

## Rule Concept: Clarifications to the Responsible End Market Rules

### RMA Rulemaking 3: Prepared for Rulemaking Advisory Committee discussion – March 30, 2026

#### Background

This topic paper summarizes several amendments to rules at OAR 340-090-0670 and OAR 340-096-0310 regarding the obligation on Producer Responsibility Organizations and on commingled recycling processing facilities and limited sort facilities, respectively, to ensure delivery of materials collected for recycling in Oregon to responsible end markets:

- A. **Definition of “responsible” at OAR 340-090-0670(2)(b)**, specifically related to the definitions of “transparent” and “environmentally-sound”
- B. **Clarification of “yield” at OAR 340-090-0670(2)(c)(E)** allowing certain disclosure to a verification or certification body, rather than to DEQ; verifying that bodies may report yield performance of a particular market to DEQ in pass-fail format.
- C. **Clarification of implementation obligations (described at OAR 340-090-0670(3)) for the PRO to assist with compiling disposition data** for materials processed by commingled recycling processing facilities and **adding a temporary variance to the timelines for REM self-attestation and verification/certification for remelters that receive loose scrap metal from shredders** – these facilities need not self-attest nor be verified/certified through 2032.
- D. **Amendments to the practicability rules at OAR 340-090-0670(5)**, specifically related to practicable actions and applicability of the threshold for practicable actions.
- E. **Amendments to disposition reporting rules at OAR 340-090-0670(6) and OAR 340-096-0310(2)** related to the material categories to be used for disposition reporting, a temporary variance for reporting, and designation of reporting obligations.
- F. **Housekeeping edits to OAR 340-090-0670 and OAR 340-096-0310.**

#### Background

In rulemakings 1 and 2 in 2022-2024, the Environmental Quality Commission adopted rules to implement the responsible end market obligation applied by the statute to Producer Responsibility Organizations (ORS 459A.896(2)(a)) and commingled recycling processing facilities (ORS 459A.955(2)(h)). Both of these entities must take action to ensure that materials collected for recycling in Oregon go to responsible end markets. For PROs, the obligation applies to four classes of covered products listed at ORS 459A.869(7), and for CRPFs, the obligation applies to all materials that they hold. As such, for some materials only CRPFs are obligated (e.g. scrap metal that passes through a CRPF), for some materials only a PRO is obligated (e.g. polyethylene film collected at a PRO collection point), and for some materials the two entities bear a joint obligation (e.g. covered products on the Uniform Statewide Collection List that pass through CRPFs). Statute delimits the PRO’s obligation by the “practicability” of action, recognizing that there are financial limitations to this obligation, as well as feasibility limitations with respect to what the PRO can do to fulfill the obligation for materials it does not control.

The rules adopted in 2023 and 2024 actualize the responsible end market obligation by:

1. Defining “end market” for each material-specific supply chain,
2. Defining “responsible” as compliant, transparent, environmentally-sound, and achieving adequate yield, and stipulating that the entire supply chain through to the end market and including disposal pathways needs to meet the standard in order for an end market to be considered responsible,

3. Laying out the compliance deadlines and steps by which responsible performance is to be demonstrated (1. self-attestation followed by 2. PRO verification or third-party certification),
4. Requiring auditing from the PRO including through the use of random bale tracking,
5. Defining “practicable action” by example and setting a dollar per ton threshold beyond which a PRO can make a claim of impracticability, and
6. Establishing rules for quarterly disposition reporting (what is reported, by whom, for what deadlines, and what can be excluded from reporting).

These six topics are covered, respectively, in OAR 340-090-0670(1)-(6), the rules clarifying the PRO responsible end market obligation. Rules clarifying the CRPF obligation at OAR 340-096-0310 are more abbreviated because they cross-cite OAR 340-090-0670’s foundational definitions (e.g. of “end market,” “responsible,” etc.).

Further actualization of the responsible end market policy occurs through the program plan, and most prominently through the plan’s inclusion of a verification standard for auditing whether or not facilities meet the responsible standard. Whereas the rules define “responsible” in summary form, the plan goes to a greater level of detail with discrete performance criteria elucidated. Portions of the program plan addressing verification of end markets against the responsible end market standards are currently the subject of a plan amendment proposed by CAA.

Parties have more than eight months of experience implementing the REM obligation, after the first compliance deadline (deadline for facilities to self-attest as “responsible”) on July 1, 2025. The following developments in implementation informed the amendments proposed here:

- DEQ has participated in numerous conversations with CAA, individual end markets, and trade associations;
- Industry voiced concerns with the approach to defining “responsible” in greater detail at each level of the regulations (statute, rule, and plan), with elements like chemicals of concern and microplastics appearing only at the plan level, clarifying language in rule such as “avoid[ing] release to the environment” and “manag[ing] inputs sustainably;” and the phrase “disposition reporting” not explicitly stated within the “responsible” standard in rule,
- Public interests sought a stronger “responsible” standard and industry expressed interest in flexibility while considering a Circular Action Alliance responsible end market program plan amendment in Aug 2025 through to the present, with some of the compromises struck seeming appropriate to memorialize in rule;
- There has been confusion as to who is responsible for what among CRPFs and the PRO with respect to disposition reporting for USCL materials that pass through CRPFs has resulted in DEQ temporarily taking on a considerable portion of the work,
- Practical difficulties have arisen with implementing REM provisions within unbaled scrap metal supply chains, with materials coming into shredders loose from various sources and going into mixed piles, in contrast with supply chain facilities that handle baled or containerized materials. In addition, CRPF-origin materials comprise a much smaller proportion of materials inbound to these facilities (compared to a paper mill or plastic reclaimer), which further raises the possibility that remelters that receive volumes below the de minimis threshold required for disposition reporting may nevertheless be called upon to report disposition and undergo verification;
- There has been confusion about when the PRO’s obligation to implement practicable actions is rightly triggered – only in cases where a verification, certification or audit shows inadequate facility performance, or also in cases where there are insufficient REMs for a given material?;
- Review of CAA impracticability claims for non-empty aerosol containers and pressurized cylinders has led to consideration of how the practicability threshold applies to different classes of materials and what should be counted toward the threshold in impracticability claims for various scenarios;
- The material categories provided in rule for reporting disposition were found to be lacking several categories necessary for representing how materials currently flow into recycling supply chains. Instances have also arisen where greater granularity in material categories could be helpful to address a particular issue (e.g. bans on imports of mixed paper containing cartons are in place among some

nations in Asia, but specific fiber grade bales are still allowed in – as such, differentiating among mixed paper and specific fiber bales could be useful for checking that mixed paper is not being exported to countries with bans in place). However, the current rules do not allow flexibility in terms of implementing quick changes to the reporting categories; and

- CAA is commissioning the development of a nationwide standard and system for certifying responsible end markets. CAA is still fairly early in that process (it is less than one-quarter complete). Through participation in the Standards Development Committee, DEQ has engaged in detailed conversations with representatives from industry, government and public interest groups, and those conversations have revealed opportunities to better achieve Oregon’s statutory interests in ways that are more responsive to concerns from end markets.

## Proposed amendments

### A. Responsible Standard

DEQ is proposing the following changes to the four-pronged “responsible” standard at OAR 340-090-0670(2).

#### 1. Transparent

DEQ proposes to edit OAR 340-090-0670(2)(b)(B) to read:

(B) Transparent. Meaning the entity is

(i) willing to be named and audited, provides chain of custody documentation tracking materials (originating in Oregon) to disposition, maintains record keeping relevant to chain of custody and material disposition in accordance with ORS 459A.962(7), and ~~promptly documents within the chain of custody~~ **makes available to relevant certification or verification bodies** any penalties, violations or regulatory orders received, **and**

**(ii) provides disposition data to an upstream supplier of materials, DEQ, a PRO, and/or a commingled recycling processing facility that is needed by a PRO and/or a CRPF to meet their quarterly reporting obligations pursuant to ORS 459A.887(6) and ORS 459A.955(2)(h)(A)(i).**

#### Rationale

DEQ considers it unnecessary that facilities would need to document violations and regulatory orders within the supply chain (i.e., to notify upstream and downstream supply chain partners of these violations and regulatory orders); rather, making such information available to a verification or certification body is sufficient.

Adding specific reference to disposition reporting to the definition of “Transparent,” while somewhat redundant with existing language (“provides chain of custody documentation tracking materials...to disposition”), makes explicit that failure to provide disposition reporting can result in a facility being excluded from Oregon’s “responsible” list.

#### 2. Environmentally Sound

DEQ proposes to modify OAR 340-090-0670(2)(b)(C) to:

- Clarify that “avoiding release to the environment” encompasses plastic reclaimers:
  - Either implementing a sufficient management framework to eliminate plastic resin loss, or successfully eliminating plastic resin loss, and
  - Implementing action to limit microplastic emissions, including quantification and disclosure of the discharge of suspended solid wastes including microplastics into water, to a relevant verification or certification body.
- Define “microplastics” as particles of plastic less than 500 micrometers in size.

## Rationale

This language aligns to what has been agreed upon in the context of negotiation of CAA's program plan amendment on responsible end markets, with the first bullet intended to describe a level of performance commensurate with achievement of Operation Clean Sweep certification. CAA's standard in the program plan explicitly mandates OCS-level performance, whereas in rule it is preferable to not tie the language to a particular standard subject to change, but rather spell out the level of performance that would achieve the standard.

DEQ also proposes to modify OAR 340-090-0670(2)(b)(C) to:

- Clarify that "managing inputs sustainably" includes disclosure of:
  - a) (for facilities located in water-scarce regions) Average volume of blue water used by the facility daily, and
  - b) The following chemicals to the verification or certification body if they are either intentionally-added to products or as part of the recycling process:
    - Lead, mercury, cadmium, and hexavalent chromium,
    - Phthalates,
    - PFAS<sup>1</sup>, and
    - Any chemicals required to be disclosed to regulators by permit or local regulation.
- Clarify that a verification body shall collate the chemical disclosures across supply chain facilities that process each of the following four types of materials: glass, paper, plastic, and metal, and make this information available to DEQ upon request. DEQ recognizes that some supply chain facilities consider information about the chemicals that they use to be proprietary and are reticent to share the information, and therefore considers it sufficient to receive information from the verification body aggregated at a level that identifies the primary category of material (e.g., plastic) where the chemicals are used.

## Rationale

CAA has included evaluation and disclosure of both of these sets of information (chemicals of concern and water use), along with three other sets of information (regarding air pollution, water pollution, and waste generation), within the draft verification standard in its program plan amendment proposal. By putting these two sets of information (water use, chemicals of concern) into rule and mandating the degree of specificity with which the information needs to be reported onward to DEQ, DEQ effectively proposes to prioritize these two sets of information above the other three. Having information about a facility's water use will enable DEQ to consider the issue of facility responsibility in light of concerns raised regarding water-intensive types of processing being located in water-scarce regions, such as thermoform recycling facilities in Mexico. And having information about chemical use across facilities will enable DEQ to consider the issue of toxicity. Air and water pollution generally will already be reported to regulators (where monitoring is required); hazardous waste generation is subject to RCRA reporting, and solid waste disposition reporting is already required as part of general disposition reporting requirements.

## B. Yield

DEQ proposes to edit OAR 340-090-0670(2)(c)(E) as follows:

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<sup>11</sup> These three sets of chemicals together encompass chemicals recommended for inclusion in Toxics in Packaging state laws by the Toxics in Packaging Clearinghouse's model legislation.

(E) Yield, including separate yields for materials mixed together and indicated in subparagraphs (i) through (iv) of paragraph (D), may be estimated and self-attested to by entities in the recycling supply chain, with **the estimate and a methodological justification provided to the relevant verification or certification body.** **Verification and certification bodies may report yield performance of a particular facility to DEQ in pass-fail format.**

This proposed rule change addresses industry unease with reporting to a public entity specific yield data, which many facilities consider proprietary, while still providing DEQ with sufficient information to receive assurance that materials accepted for recycling in Oregon are actually being recycled.

## C. Implementation

### 1. PRO obligation to assist with disposition reporting

DEQ proposes the following changes to the Implementation rules at OAR 340-090-0670(3):

- Editing OAR 340-090-0670(3)(a) to indicate three rather than two implementation steps for ensuring that materials go to responsible end markets and to remove the word “successively” to add flexibility in terms of sequencing and,
- Inserting OAR 340-090-0670(3)(a)(B) as the second of these three steps, and indicating there that “Next, a producer responsibility organization must ensure that the facilities indicated at OAR 340-090-0670(2)(a)(A)-(E) and that manage the four classes of obligated material listed at ORS 459A.869(7) provide quarterly disposition data that is sufficient to enable complete disposition reporting as laid out at OAR 340-090-0670(6), including for material not under the control of the PRO to the extent practicable.

#### Rationale

This amendment is intended to facilitate smoother implementation of the disposition reporting requirements for USCL material by clarifying that the PRO bears a joint responsibility for the work, to the extent practicable.

### 2. Temporary variance for remelters that receive loose scrap metal

DEQ proposes to add a temporary variance to the timelines for REM self-attestation and verification/certification at OAR 340-090-0670(3)(f)(A) for remelters that receive loose scrap metal from shredders – these facilities need not self-attest nor be verified/certified through 2032.

#### Rationale

Variances to verification timelines are generally envisioned to happen through the PRO program plan rather than rule, which affords more flexibility, it is befitting to insert this variance into rule because scrap metal is not an obligated material for PROs.

## D. Practicability

### 1. Practicable actions

DEQ proposes to amend OAR 340-090-0670(5)(b) as follows:

~~(b) If the results of a verification, certification, or audit under sections 3 and 4 of this rule show that an end market does not meet the responsible end market standards in section 2 of this rule, t~~The producer responsibility organization must carry out practicable actions to meet the responsible end market standards in section 2 of this rule **if**

**(A) there are insufficient responsible end markets for a particular material, or**

**(B) the results of a verification, certification, or audit under sections 3 and 4 of this rule show that an end market does not meet the responsible end market standards in section 2 of this rule.**

Further, DEQ proposes to clarify that “insufficient responsible end markets” means that the entity that controls the material (e.g. a CRPF) has requested help from the PRO and one of the following conditions is met:

- (i) There are three or fewer REMs for a particular material for more than six months in duration, or
- (ii) The average tonnage of obligated material collected for recycling in Oregon in the category in question exceeds X% of the capacity of responsible end markets for more than six consecutive months in duration.

**Rationale**

This amendment is intended to resolve confusion experienced around the time of program launch when insufficient end markets had self-attested for a handful of materials, and the question of what the PRO’s obligation is amidst conditions of insufficient REMs was raised.

**2. Threshold for practicable actions**

DEQ proposes to clarify at OAR 340-090-0670(5)(c)(A)(i) that, for materials described under ORS 459A.869(7)(b) (covered products identified on the uniform statewide collection list and collected pursuant to a collection program providing the opportunity to recycle) and any other materials not collected by the PRO and for which the PRO has a REM obligation, the PRO shall count toward the practicability threshold only the differential cost between two scenarios: a) the current cost of delivering to and recycling materials at an irresponsible end market, and b) the anticipated costs of delivering to and recycling materials at a responsible end market.

DEQ additionally proposes to clarify at OAR 340-090-0670(5)(c)(A) that, for materials described under ORS 459A.869(7)(a) (PRO Recycling List materials) and any other materials collected by the PRO and for which the PRO has a REM obligation, the PRO may count toward the practicability threshold all costs of delivering to and recycling materials at a responsible end market.

At OAR 340-090-0560(5)(d)(A), DEQ proposes to clarify that, should the department accept an impracticability claim for a PRO Recycling Acceptance List material, it can only liberate the PRO from a practicable action that is not separately imposed by ORS 459A.869(1) (i.e., it cannot liberate the PRO from actions necessary to meet collection targets, convenience or performance standards, and responsibly recycle the material in question). As for other materials, acceptance of an impracticability claim will result in consideration of delisting.

**Rationale**

This proposed rule concept is targeted toward addressing confusion that arose during review of CAA’s practicability studies for [pressurized cylinders](#) and [non-empty aerosol containers](#), two PRO Recycling Acceptance List materials. Questions of which costs are correctly counted towards the practicability threshold and of the consequences of an accepted impracticability claim for a PRO Recycling Acceptance List material came up in the context of DEQ’s review of these reports. With respect to the latter question, DEQ interprets the statute as limiting the concept of practicability to ORS 459A.896(2), where the phrase “if practicable” appears, and not extending it to ORS 459A.896(1). If cost relief is needed for responsible recycling of a PRO Recycling Acceptance List material, DEQ will look rather toward changes to performance and convenience standards or to delisting as options for delivering the relief needed.

**E. Disposition Reporting**

DEQ proposes three changes to the disposition rules at OAR 340-090-0670(6) and OAR 340-096-0310(2):

- 1) Amendment of OAR 340-090-0670(6)(c)(B)(i) and OAR 340-096-0310(2)(a)(C)(ii) to stipulate that, rather than requiring the use of disposition reporting categories fixed in rule, DEQ will administratively

designate the material categories to be used for disposition reporting, providing adequate advance notice before setting or changing categories (changes must be communicated no less than 15 days before the beginning of the quarter to be reported on using the new categories);

- 2) Provision of temporary variance through 2032 from the need to report disposition to remelters that receive loose scrap metal from shredders; and
- 3) Clarification that, if facilities designated to report disposition on a CRPF's behalf pursuant to OAR 340-096-0310(2)(a)(D) refuse the designation, the obligation to report disposition remains with the source CRPF.

## **F. Housekeeping**

DEQ is proposing some additional housekeeping edits to OAR 340-090-0670 and OAR 340-096-0310, including removal of deadlines that have passed, adjusting the practicability threshold for inflation, and replacement of "smelter" with "remelter" as the correct term for the end market for metal.

## **Outcomes of proposed amendments**

Operations: Greater clarity for regulated parties regarding where the bar for "responsible" performance is situated and regarding the REM obligation, especially for materials where CRPFs and the PRO are jointly obligated.

Fiscal or economic impacts: Cost savings are achieved in association with the variance proposed for remelters of loose metal received from shredders, as these facilities will not need to be verified nor will need to report disposition through 2032. Many of the other edits are either formalizing compromises already reached in the context of the PRO plan amendment (i.e., they do not impose a change in economic impacts) or clarifying vagueness in the statute.

## **Committee discussion questions**

1. Do DEQ's proposed edits to the "responsible" standard provide greater clarity and represent the compromises struck among interested parties during the program plan amendment review process?
2. Do you consider that the proposed changes to the Implementation rules could help move forward the process of disposition reporting?
3. Do you generally approve of the proposed definition for "insufficient responsible end markets," and what would you propose as the appropriate value to replace the placeholder of X% with?
4. Do the other clarifications proposed on the practicability rules have a logical basis, from your perspective? Why or why not?
5. Are there additional rule concepts that you have questions or comments about?

## **Contact**

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