

# Responsible End Market Subcommittee Meeting Outcomes: Plan Amendment Review

**Document provided by Angie Marzano, Lane County**

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During the two subcommittee meetings on 10/20 and 11/3, the REM subcommittee discussed the four issues that appear in bold text in the preliminary recommendation's checklist that DEQ circulated prior to the first subcommittee meetings (e.g., areas where the Amendment deviates from the requirements). Outcomes of the conversations are indicated in the table below, rightmost column.

Requirement	Issue with the Plan Amendment	Conclusions from REM Subcommittee
<b>OAR 340-090-0670(3)(a)(B):</b> The PRO must conduct detailed verification of all downstream facilities.	Amendment characterizes verification as “voluntary.”	The subcommittee appeared in consensus that the plan should clarify that a.) conducting verifications is not voluntary for the PRO, b.) end market responsiveness to the Verification Body is not voluntary if the market wants to be on the “responsible” list, and c.) end markets should be afforded some flexibility in terms of what documentation to provide to prove that they meet the responsible standard (for example, if a facility has a third-party certification that benchmarks well against the “responsible” standard, it can be used to demonstrate that certain criteria are met and reduce its auditing burden).

<p><b><u>OAR 340-090-0670(3)(g)(D):</u></b> Verifications must document all instances of downstream facility noncompliance with the “responsible” standard</p>	<p>Amendment states that verification will not be used to determine compliance.</p>	<p>The subcommittee discussed CAA’s discomfort with the verification reports making “not responsible” determinations (e.g. with CAA bearing the responsibility of excluding facilities from the responsible list, especially in cases that are unclear or where information is incomplete). The subcommittee considered that: a.) if CAA will not “own” the list, then it must provide enough verification information to DEQ in order for DEQ to be able to decide which facilities should and should not appear on the “responsible” list; b.) if information is insufficient for DEQ to make a designation, DEQ should have the ability to task CAA with seeking more information, and c.) DEQ should consider ways to increase industry comfort with engagement in a process that involves information about facility performance being conveyed to a regulatory body. For example, DEQ could give facilities an opportunity to opt out of the process without publicity instead of choosing to finalize a verification result that would lead to exclusion from the list with a reason made public.</p>
<p><b><u>OAR 340-090-0670(3)(g)(C):</u></b> Verifications must include documentation that the “responsible” standard (e.g. four pillars – compliant, transparent, environmentally-sound, achieving adequate yield) is met.</p>	<p>Amendment does not guarantee any site visits to facilities, although environmental soundness and yield arguably cannot be verified adequately without site visitation.</p>	<p>The group discussed a compromise approach whereby some downstream facilities would receive site visits during this program plan period based on a risk assessment. The vision for risk assessment is as follows: a.) a scoring approach for performance is applied to prioritize a subset of facilities that may require site visit. A coding system of green (responsible/approved), yellow</p>

		<p>(more information/conditionally approved) and red (not responsible) Red facilities from the desktop result would be excluded from the list. Then each facility among this subset is tested against the following three risk assessment questions: 1.) Is the entity operating in a country that has a legal framework for waste management and pollution control, including potential import requirements/restrictions? 2.) Can the entity demonstrate a process to control inbound quality and take proper action to notify Commingled Recycling Processing Facilities (CRPFs) when the expected quality is not met? and 3.) The entity has received an on-site audit within the past two years under an approved methodology. If the answer to one or more of these questions is “no,” then the facility should receive a physical site visit.</p> <p><i>**CAA to develop a draft scoring approach by early December, which ORSAC will review as part of the second draft amendment submission.</i></p>
	Amendment proposes to remove “yield” requirements entirely from the verification standard.	<p>The subcommittee discussed ways to obtain assurance through verification that materials are being recycled, but also to mitigate the industry’s continued discomfort with the yield concept. The following compromise approach was discussed:</p> <ul style="list-style-type: none"> <li>• All downstream facilities disclose to the verification body their estimated, self-attested yield for all materials for which the disclosure is mandated by rule.</li> </ul>

		<ul style="list-style-type: none"> <li>• The verification body, in its report to CAA which is transmitted to DEQ, only discloses whether or not the yield is above the 60% threshold rather than the exact yield figure.</li> <li>• A subset of facilities are prioritized for additional scrutiny of yield on the basis of the materials that they manage (e.g. minority materials in mixed-material bales, and materials in mono-material bales for which concerns have previously been raised.)</li> <li>• For the subset of prioritized facilities, the verification body solicits and reviews additional documentation, including Standard Operating Procedures and equipment used on site, to ascertain whether recycling of materials is occurring to meet the 60% requirement.</li> <li>• If the additional desktop review leaves lasting uncertainty, yield will be verified with an on-site audit.</li> </ul>
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**Two additional topics for further discussion:**

- 1) Removal/downgrading of criteria focused on “chemicals of concern” and “plastic pollution.”
- 2) Certification – is it a pathway toward meaningful harmonization when California’s law only has verification in its draft rules? **Note:** in speaking about verification vs certification, the subcommittee, DEQ, and CAA agreed to clearly delineate two eras from one another: 1.) The current era, in which PRO verification (e.g. PRO owns the standard and it is in the program plan) is the only path of compliance for the PRO and CRPFs, because the EQC has not yet approved a third-party certification for use. This era will continue until at least the next program plan (2029), the earliest time at which a next rulemaking could

approve a certification for use to meet Oregon's requirements, and 2.) The future era, in which a third-party certification has been approved for use (pending EQC outcomes) and facilities could choose to either be certified or verified.