

Topic paper 6: Producer Definitions

RMA Rulemaking 3: Prepared for Rulemaking Advisory Committee discussion – May 27, 2026

Producer Definitions OAR 340-090-0860

Summary of proposed amendments

DEQ proposes to amend OAR 340-090-0860, which relates to the definition of “producer” and the assignment of obligations under the RMA. DEQ proposes to confirm or clarify that:

- A. In cases involving a product brand-owner directing the manufacturing of a packaged item that is physically produced by a different entity (such as under a contract), the brand-owner is the obligated producer.
- B. In cases involving an entity directing the manufacturing of a packaged item that is physically produced by a different entity (such as under a contract) but which lacks the identification of a brand, the entity directing the manufacturing is the obligated producer.
- C. In cases involving an entity directing the manufacturing of a packaged item that is physically produced by a different entity (such as under a contract) but which is co-branded with the brands of both parties, the entity directing the manufacturing of the packaged item is the obligated producer.
- D. In cases where a packaged item is ultimately sold at physical retail, the presence of remote sales earlier in the supply chain (for example, from the original producer to a distributor and from there to a grocery store) do not trigger “remote sale” producer obligations, except where such intermediary parties are adding packaging.

Background

The Recycling Modernization Act was one of the first packaging EPR laws to be adopted in the United States, and has been the earliest to be implemented. During early implementation, several instances have arisen where producers – or potential producers – have reported confusion about the extent of their obligations. CAA, the sole producer responsibility organization serving the Oregon program, has developed extensive guidance that addresses many such instances. At the same time, several other states have followed Oregon in adopting EPR for packaging, and have benefitted from the early experience in Oregon, adopting laws that avoid some of the early confusion that has been reported here. In the spirit of harmonizing with other states and improving clarity for producers (and non-producers as well), DEQ proposes to amend existing rules relating to producer obligations which were first adopted in 2024.

Proposed amendments

DEQ proposes four amendments to OAR 340-090-0860, “Producer Definitions”, as follows.

A. Assigning responsibility when there are multiple manufacturers of a branded product due to “directing the manufacturing” rules

DEQ proposes to add a new paragraph (b), with conforming edits, to OAR 340-090-0860(1) as follows:

(b) If there are multiple manufacturers for an item sold in packaging under a brand, the producer is the manufacturer that owns the brand.

Rationale

During the second RMA rulemaking, DEQ proposed, and the Commission adopted, OAR 340-090-0860(1), which establishes that a person that manufactures a packaged item includes a person that directs the manufacturing of the item. That rule was intended to address situations involving contracted manufacturing.

- For example, consider the case of a large grocery retailer that places an order with a bakery to produce muffins that meet certain specifications determined by the retailer (including, potentially, packaging specifications). In the absence of that rule, the statute is ambiguous as to whether the bakery or the grocery retailer is the producer under ORS 459A.866(1)(a), with arguably neither being the producer. That result was not intended by the statutes. OAR 340-090-0860(1) clarifies that the person “directing the manufacturing” could also be the manufacturer and so could be obligated under ORS 459A.866(1)(a).
- DEQ has identified additional ambiguity in the rule that may warrant clarification. To continue the bakery example, both the bakery (which is producing the muffins, and is therefore a manufacturer) and also the retailer that is directing the manufacturing by setting specifications for those muffins and/or their packaging (and therefore also a manufacturer) could point fingers at each other, essentially saying “I’m not the manufacturer; you are”. CAA has provided guidance to producers on this point, and DEQ believes that there is benefit in clarifying the obligation by amending the rule in question.

In the event of such a conflict, assigning the producer obligation to the brand owner is consistent with the intent and general approach of ORS 459A.866(1)(a)(A), which first assigns obligations to branded items to the manufacturer (if the manufacturer is the brand owner). It also aligns with how producer obligations are being assigned in other states with EPR for packaging.

Note that ORS 459A.866(1)(a)(B) provides for producer obligations in cases where the item is manufactured by an entity other than the brand owner, but only if there is a person that is “the licensee of a brand or trademark”. Production of a branded product by a non-brand owning licensee does occur and is the subject of (1)(a)(B). But this rule concept addresses a different case, involving production by an entity that is not a “licensee of a brand or trademark” but rather is operating either under contract or other direction of a brand owner, to produce items sold under that brand.

B. Assigning responsibility when there are multiple manufacturers of an unbranded product

DEQ proposes to add a new paragraph (c) with conforming edits, to OAR 340-090-0860(1) as follows:

(c) If there are multiple manufacturers of an item sold in packaging that lacks identification of a brand, the producer is the manufacturer that directed the manufacturing of the packaged item.

Rationale

This rule concept relates to the first rule concept, again involving multiple possible manufacturers. As with the prior case, under existing rules both entities could point fingers at each other, suggesting a need for clarification.

In this case, DEQ proposes alignment with the prior rule concept: the entity directing the manufacturing (which typically will be the brand owner) should be the obligated producer. Under ORS 459A.866(1)(a)(A), if there is no entity directing the manufacturing, then there is only one manufacturer, and that entity would be obligated.

C. Assigning responsibility when there are multiple manufacturers of a co-branded product

DEQ proposes to add a new paragraph (d), with conforming edits, to OAR 340-090-0860(1) as follows:

(d) If there are multiple manufacturers of an item sold in packaging that contains multiple brands, the producer is the manufacturer that directed the manufacturing of the packaged item.

Rationale

Some products are co-branded, for example “Retail Store Salsa made by Boutique Salsa Factory”. For consistency, DEQ proposes alignment with the prior rule concept: the entity directing the manufacturing (the retail brand owner) would be the obligated producer, and not the company actually making the salsa. Of course, if the retailer is merely selling factory-made and -branded salsa without directing the manufacturing of the salsa, then the salsa manufacturer would be the obligated producer according to ORS 459A.866(1)(a)(A).

D. Clarification of “items sold in packaging at a physical retail location”, and obligations on upstream supply chain intermediaries (such as distributors)

DEQ proposes to add a new paragraph (e), with conforming edits, to OAR 340-090-0860(1) as follows:

(e) If an item is sold in packaging at a physical location, the producer of that item, as determined by ORS 459A.866(1)(a) and this rule, is responsible for all covered product packaging related to the item, regardless of any supply chain transactions that may have proceeded the item being sold in a physical location. Except that if an entity in the supply chain that is not a manufacturer of the packaged item adds additional covered product packaging to the item, that entity is the producer responsible for the added packaging, as provided in ORS 459A.866(1)(b)(B).

Rationale

DEQ has become aware of confusion on the part of some entities, such as certain distributors, who report being unclear about the scope of their obligations and who wrongly believe that multiple entities in a supply chain can have overlapping and duplicative fee obligations. While that is not the case under the RMA, additional clarification in rule might reduce such confusion.

This rule concept addresses a common source of misunderstanding, involving packaged products that are manufactured and put into packaging, and then sold through one or more distributors before finally being resold (again) by a retailer, who subsequently removes shipping packaging and places the primary (and secondary) packaging on the shelf for sale to consumers. Such a chain of transactions ultimately results in items being “sold in packaging at a physical retail location” (triggering ORS 459A.866(1)(a)), but before that final sale, there could be several sales made “via remote sale or distribution” (potentially triggering ORS 459A.866(1)(b)).

DEQ believes that existing statute and rule already provide clear direction on this point, but is proposing this new rule concept in the spirit of reducing confusion by producers as well as entities that are not producers but think they might be.

Outcomes of proposed amendments

- Operations: Greater clarity for obligated and non-obligated producers, PRO, and DEQ.
- Fiscal or economic impacts: Potential shifting of cost obligations between producers, although rule concepts proposed above are generally consistent with existing CAA guidance, so changes may be minimal.
- Equity impacts: None known.

Committee discussion questions

1. Do you support the draft rule language?
2. Do you have concerns about the draft rule language?
3. Do you have any suggested changes to the outcomes of proposed amendments?

Contact

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