AMERIPEN®

October 30, 2026

Submitted via email: RMARulemaking3@deq.oregon.gov

Oregon Department of Environmental Quality
Attn: Stephanie Caldera

RE: Recycling Modernization Act Updates 2026 – Rulemaking #3 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 third rulemaking for the Recycling Modernization Act ("RMA" or "the Act"). AMERIPEN respectfully submits this comment letter for the Department's consideration as it finalizes the rulemaking language before submitting it to the Environmental Quality Commission for adoption.

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. We have several member companies with a presence in Oregon, and many more who import packaging materials and products into the state. According to an independently-conducted 2026 Packaging Industry Economic Impacts Study sponsored by AMERIPEN, the packaging industry in Oregon directly contributed to $1.8 billion in economic output in Oregon and supports 3,593 jobs, $347.9 million in wages, and $508.6 million in tax revenue on an annual basis.[1]

The comments below are offered in order of the relevant Oregon Administrative Rule (OAR) section as presented in the draft rules.

OAR 340-090-0630 (Recycling Acceptance Lists):

Overly restrictive treatment of storage container lids: The proposed definition of "storage container" in paragraph (1)(t) requires that the containers have a "removable lid." However, a storage container that otherwise meets the definition could have other types of lids, such as hinged lids that attach to the sides of the container and are therefore not removable. As such, this definition is written too narrowly. AMERIPEN therefore recommends modifying the first sentence as follows to capture a more

[1] AMERIPEN, "Economic Impact," accessed October 28, 2026, https://www.ameripen.org/economic-impact/.

appropriate range of materials: "(t) 'Storage container' means a durable receptacle that **may be**~~is~~ enclosed with a ~~removable~~ lid, […]."

Tray definition is unclear: The proposed definition of "tray" in paragraph (1)(w) requires a qualifying container to have "depth less than 2 inches." This definition may pose some challenges in implementation. For one, two inches does not appear to be a standardized measure for identifying a tray. Second, it is unclear how depth is to be measured, especially if the tray has multiple levels of different depths. To remove some of the uncertainty, AMERIPEN recommends replacing the definition with the following: "'Tray' means a rigid packaging container designed primarily to hold, display, or transport products, having a generally open top and a depth that is less than its smallest horizontal dimension."

Support for addition of PET materials to Local Government Recycling Acceptance List: AMERIPEN supports the addition of transparent blue and transparent green PET (#1) bottles to the Local Government Recycling Acceptance List, as this better reflects their value and acceptance in the recycling system.

Technical note for glass bottles and jars language: At paragraph (4)(c), AMERIPEN recommends clarifying the cross-reference to read "OAR 340-090-0630(2)(p)" for ease of readability.

OAR 340-090-0640 (Convenience Standards):

Concern with increased cost allowance for contracted collection and recycling: Subparagraph (1)(b)(C) would specify that a PRO can contract out for collection and recycling services at a 10% cost premium specifically within the same urban growth boundary or county. The addition of this language risks allowing program costs to inflate further, particularly if contracts are sought in more expensive and hard-to-serve areas. The construction of the rule acknowledges that the PRO could already provide the same services at a lower cost without the contract, so there is no obvious need to further expand this allowance. AMERIPEN therefore recommends removing this additional language to reduce program costs in the interest of maintaining affordability.

Preserve discretion for PRO contracting: Subsection (6) establishes new convenience standards for aerosol cans and pressurized cylinders. Subparagraph (6)(a)(D) and paragraph (b) contain provisions relating to PRO contracts for collection points, but they use the term "must," implying the PRO is obligated to sign contracts for collection of aerosol cans and pressurized cylinders without discretion. This is not an advisable approach as it would force indiscriminate costs and operational burdens, and is likely unintended. AMERIPEN requests that both instances of "must" be modified to "may."

Questionable scope of reimbursable costs for aerosol cans and pressurized cylinders: Subparagraph (6)(c)(A) allows aerosol can and pressurized cylinder collection points to be reimbursed for the costs of disposing residual contents (as if they are disposed as non-hazardous solid waste). It is unclear whether this is a reimbursable cost allowed under the Act. Subsection (14) of Oregon Revised Statutes (ORS) 459A.890 states, "The disposal of covered products by means of landfilling or incineration may not be

an eligible cost for funding or reimbursement by a producer responsibility organization under this section." Additionally, as provided in ORS 459A.920, the contamination management fee is "paid by producer responsibility organizations to commingled recycling processing facilities to compensate the facilities for the costs of removing and disposing covered products that are contaminants;" as aerosol and cylinder residual contents are not "covered products," they are not eligible for this funding. Finally, the processor commodity risk fee provided for in ORS 459A.923 treats "disposal" as an "eligible processing cost," but it is unclear how disposal of the contents of covered products applies. Therefore, AMERIPEN asks the Department to review whether disposal of the residual contents is reimbursable under the spirit and letter of the Act.

OAR 340-090-0640 (Performance Standards):

Cross-reference correction: The cross-reference in paragraph (3)(a) should be to OAR 340-090-0640(6) rather than OAR 340-090-0650(6).

340-090-0670 (Responsible End Market Obligations of the Producer Responsibility Organization):

Support for provision of disposition data upstream: AMERIPEN greatly appreciates the new language in clause (2)(b)(B)(ii) requiring entities downstream in the supply chain to share disposition data back upstream as necessary. This is critical to ensuring the PRO, Department, and other facilities have visibility into the fate of materials in the recycling process.

Clarify application of requirements for plastics end markets: Clause (2)(b)(C)(ii) imposes additional requirements on any "entity that manages plastic," including implementing controls for plastic resin loss. However, all types of end markets may "manage plastic" if it incidentally enters their facilities, even when they primarily work with other materials like paper, glass, or metal. To avoid unnecessary application of these requirements to entities that deal with little-to-no plastic, AMERIPEN recommends modifying the clause as follows: "As part of avoiding release into the environment, an entity **described in OAR 340-090-0670(1)(d) or OAR 340-090-0670(1)(e)**~~that manages plastics~~ must:".

Concerns with resin loss standard: It is unclear what constitutes a "sufficient management framework" for plastic resin loss, as required by subclause (2)(b)(C)(ii)(I), including what criteria is used to determine sufficiency and what entity determines it. AMERIPEN recommends eliminating the word "sufficient" or else replacing it with "efficient," which will reduce the level of subjectivity when assessing compliance.

Clarify scope of water sampling: Subclause (2)(b)(C)(ii)(II), among other things, requires facilities to quantify and disclose "the discharge of suspended solid wastes including microplastics into water." There should be a distinction between entities that discharge wastewater into the environment and those that send the water to another facility for treatment, where the entities have less visibility into and control of the waste management. AMERIPEN therefore asks that this provision be clarified to apply only to those facilities that discharge wastewater directly into water or otherwise into the environment, rather than into a treatment facility.

Concerns with chemical disclosure requirement: Subclause (2)(b)(C)(iii)(I) requires disclosure of certain chemicals that are "intentionally added" to "products." First, it is not clear what the purpose of disclosure of "other chemicals required to be disclosed to regulators by permit or local regulation" is, particularly since it is not being assessed against a specific standard. At best, this may just amount to an administrative burden without benefit. Moreover, there is no definition of "intentionally added" and the provision is not appropriately limited to "covered products." AMERIPEN recommends striking the inclusion of "other chemicals required to be disclosed to regulators by permit or local regulation." Additionally, AMERIPEN recommends applying this section to "covered products" (rather than just "products").

Support for temporary variances for emerging end markets: AMERIPEN supports the addition of subparagraph (5)(a)(F) to allow end markets that have not yet self-attested or been verified or certified to qualify, enabling the onboarding of these additional markets.

Support for approach to assessing responsible end market insufficiency: AMERIPEN greatly appreciates the revised approach toward determining whether there are insufficient responsible end markets for a particular covered product. AMERIPEN commented to the Department during the Rulemaking Advisory Committee process that the previous proposal relied on arbitrary thresholds that did not appropriately consider the different circumstances of each material type and that risked needlessly triggering interventions. In comparison, this current proposal is more comprehensive and appropriately engages stakeholders.

Seeking clarity about PRO obligations related to non-responsible end markets. Clause (5)(d)(A)(i) proposes a new standard for measuring costs toward the practicability benchmark for determining when costs for recycling are excessive. Specifically, it applies the difference in costs when shifting material from a non-responsible end market to a responsible end market. AMERIPEN seeks clarification as to whether the PRO and producers are obligated for the baseline costs for recycling at non-responsible end markets, or whether those costs remain the responsibility of local governments and service providers. This approach is more appropriate if local governments and service providers remain responsible for the baseline costs; otherwise it bars the PRO from counting costs that it actually incurs.

340-090-0840 (Covered Products):

Concerns with criteria for the garbage bag exemption: Paragraph (2)(f) creates a new exemption for plastic garbage bags that meet a series of criteria, including that any other "similar" plastic bags are not marketed to "fulfill a purpose of recycling any covered products" on the uniform statewide collection list. It is unclear why the exemption is conditioned on marketing of all other plastic bags: the marketing of other products is not relevant to determining the intended use of the individual product seeking the exemption. To simplify this exemption, AMERIPEN recommends that eligibility for the exemption generally be based on the marketing, labeling, and intended use of the specific product at issue. Bags marketed as recyclable would still be penalized by not being exempt. Furthermore, the use of "similar to" creates a challenge because it is not clear what dimensions are being compared for similarity.

AMERIPEN recommends replacing the "similar to" term throughout this provision with "functionally equivalent to", which creates more certainty about how to comply.

340-090-0900 (Life Cycle Evaluation Definitions):

Concerns with revised definition for refill: The proposed revisions to the definition of "refillable packaging product" require the products to be designed for refill "at home" and force the refill packaging to only be used in conjunction with the "parent" packaging. Expecting refill to occur strictly "at home" is unnecessarily restrictive and does not acknowledge the variety of options where refill can occur, including at workplaces, during travel, and while otherwise "on the go." AMERIPEN therefore recommends replacing "at home" in subparagraph (38)(a)(A) with "at the location where the consumer uses it." Additionally, it is reasonable to expect the refill packaging to be used with the parent packaging but mandating that it "cannot be used without the parent" technically forces producers to overdesign the refill to never allow the possibility of its use with another parent or in other situations, which is excessive. AMERIPEN therefore recommends replacing "cannot be used without the parent" with "is intended for use with the parent" in subparagraph (38)(a)(B).

340-093-0030 (Definitions):

"Effectively composted" provisions create unnecessary barriers: Subparagraph (43) defines "effectively composted" to effectuate OAR 340-012-0098(2)(e) and 340-096-0060(7). The Department would become the ultimate arbiter of what compostable materials (if any) are acceptable for each facility on an individual basis. In effect, when applying the relevant provisions in tandem, this would create a very high bar for setting up compostable materials for acceptance in the state. It would subject compost facilities to a penalty for accepting materials that do not meet the new definition. Moreover, terms under the definition like "beneficial" and "harm" remain unclear. This all serves to discourage compostable packaging, despite its potential benefits. AMERIPEN is greatly concerned that this approach unnecessarily restricts compost facilities' decision-making authority and ability to determine what inputs they desire and asks the Department to reconsider the framework that requires Department approval for additions to the acceptance lists. Approaches in states like Washington, Minnesota, Colorado, and Maryland that rely on relevant ASTM standards or their equivalents for certification of compostables may be more appropriate. Additionally, AMERIPEN seeks clarification about the acceptability status of wax coated cardboard in light of the proposal to delete the material from paragraph (47)(a).

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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 draft RMA rule language and welcomes the opportunity to meet with Department staff to provide further information as needed. Please contact me (daniellew@ameripen.org) or Gregory Melkonian by email (gmelkonian@serlinhaley.com) with any questions on the input AMERIPEN provided in this letter.

Sincerely,



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