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STATUTORY MINOR CORRECTION

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DEQ 76-2018
CHAPTER 340
DEPARTMENT OF ENVIRONMENTAL QUALITY

FILING CAPTION: OAR 340-090-0040 Statutory Minor Correction

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AGENCY ATTESTS THE FOLLOWING CHANGES HAVE BEEN MADE, ACCORDING TO ORS 183.335(7):

Correcting spelling

AMEND: 340-090-0040

RULE TITLE: Local Government Recycling Program Elements

RULE SUMMARY: Spelling correction: (3)(h) - "single-family."

RULE TEXT:

(1) In addition to the minimum requirements in OAR 340-090-0030 and 340-090-0042, each city with a population of 4,000 or more and any county responsible for the area between the city limits and the urban growth boundary of that city, or the area outside the city limits but within a metropolitan service district, must implement recycling program elements from section (3) of this rule based on the following requirements:

(a) For cities within a metropolitan service district:

(A) The three recycling program elements set forth under subsections (3)(a), (b) and (c) of this rule and at least four additional elements set forth under section (3) of this rule;

(B) At least eight recycling program elements set forth under section (3) of this rule; or

(C) An alternative program approved by DEQ that meets the requirements of OAR 340-090-0080.

(b) For cities with a population of at least 4,000 but not more than 10,000 that are located 120 miles or less from the City of Portland:

(A) At least four recycling program elements set forth under section (3) of this rule; or

(B) An alternative program approved by DEQ that meets the requirements of OAR 340-090-0080.

(c) For cities with a population of at least 4,000 but not more than 10,000 that are more than 120 miles from the City of Portland:

(A) At least three recycling program elements set forth under section (3) of this rule; or

(B) An alternative program approved by DEQ that meets the requirements of OAR 340-090-0080.

(d) For cities with a population of more than 10,000 but not more than 50,000 that are located 150 miles or less from the City of Portland:

(A) The three recycling program elements set forth under subsections (3)(a), (b) and (c) of this rule and at least two additional elements set forth under section (3) of this rule;

(B) At least six recycling program elements set forth under section (3) of this rule; or

(C) An alternative program approved by DEQ that meets the requirements of OAR 340-090-0080.

(e) For cities with a population of more than 10,000 that are located more than 150 miles from the City of Portland:
(A) The three recycling program elements set forth under subsections (3)(a), (b) and (c) of this rule and at least one additional element set forth under section (3) of this rule;
(B) At least five recycling program elements set forth under section (3) of this rule; or
(C) An alternative program approved by DEQ that meets the requirements of OAR 340-090-0080.
(f) For cities with a population of more than 50,000 that are located 150 miles or less from the City of Portland:
(A) The three recycling program elements set forth under subsections (3)(a), (b) and (c) of this rule and at least three additional recycling program elements set forth under section (3) of this rule;
(B) At least seven recycling program elements set forth under section (3) of this rule; or
(C) An alternative program approved by DEQ that meets the requirements of OAR 340-090-0080.
(g) A local government that is not subject to ORS 459.007(6) or (7) or OAR 340-090-0042 may substitute for one recycling program element set forth under section (3) of this rule:
(A) The waste prevention and reuse program element set forth under OAR 340-090-0042(2); and
(B) At least two additional waste prevention and reuse program elements set forth under OAR 340-090-0042.
(2)(a) For determining a city's distance in miles from the City of Portland under section (1) of this rule, DEQ must use the current mileage table or comparable current mileage statistics from the Oregon Department of Transportation.
(b) The effective date of section (1) of this rule is January 1, 2018. Until that date, in addition to the minimum requirements in OAR 340-090-0030, each city with a population of 4,000 or more and any county responsible for the area between the city limits and the urban growth boundary of that city must implement additional recycling program requirements selected from section (3) of this rule in accordance with the following criteria:
(A) Each city with a population of at least 4,000 but not more than 10,000 that is not within a metropolitan service district and any county responsible for the area between the city limits and the urban growth boundary of that city must implement one of the following, except where otherwise indicated:
(i) Implement subsections (3)(a), (b), and (c) of this rule;
(ii) Select and implement at least three program elements listed in section (3) of this rule; or
(iii) Implement an alternative program that is approved by DEQ under OAR 340-090-0080.
(B) Each city with a population of more than 10,000 or that is within a metropolitan service district and any county responsible for the area within a metropolitan service district or the area between the city limits and the urban growth boundary of that city must implement one of the following, except where otherwise indicated:
(i) Implement subsections (3)(a), (b), and (c) of this rule and one additional element in section (3) of this rule;
(ii) Select and implement at least five program elements listed in section (3) of this rule; or
(iii) Implement an alternative program that is approved by DEQ under OAR 340-090-0080.
(3) Program elements:
(a) Deliver to each residential collection service customer at least one durable recycling container. For purposes of this program element, a durable container must be a rigid box or bucket with a volume of at least 12 gallons made of material that holds up under all weather conditions for at least five years and that the resident and the collector can easily handle;
(b) Provide on-route collection at least once each week of source separated recyclable materials, excluding yard debris, to residential collection service customers provided on the same day that solid waste is collected from each customer;
(c) Provide a recycling education and promotion program that is expanded from the minimum requirements described in OAR 340-090-0030(3), and supports the management of solid waste in the following priority order: first preventing the generation of waste, then reusing materials, then recycling materials, then composting materials, then recovering energy, and finally safely disposing of solid waste that cannot be prevented, reused, recycled, composted or used for energy recovery.
(A) Each local government's expanded program must satisfy the applicable requirements of ORS 459A.008 and OAR 340-090-0041 and:
(i) Must inform all solid waste generators of how to prevent waste and how to reuse, recycle and compost material;

(ii) Must inform all solid waste generators of the manner and benefits of preventing waste and how to reuse, recycle, and compost materials;
(iii) Must promote the use of recycling services;
(iv) Must determine the levels of contamination of materials set out for collection and take action to reduce contamination in collected recyclables; and
(v) Must target educational and promotional materials provided to commercial customers to meet the needs of various types of businesses and should include reasons to recycle, including economic benefits, common barriers to recycling and solutions, additional resources for commercial generators of solid waste, and other information designed to assist and encourage recycling efforts. These materials must encourage each commercial generator of solid waste to strive to achieve 55 percent recovery from its solid waste stream by the year 2025.
(B) The expanded program must be provided in one of the two following ways:
(i) A "Specified Action" program, which must include at a minimum the following elements:
(I) All new residential and commercial collection service customers must each receive a packet of educational materials that contain information listing the materials collected, the schedule for collection, proper method of preparing materials for collection and an explanation of the reasons why customers should source separate materials for recycling;
(II) Existing residential and commercial collection service customers must be provided information identified in OAR 340-090-0040(3)(c)(B)(i)(I) at least four times a calendar year through a written notice or effective alternative to reach various solid waste generators, or combination of both;
(III) At least annually information regarding the benefits of recycling and the type and amount of materials recycled during the past year must be provided directly to the collection service customer in written form and must include additional information including the procedure for preparing materials for collection;
(IV) Targeting of at least one community or media event per year to promote waste prevention, reuse, recycling and composting, although not every media event needs to promote all of those activities;
(V) Utilizing a variety of materials and media formats to disseminate the information in the expanded program in order to reach the maximum number of collection service customers and residential and commercial generators of solid waste; and
(VI) Development and implementation of a contamination reduction education plan that satisfies the requirements of OAR 340-090-0041.
(ii) Development and implementation of an "Expanded Education and Promotion Plan." The Plan must:
(I) Include actions to effectively reach solid waste generators and all new and existing collection service customers;
(II) Include such actions as necessary to fulfill the intent of this subsection;
(III) Include a timetable for implementation, and the local government must implement that timetable;
(IV) Include development and implementation of a contamination reduction education plan that satisfies the requirements of OAR 340-090-0041; and
(V) Be submitted to DEQ:
(V)-(a) By February 28 of the first year that the Plan is to be in effect; or
(VI)-(b) Within 30 days of the beginning of the local government's fiscal year in which the Plan is first put into effect.
(d) Establish and implement a recycling collection program through local ordinance, contract or any other means enforceable by the appropriate city or county for each multi-family dwelling complex having five or more units. The collection program must meet the following requirements:
(A) Collect at least four principal recyclable materials or the number of materials required to be collected under the residential on-route collection program, whichever is less;
(B) Provide educational and promotional information directed toward the residents of multi-family dwelling units periodically as necessary to be effective in reaching new residents and reminding existing residents of the opportunity to recycle including the types of materials to be recycled and the method for properly preparing those materials.
(e) Establish and implement an effective residential yard debris program to collect and compost residential yard debris.

The program must include the following elements:
(A) Promotion of home composting of yard debris through written material or some other effective media form that is directed at the residential generator of yard debris; and either
(B) At least monthly on-route collection of yard debris from residences for production of compost or other marketable products; or
(C) A system of residential yard debris collection depots, for producing compost or other marketable products, located such that there is at least one conveniently located depot, open to the public at least once a week, for every 25,000 population.
(f) Taking into account material generation rates, establish and implement regular, on-site collection of source-separated principal recyclable materials from commercial generators, taking into consideration how the generator could achieve 55 percent recovery from its solid waste stream by the year 2025. This program element does not apply to manufacturing, business or processing activities in residential dwellings or to the generation of industrial solid waste. At a minimum the commercial recycling program:
(A) Must be provided to commercial entities that employ 10 or more persons and occupy 1,000 square feet or more in a single location;
(B) Must include an education and promotion program that:
(i) Uses materials and messages specifically designed for commercial generators of solid waste; and
(ii) Informs all commercial generators of solid waste of the benefits of recycling, the recycling opportunities available to them and how to recycle; and
(iii) If the local government is providing the expanded education and promotion program element, includes any additional requirements needed to meet OAR 340-090-0040(3)(c); and
(iv) Includes information on the benefits of waste prevention to commercial generators.
(C) Must be conducted to effectively promote the commercial recycling program to commercial generators of solid waste;
(D) Must encourage each commercial generator of solid waste to strive to achieve 55 percent recovery from its solid waste stream by the year 2025;
(E) Should provide other elements including but not limited to:
(i) Provision of waste assessments to businesses;
(ii) Provision of recycling receptacles to businesses at no or low cost;
(iii) Waste prevention and recycling recognition programs. Local governments are encouraged to involve local business organizations in publicly recognizing outstanding waste prevention and recycling efforts by commercial generators of solid waste. The recognition may include awards designed to provide additional incentives to increase waste prevention and recycling efforts.
(g) Establish depots for recycling collection of all principal recyclable materials listed in OAR 340-090-0070, and where feasible, additional materials, except that used oil need not be collected at the depot if another location within the local government unit will accept used oil for recycling. This program must provide at least one (1) recycling depot in addition to the depot(s), if any, required by OAR 340-090-0030(1). For any city with a population of 50,000 or more, the minimum number of additional depots must be equal to the city's population, divided by 25,000, and rounded down to the nearest whole number. The expanded depot program must include promotion or education that maximizes the use of the expanded depot program. The depots must operate as follows:
(A) Have regular and convenient hours for residential generators of solid waste; and
(B) Be open on at least one weekend day each week; and
(C) Be established in location(s) that are convenient for residential generators of solid waste to use.
(h) Establish collection rates for residential solid waste from single-family residences and single residential units, in complexes of less than five units that encourage waste prevention, reuse and recycling. The rates must, at a minimum, include the following elements:
(A) At least one rate for a container that is 21 gallons or less in size and costs less than larger containers;

(B) Rates must be based on the average weight, as determined in paragraph (E) of this subsection, of solid waste disposed per container for various sizes of containers;
(C) Rates, as calculated on a per pound disposed basis, may not decrease per pound with the increasing size of the container or the number of containers;
(D) Rates per container service must be established such that each additional container beyond the first container for each residential unit must have a fee charged that is at least the same fee and no less than the first container; and
(E) Rates, calculated on a per pound disposed basis, the city or county develops through their own per pound average weights for various container sizes by sampling and calculating the average weights for a cross section of containers within their residential service area.
(i) An on-going system to collect food waste and, optionally, other compostable waste, from commercial and institutional entities that generate large amounts of such wastes, and compost it at facilities in compliance with DEQ composting facility rules and local government regulations:
(A) Before diverting edible (unwanted) foods to be composted, a local government should consider how to encourage making them available:
(i) Through food rescue;
(ii) Or if charity channels are not available, to farmers for animal feed.
(B) A commercial composting program must include the following elements:
(i) On-going promotion of the commercial compost program through written material or other effective formats directed to targeted commercial generators within the local government unit, such as grocery stores, restaurants, wholesale flower warehouses, hotels, businesses and institutions with food service;
(ii) To avoid problems relating to human health and the environment, periodic collection of food wastes and, optionally, other compostable wastes, is required from commercial generators on an appropriate schedule.
(C) Any composting facility to which collected compostable waste is taken must comply with DEQ composting facility rules;
(D) On-site commercial composting should be considered if the location is appropriate, space is available and the entity complies with DEQ composting facility rules and local government regulations.
(j) A commercial recycling program that requires commercial generators of solid waste that generate large amounts of recyclable materials to source-separate recyclable materials.
(A) For subsection (3)(j) of this rule, “large amount commercial generator” means a commercial generator of solid waste that has a service level of four or more cubic yards of solid waste per week at a single site.
(B) A local government must require participation in its commercial recycling program by all large amount commercial generators except for generators exempted under paragraph (3)(j)(F) of this rule.
(C) The local government’s commercial recycling program must include requirements for large amount commercial generators to:
(i) Source-separate recyclable materials for reuse or recycling;
(ii) Self-haul or arrange for collection service of the source separated recyclable materials;
(iii) Provide recycling containers for internal areas where recyclable materials may be collected, stored, or both; and
(iv) Correctly label all interior and exterior containers and post signs where recyclable materials may be collected, stored, or both that identify the materials that the large amount commercial generator must source-separate for reuse or recycling and that provide recycling instructions.
(D) The local government must provide education and promotion that meets at least the minimum requirements described in OAR 340-090-0030(3) for all large amount commercial generators.
(E) To ensure compliance with the requirements in this subsection, the local government must establish a method for identification and monitoring of large amount commercial generators.
(i) If a large amount commercial generator is not in compliance with the requirements of this subsection, then the local government must, at a minimum, notify that large amount commercial generators that it is out of compliance.
(ii) For a noncomplying large amount commercial generator, the local government may also consider a penalty or fine

structure that incorporates warning notices, civil injunctions, financial penalties, or criminal prosecutions.
(F) The local government may allow for limited exemptions from the requirements of this subsection for reasons that the local government deems appropriate, such as zoning requirements, lack of sufficient space to provide additional recycling containers, or non-generation of recyclable materials.
(G) The local government may consider certification requirements for self-haulers of source- separated recyclable materials. Those certification requirements may include, but are not limited to, requiring large amount commercial generators to maintain written records demonstrating that all self-hauling activities have been completed in compliance with the requirements of this subsection (3)(j).
(k) A program for monthly or more frequent on-route collection and composting for food waste and, optionally, other compostable waste from residential collection service customers.
(A) The local government must provide education or promotion that meets at least the minimum requirements described in OAR 340-090-0030(3) for all residential collection service customers.
(B) In addition to the requirements of subsection (3)(k)(A) of this rule, the local government's education or promotion to all residential collection service customers must include:
(i) Types of food waste collected;
(ii) The schedule for collection;
(iii) Methods of preparing food waste for collection;
(iv) Explanations of why separating food waste for recovery is necessary; and
(v) Explanations of how to reduce contamination of the food waste recovery stream set out for collection.
(L) A recovery program for construction and demolition debris.
(A) As used in subsection (3)(L) of this rule, "construction and demolition debris" means waste resulting from the construction, renovation, repair, or demolition of buildings or other structures that contain recyclable material. "Construction and demolition debris" does not include putrescible wastes, hazardous waste, or asbestos.
(B) The recovery program for construction and demolition debris must:
(i) Require that construction and demolition debris be source-separated at the site of generation or be sent to a material recovery facility for processing and recovery; and
(ii) Include an education or promotion program for developers, contractors, and residential owners that provides strategies:
(I) To reduce waste during preconstruction planning and in building construction, renovation and demolition phases; and
(II) To direct waste to reuse and material recovery facilities.
(C) Generators subject to this program include any person who:
(i) Generates and self-hauls a minimum of six cubic yards of construction and demolition debris at any time; or
(ii) Generates and arranges for collection service of a minimum of ten cubic yards of construction and demolition debris at any time.
(D) The local government must provide education or promotion that meets at least the minimum requirements described in OAR 340-090-0030(3) for all generators of construction and demolition debris that are subject to the recovery program for that debris.
(m) A food waste collection program requiring nonresidential generators that generate large amounts of food waste to source-separate the food waste for recovery.
(A) For subsection (3)(m) of this rule:
(i) "Nonresidential generator" means a commercial generator or other generator but not a residential or multi-family generator; and
(ii) "Large amount nonresidential generator" means a nonresidential generator that disposes of more than fifty tons of food waste annually.
(B) The local government must require participation in its food waste collection program by all large amount nonresidential generators except for generators exempted under paragraph (3)(m)(F) of this rule.

(C) The local government's food waste collection program must include requirements for large amount nonresidential generators to:
(i) Cover, at a minimum, food waste that is not packaged and for which final disposal by the large amount nonresidential generator is controlled by the nonresidential generator's employees or agents;
(ii) Source-separate food waste for donation or food waste collection;
(iii) Self-haul or arrange for collection service of the food waste;
(iv) Provide containers for internal areas where food waste may be collected, stored, or both; and
(v) Correctly label all interior and exterior containers and post signs and instructions where food waste is collected, stored, or both, that identifies the types of food waste the large amount nonresidential generator must source-separate for donation or food waste collection.
(D) The local government must provide education or promotion that meets at least the minimum requirements described in OAR 340-090-0030(3) for all large amount nonresidential generators.
(E) To ensure compliance with the requirements in this subsection, the local government must establish a method for identification and monitoring of large amount nonresidential generators.
(i) If a large amount nonresidential generator is not in compliance with the requirements of this subsection, then the local government must, at a minimum, notify that large amount nonresidential generator that it is out of compliance.
(ii) For a noncomplying large amount nonresidential generator, a local government may also consider a penalty or fine structure that incorporates warning notices, civil injunctions, financial penalties, or criminal prosecutions.
(F) The local government may allow for limited exemptions from the requirements of this subsection for reasons that the local government deems appropriate, such as zoning requirements or lack of sufficient space to provide additional food waste containers.
(G) The local government may consider certification requirements for self-haulers of food waste. Those certification requirements may include, but are not limited to, requiring large amount nonresidential generators of food waste to maintain written records demonstrating that all self-hauling activities have been completed in compliance with the requirements of this subsection (3)(m).
(4) In addition to the requirements in sections (1) and (2) of this rule, each city with a population of 4,000 or more and any county responsible for the area within a metropolitan service district or the area between the city limits and the urban growth boundary of that city in any of the following wastesheds must provide the opportunity to recycle rigid plastic containers if the conditions set forth in section (5) of this rule are met:
(a) Clackamas, Multnomah and Washington Counties, in aggregate, as a single wasteshed;
(b) Benton wasteshed;
(c) Clatsop wasteshed;
(d) Columbia wasteshed;
(e) Deschutes wasteshed;
(f) Douglas wasteshed;
(g) Hood River wasteshed;
(h) Jackson wasteshed;
(i) Josephine wasteshed;
(j) Lane wasteshed;
(k) Linn wasteshed;
(l) Marion wasteshed;
(m) Polk wasteshed;
(n) Wasco wasteshed; and
(o) Yamhill wasteshed.
(5) The opportunity to recycle rigid plastic containers is required within a wasteshed when a stable market price for rigid plastic containers, that equals or exceeds 75 percent of the necessary and reasonable collection costs for those containers, exists for such wasteshed.

STATUTORY/OTHER AUTHORITY: ORS 459.045, 459A.025, 459A.100 - 459A.120, 468.020

STATUTES/OTHER IMPLEMENTED: ORS 459A.005, 459A.007, 459A.008, 459A.010, 459A.665