

Topic paper: Clarifying Rules for Producer Obligations

RMA Rulemaking 3: Prepared for Rulemaking Advisory Committee discussion - Nov. 13, 2025

Producer Definitions OAR 340-090-0860

Summary of proposed additions

DEQ is proposing to add three definitions to the Producer Definitions rules of the Recycling Modernization Act at OAR 340-090-0860 – specifically:

- “sold in packaging at a physical retail location,”
- “remote sale or distribution,” and
- “consumer”

Background

The obligation to register with, report to, and pay fees to a Producer Responsibility Organization for packaging that contains an item is assigned to the correct producer using one of three definitions in statute (ORS 459A.866(1)(a)-(c)). To identify which of the three definitions to apply to a particular scenario, producers must consider how the item in the packaging reaches the consumer. Therefore, it’s important to producers of items in packaging for the rules to be clear about the meaning of the terms “physical retail location,” “remote sale or distribution,” and “consumer.”

During 2025, when the first compliance deadlines for producers arrived, DEQ realized that in some cases, producers were interpreting these terms in various ways. This confusion had impacts on the interpretation of producer obligation.

Considerations

In defining these terms DEQ will consider the following:

- **For the producer definition for items sold in packaging at a physical retail location (ORS 459A.866(1)(a)):** Take a broad interpretation of the word “retail” within the phrase “at a physical retail location.” There is not a policy basis for excluding sales at establishments like restaurants and wholesale groceries from the three-tiered producer definition at ORS 459A.866(1)(a), and
- **For the producer definition for items sold in packaging via remote sale or distribution (ORS 459A.866(1)(b)):**
 - Take a broad interpretation of the term “remote” to encompass any type of transaction or transfer of material that occurs with the parties involved at a distance from one another (e.g. via phone, email, contract, etc.), and
 - Encompass business use in the definition of “consumer.” Oregon’s Act does not include an exemption for commercial waste, which comprises approximately 40% of the commingled recycling inbound stream. Producer obligation in most scenarios involving a business consumer of an item in packaging should rightly be assigned using the producer definition for remote sale or distribution at ORS 459A.866(1)(b).

Proposed draft rule language

OAR 340-090-0860(1)(c) (proposed new sub-section): “Sold in packaging at a physical retail location” encompasses any sales, e.g. transfers of items in packaging in return for payment, that occur in a physical space.

OAR 340-090-0860(2) (proposed new section): Producer definition for items sold in packaging in or into this state via remote sale or distribution. For purposes of ORS 459A.866(1)(b):

- a) “Remote sale or distribution” encompasses any sale or transfer of items in packaging that occur with the parties involved at a spatial distance from one another, including arrangements made via phone, internet, and contract.
- b) “Consumer” refers to the person, as defined at ORS 459A.863(19), that is the end user of an item in packaging, i.e., the person that uses the item in any way other than simply reselling or redistributing it.

Outcomes of proposed additions

- Operations: Greater clarity for producers when endeavoring to interpret the producer definitions in the Act.
- Fiscal, economic, and equity impacts: Limitation of free ridership due to misinterpretation of the producer definitions.

Committee discussion questions

1. Do the proposed rule additions improve clarity with respect to assignment of producer obligations for items in packaging?

Producer obligation assignment OAR 340-090-0860

Summary of considered additions

DEQ is currently reviewing and requests Rulemaking Advisory Committee input about whether or not clarifying rules are needed in OAR 340-090-0860, the section of rules pertaining to producer obligations, for the following two statutory provisions:

ORS 459A.869(3), which enables another producer to pay fees for certain covered product(s) on behalf of an obligated producer, and

- ORS 459A.869(4), which enables another producer to register with the PRO on behalf of an obligated producer, if the producer that registers reports to the PRO on all of the obligated producer’s covered products.

These provisions are intended to provide flexibility to producers in cases where it is easier for another member of a supply chain besides the obligated producer to fulfill the fee payment and/or PRO registration obligations – for example, in Canada retailers often report packaging volumes on behalf of the brands that are sold in their stores because the retailers hold the data on how much product was sold and where.

Specifically, DEQ is seeking to understand whether or not rules outlining a standard process for the assignment of obligation among producers are necessary, with an intention to provide clarity for producers and guardrails that would ensure effective enforcement in scenarios where the obligation has ultimately not been fulfilled for a product and there are disputes about which producer is responsible.

Background

To inform its consideration of this matter, DEQ researched how assignment of obligation among producers works in the Canadian packaging EPR context. In Canada, there are three models in practice:

1. Alberta approach. Producers must register and report their supply of packaging and paper directly to the Alberta Recycling Management Authority (ARMA), but may arrange for another entity (e.g. the PRO in Alberta) to administer the reporting obligation to ARMA on their behalf. However, the underlying obligation to report, and the authority's ability to verify reporting, remains with the obligated producer.
2. Ontario approach. Producers must also register with, and report supply to, a regulatory authority (the Resource Productivity and Recovery Authority), but without any allowance for another entity to administer the reporting obligation on the obligated producer's behalf, and
3. British Columbia and Quebec approach. Producers must register with a PRO. The PRO may establish rules that allow one entity (e.g., a retailer that is a producer registered with the PRO) to report the supply of another producer to it (e.g. a consumer products company that is also a producer registered with the PRO). Where one party reports on behalf of the other, the PRO may establish a formal agreement with the two producers which, in the case of tracking reporting errors, allows the PRO to identify who reported what on behalf whom.

Oregon's approach cannot exactly match any of these Canadian models, because no Canadian province has both producer-facing language regarding obligation-trading within the regulations and PRO-facing rather than government-facing supply reporting. Canadian approaches are also designed to enable one producer to report on behalf of another (e.g. ORS 459A.869(3)), but not to enable one producer joining a PRO on behalf of another (e.g. ORS 459A.869(4)).

Despite the regional differences, DEQ considers that it is possible to learn from the Canadian context and have it inform Oregon's approach.

Committee discussion questions

1. Should Oregon clarify in rule, following the example of Alberta, that in cases in which an assignee producer fails to fulfill obligations, the assignor is ultimately the party that is obligated and out of compliance?
2. Should Oregon put guardrails into rule governing the process whereby a producer can assign an obligation to another producer? Or is a process implemented by the PRO sufficient to provide the transparency and accountability necessary to enable enforcement by DEQ should the assignee fail to follow through with the assignment?

Contact

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