



Oregon Department of Environmental Quality

Oregon Recycling System Advisory Council

PRO Plan review (Draft 2): Equity

Last updated: Oct. 17, 2024

Purpose

This document is intended to assist the Recycling Council to frame its Oct. 22, 2024, Special Meeting discussion regarding equity, and the degree to, and quality with which, equity is addressed in Circular Action Alliance's second draft program plan.

Discussion Questions

1. Which changes to the second draft do you support as presented? Which do you think could be strengthened?
2. Does CAA's vision in its goals section of the plan adequately allow for measurement of success in achieving equity in long term?
3. What changes, including metrics or measures, would have substantial positive impacts for Draft 3 of CAA's program plan?

Requirements Overview

One main equity provision in the Act is a requirement that commingled recycling processing facilities pay their workers a living wage and supportive benefits. However, this is not an obligation that requires considerable elaboration in the program plan—the PRO will simply pay invoices remitted by the processors through the processor commodity risk fee funding, and proposed rules for that fee already take into account these costs borne by the commingled recycling processing facilities. Future fee rulemakings may cause the amount of this obligation to change (in either direction) as circumstances change and as projections become replaced with actual data.

The PRO must describe in the plan how it will meet the following other equity-related requirements:

- Tribal depots and collection points operated by a community organization at the direction of a local government must be contracted with where possible for collection of materials on the PRO Recycling Acceptance list.
- Underserved populations must receive enhanced convenience for collection of materials on the PRO Recycling Acceptance list.
- Any alternative compliance with the convenience standard must provide equitable access to, and provision of, recycling across regions and diverse populations (pending approval of relevant rule language in the ongoing rulemaking).
- Educational materials and campaigns must be culturally responsive to diverse audiences across the state, including through translation of materials into multiple languages.

DEQ and the Council have also introduced additional suggested elements, or guidance elements, related to equity that the PRO could choose to include in the plan voluntarily, including paying a living wage to collection point staff, establishing a “whistleblower channel” for communities adjacent to end

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markets to provide input on verifications, and instituting internal requirements around engagement of COBID-Certified firms in contracting.

Second Draft Plan Status – Key Changes

CAA made the following key changes to Draft 2 of the plan related to equity:

- Addition of an outcome to the Goals Section targeting engagement of diverse businesses and collection point partners, including COBID-certified firms.
- Addition of a whistleblower channel for community feedback on end market verifications.
- Elaboration on how collection point partners will be compensated, including a commitment to pay a living wage at CBO-managed sites.
- Indication of two Tribal depots that CAA intends to collaborate with.
- Addition of three languages to the translation list for education materials.
- Addition of three CBOs to the Stakeholder Engagement list in Appendix D.

Second Draft – Relevant Sections for Review

Section	Page Number(s) in Public-Facing Version of Plan	Page Number(s) in Tracked Changes Version of Plan
Goals of the Program	pg 15-16 (Goal 3)	pg 11-12 (Goal 3)
Equity	pg 159-162	pg 146-149
Appendix D: Stakeholder Engagement	pg D33-35	pg D39-D42

As equity requirements and guidance elements are embedded within several of the PRO obligations, some information related to equity may also be found in the sections of the plan dedicated to the following themes:

1. Establishing a network of collection points to collect PRO Recycling Acceptance List materials,
2. Sending materials collected in Oregon to Responsible End Markets, and
3. Developing education and outreach materials and campaigns.

Please refer to the table in the Appendix for page numbers for relevant content.

Non-discrimination statement

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Appendix: DEQ Preliminary Feedback on Relevant Requirements and Guidance Elements

A checklist of relevant statutory requirements for the equity section is provided below. Additional guidance elements from the Internal Management Directive on program plan review are also included for the Council’s reference, below, but do not have a statutory reference or requirement. Page numbers listed are for the public-facing version of the plan.

Required or Guidance Plan Component	Statute or Rule Citation	Plan Section(s)	DEQ Preliminary Feedback
Overarching goals for the program plan that are as objective and measurable as possible.	ORS 459A.875(2)	<ul style="list-style-type: none"> Goals of the Program, pg 13-17 	<p>Equity-related Outcomes/Indications for Success for Goal 3 on pg 15-16 look good.</p> <p>The Metrics could use additional consideration to make them most meaningful; currently most of the metrics involve tracking the “numbers and kinds” of various offerings (e.g. recycling services and system expansions for underserved populations, education materials, communications channels, audiences reached, etc.). It would be more holistic to also include metrics focused on the size and scope of the investment in equity being made (e.g. proportion of contracts, and contract dollars, that go to COBID firms, absolute amount of contract dollars awarded to COBID firms, etc).</p> <p>CAA might review Metro’s Equity In Contract annual report to explore some such possible metrics.</p>
Inclusion of Tribal depots among the list of “existing depots” and pursuit of efforts to contract with those depots (for collection of the PRO Recycling Acceptance List).	ORS 459A.875(2)(a)(B) and OAR 340-090-0640(1)(a)(C)	<ul style="list-style-type: none"> Equity in the Establishment of a PRO Depot Network, pg 160 Appendix F: PRO Depot Lists and Coverage, pg F40-49 (was not updated in Draft 2) 	<p>DEQ supports CAA’s identification of two existing depots operated by Tribal nations and efforts to contract with those depots for collection of PRO Recycling Acceptance list materials.</p> <p>In draft 3 DEQ will look out for an update in terms of whether or not such contracting is on track to go ahead, and whether or not any other depots operated by Tribal nations have been identified.</p>
Identification of key collaborators that the prospective PRO plans to contract with for PRO Recycling Acceptance List	n/a (unless an entity meets the “existing depot”	<ul style="list-style-type: none"> CAA’s Proposed Approach to Equity, pg 159-160 	DEQ acknowledges modest progress between drafts 1 and 2 in terms of CAA having consulted with additional CBOs regarding potential to collaborate on collection of the PRO Recycling Acceptance List (the

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Required or Guidance Plan Component	Statute or Rule Citation	Plan Section(s)	DEQ Preliminary Feedback
collection, including community-based organizations and minority-owned/operated businesses.	definition at 340-090-0640(1)(a)	<ul style="list-style-type: none"> Equity in the Establishment of a PRO Depot Network, pg 160 Appendix D, Stakeholder Engagement, pg D33-34 	<p>Arc, Ground Score, and St. Vincent de Paul have been added to the consultation list in Appendix D).</p> <p>In draft 3 DEQ will look for the following update:</p> <ul style="list-style-type: none"> Have any CBOs been identified that operate facilities that meet the definition of “existing depot?” If so, have they been offered the opportunity to contract, and is partnership moving ahead?; and Beyond the requirement to contract with existing depots if possible, has CAA secured any other partnerships with CBOs in order to fulfill the requirement to meet collection targets, convenience standards and performance standards in collecting PRO-list materials?
A description of how the prospective PRO will engage with local community-based organizations and women and minority-owned businesses to develop collection points (for collection of the PRO Recycling Acceptance List).	n/a	<ul style="list-style-type: none"> Equity in the Establishment of a PRO Depot Network, pg 160 Unnamed section, pg 50-51 (was not updated in Draft 2) 	<p>While DEQ supports CAA’s intent to go beyond the requirement to contract where possible with existing depots and partner with CBOs that may not qualify as ‘existing depots’ (as noted on pg 160, where CAA wrote, “CAA will explore partnerships with community groups that collect PRO depot materials but may not qualify for permits or meet the definition of “depot” or “drop off center””), DEQ will need to be able to assess, in draft 3, whether or not the base requirement with respect to existing depots has been met.</p> <p>Therefore, DEQ recommends that, in draft 3, CAA speak to each of the two above bullets separately (#1 pertains to a requirement, #2 pertains to a guidance element).</p>
Plans for providing enhanced convenience (for collection of the PRO Recycling Acceptance List) to underserved populations.	OAR 340-090-0640(2)(h)	<ul style="list-style-type: none"> Underserved Populations, pg 51 (was not updated in Draft 2) 	<p>DEQ’s feedback from the first draft still stands (i.e., updated, firmer plans to provide enhanced convenience to underserved populations are needed), as the relevant section will not be updated until the third draft.</p>
Descriptions of any alternative collection programs being proposed to substitute for	OAR 340-090-0640(6)(c)(B)	<ul style="list-style-type: none"> Equity in the Establishment of a PRO Depot Network, pg 160 	<p>This section of the plan will not be updated until the third draft. Therefore, DEQ’s feedback from the first draft still stands (i.e., requests for alternative compliance with the convenience standard need to be accompanied by textual rationales explaining how all criteria at</p>

Required or Guidance Plan Component	Statute or Rule Citation	Plan Section(s)	DEQ Preliminary Feedback
convenience standards, including an assessment of the impact on equitable access to and provision of recycling across regions and diverse populations.		<ul style="list-style-type: none"> Proposed Approach to Meeting Convenience Standards, pg 43-54 (was not updated in Draft 2) 	OAR 340-090-0650(6) are met, including a criterion regarding equitable access to and provision of recycling to diverse populations).
Principles and methods for compensation of collection point staff.	n/a	<ul style="list-style-type: none"> Equity in the Establishment of a PRO Depot Network, pg 160 Establishment of Depot Sites and Contracts, pg 52-53 (was not updated in Draft 2) 	<p>DEQ welcomes CAA's plan, described on pg 160, to build a living wage for CBO-managed collection points into the base service fee CAA will pay monthly to the CBOs.</p> <p>CAA could add some detail in the third draft regarding how it will determine a living wage.</p>
Plans to incorporate community feedback into verifications of end markets and other downstream entities.	n/a	<ul style="list-style-type: none"> Equity in Responsible End Markets, pg 161 Whistleblower Process, pg 94 	<p>DEQ welcomes CAA's initiative, laid out on pg 94, to operate a whistleblower channel for the responsible end market verifications to allow communities adjacent to facilities to share input regarding how facilities perform against the "responsible" standard.</p> <p>DEQ considers that the success of such a channel will depend upon:</p> <ul style="list-style-type: none"> how broad and targeted outreach regarding the whistleblower channel is, and the extent to which information is being provided to potential whistleblowers, i.e., do they have something to comment on? <p>In the third draft, CAA could provide more detail addressing each of these points and different scenarios. For example, how would potentially-impacted communities of end markets outside the US be identified and contacted? And what information would be provided to potential users of the whistleblower channel – just general information about the "responsible" standard, or any facility-specific information? (e.g. <i>"Facility A" is subject to the "responsible" standard and we seek your input on whether or not it meets x, y, z criteria,</i> or, alternatively, <i>"Facility A has been verified and met x, y, criteria, but has a non-</i></p>

Required or Guidance Plan Component	Statute or Rule Citation	Plan Section(s)	DEQ Preliminary Feedback
			<i>conformance on z criterion, do you have any information that would disagree with this finding?"</i>
Any equity approaches pertaining to practicable actions such as development of new markets.	n/a	<ul style="list-style-type: none"> Equity in Responsible End Markets, pg 161 	<p>At pg 161, CAA lays out equity principles with respect to implementation of practicable actions at end markets. DEQ supports the principles but they would need to be upheld in implementation to add value.</p> <p>Perhaps a first opportunity to showcase how these principles will be applied lies with the forthcoming onramp proposal for PET thermoform clamshells, which may involve a markets development proposal?</p>
A description of how the prospective PRO will ensure that educational materials and campaigns are culturally responsive to diverse audiences across this state, including people who speak languages other than English and people with disabilities; are printed or produced in languages other than English; and are accessed easily and at no cost to local governments and users of the recycling system.	ORS 459A.875(2)(a)(J)(i) and ORS 459A.893(3)	<ul style="list-style-type: none"> Equity in Education and Outreach, pg 162 A Culturally-Responsive Approach, pg 128-130 (section is already approved) 	<p>The education section of the plan was conditionally-approved in the first draft review and is not subject to second draft review besides verifying that edits conform to conditions of approval.</p> <p>One condition of approval relevant to equity in the education approach was the addition of an Indic language, an Afro-Asiatic language, and Tagalog to the list of languages into which education materials will be translated; CAA satisfied this condition through the addition of Somali, Hindi, and Tagalog to their language list.</p>
Any internal requirements around engagement of "Certified Firms" when contracting work out to third parties ("Certified Firm" means a small business certified under ORS 200.055 by the	n/a	<ul style="list-style-type: none"> Equity in PRO Administration, pg 162 	<p>A relevant section on pg 162 lays out principles for upholding equity in administration of the program, including through development of an approach that provides opportunities to COBID businesses, provision of equal opportunities for system expansion and depot collection, equitable employment practices, and prioritizing Oregon-based individuals when hiring.</p>

Required or Guidance Plan Component	Statute or Rule Citation	Plan Section(s)	DEQ Preliminary Feedback
Oregon Certification Office for Business Inclusion and Diversity (COBID) as a minority-owned business, woman-owned business, business that service-disabled veterans own, or emerging small business).*			DEQ still considers that more information on how COBID businesses will be engaged could make this section more effective.



Oregon Department of Environmental Quality

Oregon Recycling System Advisory Council

PRO Plan review (Draft 2): Statewide plastic recycling goal and on-ramp proposals

Last updated: Oct. 17, 2024

Purpose

This document is intended to assist the Recycling Council in framing its Oct. 22, 2024, Special Meeting discussion regarding Circular Action Alliance’s materials strategy as articulated in its second draft program plan. There is a particular focus on the following elements:

- Use of the program plan on-ramp to add materials to the Uniform Statewide Collection List,
- PRO Recycling list material-specific challenges, and
- Likelihood of the achievement of the statewide plastics recycling goal when it first applies in 2028.

Discussion Questions

1. Do you agree with the vision for materials, and pace for the evolution of the Uniform Statewide Collection List through program plan “on-ramping”?
2. What feedback do you have for CAA regarding the practicability and cost challenges pertaining to certain PRO list materials that are described in this plan draft?
3. Is CAA on track to meet the statewide plastics recycling goal of 25% in 2028?

Requirements Overview

Following are the relevant statutory and rule requirements with respect to on-ramping, material-specific performance standards, and the plastic recycling goal:

- The PRO can propose the “on-ramping” of materials onto the Uniform Statewide Collection List in its program plan. In order to do so, the PRO must analyze how the material performs against the statutory criteria at ORS 459A.914(3) and must describe planned activities and investments that address any issues highlighted by the analysis.
- The PRO must collect PRO Recycling Acceptance list materials in a manner that achieves collection targets, convenience standards, and performance standards for the materials. Alternative compliance to convenience standards may be proposed as long as collection targets will be achieved, equity in terms of access to and provision of recycling services will be provided, local government support is secured, and the proposal will not engender adverse environmental impacts.
- Expanded polystyrene must be densified for transportation within 75 miles of a collection point. The PRO may propose in the program plan an alternative distance threshold.
- Aerosol containers and pressurized cylinders must be managed, both at collection points and downstream of collection points, as hazardous waste.
- The PRO must meet a statutory statewide plastics recycling target of 25% in 2028 (which steps up to 50% in 2040), with the current recycling rate estimated at 16.8-18.4%.
- A PRO can make a case to the department that it is not “practicable” to ensure that materials are recycled at responsible end markets through a cost analysis demonstrating that implementation of a practicable action to comply with the REM requirement will cost more than \$2,017 per ton (expressed in 2021 dollars and adjusted annually for inflation). If the PRO’s

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analysis is accepted, the PRO is released from the obligation to ensure that the materials flow to responsible end markets and delisting of the material is explored in a subsequent rulemaking.

Second Draft Plan Status – Key Changes

CAA made the following key changes in Draft 2 of the plan:

- 1. On-ramping:** CAA envisions the on-ramping of materials onto the USCL in three groupings:
 1. Materials proposed to be on-ramped in this program plan review process (green and blue transparent PET),
 2. Materials CAA intends to on-ramp in this program plan period by plan amendment (PET thermoforms, non-hazardous aerosol containers, aluminum foil and pressed foil products, PE and PP lids and caps, and HDPE can carriers), and
 3. Materials for which CAA is exploring on-ramping in subsequent plan periods (spiral wound containers).

- 2. Challenges still to be addressed:** CAA has signaled practicability and other cost challenges related to:
 - Processing pressurized cylinders and hazardous aerosol containers, which must be managed as hazardous waste according to the performance standards, and
 - Required densification of expanded polystyrene no more than 75 miles from collection points.

Specific proposals (practicability analyses, an alternative compliance proposal for EPS) related to these challenges may follow in the third draft.

3. Achieving plastic recycling rates: CAA integrated the latest plastics recycling data from the DEQ waste composition and material recovery surveys into Draft 2 of the plan, which indicates that the current statewide plastics recycling rate stands at 16.8-18.4%. In Table 12 on page 86 of the public-facing version of the plan, CAA highlights strategic opportunities for meeting the 25% plastics recycling target by 2028, which requires collecting an additional 14.5-19 thousand tons of plastic.

Second Draft – Relevant Sections for Review

Section / Subsection	Page Number(s) in Public-Facing Version of Plan	Page Number(s) in Tracked Changes Version of Plan
Materials Strategy, with particular focus on the below-listed subsections:	pg 66-85	pg 61-80
Proposed Additions to the USCL	pg 67-68	pg 62-63
Proposed Future Additions to the USCL through Forthcoming Program Plan Amendments	pg 69-73	pg 63-67
SIMs on the PRO Recycling Acceptance List	pg 76-79	pg 70-73
Variance Requests	pg 80	pg 73-74
Initial Plastics Recycling Rate Projections	pg 83-86	pg 77-80

A requirement-by-requirement, checklist-driven approach to the review of this content was taken by the relevant subcommittee during review of Draft 1. Should the Council wish to delve into that level of detail during review of Draft 2, it may refer back to the [Draft 1 checklist](#) on the [Council's website](#).

Non-discrimination statement

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Oregon Department of Environmental Quality

Oregon Recycling System Advisory Council

PRO Plan review (Draft 2): Responsible End Market Verification Standard, Auditing, and Variance Proposal(s)

Last updated: Oct. 17, 2024

Purpose

This document is intended to assist the Recycling Council in framing its Oct 22, 2024, Special Meeting review of the PRO program plan related to the responsible end market obligation. There is particular focus on the following elements of the plan:

- Proposed criteria and performance indicators that comprise the verification standard that will be used to verify that end markets and other downstream entities that manage Oregon’s waste collected for recycling are “responsible,” including:
 - Classification within the verification standard of non-conformances by degree of severity and proposal for how different classes of non-conformance will be addressed going forward.
- Proposal for how the PRO will fulfill the requirement to audit across the results of the various facility-specific verifications, including through the use of random bale tracking.
- Any requested variances with respect to the entities that will be verified and how the verification standard will be applied (i.e., partial application of only certain criteria vs. full application).

Discussion Question

1. Does the plan Draft 2 fulfill the relevant requirements listed in the Appendix Table of this document?

Overview of Requirements

The PRO must ensure, to the extent practicable, that four classes of materials pursuant to ORS 459A.869(7) collected for recovery in Oregon go to responsible end markets. “Responsible end market” is defined in statute 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.” In rule at OAR 340-090-0670, more detailed requirements for the fulfillment of this obligation are laid out, including material-specific definitions of “end market” and a four-element definition of “responsible” (compliant, transparent, environmentally-sound, achieving adequate yields) that facilities must be either PRO-verified or third-party certified against.

The full listing of requirements relevant to the chosen scope of the Recycling Council’s review of this topic (see bullets in “Purpose” section above) appears in the Appendix of this document.

Second Draft Plan Status – Key Changes

In its second draft plan, Circular Action Alliance added new content pertaining to each of the three sub-elements that the Recycling Council will be focusing on in its review.

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- CAA has partnered with Recycled Material Standard to develop a set of 21 criteria for the verification of responsibility. Non-conformance with each criterion will be classified as disqualifying, major, and/or minor. The timeframes to address major and minor non-conformances are indicated as 30 days and one year, respectively.
- CAA proposes to not use battery-powered bale trackers out of concern for worker safety, but rather to conduct paper-based chain-of-custody auditing.
- CAA added two additional variance requests to an existing list of three from the first draft:
 - Variance from the requirement to verify plastic converters producing products for food and beverage and children’s product applications, and
 - Variance from the requirement to estimate yield at domestic paper mills. Instead, CAA proposes to visually verify that no minority bale components are being diverted to landfill.

Second Draft – Relevant Sections for Review

Section	Page Number(s) in Public-Facing Version of Plan	Page Number(s) in Tracked Changes Version of Plan
Goals of the Program	pg 13-14 (Goal 1)	pg 9-10 (Goal 3)
Ensuring Responsible End Markets	pg 86-114	pg 80-103

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Appendix: DEQ Preliminary Feedback on Relevant Requirements and Guidance Elements

The checklist of relevant requirements and guidance elements is provided below. Guidance elements from the Internal Management Directive are also included for Council reference but do not have an accompanying statute or rule citation. Page numbers listed reference the public-facing version of the plan.

Required or Guidance Plan Component	Statute or Rule Citation	Plan Section(s)	DEQ Draft 2 Preliminary Feedback
<p>Overarching goals for the program plan that are as objective and measurable as possible.</p>	<p>ORS 459A.875(2)</p>	<p>Goals of the Program, pg 13-17</p>	<p>The Outcomes/Indications of Success and Key Metrics columns are in good shape for Goal 1 Outcome 1, related to fulfillment of the responsible end market obligation.</p> <p>As stated in its response to the first draft, DEQ recommends focusing the Outcomes/Indications of Success related to REMs on key issues of focus -- for example, the issue of release of waste to the environment, or of emissions from a certain type of facility. This would potentially be more understandable to the layperson in terms of voicing which particular problem(s) the PRO has prioritized and what has been achieved.</p> <p>However, CAA may not be able to prioritize particular issues until verification results have been initially generated. Therefore, perhaps CAA can revisit this feedback in subsequent program plan submittals.</p>
<p>Ensure that four classes of covered products, identified in ORS 459A.869(7), and contaminants collected with those covered products, are managed and disposed of consistent with the goals, standards and practices</p>	<p>ORS 459a.875(2)(a)(G)-(I) and OAR 340-090-0670</p>	<p>Ensuring Responsible End Markets, pg 86-114</p>	<p>In Draft 2, CAA added a detailed verification standard for assessing the extent to which facilities managing Oregon’s waste collected for recycling are “responsible.” DEQ supports CAA’s partnership with GreenBlue’s Recycled Material Standard to develop a verification standard for Oregon’s REM obligation and apply that standard to end market.</p>

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<p>required by ORS 459A.860 to 459A.975 and transferred to responsible end markets.</p>			<p>The overall vision for ensuring successful delivery of this obligation was largely acceptable in the Draft 1 iteration, but CAA has added some additional detail in Draft 2 that is helpful for further envisioning how this will work. The revised vision for facility self-attestations and how self-attestation content will be used for determining the scope for the subsequent verifications is well-received by DEQ, for example.</p>
<p>Describe how the prospective PRO will verify that the recycling supply chains up through and including the end markets are meeting the “responsible” standard, including through</p>	<p>ORS 459A.875(2)(A)(H) and OAR 340-090-0670(2)-(3)</p>	<ul style="list-style-type: none"> • Verification of REMs, pg 88-103 • Tracking Material Flows, pg 108-110 	
<p>The approach for verifying that downstream entities meet the “responsible” standard, including</p>		<ul style="list-style-type: none"> • Verification Sampling Plan, pg 93 • REM Verification Criteria (Preliminary), pg 94-102 • Verification of Chain of Custody, pg 102-103 • Verification of Recycling Yield for Materials Mixed Together in a Bale, pg 103 • Tracking Material Flows, pg 108-110 	<p>DEQ applauds CAA and RMS for providing a detailed list of criteria – a verification standard – that interested parties can react to and use as a basis for discussion of where Oregon’s “responsible” bar should be set.</p> <p>The verification standard on pg 94-102 consists of five groupings of criteria: four corresponding to elements of the “responsible” standard in rule at OAR 340-090-0670(2)(b), and a fifth for labor.</p> <p>DEQ invites input from interested parties about whether or not the labor criteria are adequate and appropriate considering:</p> <ul style="list-style-type: none"> • how “responsible end market” is defined in statute (which encompasses worker health and safety); and • how “responsible” is defined in rule (with the labor element limited to questions of compliance). <p>DEQ requests clarification in draft 3 related to how non-conformance will be addressed. In Table 14 on pg 100-102, where a category of non-conformance is assigned for each criterion, please clarify in the text what is meant when two or more categories are indicated and separated by back-slashes. For example, does it mean the non-conformance could fall into one or the other category on a case-by-case basis as determined by the Certification Body in alignment with ISO 19011?</p>

<p>1. How compliance with applicable laws and treaties will be verified (element #1 of the “responsible” standard).</p>		<ul style="list-style-type: none"> • REM Verification Criteria (Preliminary): Compliance to Law and Regulation: pg 96, 101 	<p>CAA could consider moving “Environmental Compliance” so that it is part of the Compliance grouping of criteria rather than the Environmentally-sound element, which could be strictly focused on environmental management quality and environmental performance.</p> <p>Otherwise, the criteria reflect that a full compliance audit is envisioned as part of the verification process, and that aligns with the definition of “responsible” in rule.</p>
<p>2. How chain of custody transparency will be verified (element #2 of the “responsible” standard)</p>		<ul style="list-style-type: none"> • REM Verification Criteria (Preliminary): Transparency: pg 98-99, 102 	<p>The Transparency criteria appear thorough.</p>
<p>3. How environmental soundness will be verified (element #3 of the “responsible” standard)</p>		<ul style="list-style-type: none"> • REM Verification Criteria (Preliminary): Environmentally-sound: pg 97-98, 101-102 	<p>Generally these criteria fairly comprehensively cover the impacts that end market facilities can have on the environment. Criterion-specific feedback is as follows:</p> <ul style="list-style-type: none"> • Break “no activity on-site causes obvious contamination to the local environment” out from the Environmental Compliance criterion into its own criterion focused on containment of waste, as this is an explicit and performance-focused piece of the “environmentally-sound” definition in rule. Attribute “Disqualifying/Major” as the non-compliance category. • Account for energy use, as sustainable use of inputs is an explicit piece of the “environmentally-sound” definition. • Add GHG emissions to the Environmental Impact Measurement criterion. • Adapt the “Management of Resin Loss” criterion so that it would be applied more broadly to any facility that may have emissions of plastic, rather than narrowly to plastic reclaimers. Upgrade non-compliance category to “Major/Minor.” • Related to the emergent issues of microplastic pollution and hazardous substances embedded in

			recyclate passing along to the next product, consider adding a requirement that facilities make wastewater effluent and recyclate samples available for testing if requested, and working with a research organization to integrate findings from testing into future iterations of the standard.
4. How adequate yield will be verified (element #4 of the “responsible” standard).		REM Verification Criteria (Preliminary): Yield: pg 99-100, 102	<ul style="list-style-type: none"> Yield is measured against the 60% threshold for the entire recycling supply chain (everything downstream of the MRF or PRO collection point up through to the end market) rather than an individual facility; that probably needs to be made explicit. Consider writing the requirement to use proportional accounting when materials mix into the standard.
Protocols to be applied when reporting disposition for and calculating yield in recycling supply chains in which obligated Oregon materials mix with non-obligated materials, such as material from another state.	OAR 340-090-0670(2)(d)	Accounting for Disposition and Yield, pg 109-110	CAA is clear in this section that they will use accounting approaches that fulfill the relevant requirements in rule.
Plans to incorporate community feedback into verifications of markets and other downstream entities.*	n/a	Whistleblower Process, pg 94	<p>DEQ welcomes CAA’s initiative, laid out on pg 94, to operate a whistleblower channel for the responsible end market verifications to allow communities adjacent to facilities to share input regarding how facilities perform against the “responsible” standard.</p> <p>DEQ considers that the success of such a channel will depend upon:</p> <ul style="list-style-type: none"> how broad and targeted outreach regarding the whistleblower channel is, and the extent to which information is being provided to potential whistleblowers, i.e., do they have something to comment on?

			<ul style="list-style-type: none"> In the third draft, CAA could provide more detail addressing each of these points and different scenarios. For example, how would potentially-impacted communities of end markets outside the US be identified and contacted? And what information would be provided to potential users of the whistleblower channel – just general information about the “responsible” standard, or any facility-specific information? (e.g. <i>“Facility A is subject to the “responsible” standard and we seek your input on whether or not it meets x, y, z criteria,” or, alternatively, “Facility A has been verified and met x, y, criteria, but has a non-conformance on z criterion, do you have any information that would disagree with this finding?”</i>)
<p>Requests for temporary variance from the required components of a verification accompanied by justification, if such requests are being made. Justification could consist of criteria for identifying facilities that would receive more limited verifications on the basis of characteristics such as location and role in the supply chain,</p>	<p>OAR 340-090-0670(3)(h)</p>	<p>Requests for Temporary Variance in Verification, pg 106-108</p>	<p>DEQ requests the following revisions:</p> <ul style="list-style-type: none"> Renumber the list of requests for temporary variances – the list shows nine requests, but there appear to only be five, with some supporting rationales erroneously getting a number despite being a rationale for the previous request rather than a distinct request. Indicate a desired duration for each variance. For variance requests #1 and #2, either: <ul style="list-style-type: none"> provide benchmarking results that compare the draft CAA “responsible” standard vs the other standards proposed to be counted toward meeting the “responsible” standard (e.g. Clean Farms, Valipac, EUCertPlac, RIOS, FDA LNO, RMS recycled content, SCS recycled content), or indicate that such info will be provided in a plan amendment when requesting the variance. Specifically, that would mean CAA is only signaling the intent to request such variances in the current program plan, but that actual approval would be contingent on a future plan amendment). Reconsider the details of the variance proposal for plastic converters. As it is currently formulated, it amounts to a wholesale, two-year delay in

			implementation, and it is not clear how a wholesale delay will address the industry concerns raised. As for concerns about the new requirements conflicting with existing Non-Disclosure Agreements, perhaps a phase-in approach would better address this concern. For example, CAA could conduct the verifications on schedule but initially report aggregate rather than facility-specific data to DEQ.
Actions and timeline to investigate if the prospective PRO learns of potential non-compliance through the verification/certification process or otherwise;	ORS 459A.875(2)(A)(H) and OAR 340-090-0670(5)	<ul style="list-style-type: none"> • Investigating Non-Compliance, pg 103 • Actions to Address Non-Compliance, pg 103-106 	DEQ recommends ground-truthing the proposed timelines for action for each class of non-conformance presented in Table 15 with some real-world scenarios, to evaluate whether they are reasonable.
Steps the PRO will take and timelines for action when verification, certification, or auditing indicates that the “responsible” standard is not being met; and			
Description of how the PRO will audit results across all facility verifications. This section could include:	ORS 459A.875(2)(A)(H) and OAR 340-090-0670(4)	<ul style="list-style-type: none"> • Auditing the Verification Program, pg 110 • Random Bale Auding, pg 110-112 	CAA proposes to take a chain of custody (presumably predominantly desktop audit) approach rather than a remote tracking approach to fulfillment of the requirement to conduct random bale auditing. Worker safety is cited as the main factor motivating this proposal.
The sampling methodology to be used for random bale auditing including	ORS 459A.875(2)(A)(H) and OAR 340-090-0670(4)	Random Bale Auding, pg 110-112	DEQ suggests that CAA rather consider an approach to random bale tracking that initially employs alkaline battery-powered trackers, and edit the third draft plan to reflect this and accommodate DEQ’s comments on the first draft with respect to design of the sampling approach. The main downside of using alkaline-powered trackers is battery lifespan, which DEQ understands to be on the order of one year vs several years for lithium batteries. For many end-of-life pathways, one year will be sufficient to follow the product through to the end market. The use of alkaline batteries may also increase
Quantity of trackers to be deployed.			
Where and how they will be placed (in bales and/or in consumer bins, what type of materials, etc.			

<p>The approach to securing the trackers to the targeted materials and preventing their early destruction or loss.</p>			<p>tracker size and affect the likelihood of a tracker affixed into a piece of waste at curbside making its way through the CRPF sorting process and into a bale. Placement of trackers loosely into bales at CRPFs, however, should not be affected.</p>
<p>Safety considerations.</p>			<p>DEQ is concerned that a desktop audit approach would not deliver as robust of auditing as an approach that uses remote trackers. DEQ would cite its prior experience with e-cycles provider Total Reclaim as evidence of this. In that situation there were many paper records indicating that all was well, but discrepancies were only detected through the use of remote trackers.</p> <p>DEQ considers the safety risk posed by the presence of batteries in waste streams to be a risk that the facilities (MRFs and end markets) encounter daily. DEQ's material recovery survey data indicate that contamination in the commingled system is as high as ever, and batteries are among the contamination entering the system. That said, CAA's desire to minimize liability is understandable – risk may be low, but consequences of a battery igniting could be significant.</p> <p>However, DEQ considers that CAA can design its auditing approach in a way that would limit risk to an acceptable level <i>and</i> that would employ battery-powered remote trackers. For example, CAA could use trackers that are powered by alkaline rather than lithium batteries. Alkaline batteries are commonly shredded without advance preparation for recycling; consequently, DEQ considers that the risk of ignition due to shredding (at, say, a plastic reclamation facility) or crushing is acceptable.</p>



Oregon Department of Environmental Quality

Oregon Recycling System Advisory Council

PRO Plan review (Draft 2): Ecomodulation

Last updated: Oct. 17, 2024

Purpose

This document is intended to assist the Recycling Council to frame its Oct. 22, 2024, Special Meeting review of the PRO program plan Draft 2 related to the PRO obligation to ecomodulate producer fees.¹

Discussion Question

1. Does the plan Draft 2 fulfill the relevant requirements listed in the Appendix Table of this document?

Overview of Requirements

The PRO must propose in its program plan an approach to ecomodulation (adjustment) of individual producers' fees that will continually incentivize reduction of environmental and human health impacts of covered products. The approach must include lower fees for lower impacts and higher fees for higher impacts. In its program plan, the PRO must:

- Explain how the ecomodulation approach will be implemented (including details such as the proposed criteria for ecomodulating and magnitude of the fee adjustments),
- Indicate how it has considered five factors named in statute in the development of the approach, and
- Identify how the ecomodulation approach is part of an overall fee schedule that is sufficient to cover all program costs and minimizes cross-subsidization between materials (i.e., paper doesn't pay for plastic and vice-versa).

The full listing of requirements relevant to this topic appears in the Appendix of this document.

Second Draft Plan Status – Key Changes

In Draft 1, CAA proposed delaying implementation of ecomodulated fees until 2027 or 2028. In Draft 2, CAA changed its proposal to include implementing two bonuses for voluntary evaluation and disclosure of life cycle impacts that are proposed as mandatory (for PROs to make available to their member producers) in the current rulemaking.

¹ Because there are no updates to the program cost estimates in Draft 2 of the plan, DEQ is recommending a focus on ecomodulation during the Council's Draft 2 review rather than a broader review of the entire Financing section of the plan. The Council could choose to broaden its review focus with respect to Financing in its Draft 3 review (which will contain updated program cost estimates and an updated, 60-category fee schedule intended to generate sufficient revenues to cover those costs).

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Key elements of CAA’s proposal are as follows:

- For “Bonus A” (simple bonus for voluntary evaluation and disclosure of life cycle impacts of covered products included in a given Stock Keeping Unit or batch of SKUs):
 - CAA will solicit impact evaluations from the start date and apply bonuses for those received to fees paid in subsequent years. For example, impact evaluations submitted in 2025 will result in a reduction of 2026 fees (i.e., the bonus will be applied from the 2026 program year onward).
 - Producer bonuses will amount to a 10% reduction of the base fee paid for each primary packaging material in a given SKU. Secondary and tertiary packaging in a SKU would generally be excluded from the bonus, although CAA may introduce exceptions to this norm. Fee reductions applied across all materials in a single SKU would be capped at \$20,000.

- For “Bonus B” (bonus for producer impact evaluation and disclosure that proves that a producer action has resulted in substantial impact reduction):
 - CAA will solicit producer evaluations beginning in 2027, with the bonus first applied to producer fees in the 2028 program year.
 - The bonus will be structured into three tiers of impact reduction (1. 10-25%, 2. 25-40%, and 3. >40%), with higher bonus magnitudes and caps for each progressively greater level of impact reduction.
 - The magnitudes and caps for the three tiers of bonuses will be proposed in the third draft plan, but the Bonus B amount will always be larger than what would have been awarded had the producer rather gone for Bonus A.
 - Bonuses will be applied to the main primary packaging material in the SKU only, and not to secondary and tertiary packaging.

- With respect to the overall proposed ecomodulation approach:
 - The program will start with only bonuses, and no penalties, offered to member producers.
 - Up until the time that CAA will propose to add penalties to the ecomodulation approach, bonuses given to a subset of producers will be paid by producers through an ecomodulation reserve fund, into which producers will pay in proportion to their supply weights, and which will be paid out from on a material-specific basis.

Second Draft – Relevant Sections for Review

Section	Page Number(s) in Public-Facing Version of Plan	Page Number(s) in Tracked Changes Version of Plan
Goals of the Program	pg 13-14 (Goal 1)	pg 9-10 (Goal 3)
Graduated Fee Algorithm and Methods	pg 147-155	pg 134-142

Non-discrimination statement

DEQ does not discriminate on the basis of race, color, national origin, disability, age, sex, religion, sexual orientation, gender identity, or marital status in the administration of its programs and activities. Visit DEQ’s [Civil Rights and Environmental Justice page](#).

Appendix: DEQ Preliminary Feedback on Relevant Requirements

The checklist of relevant requirements is provided below. Page numbers listed are for the public-facing version of the plan.

Required or Guidance Plan Component	Statute or Rule Citation	Plan Section(s)	DEQ Draft 2 Preliminary Feedback
<p>Overarching goals for the program plan that are as objective and measurable as possible.</p>	<p>ORS 459A.875(2)</p>	<p>Goals of the Program, pg 13-17</p>	<p>DEQ is pleased to see ecomodulation receiving increased treatment in the second draft version of the goal section.</p> <p>DEQ proposes a slight edit to the metrics wording – CAA could monitor the “quantity and type of impacts reduced through ecomodulated fee incentives” (as opposed to the <i>number</i> and type). CAA could also track the number of bonuses awarded and number of producers that have qualified over time.</p>
<p>Description of how the prospective PRO will establish, calculate and charge membership fees to member producers that includes a graduated fee algorithm and methods, including</p>	<p>ORS 459A.875(2)(a)(E)-(F) and ORS 459A.884(4)</p>	<p>Graduated Fee Algorithm and Methods, pg 147-155</p>	<p>DEQ welcomes the updated language in this section, and awaits further details in Draft 3. CAA responded to feedback on its first draft by updating this section of the plan with a proposal for implementation of ecomodulated fees during the first program plan.</p> <p>Specifically, CAA described a vision for implementing two bonuses proposed in the current rulemaking as mandatory offerings from the PRO to member producers, a simple bonus for voluntary evaluation and disclosure of life cycle impacts of products (which CAA terms “Bonus A” in the plan) and a larger bonus for substantial impact reduction as demonstrated through a life cycle impact evaluation and disclosure (“Bonus B”). CAA proposes to begin applying Bonus A to producer fees in the 2026 program year, and Bonus B in the 2028 fee year.</p> <p>DEQ accepts the premise that some phase-in may be needed to ensure smooth implementation of ecomodulation, but requests that draft 3 of the plan include a start year for Bonus B of 2027. With that change, the PRO would have some experience with its implementation to inform development of its second program plan for 2028-2032.</p>

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<p>the algorithm for the graduated fee approach, indicating the criteria and magnitude of modulation;</p>	<p>ORS 459A.884(4) and ORS 459A.875(2)(a)(E)</p>	<p>The Algorithm and Accompanying Descriptive Text for the Proposed Graduated Fee Structure, pg 147-152</p>	<p>Overall, the development of Bonus A seems on a good track thus far, and DEQ awaits further details on Bonus B in Draft 3.</p> <ul style="list-style-type: none"> • It is proposed on pg 149 that CAA will set Bonus A at 10% of base fees associated with all primary materials in the SKU that is being assessed, capped at a maximum fee reduction of \$20,000 for each SKU or batch of SKUs that are evaluated and disclosed in a project report. A 10% discount strikes DEQ as an appropriate bonus magnitude for simple evaluation and disclosure. Generally, the magnitude for this bonus needs to land somewhere that is attractive to producers but does not lead to “factory-production” of life cycle assessments for the mere purpose of attaining bonuses rather than out of interest in impact reduction opportunities. • As for the \$20k cap, it seems an appropriate mechanism for partially addressing concerns about fairness and the potential for large producers to have greater access to (because they have in-house LCA capacity) and gain more (because they have greater supply volumes) from these bonuses than small producers. <p>Overall, the development of Bonus B seems on a good track thus far, and DEQ awaits further details in Draft 3.</p> <ul style="list-style-type: none"> • For Bonus B, CAA proposes to apply the bonus to primary packaging material in the SKU, and reward three tiers of impact reduction with progressively higher bonus magnitudes and caps. The magnitudes and cap amounts corresponding to each tier will be proposed in the third draft plan, with the Bonus B amount in all cases larger than what would have been awarded if the producer sought Bonus A for the same SKU instead.
<p>Inclusion of both penalties and rewards in the approach to graduated fees</p>	<p>ORS 459A.884(4)</p>		<p>DEQ generally approves of the proposed approach. CAA proposes to start the program only with Bonus A and Bonus B, the bonuses proposed as mandatory in the current rulemaking, although it is not precluded from proposing other bonuses or penalties. Despite statute mandating both penalties and rewards, DEQ is amenable to a phased-in approach, with an expectation that penalties would roll out starting from the second program plan.</p>

			As the program rolls out DEQ welcomes CAA's evolving thinking on penalty design, perhaps using information from the life cycle evaluations, such as the hazardous substance disclosures, as an input into its thinking.
accompanying descriptive text explaining how the algorithm will deliver continual reductions in the environmental and human health impacts of covered products	ORS 459A.884(4) & ORS 459A.875(2)(a)(F)		Language could be moderately strengthened to explain how various design decisions aim to continually reduce impacts. For example, CAA could elaborate on bonus magnitude, materials in the SKU to which bonuses are to be applied, and which other producers will fund which bonuses. DEQ understands, based on its own research, that the act of voluntary evaluation and disclosure correlates to impact reduction action. Therefore, CAA does not need to further describe this dynamic at the macro level.
a description of how the PRO will maintain financial solvency (specifically, how loss of revenue due to ecomodulation rewards will be paid for)	ORS 459A.875(2)(a)(E)	Funding the Bonuses, pg 152-153	DEQ recommends that CAA add supporting rationales explaining why the proposed approach is best for delivering continual incentivization of impact reduction, while also respecting the principle that cross-subsidization be limited in fee-setting. CAA proposes to draw the funds for paying out both bonuses from producers within the material categories that a producer is receiving the bonus for. Effectively, these other producers in those categories will be paying more, through their material-specific contributions to the ecomodulation reserves, in order for the producer that has voluntarily evaluated and disclosed impacts to receive a fee reduction.
a description of the factors taken into consideration in development of the approach, and how their incorporation contributes to continual incentivization and disincentivizing of producer choices that actually correlate to meaningful environmental benefit. The following five	ORS 459A.875(2)(a)(F) and ORS 459A.884(4)(a)-(e)	Consideration of Other Eco-Modulation Factors, pg 153	DEQ concurs with CAA's description at pg 153-155 of how the two proposed bonuses take into account all five statutory factors.

factors must have been considered according to statute:			
The post-consumer content of the material, if the use of post-consumer content in the covered product is not prohibited by federal law		Post-Consumer Recycled Content, pg 153,154	
The product-to-package ratio		Product-to-Package Ratio, pg 154	
The producer's choice of material;		Producer's Choice of Material, pg 154	
Life cycle environmental impacts, as demonstrated by an evaluation performed in accordance with ORS 459A.944; and		Life Cycle Environmental Impacts, pg 154	
The recycling rate of the material relative to the recycling rate of other covered products.		The Recycling Rate of the Material Relative to the Recycling Rate of Other Covered Materials, pg 155	