



State of Oregon Department of Environmental Quality

# Meeting Summary

Plastic Pollution and Recycling Modernization Act (SB 582, 2001)  
Rulemaking Advisory Committee Meeting 2, Sept. 28, 2022

## Purpose of Meeting

On Sept. 28, 2022, DEQ convened the second meeting of the Plastic Pollution and Recycling Modernization Act (RMA) Rulemaking Advisory Committee (RAC) for the first of two rulemakings via Zoom Webinar. The purpose of the meeting was to:

- Discuss proposed rule concepts related to Local Government Compensation
- Revisit topics from the first meeting incorporating more information about the Annual Administration Fee, Responsible End Markets, Market Share and Modified Market Share, and PRO Program Timelines.
- Preview the Materials Acceptance List topic which will be brought to the RAC in meetings three and four.

## Meeting Attendees

The meeting attendees included members of the RMA Rulemaking 1 Rulemaking Advisory Committee (see attachment 1 for RAC members in attendance), staff members from Oregon Department of Environmental Quality (DEQ), and members of the public.

## Welcome, Opening Remarks, and Introductions

Cheryl Grabham, DEQ welcomed everyone to the meeting. Alex Bertolucci, DEQ, provided an overview of how to use the tools in the Zoom webinar, and how to participate if a member wanted to ask questions. Cheryl reviewed the agenda and goals for the meeting.

DEQ project staff participating on the call were introduced, Cheryl introduced Alternate members, and the newest RAC member, Tim Brownell introduced himself.

## Input and Engagement

Roxann Nayar explained the ways in which RAC input was welcome throughout the process, not just limited to the 10-day input period. She clarified that the input period helps staff prepare in advance of the following meeting, but that input is welcome at any point.

## Local Government Engagement

Roxann Nayar provided an overview of DEQ's outreach and engagement plan with local governments and their service providers. DEQ plans to send out a hardcopy information mailer about the RMA and offer presentations in November. A brief overview of the timing of DEQ contractor, Eunomia's work with delivering the needs assessment survey was also provided.

## Local Government Compensation

Roxann Nayar provided an overview of the Local Government Compensation topics that are being addressed in Rulemaking 1, including recycling service expansion, transportation reimbursement, and contamination reduction programming. The contamination assessment topic is being deferred until the second rulemaking.

Q. What is the expectation of the needs assessment and how will it be structured?

A: The needs assessment will consist of surveying all the local governments and their service providers to gauge local interest in recycling service expansion.

## **Contamination Reduction Programming**

Cheryl Grabham provided an overview of the contamination reduction programming rule concept. Multiple RAC member asked questions about eligible expenses and specifics about local government and PRO roles with selecting programming activities. Additional questions and conversation related to the level of detail for invoicing, and clarification about the timing of when programming activities are eligible for funding.

There was discussion, and RAC members asked questions regarding the \$3 per capita allotment for contamination reduction programming. DEQ clarified that the amount was set in statute by the legislature. There were additional questions about the effectiveness of the reimbursement amount for smaller communities, who will not receive as much funding support compared to larger urban areas. One RAC member stated that \$3 per capita would not fund positions to the same degree as they would in an urban center.

RAC members provided input about the 60-day requirement for reimbursement. Members sought clarity around when the 60 days begins, as and noted the administrative burden associated with reimbursement requests that come from a group of multiple local governments.

A comment was received that DEQ should consider the level of detail required for invoicing, particularly if there are reimbursement requests provided by local governments who are working together. In this discussion, there was also consideration about balancing the level of detail for this process, with the new administrative burdens the local governments will need to navigate.

## **Expansion of Collection Services**

Roxann Nayar presented the rule concept “Expansion of Recycling Collection Services”.

The RAC commented and asked questions about the timing of the needs assessment survey, and how and when PROs will initiate working with the local governments. DEQ clarified that the law requires DEQ to complete the first needs assessment by July 1, 2023. The needs assessment is the formal mechanism by which local governments register their interest in receiving funding for expansion of services. The PROs are formed by March 31, 2024, in their program plan, they have to set forth a plan for how expansion will be provided within the duration of that plan. They will have three years to respond to the request for expansion by local governments. There will be a process that the PROs will propose in their plan for how the funding will occur and there will be opportunities for the PROs and the local governments to negotiate the details.

Multiple RAC members provided comments about eligible expenses and requested clarification about the eligible start-up expenses and timing for any expenses to be considered ‘new’.

One RAC member expressed concern about the proposed approach for expansion prioritization and the costs for a community that would need to adjust its collection. DEQ clarified that for communities more than 50 miles from a commingled recycling facility, that transportation costs would be compensated by the PROs. Additionally, the processor commodity risk fee will help reduce the volatility of the rates.

One RAC member requested further clarification about costs associated with contamination education, promotional expenses, and what costs are considered a start-up costs versus an operational cost. DEQ responded that the breakdown of what is considered a start-up cost and an operational cost was established by the legislature.

One RAC member brought up a scenario regarding collection frequency, and the differences for expansion eligibility between jurisdictions that offer every other week collection or weekly.

A RAC member asked for clarity about the eligibility for collection events, and whether non-curbside collectables would be considered existing infrastructure.

A RAC member requested further clarification about dispute resolution as it related to expansion prioritization.

Multiple RAC members asked about the needs assessment, including what level of detail will be requested, how the process will work, whether there will be any standardization for requesting services, about who will be contacted to complete the assessment, and whether there is flexibility for negotiating for services that would collect materials that were not on the statewide list. DEQ captured these questions and comments and will consider them while developing the details for the assessment.

### **Revised Rule Concept: Annual Administration Fee**

Cheryl Grabham presented an update from a topic first presented during the July RAC meeting. Cheryl provided an overview of the additional information in the revised memo, “Annual Administration Fee: Additional Detail”. DEQ noted the three main questions heard during the July meeting, and provided additional information in response to each.

### **Revised Rule Concept: Responsible End Markets**

David Allaway presented follow-up information about two topics first presented during the July RAC meeting. The memos provided for this meeting are titled, “Responsible End Markets” and “Market Share and Modified Market Share”.

For responsible end markets, DEQ revised the standard for the term, “compliant” by proposing to include labor and public health laws explicitly within the proposed definition. The second revision related to reporting, auditing and enforcement. DEQ is proposing to include language similar to the statutory language for material recovery facility obligations, where there are possible compliance pathways that could be met.

There was discussion regarding oversight and the use of third-party certifications. DEQ confirmed that more work will be done to research third-party certification systems, and that there will be a formal process as statute requires that certification systems be approved by the Environmental Quality Commission. Additional comments regarding DEQ’s roles and responsibilities were made, including that DEQ should clarify what information will be required.

DEQ clarified that MRFs and PROs are responsible for reporting on disposition of the materials they respectively control. In instances where both have responsibilities, they are responsible for evaluating the adequacy of the end-markets, with the MRF responsibilities extending to the materials that they manage. DEQ has oversight of both parties and ability to perform audits, which is something DEQ plans to do.

A RAC member also asked whether local labor laws can be included in end market-related reporting.

DEQ stated that, the internal verification process is described in the original rule concept. There are no current third-party certification standards that can assess for all of the different elements of the proposed definition of responsible markets, so we have to allow for a first- or second-party certification system by the PRO and the MRF.

Multiple RAC members commented on transparency and responsible end market verification. A RAC member noted that there may be sequencing considerations between the choices of a DEQ-approved certification program compared to a two-step process, and that the third-party certification may be

preferred because the certification occurs before the materials are sent. The considerations between the choices also inform transparency, and whether there are opportunities for local governments to specify in their contracts where the materials should go.

Another RAC member questioned knowledge gaps about the current system, and that the new processes would improve understanding well enough that information about what happens to the materials and the verification of these end markets could be communicated to the public.

DEQ provided a brief overview to its enforcement approach and authorities under the Act.

## **Responsible End Markets- Practicability**

David Allaway presented a third updated topic in the rule concept, involving the definition of 'practicability'.

As PROs are required to ensure that materials flow to responsible end markets and in a manner consistent with the statutory policy hierarchy only to the extent practicable, DEQ proposed in July to define the term 'practicable'. DEQ reflected on input received regarding the proposal that, for an action to be deemed not practicable, a PRO must either demonstrate technical barriers that cannot be overcome, or transactional costs that are not justified given the resulting societal benefits.

The revised rule concept proposed two different pathways: The Commission would adopt in rule a benchmark value of social benefit of a modernized recycling system, expressed on a per-ton basis. That benchmark value would be subject to annual adjustments for inflation. A PRO could demonstrate that a remedy is not cost-effective if the per-ton cost of that remedy exceeds the benchmark value. This approach has the advantage of being relatively simple for the PRO to implement.

If, however, the PRO wants to make a more involved proposal, it could follow the second option, whereby it would perform a customized assessment of both costs and benefits of the specific case at hand. This would be subject to a mandatory consultation with the state's Recycling Council prior to review and a decision by the Department.

This revised proposal provides the PRO with some flexibility while also placing a cap, or a ceiling, on costs to the PRO.

## **Market Share and Modified Market Share**

David Allaway presented an update on the revised Rule Concept: Market Share and Modified Market Share memo. Statute directs the Commission to establish by rule methods for calculating market share. Market share is defined in Statute to mean, "a producer's percentage of all covered products sold in or into this state during a specified time period, as calculated in accordance with methods established by the commission by rule."

Market share, as the term is used in the Act, will be calculated on the basis of weight of covered product. Again, the Act uses this term for two purposes only: first confirming that each PRO has members with an aggregate market share of at least 10 percent, and second, identifying the 25 largest producers.

DEQ proposes using the same term, "market share", to allocate these responsibilities. With the revised concept DEQ is changing that proposal. Statute only uses the term "market share" for two applications, and allocation of financial responsibility is not one of them. However, ORS 459A.869(9) requires the Commission to establish by rule standards and requirements for coordination between PROs. Such coordination includes financial coordination. The revised concept proposes to define a new term, "modified market share" for the purposes of allocating financial obligations, furthermore, DEQ proposes that modified market share should be calculated using a financial burden approach.

DEQ presented information about the revised rule concept and then opened the discussion.

RAC members weighed in in favor or against specific options that were presented. One offered support for a fourth option, and DEQ responded that this was not selected because of associated costs to pay a contractor to conduct the annual study. Meanwhile another member was opposed to the second option because it could create a system where Oregon is operating differently from other jurisdictions. Another commenter agreed with using Oregon-specific information, and with using an independent consultant index for the first year.

A RAC member asked if the costs would change from year to year. DEQ replied that change would depend on the scope of the obligation, and it would not be consistent across jurisdictions. The biggest anticipated variable will be the revenue.

A RAC member commented that there are efficiencies in the system, and in situations where a different processor is used, or different recovery rates standards are implemented, may impact how much material is recovered, and in turn, will also impact revenue.

## **Public Input Period**

DEQ opened the public input period.

One commentor asked if the committee has considered evaluating what constraints and opportunities are available to cities, keeping in mind that in some areas, there are unincorporated towns with limited staffing resources. They requested that DEQ consider sharing the convenience standards analysis with local governments before the needs assessment is issued, and that this information would help inform the decision local governments need to make in the assessment.

A commentor asked (re: slide 66) for auditing frequency to be clarified.

A commentor asked if the externalized costs for the practicability analysis would be based on costs and the impacts of local landfill disposal only? Or will other non-recyclable end-of-life costs, including improper disposal, be included?

A commentor noted that there are at least two co-operative programs in the Portland metro region that work on behalf of multiple local governments. Washington County and Clackamas County both manage co-operative programs. Will there be a funding distribution model for local governments to implement contamination or waste reduction education- type programs, where the co-operatives may be able to do on behalf of their local partners?

They also stated that local government budgets are developed on the fiscal year cycle, while population estimates are based on the calendar year and questioned how this will align. Additionally, the commentor would like to see investment from producers to improve the MRFs, so that materials can be sorted better, and contribute to overcoming some of the challenges they will face if there is a reduction in the amount of types of materials that will be accepted.

A commentor asked how the needs assessment and related communications will be delivered, and when. They asked how communities with populations under 4,000 or those that have no city officials will find out about the assessment, and when the local governments or their service providers will be eligible for the advanced funding.

A commentor stated that local haulers who serve small jurisdictions would benefit from clarification about when in this process jurisdictions can designate their haulers as their representatives. This includes considering ways to reduce the individual approval per receipt and providing an ability to combine receipts to claim for reimbursement.

## **PRO Program Plan Timelines**

Michael Lee presented a rule concept titled, “PRO Program Plan Timelines”. This concept clarifies the period of time a program plan is valid, and the timing of update program plan submissions.

## **Recycling Acceptance Lists**

David Allaway introduced the topic related to material acceptance lists which will be presented in detail during the third and fourth RAC meetings. The purpose of this presentation was to prepare the RAC for the following two meetings and to ensure a shared understanding of the basics of materials recycling and acceptance lists.

## **Next Steps, Meeting Schedule, and More Information**

Cheryl Grabham concluded the meeting and reminded everyone that input can be sent to [recycling.2023@deq.oregon.gov](mailto:recycling.2023@deq.oregon.gov).

## **Alternative formats**

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email [deqinfo@deq.oregon.gov](mailto:deqinfo@deq.oregon.gov).

El DEQ puede proporcionar los documentos en un formato alternativo o en un idioma distinto al inglés si así lo solicita. Llame al DEQ al 800-452-4011 o envíe un correo electrónico a [deqinfo@deq.oregon.gov](mailto:deqinfo@deq.oregon.gov).

DEQ 可以根據要求提供另一種格式的文件或英語和西班牙語以外的語言。請致電 DEQ : 800-452-4011 或發送電子郵件至 : [deqinfo@deq.oregon.gov](mailto:deqinfo@deq.oregon.gov).

ДЭК может предоставить документы в другом формате или на другом языке, помимо английского и испанского, по запросу. Позвоните в ДЭК по телефону 800-452-4011 или свяжитесь по электронной почте [deqinfo@deq.oregon.gov](mailto:deqinfo@deq.oregon.gov).

Tùy theo yêu cầu, cơ quan DEQ có thể cung cấp các tài liệu ở định dạng thay thế hoặc bằng ngôn ngữ khác ngoài tiếng Anh và tiếng Tây Ban Nha. Liên hệ với DEQ theo số 800-452-4011 hoặc gửi email đến [deqinfo@deq.oregon.gov](mailto:deqinfo@deq.oregon.gov).

## Attachment 1: RAC Member Attendees

Rulemaking Advisory Committee Meeting in Attendance for all or part of the meeting	
Name	Organization/Affiliation
Trevor Beltz	Tillamook County Creamery Association
Mike Riley (alternate for Udara Abeysekera Bickett)	The Environment Center
Rosalynn Greene	Metro
Sydney Harris	Product Stewardship Institute
Stephen Henry (alternate for Michael McHenry)	Pendleton Sanitary Service, Inc.
Kristan Mitchell	Oregon Refuse and Recycling Association
Jeff Murray	EFI Recycling, Inc.
Deveron Musgrave	City of Eugene
Jerry Powell	Resident
Craig Smith	Food Northwest
Taylor Cass Talbott	Trash for Peace
Jared Rothstein	Consumer Brands Association
Michael Burdick (alternate for Mallorie Roberts)	Association of Oregon Counties
John Salvador	Georgia-Pacific Professional
Nicole Willett	Resource Recovery Alliance
Tim Brownell	Deschutes County
Allen Langdon	Circular Materials
Absent: Paloma Sparks	Oregon Business and Industry