



June 8, 2026

Submitted via email: RMARulemaking3@deq.oregon.gov

Stephanie Caldera
Oregon Department of Environmental Quality

RE: Oregon Rulemaking Advisory Committee May 27 meeting – Comments

Dear Oregon Department of Environmental Quality,

AMERIPEN – the American Institute for Packaging and the Environment – is providing feedback to the Oregon Department of Environmental Quality (“the Department” or “DEQ”) regarding the regulatory topics discussed at the May 27, 2026, meeting of the Rulemaking Advisory Committee (“RAC”) as part of the third rulemaking for the Recycling Modernization Act (“RMA”). AMERIPEN respectfully submits this comment letter for the Department’s consideration as it refines the rulemaking concepts and prepares to draft a formal rulemaking proposal.

AMERIPEN represents the entire packaging value chain, advocating for responsible packaging policies that drive meaningful progress in packaging sustainability while supporting industry growth and consumer needs. Our membership includes materials suppliers, packaging manufacturers, retailers, consumer packaged goods companies, and end-of-life materials managers. This cross-sectional membership gives AMERIPEN a perspective on packaging policy that no single-sector commenter can offer, and it informs the technical and regulatory analysis that follows.

AMERIPEN supports the program’s statutory objectives and the Department’s efforts to develop a durable regulatory framework under the RMA. These comments identify two discrete issues in the current proposal that, if unaddressed, will undermine the program’s effectiveness and expose Oregon consumers and producer to higher costs: (1) the reliance on arbitrary numerical thresholds to define “insufficient responsible end markets”; and (2) a structural error in the practicable action threshold framework as applied to materials not currently delivered to any end market. They also express preliminary support for the proposed clarifications to defining obligated producers. AMERIPEN addresses each item in turn and requests that the Department adopt the recommendations set forth below. AMERIPEN also intends to provide more comprehensive comments during the forthcoming formal comment period.

Item One: Definition of “Insufficient Responsible End Markets” (Topic Paper 4)

Among other things, the proposal defines “insufficient responsible end markets” (“insufficient REMs”) by reference to two numerical thresholds: (1) existence of three or fewer responsible end markets for a particular material for more than six months, and (2) average tonnage for a category of obligated material exceeding 30% of responsible end market capacity for more than six consecutive months. Neither threshold rests on an objective empirical or methodological foundation. No publicly available



standard, peer-reviewed analysis, or established regulatory practice identifies three end markets or a 30%-over-capacity condition sustained for six months as reliable or definitive indicators of market insufficiency. Imposing regulatory consequences of significant magnitude, including the obligation of a producer responsibility organization (“PRO”) to carry out practicable actions at program cost, on the basis of thresholds that lack a demonstrable evidentiary basis creates a rule that is analytically unsound.

Moreover, this creates a one-size-fits-all standard of 30% for all materials that ignores natural variation among different commodities, and even among material types and forms within commodities. It is entirely possible for a market to operate stably and effectively with three or fewer end markets, depending on the material and maturity of the market. Similarly, a sizable oversupply for six months could be customary for a certain material, especially for those that experience highly seasonal use patterns.

AMERIPEN recognizes that this rule concept is tempered by the requirement that a commingled recycling processing facility (“CRPF”) must make a request. Nonetheless, the proposed thresholds are problematic for the reasons stated above and threaten to impose unnecessary and unreasonable cost burdens on packaging producers if triggered.

AMERIPEN urges the Department to redefine “insufficient responsible end markets” using a single methodology that assesses actual market conditions for each material type and form individually, rather than applying one hard standard across all markets. The revised framework should replace the current numerical thresholds with indicators grounded in demonstrated market performance — including, for example, sustained price signals indicating that sortation and delivery to a responsible end market is no longer commercially feasible over a defined measurement period, combined with demonstrated inability to successfully market the material to a responsible end market. The Department should also specify a temporal baseline (such as twelve consecutive months) to distinguish sustained market insufficiency from short-term volatility. AMERIPEN acknowledges that developing a commodity-specific and form-specific methodology requires additional analytical work, and the association offers to engage with the Department and other stakeholders in that process.

Finally, as a technical note, AMERIPEN notes that it is unclear whether the “three or fewer” REMs condition is intended to apply only across six consecutive months, as is provided in the other condition. If not, there must be some time limit over which to measure the six months (e.g., within a 12-month span); otherwise, the condition will trigger too frequently and capture short-term market changes rather than sustained market insufficiency.

Item Two: Threshold for Practicable Actions (Topic Paper 4)

The second concept in the “Practicability” section proposes to limit eligibility for the practicable action threshold to the cost difference between delivering a material to an end market that is not a REM versus to a REM. This cost-differential framework is analytically coherent only where the material in



question is already being delivered to an end market. For materials not currently sent to any end market, there will not be a baseline cost against which to compare.

AMERIPEN therefore recommends that the Department clarify that the proposed cost-differential limitation would only apply in cases where a material is currently delivered to and recycled at an irresponsible end market. For materials not currently sent to any end market, the full cost of the new delivery and recycling activity should be factored into the practicable action threshold calculation. This clarification does not alter the policy objective the Department seeks to achieve, but rather addresses a potential oversight.

Item Three: Definition of Obligated Producer (Topic Paper 6)

Topic paper 6 proposes four amendments to Oregon Administrative Rule 340-090-0860 to clarify when what entity would be considered the obligated producer in various scenarios where the obligation may be unclear. AMERIPEN is generally supportive of the intent and approach envisioned in these rule concepts, especially the effort to harmonize with other states' extended producer responsibility ("EPR") laws and regulations. AMERIPEN also acknowledges that further clarification may be merited (as discussed at the RAC meeting).

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AMERIPEN strives to offer a good-faith and proactive approach to crafting packaging policies. We continue to focus on initiatives that develop and/or strengthen policies to advance the "reduce, reuse, recycle" strategies, while also underscoring the value of packaging. Our members are driving innovation, designing new packaging to be recycled, composted, or reused, and creating a more circular economy for all packaging. In our efforts to reduce environmental impact by increasing packaging circularity, our members continue to recognize the value of collaboration and the importance of working across the packaging value chain.

AMERIPEN thanks the Department for its consideration of this written feedback regarding the rule concepts discussed at the latest RAC meeting and welcomes the opportunity to meet with Department staff and to provide technical assistance with any of the items raised in these comments. AMERIPEN respectfully requests that the Department adopt the foregoing recommendations as it refines the rulemaking proposal. Please contact me (daniellem@ameripen.org) or Gregory Melkonian by email (gmelkonian@serlinhaley.com) with any questions on the input AMERIPEN provided in this letter.

Sincerely,

A handwritten signature in black ink that reads "Danielle F. Waterfield".

Danielle F. Waterfield, Esq.
Policy Director and General Counsel