



State of Oregon Department of Environmental Quality

Revised Rule Concepts 4: Responsible End Markets

Plastic Pollution and Recycling Modernization Act (SB 582, 2001) Rulemaking Advisory Committee Meeting 2 of 5, Rulemaking 1

Summary

The Plastic Pollution and Recycling Modernization Act (“Act”) requires that certain covered products collected for recycling are delivered to “responsible end markets” and managed in an environmentally-protective way according to Oregon’s hierarchy of materials management options.

At the July 20, 2022 Rulemaking Advisory Committee meeting, DEQ presented four rule concept areas for consideration:

1. Specify which persons in the recycling supply chain are considered the “end market;”
2. Clarify standards for what would constitute a “responsible” end market under ORS 459A.863;
3. Establish implementation, reporting, auditing and enforcement requirements and protocols for “responsible end markets;” and
4. Clarify actions that may be considered “practicable” for 459A.869(7) and ORS 459A.896(2), which require a Producer Responsibility Organization, “to the extent practicable,” to ensure product delivery to responsible end markets with materials managed in an environmentally-protective manner and according to Oregon’s hierarchy.

This document presents proposed updates to rule concepts in areas (2), (3), and (4) in response to feedback received from the committee during the July 20 meeting.

Background

“Responsible end market” is defined in ORS 459A.863 as: “a materials market in which the recycling or recovery of materials or the disposal of contaminants is conducted in a way that benefits the environment and minimizes risks to public health and worker health and safety.” The responsible end market obligation is applied to either or both producer responsibility organizations and commingled recycling processing facilities depending on the category of product. See the relevant [background document](#) for more detail on the products to which the obligations apply singularly and jointly.

Concepts for discussion at September 28, 2022 RAC meeting

I. Update to Rule Concept for discussion: Proposed Standard for “Responsible”

Committee members provided input regarding the inclusion of public health and worker health and safety in the statutory definition of “responsible end market.” Within the standard for “responsible,” DEQ proposes to update the language for the “Compliant” element as follows, adding to the existing text the new text in parentheses:

Compliant: Follows its own local, state, and national laws **(including relevant environmental, labor, and public health laws)** and treaty obligations, and is registered and permitted as required by local, state, and national authorities.

II. Update to Rule Concept for discussion: Implementation, Reporting, Auditing, and Enforcement

Committee members indicated a need for greater clarity regarding the ways in which PROs can fulfill their obligations relative to responsible end markets. DEQ proposes to include language in rule that provides examples of approaches that PROs could use to fulfill their responsibilities, such as:

- Obtain a certification from a commission-approved program approved to verify the chain of custody and supply chains meet the “responsible” standard.
- Use a two-step approach to verify end markets—1) *initial screening assessment*: ask end markets to certify, by the start date of the program or prior to delivering materials, that the information provided meets the “responsible” standard, and 2) *detailed assessment*: undertake more detailed assessment of all end markets within one year of the start date of the program or three months of first delivery of materials.

Committee members asked about potential enforcement consequences if a material recovery facility (MRF) or PRO sends materials to an end market that, unknown to them, fails to fully disclose information. Please see DEQ’s [Internal Management Directive on enforcement](#) for a review of DEQ’s long-standing approach to enforcement, which prioritizes corrective action over punitive responses.

III. Update to Rule Concept for discussion: Practicability

Committee members sought additional detail about the cost-benefit analysis method a PRO would use as part of determining whether a solution is practicable. There was particular interest in how a PRO might weigh financial or “transactional” costs and societal benefits.

DEQ proposes allowing the PRO to choose from two options, both subject to DEQ review and approval:

- The first and default option would have the PRO evaluate financial costs of a proposed solution against the value of societal benefits as set by the Environmental Quality Commission in rule. This value would be expressed as a per-ton benchmark and adjusted for inflation. A per-ton financial cost lower than the societal benefit value set in rule would be deemed “cost effective” and thereby potentially “practicable” while a per-ton financial cost higher than the per-ton societal benefit value in rule would be deemed “not practicable”.
- The second approach would have the PRO perform an analysis of financial costs and societal benefits, customized to the particular materials and practices at hand. A customized approach could be warranted under several circumstances, such as if the material in question has a societal benefit well below the system-wide average.

DEQ expects that PROs, in most cases, would choose the first approach because of its relative ease. DEQ determination that a solution is “cost effective” under the first approach offers a streamlined method of review. However in the event, that a PRO finds that a solution is not “cost effective” (and DEQ agrees), or a PRO chooses to adopt the second approach, requiring a customized analysis, DEQ would be required to consult with the Oregon Recycling System Advisory Council prior to making a final decision. As noted in the original rule concept (shared in advance of the July 20 meeting), a finding that directing a material to a responsible end market is not “practicable” would also trigger a broader review as to whether or not the material should be delisted from material acceptance lists, so consultation with the Recycling Council is appropriate.

IV. Proposed Method for Estimating Societal Benefits

DEQ is estimating the financial costs and societal benefits of various recycling scenarios as part of a process to develop recycling acceptance lists. Variability in those scenarios focuses on different combinations of materials being collected in different modes, such as collection by local governments or at PRO depots. Modeling considers more than a dozen potential environmental outcomes such as emissions of greenhouse gases and carcinogenic pollutants associated with material flows, and then converting those environmental outcomes into “societal costs”. Financial costs, societal costs and total costs can then be compared between different scenarios.

This analysis includes evaluation of financial costs and societal costs for a baseline scenario that represents the current recycling system in Oregon without modernization as required by the Plastic Pollution and Recycling Modernization Act. While the potential future scenarios currently under evaluation represent a cross-section of *possible* outcomes, DEQ plans a subsequent evaluation of the costs of a scenario that represents the material acceptance lists and PRO collection mandates (convenience targets, etc.), once those are proposed as rule concepts and shared at subsequent RAC meetings.

By comparing the estimates of financial and societal costs between the baseline scenario and the scenario that approximates the eventual rule concept, DEQ can then estimate the expected change in financial and societal costs.

DEQ seeks feedback on the overall concept from the RAC. The proposed numeric benchmark for average societal benefit will be determined later in this rulemaking process, after material acceptance lists and PRO collection standards are proposed.

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