



American Forest & Paper Association

July 28, 2023

Roxann Nayar/Materials Management
Oregon Department of Environmental Quality (DEQ)
700 NE Multnomah Street, Suite 600
Portland, Oregon 97232-4100

RE: Plastic Pollution and Recycling Modernization Act – Rule #1

Dear Ms. Nayar,

The American Forest & Paper Association (AF&PA) appreciates the opportunities afforded by the Oregon Department of Environmental Quality (“DEQ” or the “Department”) to submit public comments and dialog with other stakeholders on the establishment and implementation of Oregon’s Plastic Pollution and Recycling Modernization Act (RMA) of 2021. The Act requires producers of packaging, paper products and food service ware to support and expand recycling services in Oregon for their products in a shared model of extended producer responsibility (EPR). AF&PA looks forward to continuing to work with DEQ on the implementation of this law.

AF&PA serves to advance a sustainable U.S. pulp, paper, packaging, tissue and wood products manufacturing industry through fact-based public policy and marketplace advocacy. AF&PA member companies make products essential for everyday life from renewable and recyclable resources and are committed to continuous improvement through the industry’s sustainability initiative — [Better Practices, Better Planet 2030](#). The forest products industry accounts for approximately four percent of the total U.S. manufacturing GDP, manufactures nearly \$300 billion in products annually and employs approximately 950,000 men and women. The industry meets a payroll of approximately \$55 billion annually and is among the top 10 manufacturing sector employers in 45 states.

In Oregon, the forest products sector employs over 38,000 individuals, produces over \$11 billion in annual manufacturing output and generates \$264 million in tax revenue for the state. The forest products sector is committed to sustainability and improvements in the recycling system. Investments made by the paper industry support widely accessible recycling programs. Nearly \$7 billion in manufacturing infrastructure investments have been completed or announced from 2019-2025 to continue the best use of recycled fiber in manufacturing our products.

AF&PA supports data-driven policy solutions, including packaging producer/stewardship responsibility, that are:

- **Data & Results Based:** Designed to achieve the recycling and recovery results needed to create a circular economy.

- **Effective and Efficient:** Focused on best practices and data-driven solutions that improve consumer education, increase recycling access, and limit administrative costs.
- **Equitable and Fair:** Focused on preventing cross-material subsidization, while acknowledging the investments and voluntary improvements historically taken by each material type to achieve their material-specific recycling rates.

Following are several topics within the Rule #1 draft language that AF&PA is providing comments, requesting additional information, and offering suggestions.

1. **Local Government Recycling Acceptance Lists and the PRO Recycling Acceptance List (OAR 340-090-0630)** – The Consolidated Recycling Acceptance Lists omit two widely recyclable categories of paper-based packaging: paperboard with poly coating; and, refrigerated and frozen food cartons.

Paperboard packaging with poly coating is a category consisting of rigid paperboard that is coated with a layer of polyethylene (PE) to provide improved barrier properties. This single surface PE coated board is widely used for many foods with a short shelf life, and over a wide temperature range (ambient to frozen). Examples include bakery boxes and refrigerated food containers. Findings from the 2021 AF&PA Access to Recycling Study show that 60% of consumers nationwide have access to a community curbside or drop-off recycling program that accepts paperboard packaging with poly coating.

Refrigerated and frozen food paperboard containers are designed to keep foods fresh in cold temperatures. Examples include cartons for frozen foods, microwavable foods, bacon, and other refrigerated foods. This category does not include primary frozen food packaging like ice cream tubs or bricks. Research conducted in 2019 by the Paperboard Packaging Council found that 70% of the paperboard cartons in this category are uncoated, which means they present no challenge to recycling.

In terms of existing end markets, AF&PA research reported in the 2021 Design Guidance for Recyclability showed that polymer barriers were identified as “easier to recycle” by mills that consume both bleached paperboard cartons and recycled/unbleached boxboard cartons to manufacture new paperboard products. AF&PA members in the region report accepting paperboard packaging with polymer barrier coatings in their mills.

Because these two categories are both widely recyclable and have existing end markets in the region, AF&PA requests that they be added to the Required for On-Site Collection and Suitable for commingled Collection (USCL) lists.

AF&PA appreciates and understands the importance of decisions regarding the Local Government and PRO Recycling Acceptance lists. Given the importance of being accepted statewide within existing curbside recycling programs, we recognize the urgency that many companies feel to have their packaging materials included on the Local Government Recycling

Acceptance Lists – particularly the Uniform Statewide Collection List (USCL). However, we also recognize that the Local Government Recycling Acceptance Lists must be feasible and practical as the RMA is implemented, and as initial program plans are created.

To reduce pressure on these lists, AF&PA recommends DEQ establish a formal mechanism for producers and/or the producer responsibility organization (PRO) to request the addition of materials on the Local Government and PRO Recycling Acceptance Lists. This would provide a clear process for these decisions, on a recommended annual basis.

- 2. Convenience Standards (OAR 340-090-0640)** – AF&PA appreciates that the convenience standards section in OAR 340-090-0640(1)(a) (C) and (D) provide for reasonable constraints on costs that would be covered for recycling collection at depots. We also appreciate the work that has gone into stipulating appropriate collection point convenience standards in this section and that it provides for alternative compliance plans. However, we request that the rule provide the PRO with the opportunity to request a temporary variance in convenience standards if market factors, staffing shortages, technological issues or other circumstances warrant a variance from the strict stipulations of these requirements.
- 3. Performance Standards (OAR 340-090-0650)** – AF&PA appreciates that this section stipulates how the PRO will propose its approach and develop services to meet the requirements of the RMA. We request that the proposed rule provides clearer authority that the PRO can establish performance standards for depots and other service providers that it contracts with to provide service under the Act. Establishing this endorsement in rule will provide the ability for the PRO to ensure greater uniformity and work toward greater ability to assess recycling service providers and certain end markets.
- 4. Collection Targets (OAR 340-093-0660)** – AF&PA appreciates the deference that OAR 340-093-0660(2)(c) provides to the PRO to propose collection targets when the PRO submits a program plan for approval and believes that this approach is justified in contrast to setting arbitrary numbers in regulatory code.
- 5. Responsible End Markets (OAR 340-090-0670)** – AF&PA believes that it will be difficult, particularly in the beginning stages of implementation, for the PRO to ensure a detailed assessment of each intermediary and supply chain entity to confirm it meets the responsible end market standard under the proposed rule. This is true as the PRO will have little control over, or knowledge of, or contracts throughout the recycling supply chain. This is particularly true for materials that are classified on the Local Government Recycling Acceptance Lists, where the PRO will not have a direct relationship with entities in that recycling system. There is no specific mandate that local governments and other partners must provide the necessary information to the PRO – this may lead to delays or resistance to providing useful and accurate information to PROs or third parties to audit or validate a responsible end market and verify the criteria in OAR 340-090-0670(3).

The responsible end market characteristics listed in the proposed rule are also very prescriptive and might be particularly hard to validate, especially for the “Environmentally-Sound” requirement. It is unclear who would do the monitoring and what entities would be appropriate to validate the characteristics of “Environmentally-Sound” and what would be considered “adequate emergency response” or what would qualify as “managing inputs sustainably.” These terms either need greater specificity or should be removed.

Recycling yields might also prove challenging for the PRO to validate unless the rule provides clear authority for the PRO to solicit and obligate this information from entities in the recycling system. AF&PA anticipates significant resistance from recycling entities to provide yield information to producers/the PRO unless the rule creates a clear obligation for those entities to respond and make a good faith effort to provide this information to the PRO.

Additionally, DEQ has stated that there are unknown compliance costs associated with the joint obligation for PRO(s) and commingled recycling processing facilities to ensure materials reach responsible end markets. This is a significant area of concern. While we understand the desire to have recyclable materials collected under the RMA to be processed in safe and environmentally protective facilities. However, there must be a clearer understanding of the total compliance cost of the complex structure that has been proposed in this draft rule.

At a minimum, the rule must provide clear legal authority to the PRO to conduct the activities under this section. Equally, it must also clearly and legally obligate local governments, and the entities with which they contract to process recyclables, to provide the information and provide PROs access to facilities to conduct the audits required under this section.

6. **Producer Responsibility Organization Fees (OAR 340-090-0690)** – AF&PA appreciates that DEQ has performed significant analysis of the administrative costs as it has established the Program Plan Review fee of \$150,000 and the Annual Administration Fee of \$4 million (2025-28) and \$3 million from 2028 forward. While acknowledging that DEQ has the discretion to reduce the annual administration fee, we request that the rule stipulates that the DEQ will provide administrative fee costs accounting data to all PROs to support these costs with the invoicing stipulated in OAR 340-090-0690 (2)(a). These administrative costs currently represent the highest fees proposed in any packaging producer responsibility system in the nation, and appropriate justification and documentation must be provided to PROs on an annual basis. We believe this system would be further strengthened if the rule were to be amended so that a PRO can petition DEQ to adjust administrative fees under OAR 340-090-0690(2)(b).

7. **Market Share (OAR 340-090-700)**

AF&PA recognizes the need to establish a methodology for calculating market share for all covered products sold into the state, as well as the Department’s interest in incentivizing producers to continually reduce the environmental and human health impacts of covered products. However, the fee adjustments developed under ORS 459A.884(4) fail to optimize the environmental benefit of some material in (a).

ORS 459A.884(4)(a) establishes an incentivizing fee factor for using “post-consumer” content in products but fails to recognize that the use of all recovered material has economic and environmental benefits. AF&PA believes the distinction between “pre-“and “post-consumer” content is not meaningful and incentivizing the use of only “post-consumer” material limits the beneficial use of other (“pre-consumer”) recovered material. Therefore, AF&PA requests that all recovered material used in manufacturing covered products be recognized in the fee adjustment factor.

- 8. Expansion of Service, Service Funding and Needs Assessment (OAR 340-090-0790 to 0800) –** AF&PA appreciates that the PRO will establish the proposed schedule, scope, and estimate of total amount of funds for recycling service expansion in the program plan, under OAR 340-090-0790. This approach provides appropriate control to the PRO to manage the plan and budget for these program expansions. Furthermore, that the PRO will not be obligated to provide funds under section 340-090-0800 for activities that are inconsistent with the terms of expansion between the PRO and local government service providers. We believe that this section should also stipulate that the PRO can require local government service providers to provide periodic and regular information on the use of funds to the PRO and must submit to audits of the use of these funds to ensure that they are appropriately used for the terms of the recycling service expansion.

Thank you for considering our views and the continued opportunities to provide comments regarding the establishment of the packaging producer responsibility program in Oregon. Please feel free to contact Erin Hall, Manager, Government Affairs at erin_hall@afandpa.org, or Brian Hawkinson, Executive Director, Recovered Fiber at brian_hawkinson@afandpa.org for further information.

Sincerely,



Terry Webber
Vice President, Industry Affairs
American Forest & Paper Association