technical work of that occupation than some of Group 1, but being in a potentially hazardous work environment on active roadways, similar to the health and environmental hazards encountered by CRPF sort line workers. The base rate for Laborer Group 3 employees is $31.39, approximately $0.30 to $1.19 less than the proposed wage for CRPF sort line workers in the three highest-wage Oregon locations proposed in these rules, and $8.04 to $4.45 more than the proposed wages for CRPF sort line workers in the three lowest-wage Oregon locations proposed in these rules.

Topic: Living Wage and Supportive Benefits - Definition of a Worker

Comment: Commenter disagrees that the definition of a worker at a CRPF should be limited to those whose primary work tasks are directly associated with the mechanical or physical activities of processing material at a CRPF. So much of the RMA focuses on equity, how is this equitable? Are the other workers who are excluded from this definition not of sufficient value to warrant a living wage and supportive benefits? Who decided that? What if this definition was reversed, and only administrative or clerical workers, truck drivers, maintenance or other similar occasional workers were included in the definition? Would that be equitable to the excluded workers? Commenter number(s): 20

Response: The proposed definition of "worker" was discussed multiple times with the Rulemaking Advisory Committee, and is informed by the past work and recommendations of the Recycling Steering Committee specific to sortline worker experiences at recycling facilities.

As with all rulemaking at DEQ, the rules will be reviewed once every five years for necessity and accuracy, so any future changes to the proposed definition of "worker" will be considered as part of that review.

In addition to the five-year rule review, RMA requires DEQ to perform a study of equity in Oregon's recycling system at least once every four years. That study, ORS 459A.932, includes requirements for "[a}n evaluation of commingled recycling processing facility worker conditions, wages and benefits". DEQ will include this evaluation in its 2028 report, after the Jan. 1, 2027, implementation of the proposed rules for living wages and supportive benefits.

Topic: Living Wage and Supportive Benefits - Definition of worker

Comment: Commenters suggest broadening the definition of 'Worker' to include all workers at Commingled Recycling Processing Facilities, even administrative and clerical workers.

Related to this suggestion, commenters also suggest amending the threshold for a worker's hours to be eligible for living wages and benefits from "primary work tasks" to "at least one hour," suggesting the proposed rule language be updated to read as such:

"A living wage is a wage one full-time worker must earn, calculated on an hourly basis, to cover the cost in the place where they live of their household's minimum basic need without additional income or subsidization. The living wage is paid on every hour a worker has worked; it is not dependent on the employer's schedule for the worker, whether that is full time or not." Commenter number(s): 16, 22, 29

Response: The proposed definition of "worker" was discussed multiple times with the Rulemaking Advisory Committee, and is informed by the past work and recommendations of the Recycling Steering Committee specific to sortline worker experiences at recycling facilities. The concern regarding an employer's potential attempts to subvert the statutory requirement of paying a living wage to these types of workers by intentionally scheduling workers for tasks other than sortline-type work as their "primary" work is noted; however, a study completed by Crowe LLP in 2023 on behalf of DEQ assessed labor costs in three main categories: sortline workers, equipment operators/maintenance and office. This indicates that commingled recycling processing facilities tend to employ people for very distinct tasks and roles, and combining the tasks of a sortline worker with other tasks, such as clerical or maintenance tasks, would not be a common employment practice for these facilities. DEQ acknowledges some risk of non-compliance through deliberate business operational decisions is possible, and intends to use other implementation tools, such as the permitting program, and the equity study, noted below, to assess if future rule revisions are necessary to reduce risk of non-compliance.

As with all rulemaking at DEQ, the rules will be reviewed once every five years for necessity and accuracy, so any future changes to the proposed definition of "worker" will be considered as part of that review.

In addition to the five-year rule review, RMA requires DEQ to perform a study of equity in Oregon's recycling system at least once every four years. That study, ORS 459A.932, includes requirements for "[a]n evaluation of commingled recycling processing facility worker conditions, wages and benefits". DEQ will include this evaluation in its 2028 report, after the Jan. 1, 2027, implementation of the proposed rules for living wages and supportive benefits.

Topic: Living Wage and Supportive Benefits - Determining A Living Wage

Comment: Commenter suggests DEQ should align any wage requirements with those already established by localities in high-cost areas of the state and country. Commenter number(s): 35

Response: ORS 459A.905(2)(c) specifies the provision of a "living wage".

In developing the proposed rules, DEQ researched U.S. states with higher minimum wage requirements and cities or other locations in the U.S. with localized minimum wage requirements above their state-mandated minimum wages. DEQ is not aware of any U.S. locations that based their minimum wages on a living wage as defined within the proposed rules or based on the parameters included in the primary data source of the MIT Living Wage Calculator. It is unclear what locations the commenter intends to be considered "high-cost areas" for the purposes of this comparison.

Topic: Living Wage and Supportive Benefits - Method Use for Calculating Living Wage

Comment: Why did DEQ present the Oregon Office of Economic Analysis report about Oregon's population and then proposed to use MIT's Living Wage Calculator and the calculations drafted in rule. The commentor recommends revising the calculation to match the Oregon Office of Economic Analysis. Commenter number(s): 20

Response: The information from the Oregon Office of Economic Analysis includes all households, working or non-working, in Oregon, and is not an accurate representation of working households in Oregon. Working households in Oregon tend to have a larger number of members than non-working households. DEQ's use of the MIT Living Wage Calculator, with an Oregon-specific calculation that reflects the composition of working households in Oregon, is a more appropriate data source. DEQ is not implying that 35% of working families consist of a single person and that 65% of working families comprise two workers and two dependents. DEQ performed a more detailed demographic analysis of working families in support of the development of this proposed rule, and that analysis generated a result that is very close to the wage figures calculated using the simple weighting factors contained in footnote 1. DEQ chose to propose the simplified formula (two values from the MIT Living Wage Calculator, weighted) for use as a reasonable proxy by any new or relocated facilities in counties not listed in Table A, rather than requiring them to replicate the much more complex formulas and series of calculations originally performed by DEQ.

Topic: Living Wage and Supportive Benefits - Minimum Living Wage

Comment: Commenter suggests DEQ add rule language clarifying that the minimum living wage is the amount that must be paid to the worker and cannot include any administrative and other costs paid to a third party for hiring workers. For example, if the RMA living wage is $32.58 for Washington County, a CRPF in Washington County would not meet the living wage standard by paying a third-party company $2.58/hr for workers that receive $30.00/hr Commenter number(s): 29

Response: ORS 459A.905(2)(c) specifies the provision of a "living wage and supportive benefits, as defined by the rule by the Environmental Quality Commission". DEQ's position is that the statutory language is clear enough that the wage amounts proposed in rule are what must be provided directly to the worker in the form of a wage, and any costs related to third-party hiring services or other administrative factors would be in addition to the wage paid to the workers.

Topic: Living Wage and Supportive Benefits - PCRF should Include All Workers

Comment: The Processor Commodity Risk Fee only covers this subset of defined worker at a CRPF, which means the CRPF will likely be subject to higher costs that will not be supported by

the PRO fee. The definition of a worker rule language should be revised to include all CRPF workers. Commenter number(s): 20

Response: Regarding the Processor Commodity Risk Fee, to determine the statewide average per-ton operating cost (aka fee rate), which can be found under proposed 340-090-0820(2), two types of costs were considered: Eligible processing costs and anticipated program costs.

"Eligible processing cost" means all costs associated with owning and operating a commingled recycling processing facility, including but not limited to sorting, handling, storing, disposal, marketing and shipping, administration, rent, fees, depreciation, fixed costs, profit, the target price paid for commingled recycling collected from Oregon. All labor is included under this category.

"Anticipated program cost" means all additional costs related to any new requirements of ORS 459A.860 to 459A.975 that are anticipated prior to the next review of the Processor Commodity Risk Fee.

As part of the CRPF Fees study it was determined Living Wage and Supportive Benefits-related costs for the two CRPF fees taking into account the following:

- Increases in wages based on current employee counts: Increases in wages based on potential future employee counts (reflecting increases and/or decreases from the current state)
- Increases in benefits as compared to current levels (particularly for contract sort line workers)
- Consideration of wage compression issues (although not incorporated into anticipated program costs).

Topic: Living Wage and Supportive Benefits - Reporting

Comment: Commenters suggest that a reporting requirement be established that requires CRPFs to report to local governments wage-related information, to support the statutory requirements on LGs (as well as service providers and reload/LSF facilities) to direct recyclable materials only to facilities that provide living wages and supportive benefits. Commenters suggest including an option for local governments - or DEQ - to request a third-party audit of any CRPF to verify any self-reported data. Commenter number(s): 16

Response: ORS 459A.905 prohibits local governments and their service providers from delivering commingled recyclables to CRPFs that do not provide workers with a living wage and supportive benefits. That statutory requirement places the responsibility of compliance on the local governments, and DEQ's position is that local governments may structure their verification systems in ways that work best for their individual needs and no additional statutory clarification is needed in rule. In addition, DEQ's regional permitting staff are beginning development of the updated permitting program for these facilities. DEQ intends to incorporate mechanisms for self-reporting compliance with the wage and benefit requirements, among other changes. This self-reported information will be subject to enforcement similar to all permit obligations, in alignment with current agency practices, and help support local governments in verifying compliance with these proposed rules.

DEQ also has authority for periodic review of compliance of these elements through the equity study, completed initially in 2024 and to be repeated at least once every four years. ORS 459A.932(2)(a) requires CRPFs to provide DEQ "with information necessary for DEQ to meet the requirements of subsection (1)(a) and (b) of this section". Subsection (1)(a) requires DEQ to evaluate and report on "commingled recycling processing facility worker conditions, wages and benefits". DEQ considers it necessary to understand compliance status as a mechanism for evaluating CRPF wages and benefits, and will request this data for the development of the report to the legislature due Sept. 15, 2028.

Topic: Living Wage and Supportive Benefits - Reporting and Auditing

Comment: Commenter suggests DEQ add rule language that requires CRPFs to provide local governments with quarterly data sufficient to support local governments in meeting their statutory obligation to only direct materials to facilities that provide living wages and supportive benefits. CRPFs must also participate in an audit to determine compliance, if requested by a local government or DEQ. Commenter number(s): 29

Response: Local governments may structure their verification systems in ways that work best for their individual needs, and their established contracts and agreements with their service providers, and additional statutory clarification in rule may not be appropriate due to the individualized nature of service provider agreements. DEQ's regional permitting staff are beginning development of the updated permitting program for these facilities. DEQ intends to incorporate mechanisms for self-reporting compliance with the wage and benefit requirements, among other changes. This self-reported information will be subject to enforcement similar to all permit obligations, in alignment with current agency practices, and help support local governments in verifying compliance with these proposed rules.

DEQ also has authority for periodic review of compliance of these elements through the equity study, completed initially in 2024 and to be repeated at least once every four years. ORS 459A.932(2)(a) requires CRPFs to provide DEQ "with information necessary for DEQ to meet the requirements of subsection (1)(a) and (b) of this section". Subsection (1)(a) requires DEQ to evaluate and report on "commingled recycling processing facility worker conditions, wages and benefits". DEQ considers it necessary to understand compliance status as a mechanism for evaluating CRPF wages and benefits, and will request this data for the development of the report to the legislature due Sept. 15, 2028.

No Agency Response Required

General Comments

Topic: Concern about consistency with other states - REM and LCA

Comment: No other state has the responsible end market or life cycle evaluation requirements. Commenter number(s): 35, 44

Response: Statute does not require that DEQ align its rules with those of other states' programs. That said, California and Colorado's statutes include responsible end market requirements, and California has proposed very similar regulations as those of Oregon.

Topic: Concern about single-PRO system

Comment: Only one PRO has submitted a program plan to DEQ, meaning there will not be competition in the system. Commenter number(s): 56

Response: This comment is outside the scope of the rulemaking. Statute allows for multiple PROs but ultimately it is up to the community of interested parties and especially producers to decide whether or not the desire for competitive fees merits the work of standing up a competing PRO. Rules adopted by the EQC in the first rulemaking allow new PROs to submit a program plan to enter the system at the beginning of each program plan period and at other times with prior DEQ invitation of a program plan.

Topic: General Opposition - In Scope

Comment: Commenter expressed general opposition. Commenter number(s): 1

Response: DEQ did not make any changes in response to this comment because it was outside of the scope of this rulemaking.

Topic: General Support - In Scope

Comment: General support for the RMA. Commenter number(s): 39, 16, 17, 22, 23, 29

Response: Thank you for the comment.

Topic: General Support - Support Proposed Multifamily Service Timelines

Comment: Support proposed implementation timeline for service to multifamily residences under 340-090-0030- General Requirements. Commenter number(s): 29

Response: Thank you for the comment.

Topic: Out-of-Scope

Comment: The comment quotes the Civil Rights Act, 1964, and is related to the need for a social security number. Commenter number(s): 9

Response: This comment is outside the scope of the rulemaking.

Topic: Requests to Engage with DEQ

Comment: Commenters requested that DEQ continue to engage with stakeholders regarding the development of these rules, and allow for further engagement/discussion in advance of final decisions. Commenter number(s): 26, 35, 41, 50

Response: DEQ strictly adheres to the rulemaking process and receives comments on draft rules during the formal public comment period.

Topic: Rulemaking Process

Comment: Commenter stated that the RAC process moved too fast for well-considered input. The pace of the RAC meetings and amount of complex, detailed and sometimes highly technical materials the RAC was expected to review, digest and understand in advance of the meetings in order to have thoughtful discussions, combined to threaten the value of the RAC's input. There was often inadequate time for discussion which meant RAC discussions were often cut off prematurely (with promises to circle back and not doing so).

Commenter appreciated that DEQ did start providing the presentation slides in advance of the meetings, which was helpful for all participants, including RAC members and the larger viewing audience. However the time in the meetings themselves could have been used more effectively-for example, it was unproductive to read the slides out loud, word-for-word, in meetings. There should be an expectations that all RAC members come prepared to discuss topics, and to provide the time to allow them to do so instead of using most of the time to present topics. There were many RAC members, in addition to the commenter, who also asked for more time, better facilitation and more discussion.

It is past time for the DEQ to have a consistent meeting process so that these frustrations stop arising. We appear to be in a remote meeting 'mode' for the long haul and it is a shame if uncorrected process concerns diminish input to the point that public policy is adversely affected. Commenter also requested that DEQ meetings are offered in a hybrid format, to allow for better discussion and the building and maintaining relationships that are at the heart of good process and successful outcomes for the long term. Commenter number(s): 20

Response: DEQ incorporated feedback received during Oregon Recycling System Advisory Council meetings, previous rulemakings, technical workgroups, and informal conversations when developing an engaging RAC process.

Division 12: Enforcement Procedure and Civil Penalties

Rule 340-012-0140 Determination of Base Penalty

Topic: Support for Determination of Base Penalty

Comment: Referencing OAR 340-012-0065, OAR 340-012-0098, and OAR 340-012-0140, commentator supports the proposed penalties for producer responsibility organizations to ensure compliance among companies that can benefit from non-disclosure and can absorb significant penalties, noting that PRO members include companies among the top ten largest revenue earning companies in the world. Commenter number(s): 29

Response: Thank you for the comment.

Division 90: Recycling and Waste Reduction

Rule 340-090-0010 Definitions

Topic: Definitions in Recycling and Waste Reduction

Comment: The new definition of "commingled materials" is a good addition to the rules and provides clarity. Commenter number(s): 20

Response: Thank you for the comment.

Rule 340-090-0630 Recycling Acceptance Lists

Topic: Recycling Acceptance Lists - Cans on the USCL

Comment: The commenter expressed appreciation for the addition to subparagraph (2)(k) of "other non-food cans," reflecting the acceptability of all types of aluminum cans. Commenter number(s): 30

Response: Thank you for the comment.

Topic: Recycling Acceptance Lists - Molded Pulp Packaging

Comment: The commenter appreciates the clarification added to subparagraph 340-090-0630(2)(e) stating that food serviceware "designed to be in direct contact with food" is excluded from the "molded pulp packaging" category. Commenter number(s): 30

Response: Thank you for the comment.

Topic: Recycling Acceptance Lists - PRO Recycling Acceptance List (1)

Comment: The commenter appreciates the deletion of "through recycling depot or mobile events" in paragraph 340-090-0630(3), preserving flexibility for PROs to use different collection methods. Commenter number(s): 30

Response: Thank you for the comment.

Topic: Recycling Acceptance Lists - PRO Recycling Acceptance List (2)

Comment: The commenters expressed appreciation for the continued inclusion of polyethene film (PE) and expanded polystyrene (EPS) on the PRO Recycling Acceptance list. Commenter number(s): 41, 39

Response: Thank you for the comment.

Rule 340-090-0640 Convenience Standards

Topic: Convenience Standards - Minimum Number of Collection Points

Comment: Do not invest in collection points and other infrastructure upgrades and system changes for glass recycling unless it can be shown to improve recycling rates at a level that can justify costs. 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. Commenter number(s): 35

Response: This comment does not contain any specific suggested rule changes such as changing the acceptance listing status of glass, which would have ramifications for whether or not it is subject to the convenience standards for minimum number of collection points that the PRO must establish in the state. The listing of glass was based on detailed analysis of environmental and direct costs and benefits, as well as assessment against 12 statutory criteria at ORS 459A.914(3). The analysis work establishing the listings is available on the Materials List webpage. Furthermore, solid return rates for glass have been achieved at depot programs in locations such as Medford and Tacoma, suggesting that fixed collection points for glass elsewhere in the region (e.g. elsewhere in Oregon) could generate enough collection to be environmentally beneficial.

Rule 340-090-0670 Responsible End Markets

Topic: Responsible End Markets - 1%/10% Exemption

Comment: The commenter voiced appreciation for the flexibility provided in rule 340-090-0670(6)(c)(C) by not requiring reporting for de minimis amounts of individual dispositions to end markets and other locations of final disposition. Commenter number(s): 30

Response: Thank you for the comment.

Topic: Responsible End Markets - Only One Verification Required per End Market

Comment: The commenter voiced support for the addition of paragraph 340-090-0670(3)(e), which clarifies that only one self-attestation and one verification are required for each end market and other downstream entity, to create a more efficient program and to avoid duplication of efforts and creation of unnecessary costs. Commenter number(s): 30

Response: Thank you for the comment.

Topic: Responsible End Markets - Reporting

Comment: The commenter expressed support for the detailed outline of reporting requirements (presumably, verification, auditing and disposition reporting requirements). Commenter number(s): 39

Response: DEQ acknowledges the commenter's support for the level of detail in these rules with respect to reporting requirements.

Topic: Responsible End Markets - Verification Documentation Exceptions

Comment: The commenter expressed support for the documentation exemptions for end market verifications added in subparagraph 340-090-0670(3)(g)(C). Commenter number(s): 30

Response: Thank you for the comment.

Topic: Responsible End Markets - Working Group

Comment: DEQ should 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 a REM verification system that would address market concerns and barriers noted 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. Commenter number(s): 32

Response: DEQ did not make changes in response to comment because there was no suggested change provided.

Rule 340-090-0690 Waste Prevention and Reuse Fee

Topic: Waste Prevention and Reuse Fee - Approve of Waste Prevention and Reuse Fee Cap and Discretion for DEQ to Reduce Fee

Comment: Approval of cap and DEQ discretion to reduce fee Commenter number(s): 30, 41

Response: Thank you for the comment.

Topic: Waste Prevention and Reuse Fee - Clarifying Question about Activities Covered

Comment: No change- just seeks clarity and asks for potential examples of "repair and lifespan extension of covered products" (subparagraph e) activities. Commenter number(s): 30

Response: DEQ appreciates your inquiry regarding the potential activities covered under "repair and lifespan extension of covered products." This category may include practices such as using durable packaging to minimize single-use items and extending the lifespan of such packaging through repair or maintenance. Additional clarity may be provided during implementation. Please note that this clarification does not require changes to the rule language, which will remain as drafted.

Rule 340-090-0700 Market Share

Topic: Market Share - Support

Comment: The commenter voiced appreciation for DEQ"s proposal of this rule, which the commenter sees as vitally necessary for enabling the PRO to set fees effectively and to develop fair and reliable accounting processes. Commenter number(s): 46

Response: Thank you for the comment.

Rule 340-090-0860 Producer Definitions

Topic: Producer Definitions - Associated Producers

Comment: The commenter supports the approach in paragraph 340-090-0860(5) aimed at categorizing large and small producers to ensure the provisions of the RMA are applied appropriately. Commenter number(s): 30

Response: Thank you for the comment.

Rule 340-090-0870 Producer Pre-Registration

Topic: Producer Pre-Registration - Support

Comment: The commenter voiced appreciation for DEQ"s proposal of this rule, which the commenter sees as vitally necessary for enabling the PRO to set fees effectively, and for managing the tight statutory timeline with respect to when material categories are finalized and communicated to producers, when producers must report data, and when the fee schedule that has been informed by the producer data is published. Rapid DEQ approval of the material categorization in the program plan is also important to keeping things on track. Commenter number(s): 46

Response: DEQ did not make changes in response to this comment. While the program plan approval process is outside of the scope of the rulemaking, DEQ did conditionally approve the material categorization proposed by CAA in its program plan on July 31, 2024.

Rule 340-090-0920 Project Report Requirements

Topic: Project Report - Confidential Data

Comment: 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 DEQ and to the PRO. However, the proposed regulations do not address how this information would be used or handled by either DEQ 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 DEQ and the PRO, and what safeguards will be in place regarding the information within these submissions. Commenter number(s): 38

Response: Regarding how the life cycle evaluation results are to be used, which the commenter requested clarity on, voluntary producer LCE submissions are to be considered by the PRO for the awarding of two ecomodulation fee bonuses mandated under rule 340-090-0910(3). As for DEQ's use of these assessments and assessments required of large producers under ORS 459.944(2), DEQ intends to use assessment results to further refine these rules in subsequent rulemakings and to inform program plan review with respect to the PRO's plans for ecomodulation. DEQ will also use the assessment results to the extent possible to gauge impact of the Act with respect to lowering the impacts of covered products.

Regarding confidentiality, there is a section of the rules on this topic at 340-090-0920(2) that addresses how confidentiality claims are to be handled and includes a list of report components that must be disclosed in order to qualify for the associated fee bonuses. This list does not include raw data on material flows, and rather summarized results of impact assessment.

Topic: Project Report - General Support

Comment: The commenter generally supports the proposed Project Report rules, as they are largely aligned with standard LCA procedures from ISO. Commenter number(s): 46

Response: DEQ did not make changes in response to this comment.

Rule 340-090-0930 Core Product Category Rules

Topic: Core Product Category Rule - Cut-off Criteria - Support

Comment: The commenter voiced appreciation for the pre-defined cut-off criteria. Commenter number(s): 46

Response: Thank you for the comment.

Topic: Core Product Category Rule - Defining the Functional Unit - Support

Comment: The commenter voiced appreciation for the rules that pre-define the functional unit. Commenter number(s): 46

Response: Thank you for the comment.

Topic: Core Product Category Rule - Allocation - Data Sourcing

Comment: Regarding allocation of flows with respect to landfilling, the rules guide the producer to use specific unit processes and activities to account for waste composition, regional leakage rates (due to technology and climate zone) and landfill gas capture and utilization. As producers may not know where to source these data, DEQ should expect inquiries with respect to where to source them from. Commenter number(s): 46

Response: DEQ will consider the possible need for producer guidance with respect to data sourcing into account in implementation.

Topic: Core Product Category Rule - General Concern

Comment: 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. We do not expect that any other states will solicit life cycle assessments as part of their ecomodulation approach, instead focusing on environmental attributes. Commenter number(s): 46

Response: If the approach in the other states rewards attributes that actually correlate with impact reduction, then a producer that implements an impact reduction action–say, transition to reuse-refill–can receive attribute-based bonuses in the other states and a complementary bonus from Oregon for a life cycle evaluation that demonstrates that substantial impact reduction has been achieved. The PRO can furthermore use the life cycle evaluation results across producers to verify whether the attribute-based approaches to ecomodulation that it is applying in the other states are in fact pointing in the direction of impact reduction.

The commenter may review DEQ's attributes research and consider the implications of a purely attributes-based approach to ecomodulation separate from any analytics related to environmental outcomes of given attributes.

Topic: Core Product Category Rule - General Support (1)

Comment: Maintain the proposed high standards for evaluating and disclosing the environmental impacts of products. Commenter number(s): 29

Response: Thank you for the comment.

Topic: Core Product Category Rule - General Support (2)

Comment: The commenter congratulated DEQ for drafting Life Cycle Evaluation rules that closely align with the internationally recognized standard of life cycle assessment (LCA) principles and framework of ISO. Commenter number(s): 32

Response: Thank you for the comment.

Topic: Core Product Category Rule - general support (3)

Comment: The commenter expressed appreciation for the significant work that has gone into developing the life cycle evaluation (LCE) rules, which the commenter hopes will provide a comprehensive and material-neutral way to analyze packaging formats. Commenter number(s): 30

Response: Thank you for the comment.

Topic: Core Product Category Rules - System Boundary for Reusable and Refillable Packaging Products

Comment: The commenter commended DEQ for including the use phase in the system boundary of a reusable packaging product's life cycle. Commenter number(s): 32

Response: Thank you for the comment.

Topic: Core Product Category Rules – Support for three-year grace period for reusable packaging products

Comment: The commenter expressed appreciation for the allowance provided in Subsection 340-090-0900(2)(e)(B) for use of projected data when transitioning from single-use to reusable covered products. Commenter number(s): 30

Response: Thank you for the comment.

Division 93: Solid Waste: General Provisions

Rule 340-093-0160 Place for Collecting Recyclable Material

Topic: General Support - Place for Collecting Recyclable Material

Comment: This is a good update to the previous rule, noting the solid waste permittees will offer a drop-off for the local government recycling acceptance list with reasonable exceptions, while also noting that they MAY provide drop off for composting and materials on the PRO list but are not required to do so. Commenter number(s): 20

Response: Thank you for the comment.

Division 96: Solid Waste: Permits Special Rules For Selected Solid Waste Disposal Sites, Waste Tire Storage Sites And Waste Tire Carriers

Rule 340-096-0310 Responsible End Markets

Topic: Responsible End Markets - Only One Verification Required per End Market

Comment: The commenter voiced support for the addition of paragraph 340-096-0310(1)(d), which clarifies that only one self-attestation and one verification are required for each end market and other downstream entity, to create a more efficient program and to avoid duplication of efforts and creation of unnecessary costs. Commenter number(s): 30

Response: Thank you for the comment.
