OFFICE OF THE SECRETARY OF STATE
LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON

ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

PERMANENT ADMINISTRATIVE ORDER

FILED
11/17/2023 9:18 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

DEQ 18-2023
CHAPTER 340
DEPARTMENT OF ENVIRONMENTAL QUALITY

FILING CAPTION: Plastic Pollution and Recycling Modernization Act, Rulemaking 1

EFFECTIVE DATE: 11/17/2023

AGENCY APPROVED DATE: 11/16/2023

CONTACT: Emil Hnidey
503-568-0376
emil.hnidey@deq.oregon.gov

700 NE Multnomah St.
Suite 600
Portland,OR 97232

Filed By:
Emil Hnidey
Rules Coordinator

RULES:
340-090-0005, 340-090-0010, 340-090-0015, 340-090-0020, 340-090-0030, 340-090-0040, 340-090-0041, 340-090-0042, 340-090-0070, 340-090-0080, 340-090-0090, 340-090-0110, 340-090-0140, 340-090-0190, 340-090-0380, 340-090-0410, 340-090-0430, 340-090-0600, 340-090-0610, 340-090-0620, 340-090-0630, 340-090-0640, 340-090-0650, 340-090-0660, 340-090-0670, 340-090-0680, 340-090-0690, 340-090-0700, 340-090-0710, 340-090-0720, 340-090-0730, 340-090-0740, 340-090-0750, 340-090-0760, 340-090-0770, 340-090-0780, 340-090-0790, 340-090-0800, 340-090-0810

AMEND: 340-090-0005

RULE TITLE: Purpose

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: Adding "OAR 340-090-0005 to 0510" to the purpose statement.

RULE TEXT:
OAR 340-090-0005 to 0510 establish the minimum requirements for providing the opportunity to recycle. These rules also describe the standards for waste prevention, reuse, recovery, and recycling programs in Oregon. The rules are adopted under the authority of ORS 459.045, 459A.025 and 468.020. These rules relate to the requirements of ORS 459.015, 459.250, 468.862 and Chapter 459A.

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

STATUTES/OTHER IMPLEMENTED: ORS 459A.005, 459A.010, 459A.025, 459A.575

AMEND: 340-090-0010

RULE TITLE: Definitions

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: Updating definition for recycled material.

RULE TEXT:

The definitions in this rule apply to OAR 340-090-0005 to 0510, and OAR Chapter 340 Division 91. Unless otherwise specified:

(1) "Affected person" means a person or entity involved in the solid waste collection service process including but not limited to a recycling collection service, disposal site permittee or owner, city, county and metropolitan service district. For the purposes of these rules "affected person" also means a person involved in operation of a place to which persons not residing on or occupying the property may deliver source separated recyclable material.

(2) "Collection service" means a service that provides for collection of solid waste or recyclable material or both, but does not include that part of a business operated under a certificate issued under ORS 822.110. "Collection service" of recyclable materials does not include a place to which persons not residing on or occupying the property may deliver source separated recyclable material.

(3) “Collection service customers” includes: residential and commercial customers of a collection service as defined in ORS 459.005, and also, as of July 1, 2026, the multi-family residential and commercial tenants of landlords or property managers that are customers of a collection service for the benefit of their tenants.

(4) "Collector" means the person who provides collection service.

(5) "Commercial" means stores, offices including but not limited to manufacturing and industry offices, restaurants, warehouses, schools, colleges, universities, hospitals, prisons, and other institutions and non-manufacturing entities. “Commercial” does not include manufacturing activities or business, manufacturing, or processing activities in residential dwellings.

(6) "Composting" means the managed process of controlled biological decomposition of organic or mixed solid waste. It does not include composting for the purposes of soil remediation. Compost is the product resulting from the composting process. “Composting” includes both aerobic composting and anaerobic digestion.

(7) "Consumer of newsprint" means a person who uses newsprint in a commercial or government printing or publishing operation.

(8) “DEQ” means the Department of Environmental Quality.

(9) "Depot" means a place for receiving source separated recyclable material.

(10) "Director" means the Director of the Department of Environmental Quality.

(11) "Disposal site" means land and facilities used for the disposal, handling or transfer of or energy recovery, material recovery, and recycling from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, energy recovery facilities, incinerators for solid waste delivered by the public or by a collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site ; but the term does not include a facility authorized by a permit issued under ORS 466.005 to 466.385 to store, treat or dispose of both a hazardous waste and solid waste; a facility subject to the permit requirements of ORS 468B.050; a site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar nondecomposable material, unless the site is used by the public either directly or through a collection service; or a site operated by a wrecker issued a certificate under ORS 822.110.

(12) “Energy intensive materials” means metals, paper, plastic, and food, including products that are primarily made of metals, paper, or plastic, such as some furniture, small and large appliances, and consumer electronics.

(13) "Energy recovery" means recovery in which all or a part of the solid waste materials are processed to use the heat content, or other forms of energy, of or from the material.

(14) "EQC" means the Environmental Quality Commission.

(15) “Food rescue” means the practice of safely retrieving wholesome food still fit for human consumption that would otherwise be left unharvested or go to animal feed or a composting facility, anaerobic digestion facility, energy recovery facility, or other disposal site and redistributing that food through a food assistance program.
(16) “Food waste” means waste from fruits, vegetables, meats, dairy products, fish, shellfish, nuts, seeds, grains, and similar materials that results from the storage, preparation, cooking, handling, selling or serving of food for human consumption. “Food waste” includes but is not limited to excess, spoiled or unusable food and includes inedible parts commonly associated with food preparation such as pits, shells, bones, and peels. “Food waste” does not include dead animals not intended for human consumption or animal excrement.
(17) "Franchise" includes a franchise, certificate, contract or license issued by a local government unit authorizing a person to provide solid waste management services.
(18) "Generator" means a person who last uses a material and makes it available for disposal or recycling.
(19) "Glass container manufacturer" means a person that manufactures new glass containers in Oregon or that manufactures new glass containers outside Oregon sold by the manufacturer to packagers located in Oregon.
(20) "Industrial waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under ORS Chapters 465 and 466. Such waste may include, but is not limited to, waste resulting from the following processes: Electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; water treatment; and timber products manufacturing. This term does not include construction/demolition waste; or municipal solid waste from manufacturing or industrial facilities such as office or "lunch room" waste, or packaging material for products delivered to the generator.
(21) “Infrastructure support” means in-kind contributions in support of reuse, repair, leasing or sharing of efforts to reduce waste, such as: local government staff time; franchisee staff time; space at facilities owned, permitted, or franchised by a local government; space for meetings, storage, or display of materials; equipment; access to land; and access to vehicles.
(22) "Land disposal site" means a disposal site in which the method of disposing of solid waste is by landfill, dump, pit, pond, lagoon or land application.
(23) “Local government” means a political subdivision that regulates either solid waste collection, disposal, or both, including but not limited to incorporated cities, municipalities, townships, counties, parishes, regional associations of cities and counties, tribal reservations, and metropolitan service districts, but not including sewer districts, fire districts, or other political subdivisions that do not regulate solid waste.
(24) "Local government unit" means the territory of a political subdivision that regulates either solid waste collection, disposal, or both, including but not limited to incorporated cities, municipalities, townships, counties, parishes, regional associations of cities and counties, tribal reservations, and metropolitan service districts, but not including sewer districts, fire districts, or other political subdivisions that do not regulate solid waste. If a county regulates solid waste collection within unincorporated areas of the county but not within one or more incorporated cities or municipalities, then the county local government unit must be considered as only those areas where the county directly regulates solid waste collection.
(25) "Material recovery" means any process of obtaining from solid waste, by presegregation or otherwise, materials that still have useful physical or chemical properties and can be reused, recycled or composted for some purpose.
(26) "Metropolitan service district" means a district organized under ORS Chapter 268 and exercising solid waste authority granted to such district under ORS Chapters 268, 459, and 459A.
(27) "Multi-family" means dwellings of five or more units.
(28) "Newsprint" means paper meeting the specifications for Standard Newsprint Paper and Roto Newsprint Paper as set forth in the 2023 HTSA Supplement edition of the Harmonized Tariff Schedule of the United States for such products. (See Figure 1.)

(29) "On-route collection" means pick up of source separated recyclable material from the generator at the place of generation.
(30) "On-site collection" has the same meaning as on-route collection.
(31) "Opportunity to recycle" means those activities described in OAR 340-090-0020, 340-090-0030, 340-090-0040, 340-090-0041, 340-090-0042, 340-090-0050 and 340-090-0080.
(32) "Permit" means a document issued by DEQ bearing the signature of the director or the director's authorized representative and that by its conditions may authorize the permittee to construct, install, modify, operate or close a disposal site in accordance with specified limitations.
(33) "Person" means the United States, the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or other legal entity.
(34) "Post-consumer waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item. Post-consumer waste does not include manufacturing waste.
(35) "Recyclable material" means any material identified for recycling collection under ORS 459A.914 or any other material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.
(36) "Recycled-content newsprint" means newsprint that includes post-consumer waste paper.
(37) "Recycling" means any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity.
(38) "Residential" means single family dwellings and multi-family dwellings having four or fewer units.
(39) "Reuse" means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.
(40) "Solid waste" means all useless or discarded putrescible and nonputrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials; discarded or abandoned vehicles or parts thereof; discarded home and industrial appliances; manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386. "Solid waste" does not include:
(a) Hazardous wastes as defined in ORS 466.005;
(b) Materials used for fertilizer, soil conditioning, humus restoration, or for other productive purposes or which are salvageable for these purposes and are used on land in agricultural operations and growing or harvesting crops and raising fowls or animals, provided the materials are used at or below agronomic application rates, or
(c) Woody biomass that is combusted as a fuel by a facility that has obtained a permit described in ORS 468A.040.
(41) "Solid waste management" means: preventing or reducing solid waste; managing the storage, collection, transportation, treatment, utilization, processing and final disposal of solid waste, recycling, reuse and material or energy recovery from solid waste; and facilities necessary or convenient to such activities.
(42) "Source separate" means that the person who last uses recyclable material separates the recyclable material from other solid waste.
(43) "Technical assistance" means assistance in support of reuse, repair, leasing or sharing provided to businesses or non-profit staff or programs, such as: program design and implementation; publicizing and promoting opportunities through channels such as directories of reuse and repair operations; research to support technical assistance efforts; and expending funds to hire specialists or contractors who provide information and advice in topics such as business planning, operations, facility design, market research, and marketing.
(44) "Toxic materials" means products or other materials that contain chemicals or groups of chemicals on DEQ's Toxics Focus List or that DEQ otherwise designates as "toxic."
(45) "Urbanized area" means, for jurisdictions within the State of Oregon, the territory within the urban growth boundary of each city of 4,000 or more population, or within the urban growth boundary established by a metropolitan service district. For jurisdictions outside the State of Oregon, "urbanized area" means a geographic area with substantially the same character, with respect to minimum population density and commercial and industrial density, as

urbanized areas within the State of Oregon.
(46) "Waste prevention" means reducing the amount of solid waste generated or resources used, without increasing toxicity, in the design, manufacture, purchase or use of products or packaging. "Waste prevention" does not include reuse, recycling or composting.
(47) “Waste prevention campaign” means an organized effort intended to change one or more specific behaviors or practices that reduces the amount of solid waste generated or resource used without increasing toxicity in the design, manufacture, purchase, or use of products or packaging. A food rescue program is not a waste prevention campaign for the purpose of complying with sections OAR 340-090-0042(3) or (4).
(48) "Wasteshed" means the areas of the state of Oregon as defined in ORS 459.005 and listed in ORS 459A.010 and OAR 340-090-0050.
(49) "Yard debris" means vegetative and woody material generated from residential property or from commercial landscaping activities. This includes grass clippings, leaves, hedge trimmings and similar vegetative waste but does not include stumps or similar bulky wood materials.

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

STATUTES/OTHER IMPLEMENTED: ORS 459A.005, 459A

State of Oregon Department of Environmental Quality

OAR 340-090-0010 – Figure 1

Harmonized Tariff Schedule of the United States Revisions 5 (2023)

CHAPTER 48
PAPER AND PAPERBOARD; ARTICLES OF PAPER PULP, OF PAPER OR OF PAPERBOARD

Notes:

4. In this chapter, the expression "newsprint" means uncoated paper of a kind used for the printing of newspapers, of which not less than 50 percent by weight of the total fiber content consists of wood fibers obtained by a mechanical or chemi-mechanical process, unsized or very lightly sized, having a surface roughness Parker Print Surf (1 MPa) on each side exceeding 2.5 micrometers (microns), weighing not less than 40 g/m2 and not more than 65 g/m2 , and applies only to paper:

(a) in strips or rolls of a width exceeding 28 cm; or

(b) in rectangular (including square) sheets with one side exceeding 28 cm and the other side exceeding 15 cm in the unfolded state.

AMEND: 340-090-0015

RULE TITLE: Scope and Applicability

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: Adding "OAR 340-090-0005 to 0510" to applicability.

RULE TEXT:
(1) OAR 340-090-0005 to 0510 describes the requirements for waste reduction and recycling programs for residential and commercial solid wastes.
(2) The requirements in OAR 340-090-0005 to 0510 apply to local governments generally and where specified to landfill owners/operators, solid waste collection services, and other persons.
(3) OAR chapter 340, division 90 is adopted under the authorities in ORS Chapter 459 and 459A and should be used in conjunction with the laws of the State of Oregon.

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

STATUTES/OTHER IMPLEMENTED: ORS 459A.005, 459A.010, 459A.020, 459A.025, 459A.030, 459A.035, 459A.040, 459A.050, 459A.055, 459A.060, 459A.065, 459A.070, 459A.075, 459A.080, 459A.085, 459A.100, 459A.110, 459A.115, 459A.120

AMEND: 340-090-0020

RULE TITLE: Opportunity to Recycle

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: Removing reference to "340-090-0041".

RULE TEXT:

The opportunity to recycle as set forth in ORS 459A.005, 459A.007, 459A.008 and 459A.010, includes at a minimum the requirements described in OAR 340-090-0030, 340-090-0040, 340-090-0042, and 340-090-0050. The appropriate city, county, or metropolitan service district, may request approval of an alternative program for meeting the requirements of the opportunity to recycle under OAR 340-090-0080.

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

STATUTES/OTHER IMPLEMENTED: ORS 459A.005

AMEND: 340-090-0030

RULE TITLE: General Requirements

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: Adding requirements related to the Recycling Modernization Act.

RULE TEXT:

(1) The city, county, or metropolitan service district responsible for solid waste management must ensure that a place for collecting source separated recyclable materials identified in OAR 340-090-0630(4)(a) is located at each permitted disposal site or located at an alternative location in the jurisdiction that is more convenient to the population being served by the disposal site.

(2) Effective July 1, 2025 to January 1, 2027, a city, county or metropolitan service district, a local government's service provider or a commingled recycling reload facility may not deliver to a commingled recycling processing facility commingled recyclables that were collected pursuant to the uniform statewide collection list established under ORS 459A.914 unless:

(a) At the time the city, county or metropolitan service district, the local government's service provider or the comingled recycling reload facility delivered or contracted to deliver or transport materials to the commingled recycling facility:

(A) the commingled recycling facility held a valid permit issued under ORS 459A.955; or

(B) For a commingled recycling facility located outside of this state:

(i) The facility held a valid certificate issued under ORS 459A.956; or

(ii) The facility certified that it otherwise met the requirements of ORS 459A.955 or 459A.956, even though the facility did not hold a permit or certificate.

(b) Within six months after the DEQ completes a report under ORS 459A.932, the commingled recycling processing facility has taken steps to implement any recommendations of the report related to providing opportunities in the recycling industry for women and minority individuals as defined in ORS 200.005.

(3) Effective January 1, 2027, a city, county or metropolitan service district, a local government's service provider or a commingled recycling reload facility may not deliver to a commingled recycling processing facility commingled recyclables that were collected pursuant to the uniform statewide collection list established under ORS 459A.914 unless:

(a) At the time the city, county or metropolitan service district, a local government's service provider or the comingled recycling reload facility delivered or contracted to deliver or transport materials to the commingled recycling facility:

(A) the commingled recycling facility held a valid permit issued under ORS 459A.955; or

(B) For a commingled recycling facility located outside of this state:

(i) The facility held a valid certificate issued under ORS 459A.956; or

(ii) The facility certified that it otherwise met the requirements of ORS 459A.955 or 459A.956, even though the facility did not hold a permit or certificate.

(b) The processor ensures the health, safety and wellness of workers at the facility regardless ofwhether the workers are employees, independent contractors or employees of another business.

(c) The processor provides workers at the facility with a living wage and supportive benefits, as defined by the rule by the Environmental Quality Commission.

(d) Within six months after the DEQ completes a report under ORS 459A.932, the commingled recycling processing facility has taken steps to implement the recommendations of the report related to providing opportunities in the recycling industry for women and minority individuals as defined in ORS 200.005.

(4) Effective January 1, 2026 a city, county, or metropolitan service district shall ensure that rolcarts, bins and containers purchased by its service providers are manufactured from at least 10 percent post-consumer recycled material and are certified by an independent verification standard, such as the Postconsumer Resin Certification Program established by the Association of Plastics Recyclers.

(5) Effective July 1, 2025, except as provided by ORS 459A.914(6), a material may not be collected as part of a

commingled recycling program unless the material is identified for collection as part of a commingled recycling program on the uniform statewide collection list.
(6) For purposes of sections (2) through (5) of this rule the terms “commingled recycling,” “commingled recycling processing facility,” “local government’s service provider,” and “recycling reload facility” have the meaning provided by ORS 459A.863.
(7) Each city that is within a metropolitan service district or with a population of at least 4,000 and each county that is responsible for the area between city limits and the urban growth boundary of the city or the area outside the city limits but within a metropolitan service district shall:
(a) Provide on-route collection service for source separated recyclable materials identified in OAR 340-090-0630(4)(b) at least once a month for all collection service customers within the city limits and within the urban growth boundary or metropolitan service district but outside of the city limits.
(b) Effective July 1, 2026 for the recycling collection of materials identified on the uniform statewide collection list at multifamily properties:
(A) Ensure adequate space for collection.
(B) Demonstrate a plan to ensure adequate space and access for collection vehicles after new construction or significant remodels.
(C) Update or establish service standards for service providers to provide adequate service volume or collection frequency, or a combination of both.
(D) Ensure that container placement is accessible to residents, including children and individuals who use a wheelchair, while giving consideration to resident and user safety considerations.
(E) Report on activities to meet the requirements of this subsection in the periodic report submitted according to the requirements of OAR 340-090-0100.
(c) To the extent that funding is provided under ORS 459A.890(4), establish and implement, or cause to be established and implemented, a program to reduce contamination that:
(A) Includes one or more local recycling contamination reduction goals that are consistent with the statewide goals established by the DEQ pursuant to ORS 495A.929(1)(a).
(B) Causes collected source separated recyclables to undergo periodic evaluation of collected material quality and contamination, in accordance with forms and procedures established by the Department of Environmental Quality under ORS 459A.959.
(C) Includes:
(i) At least one of each of the three types of contamination reduction program elements contained on the list established by the DEQ pursuant to ORS 459A.929(1)(c), or
(ii) Uses materials or methods that are at least as effective as materials or methods approved by DEQ pursuant to ORS 459A.929(1)(c).
(D) Includes, at least once every five years, a process for reviewing, and revising as appropriate, the local goals and local elements established under this subsection.
(8) The city or county responsible for solid waste management must carry out a public education and promotion program that meets the following minimum requirements:
(a) An initial written or more effective notice or combination of both that is reasonably designed to reach each residential and commercial generator of recyclable materials, and that clearly explains why people should recycle, the recycling opportunities available to the recipient, the materials that can be recycled and the proper preparation of those materials for recycling. The notice must include the following specific information:
(A) Reasons why people should recycle; and
(B) Name, address and telephone number of the person providing on-route collection where applicable; and
(C) Listing of depots for recyclable materials at all disposal sites serving the area and any alternative DEQ-approved more convenient locations, including the materials accepted and hours of operation; or
(D) Instead of paragraphs (B) and (C) of this subsection a telephone number and a website address to find information

about depot locations and collection service as appropriate.
(b) Existing residential and commercial collection service customers must be provided information, at least semi-annually, through a written or more effective notice or combination of both, listing the materials collected, the schedule for collection, proper method of preparing materials for collection and an explanation of the reasons why source separation of materials for recycling is necessary;
(c) Written information to be distributed to disposal site users at all disposal sites or, alternatively, more convenient locations with attendants and where it is otherwise practical. The written information must include the following:
(A) Reasons why people should recycle; and
(B) List of materials that can be recycled; and
(C) Instruction for the proper preparation of recyclable materials.
(d) At sites without attendants, a sign indicating availability of recycling at the site or at the more convenient location must be prominently displayed that indicates materials accepted and hours of operation;
(e) Identify and establish a procedure for citizen involvement for the development and implementation of an education and promotion program;
(f) Notification and education materials provided to local media and other groups that maintain regular contact with commercial and residential generators and the public in general, including local newspapers, trade publications, local television and radio stations, community groups, and neighborhood associations;
(g) A person identified as the education and promotion representative for the appropriate jurisdiction to be the official contact to work with the other affected persons in matters relating to education and promotion for recycling.
(h) A local government that provides the opportunity to recycle or the local government's service provider shall utilize and distribute educational resources developed under ORS 459A.893(1). A local government or the local government's service provider may incorporate the educational resources developed under this section into an existing education program developed to satisfy the requirements of ORS 459A.007 and 459A.008.

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

STATUTES/OTHER IMPLEMENTED: ORS 459A.005, 459A.010, 459A.007, 459A.896, 459A.905, 459A.908, 459A.911, 459A.914, 459A.929

AMEND: 340-090-0040

RULE TITLE: Local Government Recycling Program Elements

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: Removing language that conflicts with the Recycling Modernization Act.

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) 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.

(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 designated by OAR 340-090-0630(4)(b) 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(8), 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) Be submitted to DEQ by February 28 of the first year that the Plan is to be in effect or 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 recyclable materials identified by OAR 340-090-0630(4)(b);
(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 recyclable materials designated by OAR 340-090-0630(4)(b) 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 materials identified in OAR 340-090-0630(4)(a), and where feasible, additional materials, except that used oil and scrap metal as described in OAR 340-090-0630(2)(m) and (n) need not be collected at the depot if another location within the local government unit will accept such materials 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(8) 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 generator 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(8) 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(8) 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(8) 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

REPEAL: 340-090-0041

RULE TITLE: Contamination Reduction Education Plan

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: Repealing rule.

RULE TEXT:

(1) As used in this rule, “contamination” means the presence of a material that the local government’s recycling program does not accept for recycling through the collection service or depot being used to collect recyclable material under ORS 459A.005.

(2) By January 1, 2018, each local government implementing an expanded education and promotion program under ORS 459A.008 and OAR 340-090-0040(3)(c) must have a program to determine levels of contamination of materials set out for collection and to take action to reduce contamination in collected recyclables.

(3) To implement the program, a local government must have a contamination reduction education plan approved by DEQ that describes how the local government will:

(a) Determine levels of contamination of materials set out for collection; and

(b) Take action to reduce contamination in collected recyclables, including recyclables collected at a depot.

(4) To satisfy section (3) (a) of this rule, the contamination reduction education plan must describe the following:

(a) Method of assessment;

(b) Frequency of assessment; and

(c) Points of assessment in the collection process, including those from either of the following categories:

(A) Customers’ and generators’ recycling containers; or

(B) Points of transfer or processing, such as transfer stations or material recovery facilities.

(5) To satisfy section (3) (b) of this rule, the contamination reduction education plan must include some activity each year to proactively educate persons in the local government unit. The contamination reduction education plan must also satisfy the following criteria:

(a) The plan must include descriptions of the education, including:

(A) The educational content being provided, including a list of materials that are priority contaminants and information on how to recycle or dispose of those contaminants properly;

(B) The format of that educational content;

(C) The audience to which the education is being presented or distributed; and

(D) The means of and schedule for distribution or implementation.

(b) The education must include activities in at least one of the following categories:

(A) Contact with collection service customers and other generators at the point of generation, such as through color-coded tags on recycling containers, door hangers, or invoices that include information on how to reduce contamination of materials set out for collection; or

(B) Community-wide messaging, such as through a campaign promoting behavior changes by customers or generators in the local government unit, that includes how to reduce contamination.

(6) Each local government must submit to DEQ its contamination reduction education plan during the first year the plan is in effect. The contamination reduction education plan must use either a format that DEQ provides or an alternative written format chosen by the local government. Thereafter, the local government must submit a copy of its plan to DEQ at the same time the local government submits its periodic report under OAR 340-090-0100.

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

STATUTES/OTHER IMPLEMENTED: 459A.005, 459A.007, 459A.008, 459A.010, 459A.050

AMEND: 340-090-0042

RULE TITLE: Waste Prevention and Reuse Programs

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: Deleting "Targeted" from "Targeted Students"

RULE TEXT:

(1) As required by ORS 459A.007, certain local governments must implement the waste prevention education and reuse program element listed in section (2) in this rule and choose two or four additional elements from sections (3) through (8) of this rule, depending on the local governments' populations and locations. Each city that is within a metropolitan service district or with a population of greater than 50,000 and each county that is responsible for the area between city limits and the urban growth boundary of a city with a population of greater than 50,000 or the area outside of city limits but within a metropolitan service district urban growth boundary must implement either: the waste prevention and reuse program element in section (2) and at least four additional elements from sections (3) through (8) of this rule; or an alternative program that is designed to achieve similar benefits as this rule and complies with OAR 340-090-0080(7). Each city with a population of greater than 10,000 but no more than 50,000, that is within a county of greater than 100,000 population, and each county of greater than 100,000 population that is responsible for the area between city limits and the urban growth boundary of a city with a population of greater than 10,000 but no more than 50,000 must implement either: the waste prevention and reuse program element in section (2) and at least two additional elements from sections (3) through (8) of this rule; or an alternative program that is designed to achieve similar benefits as this rule and complies with OAR 340-090-0080(7). Waste prevention education and reuse program elements in this rule that are implemented by a county or metropolitan service district may be used by a city within the county or metropolitan service district to meet the requirements of this rule, provided that the elements are made available throughout the entire city, including the area between the city limits and the urban growth boundary of that city. Waste prevention and reuse program elements implemented by a metropolitan service district may be used by a county that includes or is within the metropolitan service district to meet the requirements of this section, provided that the elements are made available throughout the entire urban growth boundary of the metropolitan service district.

(2) Citywide or countywide education and promotion. A citywide or countywide education and promotion program about the environmental benefits of, and opportunities to reduce the generation of waste through, waste prevention and reuse.

(a) The education and promotion program must include the following components:

(A) Information for existing residential and commercial collection service customers that:

(i) Is designed to reach solid waste generators and is provided at least four times per calendar year through: written notice, an effective alternative, or some combination of both;

(ii) Describes the benefits of generating less waste in terms of the reduction in a material's environmental impact as part of its life cycle, including upstream impacts, such as resource extraction and manufacturing; and

(iii) Addresses how to generate less waste, how to reuse materials, and solutions to common challenges to waste prevention and reuse.

(B) An activity targeting at least one community or one media event each year that promotes waste prevention and reuse, such as a waste prevention booth at a county fair or a community cleanup event that includes a sale or giveaway component to encourage reuse of discarded articles. This activity or event must be in addition to any campaigns used to comply with sections (3) or (4) of this rule. An activity or event may promote waste prevention activities, reuse activities, or some combination of both.

(b) To reach the maximum number of residential and commercial solid waste generators, the education and promotion program must utilize a variety of materials and media formats to disseminate information.

(c) Each local government must submit to DEQ a program plan during the first year the plan is in effect. The plan must use either a format that DEQ provides or an alternative written format chosen by the local government. Thereafter, the local government must submit a summary of activities in the plan to DEQ at the same time the local government submits

its periodic report under OAR 340-090-0100. The plan must describe how it will implement the elements in subsections (2)(a) and (3)(b) of this rule, including:
(A) A description of the information to be provided, including messages to be conveyed, program material format and general content, and schedules for distribution;
(B) A description of how the information meets the needs of various types of residential generators, such as multi-family or rural residents, and various types of commercial and institutional generators;
(C) A description of how information will be provided, such as through events, volunteer activities, community meetings and presentations, or door-to door outreach; and
(D) A description of who will provide the information, such as local government staff, collectors, depot operators, disposal site operators, and non-governmental organizations.
(3) Waste prevention campaign targeting residential generators. A waste prevention campaign targeting residential generators of waste and focused on one or more toxic or energy intensive materials or consumer purchasing practices. As used in this section, "consumer purchasing practices" means the act of purchasing a toxic or energy intensive material, a product containing toxic materials, or a product consisting at least 50 percent by weight of energy intensive materials. A food rescue program is not a waste prevention campaign for the purpose of complying with this section. The campaign must meet the following criteria:
(a) For either a campaign that DEQ provides or an alternative campaign that the local government chooses and DEQ approves, each local government must develop, submit to DEQ, and implement a campaign plan that:
(A) Identifies at least one specific waste generating behavior or practice targeted for change;
(B) Describes the campaign's strategy;
(C) Describes the campaign materials' general content, format, and delivery methods;
(D) Provides an implementation schedule; and
(E) Describes a performance measurement plan that specifies one or more outcomes that the local government will use to demonstrate its campaign reached the target audience or achieved its waste prevention objective.
(b) Campaign materials must include multiple components that may be used sequentially or on a rotational basis to meet the required refreshing schedule in subsection (3)(c) of this rule. Such components may include materials using:
(A) Different visual images to convey core messaging;
(B) Variations on core messaging language; or
(C) A variety of media, such as print, websites, social media, or radio.
(c) The duration of a campaign may not exceed five years, and the local government's implementation schedule must include a schedule for refreshing components of the campaign at least once every two years. To "refresh" components of a campaign means to use new or different components to deliver messages in a different way. A local government may also request, and DEQ may approve, a campaign duration or implementation schedule that differs from this subsection's schedule for refreshing components provided that the local government can demonstrate:
(A) That the campaign or one of its components has contributed to the desired behavior change; and
(B) That continuing the campaign or one of its components is likely to result in further desired changes in behavior or practices.
(d) Educational materials used in this campaign must be in addition to educational materials used to satisfy the requirements of section (2) of this rule.
(4) Waste prevention campaign targeting commercial generators. A waste prevention campaign targeting commercial or institutional generators of waste and focused on one or more toxic or energy intensive materials or consumer purchasing practices. As used in this section, "consumer purchasing practices" means the act of purchasing a toxic or energy intensive material, a product containing toxic materials, or a product consisting at least 50 percent by weight of energy intensive materials. A targeted business assistance program qualify as a campaign if that program includes components that promote changes in waste generating behavior or practices consistent with the requirements of this section and targets businesses with applicable waste generating behaviors or practices. A food rescue program is not a waste prevention campaign for the purpose of complying with this section. The campaign must meet the following

criteria:
(a) For either a campaign DEQ provides or an alternative campaign the local government chooses and DEQ approves, each local government must develop, submit to DEQ, and implement a campaign plan that:
(A) Identifies at least one specific waste generating behavior or practice targeted for change;
(B) Describes the campaign's strategy;
(C) Describes the campaign materials' general content, format and delivery methods;
(D) Provides an implementation schedule; and
(E) Describes a performance measurement plan that specifies one or more outcomes that the local government will use to demonstrate its campaign reached the target audience or achieved its waste prevention objective.
(b) Campaign materials must include multiple components that may be used sequentially or on a rotational basis to meet the required refreshing schedule in subsection (5)(c) of this rule. Such components may include materials using:
(A) Different visual images to convey core messaging;
(B) Variations on core messaging language; or
(C) A variety of media, such as print, websites, social media, or radio.
(c) The duration of a campaign may not exceed five years, and the local government's implementation schedule must include a schedule for refreshing components of the campaign at least once every two years. To "refresh" components of a campaign means to use new or different components to deliver messages in a different way. A local government may also request, and DEQ may approve, a campaign duration or implementation schedule that differs from this subsection's schedule for refreshing components provided that the local government can demonstrate:
(A) That the campaign or one of its components has contributed to the desired behavior change; and
(B) That continuing the campaign or one of its components is likely to result in further desired changes in behavior or practices.
(d) Educational materials used in this campaign must be in addition to educational materials used to satisfy the requirements of section (2) of this rule.
(5) Education program in schools. A waste prevention and reuse education program in elementary and secondary schools must satisfy the following criteria:
(a) Each local government must develop, submit to DEQ, and implement a plan to deliver elementary and secondary school education and promotion programs, that:
(A) Identifies groups or classes of students;
(B) Describes how the program will engage the students;
(C) Identifies at least one specific waste generating behavior or practice targeted for change and barriers to that change;
(D) Provides an implementation schedule; and
(E) Describes a performance measurement plan that specifies one or more outcomes that the local government will use to demonstrate its education program reached the students or achieved its waste prevention and reuse objectives.
(b) The education program must address students in both elementary and secondary schools and may include activities such as:
(A) Classroom presentations;
(B) School assemblies;
(C) Classroom curricular activities, such as service learning projects;
(D) After school programs;
(E) Field trips with a substantial focus on reducing waste generation, such as tours of tool libraries or food rescue facilities; or
(F) Student education implemented as part of in-school waste prevention and reuse programs, such as school cafeteria projects to measure and reduce food waste.
(c) If the program is a general waste prevention and reuse education and outreach program designed primarily to deliver information and increase knowledge about actions that support waste prevention and reuse, then the program must

provide education to at least 5 percent of all elementary and secondary students attending public school within the area served by the local government in each calendar year for which this element is used to comply with waste prevention and reuse program requirements, or 10 percent of all students where a program is being implemented over two consecutive years. A local government may use total enrollment numbers reported to the Oregon Department of Education to determine the number of students its program must reach or may propose, with justification, to DEQ an alternative total enrollment number. A local government may, at its discretion, provide education to private school students or to students attending school while in a correctional facility to meet required targets. A city or county may comply with this element through compliance by its county or metropolitan service district provided that:
(A) The education by the county or metropolitan service district is made available to all schools within the area served by the local government using this element to comply with waste prevention and reuse requirements; and
(B) The county or metropolitan service district is providing the education to at least this element's percentage threshold of elementary and secondary students in each calendar year for which this element is used to comply.
(d) A local government may propose a metric, besides the percentage in subsection (5)(c) of this rule, for approval by DEQ that allows for more in-depth programs designed to engage a smaller number of students. The proposal must explain how targeting a smaller number of students supports longer-term engagement in elementary and secondary education on waste prevention and reuse.
(e) Local governments may not use education programs used to demonstrate compliance with the requirements of OAR 340-090-0042(5) to demonstrate compliance with any other waste prevention and reuse program element in this rule.
(6) Funding or infrastructure support program. A program either for the provision of city, county, or wasteshed funding or for the provision of city, county, or wasteshed infrastructure support to promote and sustain reuse, repair, leasing or sharing efforts. The program must meet the following criteria:
(a) A local government must identify the specific forms of funding or infrastructure support the local government will provide to support reuse, repair, leasing or sharing activities and describe how the funding or infrastructure support contributes to sustaining and, where possible, expanding reuse, repair, leasing or sharing efforts within the local government unit.
(b) Support must be provided annually unless a local government provides funding or monetized infrastructure support in an amount larger than that required under subsection (6)(c) of this rule and the amount of that funding or monetized support, when amortized over multiple years, is at least equivalent to the annual support the local government would otherwise provide.
(c) If a city, county, or wasteshed chooses to use direct funding to comply with the requirements of this section, annual funding must be no less than $0.17 per local government unit resident for jurisdictions with populations up to 100,000 in population and $17,000 plus $0.10 per local government unit resident above 100,000 in population for jurisdictions with populations above 100,000, adjusted annually for inflation from a base year of 2016 using the West Region Consumer Price Index for All Urban Consumers for All Items, as published by the Bureau of Labor Statistics of the United States Department of Labor.
(d) If a city, county, or wasteshed chooses to provide infrastructure support to comply with the requirements of this section, that support must result in a reuse, repair, lease or sharing opportunity that is provided continuously or on at least 1 day per year for every 50,000 in the local government unit's population or monetized at a value equal to the funding required in subsection (6)(c) of this rule.
(e) Funding may include: grants; payments on behalf of organizations for equipment; funding to cover the costs of outreach efforts, such as website development, development of social media venues and media buys; or funding to allow reuse, repair, or sharing organizations.to pay staff or contractors for program development, implementation, or both. However, funding of outreach efforts does not qualify as satisfying this element if that outreach is also used to satisfy the technical assistance requirements of section (7) of this rule.
(f) A city or county may comply with this element through compliance by its county or metropolitan service district provided that the infrastructure supported by the county or metropolitan service district is accessible and convenient to residents and businesses of the city or county.

(7) Technical assistance program. A program for the provision of city or wasteshed technical assistance to promote and sustain the reuse, repair or leasing of materials or other sharing of efforts to reduce waste. The program must meet the following criteria:
(a) A local government must identify the specific forms of technical assistance the local government will provide to support reuse, repair, leasing or sharing activities and must describe how the technical assistance contributes to sustaining and, where possible, expanding reuse, repair, leasing or sharing efforts within the local government unit.
(b) A local government may satisfy the requirements of this element through a partnership with another governmental agency, a local non-governmental organization or private enterprise provided that this partnership is documented in a written agreement, such as a memorandum of understanding, an intergovernmental agreement, a franchise agreement or other contract vehicle, and:
(A) The agreement specifies the local government's contribution to the partnership. The local government's contribution must be more than nominal support. Examples of sufficient contributions include supporting ordinances or waived fees, including license fees, commitments to support volunteer recruitment, requirements that a partner implements a program on behalf of a local government, promotion that supports implementation of the partner organization's project, facilitating community meetings or workshops to support information exchange or project development, participation of local government staff on organizational boards, and providing communications channels through local government websites or other media; and
(B) The agreement specifies annual reporting of outcomes, such as increased borrowing at a tool library, pounds of building materials or household goods salvaged from solid waste disposal, or number and types of materials exchanged through a commercial or residential exchange website or distribution center that can be linked to the partnership and demonstrate year-to-year progress in reuse, repair or otherwise reducing waste.
(c) Technical assistance in the form of promotion, outreach or education used to comply with the requirements of OAR 340-090-0042(7) cannot also be used to demonstrate compliance with any other waste prevention and reuse program element.
(8) Food rescue program support. Support by a local government for a food rescue program. The local government's support must meet the following criteria:
(a) The local government must identify and describe specific support for a food rescue program within the local government unit.
(b) A local government's support must include at least two of the following components:
(A) A review of local health ordinances or other local government regulations that may create regulatory barriers to food rescue, identifying regulatory barriers to food rescue, and implementing solutions needed to facilitate food rescue. Such solutions could include, but are not limited to, recommending revisions to regulations or seeking authorization from a local health agency to take an action necessary to facilitate food rescue. Local ordinance review would be sufficient to constitute support for one component for two years.
(B) Funding, which may include: grants or payments on behalf of organizations for equipment, vehicles or building space; and stipends or other payments for gleaners and other food rescue workers. The annual amount of such funding must be no less than $0.17 per local government unit resident for jurisdictions with populations up to 100,000 in population and $17,000 plus $0.10 per local government unit resident above 100,000 in population for jurisdictions with populations above 100,000, adjusted annually for inflation from a base year of 2016 using the West Region Consumer Price Index for All Urban Consumers for All Items, as published by the Bureau of Labor Statistics of the United States Department of Labor.
(C) Infrastructure support that may include: providing space for rescued food storage; loan of vehicles for food transport; and development and implementation of donor matching programs or farm to food bank programs. Infrastructure support must result in a food rescue opportunity that is provided continuously or on at least one day per year for every 50,000 residents in the local government unit or monetized at a value equal to the funding required in paragraph (8)(b)(B) of this rule.
(D) Technical assistance that may include: convening meetings to assist in developing a food rescue program; a local

government website page to inform and promote food rescue opportunities; providing other program education and promotional support; developing success stories for use in promotional materials; and supporting measurement programs to help develop programs and demonstrate the efficacy of food rescue.

(c) A local government may satisfy the technical assistance requirements of this element through a partnership with another governmental agency, a local non-governmental organization or private enterprise provided that this partnership is documented in a written agreement, such as a memorandum of understanding, an intergovernmental agreement, a franchise agreement or other contract vehicle, and:

(A) The agreement specifies the local government's contribution to the partnership. The local government's contribution must be more than nominal support. Examples of sufficient contributions include supporting ordinances or waived fees, including license fees, commitments to support volunteer recruitment, requirements that a partner implements a program on behalf of a local government, promotion that supports implementation of the partner organization's project, facilitating community meetings or workshops to support information exchange or project development, participation of local government staff on organizational boards, and providing communications channels through local government websites or other media; and

(B) The agreement specifies annual reporting of outcomes, such as increased food diverted to food assistance programs, that can be linked to the partnership and demonstrate year-to-year progress in food rescue.

(d) Support must be provided annually unless a local government provides funding or monetized infrastructure support in an amount larger than that required under subsection (8)(b) of this rule and the amount of that funding or monetized support, when amortized over multiple years, is at least equivalent to the annual support that the local government would otherwise provide.

(e) A city or county may comply with this section (8) through compliance by its county or metropolitan service district provided that the county- or metropolitan service district-supported food rescue program either collects from sources of food in the city or county or redistributes food to residents of the city or county.

STATUTORY/OTHER AUTHORITY: 459.045, 459A.025, 468.020.

STATUTES/OTHER IMPLEMENTED: 459A.007, 459A.010, 459A.050

REPEAL: 340-090-0070

RULE TITLE: Principal Recyclable Material

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: Repealing rule.

RULE TEXT:

(1) The following are identified as the principal recyclable materials in the wastesheds as described in sections (4) through (12) of this rule:

(a) Newspaper;

(b) Ferrous scrap metal;

(c) Non-ferrous scrap metal;

(d) Used motor oil;

(e) Corrugated cardboard and kraft paper;

(f) Aluminum;

(g) Container glass;

(h) Hi-grade office paper;

(i) Tin cans;

(j) Yard debris.

(2) In addition to the principal recyclable materials listed in section (1) of this rule, other materials may be recyclable material at specific locations where the opportunity to recycle is required.

(3) The statutory definition of "recyclable material" (ORS 459.005(31)) determines whether a material is a recyclable material at a specific location where the opportunity to recycle is required.

(4) In the following wasteshed, Clackamas, Washington and Multnomah counties in aggregate the principal recyclable materials are those listed in subsections (1)(a) through (j) of this rule.

(5) In the following wastesheds, the principal recyclable materials are those listed in subsections (1)(a) through (i) of this rule:

(a) Benton wasteshed;

(b) Clatsop wasteshed;

(c) Hood River wasteshed;

(d) Lane wasteshed;

(e) Lincoln wasteshed;

(f) Linn wasteshed;

(g) Marion wasteshed;

(h) Polk wasteshed;

(i) Umatilla wasteshed;

(j) Union wasteshed;

(k) Wasco wasteshed;

(l) Yamhill wasteshed.

(6) In the following wastesheds, the principal recyclable materials are those listed in subsections (1)(a) through (g) of this rule:

(a) Baker wasteshed;

(b) Crook wasteshed;

(c) Jefferson wasteshed;

(d) Klamath wasteshed;

(e) Tillamook wasteshed.

(7) In the following wastesheds, the principal recyclable materials are those listed in subsections (1)(a) through (h) of this rule:

(a) Coos wasteshed;
(b) Deschutes wasteshed;
(c) Douglas wasteshed;
(d) Jackson wasteshed;
(e) Josephine wasteshed.
(8) In the following wasteshed, the principal recyclable materials are those listed in subsections (1)(a) through (f) of this rule: Malheur wasteshed.
(9) In the following wastesheds, the principal recyclable materials are those listed in subsections (1)(a) through (g) and (i) of this rule:
(a) Columbia wasteshed;
(b) Milton-Freewater wasteshed.
(10) In the following wastesheds, the principal recyclable materials are those listed in subsections (1)(a) through (e) of this rule:
(a) Curry wasteshed;
(b) Grant wasteshed;
(c) Harney wasteshed;
(d) Lake wasteshed.
(11) In the following wastesheds, the principal recyclable materials are those listed in subsections (1)(a) through (d) of this rule:
(a) Morrow wasteshed;
(b) Sherman wasteshed;
(c) Wallowa wasteshed.
(12) In the following wastesheds, the principal recyclable materials are those listed in subsections (1)(b) through (d) of this rule:
(a) Gilliam wasteshed;
(b) Wheeler wasteshed.
(13)(a) The opportunity to recycle must be provided for each of the principal recyclable materials listed in sections (4) through (12) of this rule and for other materials which meet the statutory definition of recyclable material at specific locations where the opportunity to recycle is required;
(b) The opportunity to recycle is not required for any material that a recycling report, as required in OAR 340-090-0100, and approved by the DEQ demonstrates does not meet the definition of recyclable material for the specific location where the opportunity to recycle is required.
(14) Each city, county or metropolitan service district in a wasteshed where yard debris is a principal recyclable material must individually, or jointly through intergovernmental agreement, implement a program that at a minimum meets the requirements of OAR 340-090-0030 when the option under OAR 340-090-0040(3)(e) is not chosen or request approval of an alternative program for providing the opportunity to recycle under OAR 340-090-0080.
(15) Any affected person may ask the EQC to modify the list of principal recyclable material identified by the EQC or may request a variance under ORS 459A.055.
(16) DEQ will review the principal recyclable material lists as needed, and will submit any proposed changes to the EQC.

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

STATUTES/OTHER IMPLEMENTED: ORS 459A.010, 459A.025

AMEND: 340-090-0080

RULE TITLE: Alternative Methods for Providing the Opportunity to Recycle

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: Replacing "where yard debris is a principal recyclable material as designated in OAR 340-090-0700" with "in the Metro wasteshed" in (5).

RULE TEXT:

This rule describes the necessary procedures and requirements that a city, county, metropolitan service district, or disposal site permittee on behalf of an out-of-state person must follow in order to request approval of an alternative program for meeting the requirements of OAR 340-090-0030(1), (7)(a) and (8), 340-090-0040, and 340-090-0042.

(1) The city, county or metropolitan service district responsible for solid waste management may apply for and request approval by DEQ of an alternative program for providing the opportunity to recycle. Each request must be made in writing to DEQ on a form DEQ provides. The request for an alternative program must be complete, signed by the appropriate authority for the city, county, metropolitan service district or disposal site permittee for an out-of-state request and address all of the requirements in section (3) of this rule and sections (5) and (6) of this rule if applicable.

(2) DEQ will review applications as they are received. DEQ will approve, approve with conditions, or reject each proposed alternative program based on consideration of the criteria described in section (3) of this rule.

(3) Each application for approval of an alternative program for providing the opportunity to recycle must include detailed written information and data on the following:

(a) A description of the alternative program being proposed and how it is different from the standard method that would be required to be implemented under the opportunity to recycle requirements;

(b) The conditions and factors that make the alternative program necessary;

(c) How the alternative program is convenient to the commercial and residential generators of solid waste using or receiving the service;

(d) How the alternative program is as effective in recovering recyclable materials from solid waste as the requirements in OAR 340-090-0020, 340-090-0030(1), (7)(a) and (8), 340-090-0040, and 340-090-0050 for providing the opportunity to recycle.

(e) How the alternative program would achieve at least the lesser of:

(A) The local government unit’s wasteshed recovery rate goal specified in OAR 340-090-0050; or

(B) Recovery levels comparable to similar communities. For the purposes of this rule, “similar community” means another local government unit that is similar, for the purpose of DEQ’s evaluation of the local government’s alternative program, based on:

(i) Population or population density;

(ii) Relevant demographics;

(iii) Distance to a market for material collected for recycling;

(iv) Costs of collection and disposal; and

(v) Other criteria DEQ approves.

(4) Anytime a city, county, metropolitan service district, or disposal site permittee on behalf of an out-of-state person desires to make changes to the approved alternative program, they must submit an amended application for DEQ’s approval following the same requirements in sections (3), (5) and (6) of this rule.

(5) In addition to any other standards or conditions, an alternative program for providing the opportunity to recycle yard debris in the Metro wasteshed must meet the following minimum standards:

(a) The alternative program is available to substantially all yard debris generators in the local jurisdiction;

(b) The alternative program can be demonstrated to result in the recycling of yard debris from the solid waste stream;

(c) There is a promotion campaign that is designed to inform all potential users about the availability and use of the method;

(d) The city, county or metropolitan service district must individually or jointly, through intergovernmental agreement,

choose from the following yard debris recycling program options as an alternative program:
(A) Provide monthly or more often on-route collection of yard debris during the months of April through October with drop-off depots for non-collection service customers available at least monthly;
(B) Provide biweekly or more often yard debris collection depots within one mile of yard debris generators, or such that there is at least one conveniently located depot for every 25,000 population; or
(C) Provide monthly or more often yard debris collection, supplemented by a weekly or more often yard debris depot during the months of April through October, both within one mile of the yard debris generators, or such that there is at least one conveniently located depot for every 25,000 population.
(e) If the alternative program is proposed by a metropolitan service district the alternative program request must include written commitments from the local governments covered by the program to implement the program or a demonstration of the metropolitan service district's authority to implement the program.
(6) In addition to the requirements in section (3) of this rule, when a disposal site permittee is requesting approval of an alternative program for an out-of-state person the following criteria must be met:
(a) For the purposes of satisfying the requirement in subsection (3)(b) of this rule for a local government unit the alternative program must designate a wasteshed having a common solid waste disposal system or an appropriate area within which to carry out a common recycling program and select and provide justification for an appropriate recovery rate based on similar wasteshed characteristics in Oregon including population density, and distance to recycling markets;
(b) For persons other than local government units the request for alternative program approval must provide information explaining how the alternative program provides the opportunity for the person to reduce the amount of waste that would be disposed and a description of how the alternative program is implemented.
(7) Instead of a local government implementing a waste prevention and reuse program under OAR 340-090-0042, a local government may apply for DEQ's approval of an alternative waste prevention and reuse program. To apply, a local government must follow these procedures:
(a) Each application for an alternative waste prevention and reuse must be made in writing on a form that DEQ provides. The application must be complete, signed by the local government, and address all of the requirements in section (3) of this rule.
(b) DEQ will review applications as they are received. For each application, using the information in subsection (c) of this rule, DEQ must, for the proposed alternative waste prevention and reuse program:
(A) Approve the proposed program;
(B) Approve the proposed program with conditions; or
(C) Reject the proposed program.
(c) Each application must include the following detailed information:
(A) A description of the proposed alternative waste prevention and reuse program;
(B) Explanations of how the proposed alternative waste prevention and reuse program would be different than and designed to achieve similar benefits as the waste prevention and reuse program that would otherwise by required under rule;
(C) A written plan describing how the proposed alternative waste prevention and reuse program would provide citywide or countywide education and promotion about the environmental benefits of, and opportunities to reduce the generation of waste through, waste prevention and reuse in the local government unit;
(D) An explanation of the conditions and factors that make the proposed alternative waste prevention and reuse program preferable; and
(E) A description of waste generating behaviors targeted for change for residential and commercial generators of solid waste in the local government unit and how that change would be measured.

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

STATUTES/OTHER IMPLEMENTED: ORS 459A.005, 459A.010, 459A.025, 459A.055

AMEND: 340-090-0090

RULE TITLE: Collection of Recyclable Materials

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: Adding language to (2)(b) related to producer responsibility organizations.

RULE TEXT:

(1) DEQ may not require any city, county, or metropolitan service district, or agent thereof, to collect or receive source separated recyclable material which has not been correctly prepared to reasonable specifications which relate to marketing, transportation, storage, or regulatory agency requirements. The specifications for material preparation must have been publicized by the appropriate city, county or metropolitan service district as part of the education and promotion program requirements in OAR 340-090-0020, 340-090-0030, and 340-090-0040.

(2) In addition to the provisions set forth in ORS 459A.080, no person shall dispose of source separated recyclable material which has been collected or received from the generator by any method other than reuse or recycling except as follows:

(a) Used oil and wood waste may be collected and burned for energy recovery.

(b) For covered products pursuant to ORS 459A.863(6), a method other than reuse or recycling may be used if proposed by a producer responsibility organization in a program plan, and that program plan is approved by DEQ. The proposal must include an assessment of environmental impacts and demonstration of consistency with the policy objectives contained in ORS 459.015(2)(a).

(c) For any recyclable materials not included in subsections (a) or (b), a method other than reuse or recycling may be used if an assessment of the environmental impacts of the method demonstrates to DEQ's satisfaction that the method provides better environmental outcomes and is consistent with the policy objectives contained in ORS 459.015(2)(a).

(3) Commercial and residential recyclable materials that are source separated for collection on-route or on-site but that are not correctly prepared according to reasonable specifications as set forth by the city, county or metropolitan service district under section (1) of this rule may not be required to be collected and may be left with the generator of the source separated material or may be collected and prepared for recycling by the collector, but may not be disposed of by the collector. The generator of the material must be provided with written information that explains correct material preparation for the purposes of educating the generator.

(4) Unauthorized materials that are deposited by the generator at a recycling depot are exempt from the prohibition in sections (1), (2), and (3) of this rule and must be managed in the appropriate manner otherwise required by law.

(5) Collected recyclable material later found to be contaminated with hazardous substances are exempt from the prohibition in sections (1), (2), and (3) of this rule and must be managed in an appropriate manner otherwise required by law.

STATUTORY/OTHER AUTHORITY: ORS 459A.025, 459.045, 459A.005 - 459A.085, 468.020

STATUTES/OTHER IMPLEMENTED: ORS 459A.080

AMEND: 340-090-0110

RULE TITLE: Minimum Content Reporting Requirements

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: Adding "from Oregon recycling collection programs, including producer responsibility organizations, required " to (3)(e).

RULE TEXT:

The following information must be reported to DEQ by February 28 of each year for the previous calendar year by the applicable person on a form DEQ provides:

(1) Each consumer of newsprint in Oregon must report the following information:

(a) Amount of newsprint used in a calendar year in short tons or metric tons;

(b) Amount of recycled-content newsprint, comprised of post-consumer waste paper, used in a calendar year in short tons or metric tons;

(c) Aggregate recycled content of the newsprint used in a calendar year expressed as a percent of the total newsprint used in a calendar year in short tons;

(d) If a consumer cannot obtain the required amount of recycled content newsprint for the reasons listed in ORS 459A.505, the report must include an appropriate explanation;

(e) For purposes of this section only "post-consumer waste" means a material that would normally be disposed of as a solid waste, having completed its life cycle as a consumer or manufacturing item.

(2) Publishers of directories distributed in Oregon must provide the following information on a form DEQ provides. For purposes of this rule, directories means telephone directories that weigh one pound or more for a local jurisdiction:

(a) Total weight in tons of directories distributed in Oregon;

(b) Percent by weight of recycled content in the total directories distributed in Oregon;

(c) Percent of total weight that consists of post-consumer waste;

(d) If a publisher cannot meet the requirements in ORS 459A.520, the publisher must provide an explanation;

(e) Description of the locations and cooperative programs implemented with local government for the collection and recycling of old directories when new ones are distributed, including the total weight of old directories collected for recycling in each local government jurisdiction.

(3) Each manufacturer of glass food, drink and beverage containers made in Oregon, or made outside Oregon and sold to packagers located in Oregon, must report the following information:

(a) Total tons of new glass food, drink and beverage containers made in Oregon, or made outside Oregon and sold to packagers located in Oregon, in a calendar year;

(b) The total tons of post-consumer recycled glass used in manufacturing the containers made in Oregon, or made outside Oregon and sold to packagers located in Oregon, in a calendar year;

(c) Post-consumer recycled glass generated in Oregon and used in "secondary end uses" must be credited towards the 50 percent minimum percentage requirement. As used in this section, "post-consumer recycled glass" does not include window glass and other glass not related to glass container manufacturing. This "credit" must be determined annually as follows:

(A) DEQ must determine the tonnage of post-consumer recycled glass generated in Oregon and used in "secondary end uses" based on reports received under OAR 340-090-0100;

(B) DEQ must then determine the percentage of post-consumer glass generated in Oregon that was used for secondary end uses that year. DEQ must use a composition study of solid waste disposed of in Oregon as the basis for estimating the amount of solid waste which is post-consumer recycled glass;

(C) The 50 percent minimum glass recycled content requirement each glass manufacturer must meet must be reduced by the number of percentage points determined in paragraph (3)(c)(B) of this rule for the subject year.

(d) A glass manufacturer must identify to DEQ all secondary end users of post-consumer recycled glass generated in Oregon of which it is aware. "Secondary end uses" must include:

(A) Use on road surfaces as "glasphalt;"
(B) Fiberglass;
(C) Abrasives;
(D) Glass foam;
(E) Glass beads for reflective paint;
(F) Construction uses, meeting engineering specifications;
(G) Road-base aggregate, meeting engineering specifications;
(H) Other uses as approved by DEQ.
(e) Upon request from a glass container manufacturer, DEQ may not enforce the requirement that a minimum percentage of recycled glass be used in the manufacturing of glass containers if DEQ determines that a glass container manufacturer cannot meet the minimum percentage requirements because of a lack of available glass cullet from Oregon recycling collection programs, including producer responsibility organizations, required by OAR 340-090-0630 to collect container glass, and that meets reasonable specifications the manufacturer establishes. However, lack of availability of appropriate cullet to fully comply with the glass recycled content requirement may not exempt a glass container manufacturer from the requirement to achieve as high a minimum recycled content as possible using available appropriate cullet. A request for non-enforcement from a glass container manufacturer must include sufficient detail for DEQ to be able to reasonably make a determination as to the availability of appropriate cullet, and must:
(A) Be made to DEQ in writing by February 28 of a year to apply to use of cullet in the previous calendar year;
(B) Include a copy of the manufacturer's specifications and an explanation of how the manufacturer determined that sufficient glass cullet meeting the specifications was not available. If a manufacturer's specifications are more restrictive than accepted national specifications, the manufacturer must demonstrate to DEQ why such restrictions are necessary;
(C) Include the tonnage of the shortfall of available cullet.

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

STATUTES/OTHER IMPLEMENTED: ORS 459A.515, 459A.520, 459A550

AMEND: 340-090-0140

RULE TITLE: Recyclable Material Economic Test

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: Changing the language in the opening sentence to include "can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material"

RULE TEXT:

This rule describes the factors that DEQ must consider in determining if a material can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

(1) DEQ must calculate the cost of collection and sale of a recyclable material by considering the collector's costs from the time the material is source separated and leaves the use of the generator until it is first sold or transferred to the person who recycles it. DEQ must consider all costs and savings associated with collection of a recyclable material in the calculation.

(2) DEQ must consider any measurable savings to the collector resulting from making a material available for recycling as opposed to disposal the same as income from sale.

(3) DEQ must calculate the cost of collection and disposal of material as solid waste by using the total costs of collection and disposal. Costs must include fees charged, taxes levies or subsidy to collect and to dispose of solid waste. Costs must also include, but are not limited, to the costs to comply with applicable statutes, rules permit conditions and insurance requirements.

(4) DEQ may use the amount and value of any source separated material that is collected or received as part of a recycling requirement of a permit or a city or county franchise determining whether remaining material meets the definition of recyclable material.

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

STATUTES/OTHER IMPLEMENTED: ORS 459A.010

AMEND: 340-090-0190

RULE TITLE: Yard Debris Recycling Charges

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: Adding section (8) and changing language to reference the "Metro wasteshed".

RULE TEXT:

(1) The EQC's purpose in adopting this rule governing when a fee may be charged for yard debris recycling services is to:

(a) Ensure that a financial disincentive for recycling is not created for any waste generator;

(b) Increase recovery of yard debris and stimulate participation in yard debris recycling programs;

(c) Acknowledge the rate considerations due to the extreme variability of volumes generated;

(d) Ensure that service provided to multi-family generators residing in dwellings of four or fewer units is equivalent to service provided to single family residences.

(2) The purpose as stated in section (1) of this rule is to apply to those recycling programs required under ORS 459A.005, 459A.010 and 459.250.

(3) As used in this rule, "residential generator" means any generator of recyclable material located in single or multi-family dwellings up to and including four units.

(4) As used in this rule, a "unit of yard debris" is the equivalent of a 32-gallon can, a similar sized bag, or the standard unit of yard debris service provided, whichever is greater.

(5) Residential generators of yard debris participating in a regularly scheduled yard debris collection service in the Metro wasteshed, may be charged a fee for yard debris recycling service. The cost of collection of at least the equivalent of one unit of yard debris per month must be incorporated into the base fee charged for solid waste and recycling collection and disposal. An additional fee may be charged for yard debris service which exceeds the equivalent of collection of one unit of yard debris per month. Where multi-family complexes are treated as a single customer, the local government providing the yard debris service must assure that yard debris service is provided at a level equivalent to service provided single-family dwellings. Local governments must make this determination and any related adjustment in service, no later than their next rate review process. In addition to the base fee charged for solid waste and recycling collection and disposal, which must include the first unit of yard debris, local governments may charge a fee for:

(a) Collection of any volumes of yard debris over and above the first unit which is included in the base fee, where the generator is a solid waste customer;

(b) Collection of any volumes of yard debris where the generator is not a solid waste customer;

(c) Yard debris collected through a depot program or other alternative method including on-call service.

(6) The total additional yard debris recycling fee charged to any generator of yard debris for collection of yard debris must be less than the fee that would have been charged for collection of that same volume of yard debris as mixed solid waste.

(7) Yard debris recycling fees in addition to the base fee charged for solid waste collection and disposal may be charged for the collection of yard debris on-route or at a depot outside the Metro wasteshed.

(8) Each city, county or metropolitan service district in the Metro wasteshed must individually, or jointly through intergovernmental agreement, implement a yard debris program that at a minimum meets the requirements of OAR 340-090-0030 when the option under OAR 340-090-0040(3)(e) is not chosen or request approval of an alternative program for providing the opportunity to recycle under OAR 340-090-0080.

STATUTORY/OTHER AUTHORITY: ORS 459A.025, 459.045, 459A.005 - 459A.085, 468.020

STATUTES/OTHER IMPLEMENTED: ORS 459.015, 459.250, 459A.005, 459A.010

AMEND: 340-090-0380

RULE TITLE: Recycling Rate Calculation for Rigid Plastic Containers

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: Adding the following language to (2)(b)(A) "following resin types: polyethylene terephthalate, high density polyethylene, polyvinyl chloride, low density polyethylene, polypropylene, polystyrene, and other"

RULE TEXT:

(1) The recycling rate for rigid plastic containers must be calculated as one of the following:

(a) Aggregate or specified resin type recycling rate for compliance purposes;

(b) Calendar year aggregate recycling rate;

(c) Specified-type rate; or

(d) Product-associated rate.

(2) Recycling rate for compliance purposes;

(a) Aggregate recycling rate for compliance purposes;

(A) DEQ may determine a recycling rate for rigid plastic containers, in the aggregate, for compliance purposes by December 31 of any year for which DEQ deems it necessary to determine such a rate. The aggregate recycling rate for compliance purposes must apply to the following calendar year and to any subsequent calendar year until DEQ again calculates an aggregate rigid plastic container recycling rate for compliance purposes;

(B) DEQ must base the aggregate recycling rate for compliance purposes in part on the most recent calendar year recycling rate and in part on other information which reflects or indicates the level of rigid plastic container recycling. When determining the recycling rate for compliance purposes for years prior to the calculation of the calendar year recycling rate, DEQ will use the best available recycling rate information in lieu of a calendar year recycling rate.

(b) Specified resin type recycling rate for compliance purposes:

(A) If the aggregate recycling rate in paragraph (2)(a)(A) of this rule is determined to be less than 25 percent, DEQ must determine a specified resin type recycling rate for compliance purposes for rigid plastic containers made from each of the following resin types: polyethylene terephthalate, high density polyethylene, polyvinyl chloride, low density polyethylene, polypropylene, polystyrene, and all other plastic resins. The specified resin type recycling rate for compliance purposes must apply to the calendar year(s) for which the aggregate recycling rate in paragraph (2)(a)(A) of this rule was determined;

(B) DEQ must base the specified resin type recycling rate for compliance purposes in part on the most recent calendar year recycling rate and in part on other information which reflects or indicates the level of rigid plastic container recycling. When determining the recycling rate for compliance purposes for years prior to the calculation of the calendar year recycling rate, DEQ will use the best available recycling rate information in lieu of a calendar year recycling rate.

(3) Calendar year aggregate recycling rate:

(a) DEQ must calculate the calendar year aggregate recycling rate for rigid plastic containers and must include all rigid plastic containers including those exempted by OAR 340-090-0340(2), (4), (5), (6) or (7) from meeting compliance standards;

(b) DEQ must determine the calendar year recycling rate for rigid plastic containers in the aggregate as a percentage by dividing the aggregate numerator by the aggregate denominator. DEQ must collect or adjust, or both, the numbers in both the numerator and denominator of this calculation to represent the same calendar year;

(c) The elements of the formula to calculate the calendar year aggregate recycling rate for post-consumer rigid plastic containers in Oregon are:

(A) The aggregate numerator, expressed in tons:

(i) DEQ must calculate the numerator be calculated as the total weight of post-consumer rigid plastic containers recycled in Oregon;

(ii) In addition to DEQ’s census of material recovery rates, DEQ may use as the basis for determining the total weight of

post-consumer rigid plastic containers recycled in Oregon an annual recycling census of all parties directly involved in brokering, processing, or recycling post-consumer rigid plastic containers from Oregon. DEQ may provide monthly forms for record keeping purposes only. Census respondents will be asked to calculate and submit:
(I) The total amount of post-consumer rigid plastic received from Oregon sources which is rigid plastic containers as defined in OAR 340-090-0330;
(II) The percentage of (I) that is lost due to removal of contaminated, non-plastic, and non-recyclable material; and
(III) Any other information DEQ may require to accurately determine the recycling tonnages.
(iii) DEQ must design and implement procedures to conduct the census relating to:
(I) Developing and maintaining a comprehensive list of handlers and reclaimers;
(II) Obtaining data from handlers and reclaimers, including the use of monthly and annual record keeping and reporting forms;
(III) Reconciling variances in reported data;
(IV) Maintaining quality control in data collection and analysis; and
(V) Adjusting data to produce estimates of the amount of plastic from post-consumer rigid plastic containers by controlling for contamination, including moisture, organic matter and other non-plastic materials.
(iv) DEQ must publish a report on the findings of the census, methodologies used and information regarding potential errors.
(B) The aggregate denominator, expressed in tons:
(i) DEQ must calculate the denominator as the sum of the total weight of post-consumer rigid plastic containers recycled in Oregon (the numerator) plus the total weight of post-consumer rigid plastic containers disposed of in Oregon. DEQ must calculate the total weight of post-consumer rigid plastic containers disposed of in Oregon by multiplying the estimated percent of municipal solid waste which is post-consumer rigid plastic containers times total tons of municipal solid waste disposed of in Oregon;
(ii) The total tons of municipal solid waste disposed of in Oregon is derived from information collected under the provisions of ORS 459A.010 (3)(d)) and 459A.050 (3) and (4);
(iii) DEQ must use a composition study of solid waste disposed of in Oregon as the basis for estimating the percent of disposed solid waste which is post-consumer rigid plastic containers. Adjustments to a previous composition study may be used as a substitute for a new composition study.
(d) DEQ will determine the calendar year aggregate rigid plastic container recycling rate, when DEQ determines it to be necessary, on a calendar year basis. When DEQ determines a calendar year aggregate rate, DEQ will publish it in a report that includes a discussion of potential errors associated with calculation of the total tons of municipal solid waste disposed of in Oregon, information on the recycling and disposal data collection and analysis methodologies and margin of error for the percent composition of rigid plastic containers.
(4) Specified-type recycling rate. DEQ must determine the recycling rate for a specified type of rigid plastic container as a percentage by dividing the specified type numerator by the specified type denominator. DEQ must collect or adjust, or both, the numbers in both the numerator and denominator of this calculation to represent the same calendar year:
(a) The elements of the formula to calculate the specified type recycling rate for rigid plastic containers in Oregon are:
(A) DEQ must calculate the specified type of post-consumer rigid plastic container numerator as the total of the specific type of post-consumer rigid plastic containers recycled in Oregon, expressed in tons;
(B) The specified type of post-consumer rigid plastic container denominator, expressed in tons:
(i) DEQ must calculate the denominator by one of the following methods:
(I) As the sum of the weight of the specified type of post-consumer rigid plastic containers recycled in Oregon plus the total weight of the specified type of rigid plastic containers disposed of in Oregon; or
(II) The total weight of the specified type of post-consumer rigid plastic containers sold in Oregon.
(ii) If DEQ uses the weight of the specified type of post-consumer rigid plastic containers disposed of to calculate the denominator, DEQ must use a composition study of solid waste disposed of in Oregon as the basis for determining the weight disposed of.

(b) Any person calculating the recycling rate of a specified type of post-consumer rigid plastic container may rely upon disposal or recycling data DEQ generates. Persons using other data to calculate a recycling rate must be able to document that such data were generated by a methodology acceptable to DEQ and are verifiable;
(c) Adjustment to data collected by the recycling census and composition study identified in paragraphs (3)(c)(A)(ii) and (3)(c)(B)(ii) and (iii) of this rule respectively must be made only by use of a methodology DEQ accepts;
(d) DEQ may use data collected on a national basis to determine the post-consumer rigid plastic container recycling rate in Oregon if it can be shown how these data are either typical of or can be adjusted to accurately represent conditions in Oregon.
(5) Product-associated recycling rate. DEQ must calculate the recycling rate for a product-associated rigid plastic container as a percentage by dividing the product-associated numerator by the product-associated denominator. DEQ must collect or adjust, or both, the numbers in both the numerator and denominator of this calculation to represent the same calendar year. The elements of the formula to calculate the product-associated recycling rate for rigid plastic containers in Oregon are:
(a) DEQ must calculate the numerator as the total weight of product-associated post-consumer rigid plastic containers recycled in Oregon, expressed in tons;
(b) The product-associated post-consumer rigid plastic container denominator, expressed in tons. The denominator must be the total weight of the product-associated rigid plastic containers sold in Oregon.
(6) A product manufacturer or container manufacturer must rely on DEQ's calculation of the aggregate recycling rate for compliance purposes for post-consumer rigid plastic containers to comply with OAR 340-090-0350(1)(b)(A). In cases where DEQ calculates the recycling rate for specified types of or product-associated post-consumer rigid plastic containers, a product manufacturer or container manufacturer may rely on DEQ's rate calculation when claiming that a container or containers comply with OAR 340-090-0350(1)(b)(B) or (1)(b)(C).
(7) In cases where a manufacturer calculates the recycling rate for specified types of or product-associated post-consumer rigid plastic containers, a product manufacturer may rely upon disposal or recycling data DEQ generates, where available. Manufacturers using other data to calculate a recycling rate must be able to document that such data were generated by a methodology DEQ accepts and are verifiable.
(8) Calculation of a recycling rate must include only those outputs from processing rigid plastic containers which are recycled into new products. When a processing technology results in a combination of outputs, some of which are recycled into new products and others of which are fuel products, or energy recovery, the recycling rate may not include any portion of the output which is a fuel product, is used to produce fuel products, or is otherwise used for energy recovery.

STATUTORY/OTHER AUTHORITY: ORS 459A.025

STATUTES/OTHER IMPLEMENTED: ORS 459A.650 - 459A.657

AMEND: 340-090-0410

RULE TITLE: Responsibilities of a Container Manufacturer

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: Correcting statute implemented. Changing "ORS 459A.65" to "ORS 459A.655"

RULE TEXT:

(1)(a) A container manufacturer must be able to document that a rigid plastic container or containers comply with the requirements of OAR 340-090-0350(1)(a), (1)(b)(A), or (1)(b)(B);

(b) For any calendar year for which DEQ determines that the aggregate recycling rate for compliance purposes is at least 25 percent, a container manufacturer is not required to keep the records otherwise required by this rule.

(2) A container manufacturer's documentation that a rigid plastic container or containers comply with the provisions of OAR 340-090-0350(1)(a), (1)(b)(A) or (1)(b)(B) must include, at a minimum, the following information:

(a) Recycled content. For each container that complies with OAR 340-090-0350(1)(a):

(A) A description of the container including its resin type;

(B) Documentation of the recycled content of the type of container including:

(i) The total weight of plastic used to manufacture that type of rigid plastic container during the time period when the container was made; and

(ii) The weight of recycled material used to manufacture that type of rigid plastic container during the same time period, within a one-year period, as determined by the container manufacturer.

(b) Aggregate recycling rate. The aggregate recycling rate for compliance purposes DEQ establishes serves as the only acceptable documentation that a container manufacturer's containers comply with OAR 340-090-0350(1)(b)(A);

(c) Specified-type recycling rate. For containers that comply with the specified-type recycling rate requirement, OAR 340-090-0350(1)(b)(B):

(A) A description of the container;

(B) Identification of the specified type;

(C) Documentation of the recycling rate for the type of container pursuant to OAR 340-090-0380(4); and

(D) Where DEQ has calculated a recycling rate for a specified type of container, the container manufacturer may rely upon DEQ’s rate to show that the container complies with the rate requirements.

(3) Container manufacturer's Certificate of Compliance:

(a) A container manufacturer must make a Certificate of Compliance available to:

(A) Any product manufacturer who uses containers from that container manufacturer and makes products in those containers available for sale in Oregon; and

(B) DEQ, upon request, only if not otherwise available from the product manufacturer.

(b) A container manufacturer's Certificate of Compliance must contain the following information:

(A) The container manufacturer's:

(i) Name;

(ii) Address; and

(iii) Name, title, address and phone number of an official representative.

(B) A description of the container or containers for which compliance or exemption is claimed; and

(C) A description of the container manufacturer's records documenting compliance.

(c) If, after review of the container manufacturer's Certificate of Compliance, DEQ determines that the information provided in the Certificate is not adequate to document that a container or containers comply with OAR 340-090-0350 through 0370, DEQ may:

(A) Request that the product manufacturer provide all or part of the documentation described in a Certificate of Compliance, other records, or additional information the container manufacturer keeps that is the basis for those records and any other information deemed necessary to determine compliance with the law. Within 15 days of this request, the product manufacturer must notify DEQ whether it will provide the requested information or if DEQ must

request it directly from the container manufacturer. If the product manufacturer notifies DEQ it will satisfy the request, the manufacturer must provide the records or other material requested to DEQ within 45 days of the date of the product manufacturer's notification;
(B) If the product manufacturer cannot provide adequate documentation or other information DEQ requests within the time frame in (A) above, then DEQ may request such information directly from the container manufacturer.
(d) A container manufacturer must comply with the following procedure and time schedule when it provides information DEQ requests:
(A) The container manufacturer must provide a Certificate of Compliance to DEQ within 60 days of the date of receipt of a DEQ request for the Certificate;
(B) If DEQ finds the Certificate to be incomplete, DEQ may request the missing materials from the official company representative. The container manufacturer must provide missing materials from a Certificate of Compliance to DEQ within 30 days of the date of receipt of a DEQ request for the Certificate;
(C) After it has reviewed the Certificate of Compliance, DEQ may request that the container manufacturer provide all or part of the documentation described in a Certificate of Compliance, other records, or additional information kept by the container manufacturer that is the basis for those records and any other information deemed necessary to determine compliance with the law. The container manufacturer must provide the records or other material requested to DEQ within 45 days of the date of receipt of a request for the records.
(4)(a) A container manufacturer may request an extension of the time period to submit materials DEQ requests. Such a request for extension must be in writing and be received by DEQ before the due date of DEQ's original request. The request for extension must:
(A) Provide the container manufacturer's name and address;
(B) Provide the name, title, address, and phone number of an official company representative;
(C) State a specific length for the requested extension, not to exceed 60 days; and
(D) Show good reason for the extension.
(b) Based upon the information provided in the request for extension, DEQ may grant the extension, deny the extension, or grant an extension for a lesser period of time.
(5) Records that document compliance with the requirements of OAR 340-090-0350 or exemption under the provisions of OAR 340-090-0340 must be maintained and available for audit by DEQ for a period of at least three years after the year for which compliance is documented.
(6) DEQ will consider a container manufacturer's failure to provide the following a violation of these rules:
(a) A Certificate of Compliance to a product manufacturer; or
(b) A Certificate of Compliance or additional materials to DEQ as requested and within the schedule set out in this rule.
(7) DEQ, at its discretion, may audit the container manufacturer directly to determine compliance with these rules.

STATUTORY/OTHER AUTHORITY: ORS 459A.025, 468.020

STATUTES/OTHER IMPLEMENTED: ORS 459A.655, 459A.660

AMEND: 340-090-0430

RULE TITLE: Violations

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: Changing reference in section 1 from "459.995(1)(a)" to "459.995"

RULE TEXT:

(1) Violations of these rules are punishable as provided in ORS Chapter 459.995 and pursuant to OAR 340-012-0042 and 0065.

(2) DEQ may not enforce the provisions of ORS 459A.650 to 459A.660 during the first full calendar year after DEQ determines for the first time that the aggregate recycling rate for compliance purposes is less than 25 percent.

(3) DEQ may not enforce the provisions of ORS 459A.650 to 459A.660 until January 1, 1998. After that time DEQ must take enforcement action for violations of ORS 459A.650 to 459A.660 occurring on or after January 1, 1998.

STATUTORY/OTHER AUTHORITY: ORS 459A.025, 468.020

STATUTES/OTHER IMPLEMENTED: ORS 459A.660, Ch. 584 OL 1995

ADOPT: 340-090-0600

RULE TITLE: Purpose and Applicability

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: New purpose and applicability rule for the Plastic Pollution and Recycling Modernization Act.

RULE TEXT:

OAR 340-090-0610 to 0810 implement the Plastic Pollution and Recycling Modernization Act, ORS 459A.860 to 459A.975. These rules also describe Producer Responsibility Organization obligations, standards and methods for local government compensation, and the recycling acceptance lists. The rules relate to the requirements of ORS 459A.869, 459A.872, 459A.875, 459A.878, 459A.881, 459A.884, 459A.890, 459A.896, 459A.914, and 459A.926.

STATUTORY/OTHER AUTHORITY: ORS 459A.975, 468.020

STATUTES/OTHER IMPLEMENTED: ORS 459A.860 - 459A.975

ADOPT: 340-090-0610

RULE TITLE: Definitions

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: New definitions rule for the Plastic Pollution and Recycling Modernization Act rules.

RULE TEXT:

Unless the context requires otherwise, terms used in OAR 340-090-0610 to 0810 have the meanings provided by 459A.863.

STATUTORY/OTHER AUTHORITY: ORS 459A.975, 468.020

STATUTES/OTHER IMPLEMENTED: ORS 459A.860 - 459A.975

ADOPT: 340-090-0620

RULE TITLE: Effective Date

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: New effective date rule for the Plastic Pollution and Recycling Modernization Act rules.

RULE TEXT:

(1) The following rules which relate to requirements of a producer responsibility organization plan are effective upon filing with the Secretary of State:

(a) OAR 340-090-0640(2)(e)(F), (2)(h) and (6).

(b) OAR 340-090-0650(1)(a), (1)(e) and (2)(b).

(c) OAR 340-090-0660(2)(b).

(d) OAR 340-090-0670(2)(d), (3)(b) and (3)(e).

(e) OAR 340-090-0750.

(f) OAR 340-090-0780.

(g) OAR 340-090-0790.

(h) OAR 340-090-0810(1)(a).

(2) The following rules which relate to producer responsibility organization fees, interim coordination, modified market share and local government identification of service providers are effective upon filing with the Secretary of State:

(a) OAR 340-090-0680.

(b) OAR 340-090-0690.

(c) OAR 340-090-0700(2).

(d) OAR 340-090-0800(3).

(3) All other rules in OAR 340-090-0630 to 0810 and the amendments to OAR 340-090-0005 to 0430 are effective on July 1, 2025.

STATUTORY/OTHER AUTHORITY: ORS 459A.975, 468.020

STATUTES/OTHER IMPLEMENTED: ORS 459A.860 - 459A.975

ADOPT: 340-090-0630

RULE TITLE: Recycling Acceptance Lists

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: New Recycling Acceptance Lists definitions rule for the RMA rules.

RULE TEXT:

(1) Recycling list definitions. For purposes of the recycling acceptance lists under sections 2 and 3 of this rule, the terms below have the following meanings:

(a) “Aerosol can” has the same meaning found in 40 CFR 273.9.

(b) “Aseptic carton” means a shelf-stable package made for a food or beverage product that is made mainly of paperboard, but also includes protective layers of polyethylene and aluminum.

(c) “Bottle” means a rigid container with or without a handle and with a neck or mouth smaller than the base.

(d) “Cap” means a rigid closure for tubs or bottles that has a fastening feature that involves threads.

(e) “HDPE” means high density polyethylene.

(f) “Lid” means a rigid closure for tubs that has a fastening feature other than threads.

(g) “Non-metallized gift wrap” means paper gift wrap devoid of non-paper additives like metallic flakes, glitter, metalized mylar or any similar material.

(h) “PE” means polyethylene and includes HDPE, low density polyethylene and linear low density polyethylene.

(i) “PET” means polyethylene terephthalate.

(j) “PP” means polypropylene.

(k) “Pressurized cylinder" means any packaging containing flammable pressurized gas, helium or carbon dioxide, including, but not limited to, seamless cylinders and tubes, welded cylinders and insulated cylinders intended to contain helium, carbon dioxide or flammable materials such as propane, butane or other flammable compressed gases. "Pressurized cylinder" does not include:

(A) any cylinder, tube or container intended to deliver a product that is not a compressed gas;

(B) liquified petroleum gas containers that are designed to be refilled;

(C) any other cylinder, tube or container that is designed to be refilled and which has an active and functioning exchange system that normally causes the cylinder, tube or container to be refilled, reused, or refurbished, unless the cylinder, tube or container is damaged and not appropriate to be subsequently refilled, reused, or refurbished;

(D) any cylinder, tube or container that contains pure oxygen or hydrogen;

(E) fire extinguishers;

(F) aerosol cans; or

(G) a storage tank that is permanently fixed in location.

(l) “Recycle-compatible coating” means a water-soluble barrier that can be used on fiber-based packaging that does not negatively impact the recyclability of that packaging.

(m) “Scrap metal” means ferrous and non-ferrous waste metal, metallic material, electrical wiring and any product that contains at least 50 percent metal by weight and that is capable of being recycled. Scrap metal includes major appliances that contain refrigerants.

(n) “Tub” means a rigid container that has a neck or mouth similar in size to its base. “Tub” does not include a clamshell or similar container with a lid that is affixed to the base using a hinge or similar mechanism.

(2) Local Government Recycling Acceptance List. The following material must be collected pursuant to ORS 459A.005 and ORS 459A.914(1)(a) to provide the opportunity to recycle:

(a) Corrugated cardboard; uncoated or coated with recycle-compatible coating; including pizza boxes;

(b) Paper bags and mailing envelopes, excluding those with a plastic liner;

(c) Paperboard boxes and packaging, such as cereal, cracker and medicine boxes, excluding any non-paper flexible packaging inside such boxes or packaging, and excluding items used to package goods that are normally placed in a refrigerator or freezer;

(d) Polycoated cartons (for example milk cartons) and aseptic cartons;
(e) Molded pulp packaging, excluding food serviceware;
(f) Tissue paper used for packaging;
(g) Non-metalized gift wrap;
(h) All printing and writing paper, including newspaper, newsprint, newspaper inserts, magazines, catalogs, similar glossy paper, telephone directories, ledger, bond, copy and printer paper, notebook paper, envelopes, cards, mail, and items made of such paper and bound with staples, and paperback books, but excluding thermal paper and hardcover books;
(i) File folders and hanging files;
(j) Plastic that fits loosely in the generator's provided on-route collection container, excluding any such item that was used to contain or store motor oil, antifreeze, or other automotive fluids, pesticides or herbicides, or other hazardous materials (flammable, corrosive, reactive, toxic), as follows:
(A) Plastic bottles that measure at least two inches in each of two or more dimensions, including caps if screwed on, made of the following materials:
(i) PET (#1) (clear only);
(ii) HDPE (#2); and
(iii) PP (#5)
(B) Plastic tubs that measure at least two inches in each of two or more dimensions, including caps if screwed on, made of the following materials:
(i) PET (#1);
(ii) HDPE (#2); and
(iii) PP (#5)
(C) Plastic buckets, pails, and storage containers, including lids if snapped on, made of the following materials:
(i) HDPE (#2); and
(ii) PP (#5)
(D) Nursery (plant) packaging, such as pots and trays, made of the following materials:
(i) HDPE (#2); and
(ii) PP
(k) Aluminum food, pet food, and beverage cans;
(l) Steel and bi-metal cans, including empty or dry metal paint cans;
(m) Scrap metal weighing less than 10 pounds and smaller than 18" in length, excluding sharp items (for example knives) and bicycle chains, electrical wiring and other wires, and other similar items likely to cause tangling;
(n) Other scrap metal;
(o) Motor oil; and
(p) Glass bottles and jars, but only from non-residential sources and only in the Metro wasteshed (this requirement is in addition to the requirements for glass recycling under section 3 of this rule).
(q) Yard debris, but only in the Metro wasteshed.
(3) Producer Responsibility Organization Recycling Acceptance List. The following materials are designated as covered products of which a producer responsibility organization must provide for the collection through recycling depot or mobile events as provided in ORS 459A.896(1):
(a) Steel and aluminum aerosol cans;
(b) Aluminum foil and products made of pressed aluminum foil;
(c) Shredded paper;
(d) Polyethylene film and packaging that is:
(i) made of polyethylene film containing a minimum of 90 percent polyethylene and copolymers by weight,
(ii) free of intentionally added PET, PVC, PVDC, paper, aluminum, degradable polymers and degradable additives, and
(iii) free of or including flexible seals, closures or dispensers so long as they are made of polyethylene and contribute less than 10 percent of the total package by weight;

(e) Plastic buckets, pails and storage containers made of HDPE (#2) or PP (#5) and the lids of such items, but excluding such items if used to contain or store motor oil, antifreeze, or other automotive fluids, pesticides or herbicides, or other hazardous materials (flammable, corrosive, reactive, toxic);
(f) Glass bottles and jars;
(g) Block white expanded polystyrene;
(h) PE and PP lids and caps;
(i) HDPE package handles (for example 6-pack handles); and
(j) Pressurized cylinders.
(4) The materials listed in Section 2 of this rule must be collected as follows:
(a) The materials listed in subsections (a) through (o) must be collected at depots as part of the opportunity to recycle pursuant to ORS 459A.005 and 459A.007;
(b) The materials listed in subsections (a) through (m) are also designated for recycling collection from collection service customers as described in ORS 459A.005(1)(a)(A) and ORS 459A.863(25)(a) to (c);
(c) The materials listed in subsection (p) must be collected from non-residential collection service customers as part of routine collection service described in ORS 459A.005(1)(a)(A) and ORS 459A.863(25)(b), but only in the Metro wasteshed;
(d) The materials listed in subsection (q) must be collected at depots as part of the opportunity to recycle pursuant to ORS 459A.005(1)(a)(A) and from collection service customers as described in ORS 459A.005(1)(a)(A) and ORS 459A.863(25)(a) and (b), but only in the Metro wasteshed; and
(e) The materials listed in subsections (a) through (m) are suitable for commingled collection and are included in the Uniform Statewide Collection List.
(f) In accordance with this subsection, a local government may submit a request for additional time to meet the obligation to collect materials on the Uniform Statewide Collection List pursuant to section 2 of this rule to DEQ for approval, if the local government's ability to successfully collect the materials is dependent on the local government receiving funding for trucks, containers, or a reload facility requested from a producer responsibility organization through the 2023 needs assessment, pursuant to ORS 459A.890(8), and the local government has not yet received the funding. The local government must provide any information requested by DEQ to review the local government's request and describe to the satisfaction of DEQ the local government's process and timeline for complying with the obligation to collect all materials on the Uniform Statewide Collection List pursuant to section 2 of this rule. DEQ may approve the request, with or without conditions, if it determines that the local government's ability to successfully collect the materials that are the subject of the request is dependent on the local government receiving funding for trucks, containers, or a reload facility requested from the producer responsibility organization through the 2023 needs assessment, pursuant to ORS 459A.890(8), and the local government has not yet received the funding.
(g) A producer responsibility organization may propose additions to the Uniform Statewide Collection List as provided in ORS 459A.914(4)(b). To be considered by the department, such a proposal must address, for each material proposed for addition, each of the considerations contained in ORS 459A.914(3).
[Note: ORS 459A.914(4)(b) authorizes additions to the Uniform Statewide Collection List through methods other than rulemaking. Materials not on the Uniform Statewide Collection List shall not be collected commingled with other materials per ORS 459A.914(5). The Uniform Statewide Collection List consists of materials designated in (e) above plus additional materials approved by DEQ pursuant to ORS 459A.914(4)(b). For the full list of materials on the Uniform Statewide Collection List consult Oregon Department of Environmental Quality's Materials Management Program.]

STATUTORY/OTHER AUTHORITY: ORS 459A.975, 468.020

STATUTES/OTHER IMPLEMENTED: ORS 459A.860 - 459A.975

ADOPT: 340-090-0640

RULE TITLE: Convenience Standards

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: New Convenience Standards rule for the RMA rules.

RULE TEXT:

(1) For purposes of ORS 495A.896(1) and this rule:

(a) An existing recycling depot or drop off center is any place located in Oregon that accepts any recyclable material from the general public at the time the producer responsibility organization submits its most recent Program Plan or plan amendment, and which also meets at least one of the following five criteria:

(A) The recycling depot or drop off center is used by a local government to satisfy the requirement in ORS 459A.005(1)(a)(A) to provide a place for collecting source separated recyclable material, including the materials on the uniform statewide collection list established under ORS 459A.914 designated for collection at a recycling depot, located either at a disposal site or at another location more convenient to the population being served.

(B) The recycling depot or drop off center is used by a local government to satisfy the optional opportunity to recycle program element described in ORS 459A.007(1)(g).

(C) The recycling depot or drop off center is operated by or at the direction of a Tribal government.

(D) The recycling depot or drop off center is located at a site that operates under a valid solid waste permit issued by the DEQ.

(E) The recycling depot or drop off center is operated by or at the direction of a local government or a local government's service provider, as defined in ORS 459A.863(12).

(b) For purpose of satisfying obligations under ORS 459A.896, it is possible for a producer responsibility organization to contract with an existing recycling depot or drop off center to provide for collection of a covered product or products if the recycling depot or drop off center meets all the following conditions:

(A) The operator of the existing recycling depot or drop off center is willing to contract to provide collection service on behalf of the producer responsibility organization.

(B) The operator of the existing recycling depot or drop off center commits to meet and is meeting all performance standards and other requirements on the producer responsibility organization and to provide collection service on behalf of the producer responsibility organization.

(C) The annual cost to the producer responsibility organization to contract for collection and recycling of a material or set of materials with the recycling depot or drop off center does not exceed 110 percent of the cost the producer responsibility organization would otherwise pay to provide a collection point for that material or set of materials.

(D) The operator of the existing recycling depot or drop off center demonstrates to the producer responsibility organization that the cost of reimbursement it requests are reasonable and only pays for additional costs associated with collection of the additional materials. An existing recycling depot or drop off center and a producer responsibility organization will resolve any disputes concerning the reasonableness of reimbursement costs through the dispute resolution process described in ORS 459A.875(2)(e).

(c) An existing recycling depot or drop off center that contracts with a producer responsibility organization pursuant to ORS 459A.896(1) must meet all relevant requirements of the producer responsibility organization, including performance standards as described in OAR 340-090-0650 and requirements for responsible end market disposition (ORS 459A.896(2)).

(d) For purposes of paragraphs (a)(A) and (B) of this section, if a local government has more than the minimum number of depots or drop off centers required by ORS 459A.005(1)(a)(A) or 459.007(1)(g) the local government must inform a producer responsibility organization, upon request, which depots or drop off centers are being used to meet the requirements of ORS 459A.005(1)(a)(A) or 459.007(1)(g). If a local government fails to provide the information within 90 days of a request DEQ may, after consulting with the local government and producer responsibility organization, determine which depots or drop off centers are being used to meet the requirements of ORS 459A.005(1)(a)(A) or

459.007(1)(g).
(e) If a recycling depot or drop off center that does not meet the requirements of subsection (a) of this section subsequently comes into compliance with those requirements a producer responsibility organization must contract with the recycling depot or drop off center within 12 months of the recycling depot or drop off center meeting the requirements of subsection (a) of this section, provided that the recycling depot or drop off center also meets the other requirements of this section. If the addition of the recycling depot or drop of center results in the producer responsibility organization exceeding the minimum number of collection points required by subsections (2)(d) to (f) of this rule the producer responsibility organization may discontinue service at another collection point in the same community, subject to the requirements of section 4 of this rule.
(f) If a producer responsibility organization determines that it is not possible to contract with an existing recycling depot or drop off center pursuant to subsection (2)(a) of this rule, due to the exceedance of the price premium cap in paragraph (1)(b)(C) of this rule, DEQ may request financial information from both the producer responsibility organization and the existing facility to verify that the cap would be exceeded. A producer responsibility organization must provide the information requested by DEQ and may not prohibit, by nondisclosure agreement or other mechanism, the sharing of the requested information by the existing facility.
(2) Minimum number of collection points. For purposes of this section a collection point is a location that accepts from the public one or more materials on the Producer Responsibility Organization Recycling Acceptance List pursuant to OAR 340-090-0630(3) and which meets all performance standards as described in OAR 340-090-0650. A producer responsibility organization must provide the following minimum number of collection points:
(a) A producer responsibility organization must provide for collection and recycling of all covered products on the producer responsibility organization acceptance list, pursuant to OAR 340-090-0630(3), at any existing recycling depot or drop off center where it is possible, as provided by subsection 1(b) of this rule.
(b) A producer responsibility organization must meet the base convenience standard described in paragraphs (d)(A), (d)(B) and (e)(A) and (B) of this section for every material described in the producer responsibility organization recycling acceptance list, pursuant to OAR 340-090-0630(3), except as provided by subsection (c) of this section.
(c) A producer responsibility organization must meet the enhanced convenience standard described in in paragraphs (d)(A), (d)(C) and (e)(C) and (D) of this section for the materials identified in OAR 340-090-0630(3)(d) – (f), (h) and (i).
(d) Collection points in counties.
(A) A producer responsibility organization must provide at least one collection point in every county for every covered product on the producer responsibility organization acceptance lists.
(B) For each material subject to the base convenience standard in subsection (b) of this section, a producer responsibility organization must provide one additional collection point as follows:
(i) For Clackamas, Multnomah and Washington counties, one additional collection point for every 60,000 residents of that county.
(ii) For all other counties, one additional collection point for every 40,000 residents of that county.
(C) For each material designated for enhanced convenience pursuant to subsection (c) of this section, a producer responsibility organization must provide one additional collection point as follows:
(i) For Clackamas, Multnomah and Washington counties, one additional collection point for every 45,000 residents of each county.
(ii) For all other counties, one additional collection point for every 30,000 residents of that county.
(D) Where the required number of collection points for a county exceeds the sum of the collection points required by subsections (a) and (e) of this section, the additional collection points shall be located in unincorporated areas of the county. The producer responsibility organization shall consult with the county government and consider areas recommended by the county for placement of such collection points.
(e) Collection points in cities.
(A) For every material subject to the base convenience standard in subsection (b) of this section, a producer responsibility organization must provide for at least one collection point:

(i) In each city in Clackamas, Multnomah and Washington counties with a population of 14,000 or more residents; and
(ii) In all other cities with a population of 7,000 or more residents.
(B) For every material subject to the base convenience standard in subsection (b) of this section, a producer responsibility organization must provide additional collection points in a city as follows:
(i) For cities in Clackamas, Multnomah and Washington counties, one additional collection point for every 75,000 residents of the city; and
(ii) In all other cities one additional collection point for every 35,000 residents of the city.
(C) For each material designated for enhanced convenience, pursuant to subsection (c) of this section, a producer responsibility organization must provide at least one collection point as follows:
(i) In cities in Clackamas, Multnomah and Washington counties with a population of 8,000 or more residents; and
(ii) In all other cities with a population of 4,000 or more residents.
(D) A producer responsibility organization must provide one additional collection point in a city for every covered product designated for enhanced convenience:
(i) For cities in Clackamas, Multnomah and Washington counties, one collection point for every 50,000 residents of the city; and
(ii) For all other cities one collection point for every 30,000 residents of the city.
(E) If more than one collection point for any material is required within a single city, the producer responsibility organization shall locate the collection points within the city so that no major sections of the city lack convenient service relative to other areas of the city. A producer responsibility organization must coordinate with DEQ to meet the requirements of this paragraph.
(F) If more than one collection point for any material is provided within a single city, at least 50 percent of all collection points for each material used to satisfy subsection (2)(e) of this rule shall be located in such a way as to be convenient to users of transit service, if the city is served by transit service. The producer responsibility organization shall describe in its program plan how this requirement is satisfied.
(f) A producer responsibility organization must provide sufficient collection points for all materials on the producer responsibility organization acceptance list such that 95 percent of all residents of Oregon live within 15 miles of a collection point.
(g) A producer responsibility organization may use the same collection points to meet the requirements of subsections (a), (d), (e) and (f).
(h) A producer responsibility organization must describe in its program plan how it will provide enhanced access to recycling of materials on the producer responsibility organization acceptance list for populations that may otherwise find it difficult to participate in service at collection points (for example valet service for vehicle users in wheelchairs and partnering with service organizations that work with homebound populations).
(3) Days and hours of operation. Collection points described in Section 2 of this rule must be available to the public as follows:
(a) If the collection point is co-located with a “parent” facility (for example a retailer if return-to-retail, or an existing depot) the same hours of operation as that parent facility is open.
(b) For all other collection points (stand-alone sites) 4 days per week (with exceptions provided for on legal holidays), at least one of which must be Saturday or Sunday and at least 8 hours each of those 4 days.
(4) Notification of changes and continuity of services.
(a) Except as provided by subsection (c) of this section, a producer responsibility organization must provide DEQ and a collection point operator at least three months’ notice in writing if a producer responsibility organization closes a collection point. The producer responsibility organization must also provide a concurrent notice to users of the collection point using prominently placed signage at the collection point location and on a website used by the producer responsibility organization for promotion with the public. Collection point closure notices must include the following information:
(A) Date of service discontinuation; and

(B) Alternative collection point location(s) or service information.
(b) Except as provided by subsection (c) of this section, if a collection point that a producer responsibility organization is using to satisfy the requirements of subsection (2)(a) of this rule no longer meets any of the conditions of subsection (1)(b) of this rule, the producer responsibility organization must not discontinue service until one of the following occurs:
(A) The contract with the site operator expires;
(B) The program plan period ends; or
(C) The parties reach mutual agreement.
(c) A producer responsibility organization may close a collection point for or discontinue acceptance of pressurized cylinders or aerosol cans without three months' notice in writing if:
(A) the collection point operator is an entity other than the producer responsibility organization;
(B) the collection point is not in compliance with contractual terms related to environmental protection or human health;
(C) The producer responsibility organization provides prior notice of its intention to discontinue the collection point; and
(D) The collection point does not promptly correct the issue.
(d) If a producer responsibility organization discontinues service pursuant to subsection (c) it shall notify DEQ as soon as possible and provide notice to users of the collection site.
(5) If a covered product on a producer responsibility organization's recycling acceptance list pursuant to administrative rule is subsequently added to the uniform statewide collection list pursuant to ORS 459A.914(4)(b), a producer responsibility organization must meet obligations for collection as follows:
(a) only at existing recycling depots or drop off centers, as provided by subsection (2)(a) of this rule; and
(b) only if the depot or drop off center is continuing to collect the covered product separately from other materials.
(6) Alternative compliance.
(a) A producer responsibility organization may propose an alternative to the requirements of section 2 of this rule in writing in the producer responsibility organization program plan or an amendment to the plan for approval by the department. If the alternative results in a city or county receiving fewer collection points than required by section 2 of this rule, the producer responsibility organization must demonstrate that it has consulted with the city or county regarding the proposed alternative approach.
(b) If a producer responsibility organization proposes to use collection events as an alternative to the requirements of section 2 of this rule, such events must be predictable (fixed set of locations on a regular schedule and promoted far in advance); and widely advertised.
(c) DEQ will assess an alternative compliance proposal during program plan review against the following criteria:
(A) Impact on the achievement of collection targets,
(B) Impact on equitable access to recycling across regions and diverse populations; and
(C) Demonstrated support of relevant local government(s) for the proposal.
(7) DEQ may approve a temporary variance to the requirements of sections (2) and (3) of this rule.

STATUTORY/OTHER AUTHORITY: ORS 459A.975, 468.020

STATUTES/OTHER IMPLEMENTED: ORS 459A.860 - 459A.975

ADOPT: 340-090-0650

RULE TITLE: Performance Standards

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: New Performance Standards rule for the RMA rules.

RULE TEXT:

(1) Performance standards generally. In providing for the collection and responsible recycling of covered products pursuant to ORS 459A.896(1), a producer responsibility organization must ensure that the following performance standards are met:

(a) Methods. A producer responsibility organization's program plan must provide for how the producer responsibility organization will achieve and maintain collection targets provided by OAR 340-090-0640, convenience standards provided by OAR 340-090-0650, and performance standards. For performance standards, the program plan shall include a description of how the producer responsibility organization will monitor sites and services on a regular basis to ensure compliance with, and reporting to DEQ in a timely manner of any deviations from the program plan and performance standards under this rule.

(b) Free to the public. No fee shall be charged to users of any depot or drop off services, collection events or collection services as provided under ORS 459A.896(1)(a) through (c). If depot collection is provided at a location that normally charges users to access the site (such as a gate fee at a solid waste transfer station), the producer responsibility organization must arrange to waive the fee for the delivery of any covered products on the producer responsibility organization recycling acceptance list.

(c) Promotion. A producer responsibility organization must promote the availability of collection opportunities, how to properly prepare materials for recycling and how to utilize collection opportunities. Such promotion must use methods and materials that are clear, culturally relevant, accessible, and understandable to diverse audiences. A producer responsibility organization must make available to the public through a website that is maintained and available in multiple languages the location and hours of operation for all collection points, and information on how to properly prepare materials for collection.

(d) Accessibility. All collection services shall be reasonably accessible for users of diverse abilities, and safe to interact with for users and service operators. Collection points that are co-located with other services, such as those located inside retail businesses, shall be conveniently located and easy for users to find. Collection receptacles shall be emptied on an adequate basis such that users can deliver materials without creating an overflow situation that obstructs access, inhibits use, or creates an obstacle to pedestrian or vehicular traffic. Sites that are unstaffed during some or all hours of operation shall provide a prominently featured hotline number and protocols for quickly responding to concerns regarding site safety, environmental impacts, or accessibility.

(e) Contamination prevention and management. Collection services shall be offered and operated in ways that minimize acceptance of contamination, and that minimize the presence of contamination in outbound materials. A producer responsibility organization's program plan must include protocols for managing materials that are not on the producer responsibility organization recycling acceptance list but that are delivered to collection points or events. Such protocols must include screening and then accepting and managing the contamination appropriately, rejecting the contamination or both, and must also include providing service users with information on proper recycling or disposal options for non-accepted materials. If contamination of accumulated covered products delivered for recycling is so significant that the producer responsibility organization or its contractor elects to dispose of them, the producer responsibility organization shall, within three business days of disposal, report to the department the disposal, the amount of material disposed and reasons for disposal, and actions the producer responsibility organization will take to better prevent and manage contamination and prevent a reoccurrence at that location. The producer responsibility organization will also report the disposal of covered products in its quarterly material disposition report required by ORS 495A.887(6).

(f) Quality assurance. Collection services must be operated in a manner that maintains the quality and marketability of collected materials, including collection of materials indoors or under cover when appropriate.

(g) Litter mitigation. Collection services and associated handling of collected material must be operated in a manner to prevent litter and any other pollution to air or water.
(h) Self-reporting. A producer responsibility organization must report to DEQ, within 2 business days, any incidents that substantially impact the availability or quality of service, or which require the presence of emergency responders (for example police, medical or fire).
(i) Additional materials. A producer responsibility organization must provide written notice of its intent to accept any materials not described in OAR 340-090-0630(3) at any collection points used to satisfy the requirements of OAR 340-090-0640 at least six months prior to promotion of such acceptance to the public. Prior to promoting to the public such acceptance, a producer responsibility organization must complete the step provided by OAR 340-090-0670(3)(a)(A) and submit properly completed screening assessment forms to the department.
(2) Additional performance standards for collection events. In addition to the performance standards in section 1 of this rule, a producer responsibility organization must meet the following performance standards for collection events:
(a) Public education and outreach. A producer responsibility organization shall coordinate with relevant local governments and service providers regarding public outreach and promotion in advance of any collection event.
(b) Staffing and resourcing. A producer responsibility organization shall include in its program plan detailed policies and processes to ensure adequate staffing, managing traffic flow, ensuring safety, and contingency plans for responding to larger-than-expected turnout.
(3) Material specific performance standards. A producer responsibility organization must meet the following additional performance standards when managing the materials listed in this section:
(a) Block white Expanded Polystyrene (EPS):
(A) Collection and transportation of EPS must be conducted in a manner designed to reduce life cycle environmental impacts. Collected EPS shall be densified (compressed into a brick-like form, with most air removed), as described in paragraph B of this subsection, before transporting EPS a distance greater than 75 miles. An alternative threshold distance may be used if approved by DEQ in a producer responsibility organization's program plan.
(B) EPS shall be densified using technologies described in the producer responsibility organization's program plan after consideration of impacts on yield, transport quantities (density), and worker safety and exposure. Densification shall occur in a manner that minimizes worker exposure to air toxics. A producer responsibility organization may only use thermal densification technology if approved to do so by DEQ in its program plan or a plan amendment. A producer responsibility organization must include an assessment of potential impacts to workers and methods that will be followed to minimize such impacts.
(b) Aerosol cans and pressurized cylinders:
(A) A producer responsibility organization may not accept aerosol cans or pressurized cylinders from any non-residential generator unless that non-residential generator affirms in writing its status as a very small quantity generator pursuant to 40 CFR 260.10 and 40 CFR part 262. Any collection point that accepts aerosol cans or pressurized cylinders must be staffed and have acceptance protocols in place to ensure that it does not accept any non-exempt hazardous waste.
(B) A producer responsibility organization shall ensure that all aerosol cans collected pursuant to ORS 459A.896(1) are managed according to universal waste standards pursuant to 40 CFR part 273. Aerosol cans shall be punctured and their contents safely removed, characterized, and managed in accordance with applicable hazardous waste standards where appropriate, prior to sending the empty container to be recycled. The handler of the containers shall meet the standards of 40 CFR 273.13(e)(4) which include but are not limited to following a written procedure for puncturing cans, conducting a hazardous waste determination of all contents, puncturing the cans with a device designed for that purpose, handling waste from the cans safely and recycling the metal.
(C) A producer responsibility organization shall ensure that any pressurized cylinders which are collected pursuant to ORS 459A.896(1) and not suitable for reuse are managed in accordance with the following standard: pressurized cylinders shall be processed by a regulated hazardous waste treatment, storage, and disposal facility, which shall remove and manage contents according to hazardous waste standards, and then send the containers to a metal recycler.

Reusable cylinders that lack obvious signs of physical defects which would limit their ability for reuse may be delivered to a functioning reuse system that is willing to accept them, or managed as a cylinder not suitable for reuse. This paragraph does not require the manifesting of pressurized cylinders.

STATUTORY/OTHER AUTHORITY: ORS 459A.975, 468.020

STATUTES/OTHER IMPLEMENTED: ORS 459A.860 - 459A.975

ADOPT: 340-090-0660

RULE TITLE: Collection Targets

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: New Collection Targets rule for the RMA rules.

RULE TEXT:

(1) Collection Targets Generally. A collection target or collection rate is a percentage of total amount of a material generated and is calculated using weight.

(a) For each material on the producer responsibility organization recycling acceptance list pursuant to OAR 340-090-0630(3), for which collection targets are established, a producer responsibility organization must report, in the annual report required under ORS 459A.887, the weight of collected materials, an estimate of the weight of materials generated, and the ratio of the two, where the weight of collected materials is the numerator and the estimate of weight of materials generated is the denominator. For materials without collection targets only the weight of collected materials must be reported.

(b) A collection rate will be calculated by dividing the weight of materials collected (numerator) by the weight of the materials generated (denominator).

(c) A producer responsibility organization must document all data sources, references, assumptions and calculations used in calculating collection rates. When estimating the weight of materials generated, a producer responsibility organization must consider data provided by DEQ, its own collection records, and other weight-based data, in addition to sales data reported to it by its members.

(d) The calculation of the numerator in the collection rate may only include the weight of materials targeted for collection and recycling, and may not include the weight of contamination.

(e) Unless otherwise specified in this rule, the numerator in a producer responsibility organization's collection rate calculation may only include the weight of materials collected by the producer responsibility organization (including any party operating under contract to or at the direction of the producer responsibility organization).

(f) As part of its annual report, a producer responsibility organization must demonstrate that it has met the collection target for each material, and if not, the reasons for not meeting the collection target and the specific actions the producer responsibility organization proposes to implement to achieve the collection target.

(2) Materials-Specific Collection Targets. Materials shall have the following collection targets:

(a) Glass. The collection target for glass will be 45 percent and will be calculated as follows:

(A) The numerator is all glass packaging collected at producer responsibility organization depots or other collections as provided under ORS 459A.896(1) and all glass collected by local governments or their designated service providers (for example on-route collection).

(B) The denominator is all glass packaging (bottles and jars) generated in Oregon, less bottle bill collections.

(b) Other materials. A producer responsibility organization must propose collection targets for other materials each time it submits a program plan for approval. Other materials that a producer responsibility organization must propose collection targets for include those identified in OAR 340-090-0630(3)(a), (b), (d), (e), and (g) – (j). When proposing collection targets for those materials, a producer responsibility organization must describe existing collection quantities and compare proposed targets against existing and recent historic collection quantities. The producer responsibility organization must provide a projection on the number of participants and the quantity of material to be collected on a per-participant basis as well as per collection point. In program plans after the first plan, a producer responsibility organization shall discuss how changes in population served and number of collection points, if any, were taken into account when proposing new collection targets. When proposing collection targets for plastic materials, a producer responsibility organization must describe how the proposed collection target will contribute towards the achievement of plastics recycling goals as contained in ORS 459A.926. In program plans after the first plan, the producer responsibility organization must propose an increase in the collection target for these select other materials or provide a justification and explanation for why it is not proposing an increase. A producer responsibility organization may

propose one combined collection target and report one combined collection rate for materials identified in OAR 340-090-0630(3)(h) and (i).

STATUTORY/OTHER AUTHORITY: ORS 459A.975, 468.020

STATUTES/OTHER IMPLEMENTED: ORS 459A.860 - 459A.975

ADOPT: 340-090-0670

RULE TITLE: Responsible End Markets

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: New Responsible End Markets rule for the RMA rules.

RULE TEXT:

(1) Definition of end market. For purposes of ORS 459A.869(7) and ORS 459A.896(2)(a), end markets are defined by material as follows:

(a) For glass the end market is the entity that first uses the glass in lieu of a virgin material downstream of the beneficiation plant, if any, where bottles are crushed, for example a bottle manufacturer, fiberglass manufacturer or pozzolan (used to make cement and concrete) producer.

(b) For metal the end market is the entity that smelts the recycled material and produces ingots, sheet, coil, or other materials that are subsequently refabricated into packaging or product.

(c) For paper the end market is the entity that re-pulps the recycled material either into a pulp product that is sold to paper manufacturers or used to produce paper or paperboard products. If paper is recycled in a manner that does not involve repulping (for example, used to produce a wallboard product), the end market is the entity that uses the waste paper to produce a product that is sold without further transformation or manufacturing.

(d) For plastic, except for plastic that is recycled to produce packaging for food or beverage applications or for production of children's products, the end market is the entity that last processes flake, pellet, or other resin material containing recycled plastic prior to sale or transfer to another person that creates a new product either by placing it into a mold or through extrusion or thermoforming. This definition applies to both mechanical and non-mechanical recycling pathways.

(e) For plastic that is recycled to produce packaging for food and beverage applications or for production of children's products, the end market is the entity that places it into a mold for the manufacturer of such packaging or product. This definition applies to both mechanical and non-mechanical recycling pathways.

(f) For any recycling pathway without an end market provided by (a) through (e), the department may designate an end market on a case by case basis.

(2) Standard for responsible end markets.

(a) For an end market to be a responsible end market, all entities that receive waste collected for recycling in Oregon downstream of the commingled recycling processing facility or producer responsibility organization collection point (or post-collection in a supply chain without either facility) must meet the responsible standard, including:

(A) The end market.

(B) All entities in the supply chain leading to the end market.

(C) Other locations where material disposition occurs (including landfills and incineration facilities).

(D) All entities along pathways leading to locations where material disposition occurs (including reload facilities).

(E) Entities that produce and use co-products of non-mechanical recycling (including fuels and waxes).

(b) The entities named in section (2)(a)(A)-(E) of this rule must meet the following standards:

(A) Compliant. Meaning the entity follows its own local, state, and national laws (including relevant environmental, labor, and public health laws) and treaty obligations, and is registered and permitted as required by local, state, and national authorities.

(B) Transparent. Meaning the entity is willing to be named and audited, provides chain of custody documentation tracking materials (originating in Oregon) to disposition, maintains record keeping relevant to chain of custody and material disposition in accordance with ORS 459A.962(7), and promptly documents within the chain of custody any penalties, violations or regulatory orders received.

(C) Environmentally-sound. Meaning the entity is willing to be audited and monitored for outdoor air, water and land emissions and disposal; stores and manages waste and recyclables in a way that avoids release into the environment; and manages inputs sustainably. This includes demonstrating adequate emergency response and environmental health,

safety, and management plans; and
(D) Achieving adequate recycling yields. Meaning the recycling supply chain recycles or causes to be recycled at least 60 percent of each material listed in the recycling acceptance lists (if applicable, consisting of the uniform statewide collection list developed pursuant to OAR 340-090-0630(4) and ORS 459A.914(4)(b), the producer responsibility organization recycling acceptance list as described in OAR 340-090-0630(3), and the list of specifically identified materials as promulgated and maintained by DEQ pursuant to ORS 459A.917, even if multiple materials are mixed together, with the remaining material managed in a responsible manner and in alignment with Oregon's hierarchy of materials management pursuant to ORS 459.015.
(c) Recycling yield, as stated in section 2(b)(D) of this rule, will be determined as follows:
(A) For all materials except for composite cans made of paper and steel, the recycling yield is the amount of the material that was successfully processed and recycled by the end market divided by the amount of the material that entered the first entity of the recycling supply chain downstream of the commingled recycling processing facility or producer responsibility organization collection point (or post-collection in a supply chain without either facility).
(B) For composite cans made of paper and steel, the recycling yield is the amount of the metal fraction or paper fraction of the material that was successfully processed by the end market, divided by the amount of that fraction that entered the recycling supply chain initially. If the yield of either the metal fraction or of the paper fraction exceeds 60 percent, the composite material is achieving adequate yields.
(C) Calculation of recycling yield shall exclude moisture and any contaminants that are included in the bale of received material, as well as incidental materials that are adhered to the received material but are not targeted for recovery, such as tape and staples on corrugated boxes, or inks and labels on most types of packages. In the event that DEQ sets limits for acceptable contamination and moisture in outbound bales through the commingled recycling processing facility permit program per ORS 459A.955(3), reductions to the yield calculation denominator to account for contamination and/or moisture cannot exceed either limit.
(D) For the purpose of determining whether at least 60 percent of each material is recycled, yield for individual materials that are recycled separately from other materials must be evaluated on the basis of those individual materials. For materials that are mixed together (such as a bale of mixed paper or mixed plastic), yield must be evaluated as follows:
(i) Yield for items listed in OAR 340-090-0630(2)(d) must be evaluated separately from other materials.
(ii) Yield for composite cans made of paper and steel must be evaluated separately from other materials if this material is added to the Uniform Statewide Collection List and recycled at a paper mill.
(iii) Yield for items listed in OAR 340-090-0630(2)(j) must be evaluated separately for materials identified in each subparagraph of paragraphs (A) through(D).
(iv) Yield must be evaluated separately for any materials proposed by a producer responsibility organization for addition to the uniform statewide collection list pursuant to ORS 459A.914(4)(b) in a producer responsibility program plan or plan amendment and approved by DEQ under ORS 459A.878, if required by DEQ.
(v) Yield for other materials mixed together may be evaluated in total.
(E) Yield, including separate yields for materials mixed together and indicated in subparagraphs (i) through (iv) of paragraph (D) may be estimated and self-attested to by entities in the recycling supply chain, with methodological justification provided.
(d) A producer responsibility program plan must describe 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. This plan must use controlled blending as defined in ISO 22095: 2013, CHAIN OF CUSTODY – GENERAL TERMINOLOGY AND MODELS as the primary method of disposition and yield accounting when materials mix.
(3) Implementation of the responsibility standard by a producer responsibility organization.
(a) A producer responsibility organization must ensure that materials collected for recycling go to responsible end markets as detailed in ORS 459A.896(2) and this rule by completing the following two steps successively:

(A) First, a producer responsibility organization must, using a screening assessment form provided by DEQ, receive and corroborate written verification from each end market and other downstream entity that it meets the responsible standard provided by section 2 of this rule.
(B) Next a producer responsibility organization must conduct a more detailed assessment of whether each end market and other downstream entity meets the responsible standard provided by section 2 of this rule, either through a verification by the producer responsibility organization as provided by subsection (e) of this rule or through third-party certification from an Environmental Quality Commission-approved program.
(b) For materials described under ORS 459A.869(7)(a) and any other materials collected by a producer responsibility organization (including collected through contract with a producer responsibility organization), a producer responsibility organization must complete the step provided by paragraph (a)(A) by the start date of the program (as defined in OAR 340-090-0720), and the step provided by paragraph (a)(B) by July 1, 2027. For such materials added after the start date of the program a producer responsibility organization must complete the step provided by paragraph (a)(A) prior to delivery of the materials to the end market, and the step provided by paragraph (a)(B) within 12 months of first delivery to the end market.
(c) For materials described under ORS 459A.869(7)(b) and any other materials not collected by the producer responsibility organization, a producer responsibility organization must complete the step provided by paragraph (a)(A) within six months of the program start date (as defined in OAR 340-090-0720), and the step provided by paragraph (a)(B) by July 1, 2027. For such materials added after the start date of the program a producer responsibility organization must complete the step provided by paragraph (a)(A) within six months of delivery of the materials to the end market, and the step provided by paragraph (a)(B) within 12 months of first delivery to the end market.
(d) If a producer responsibility organization completes the step provided by paragraph (a)(B) prior to and within the timeline of the step provided by paragraph (a)(A), the producer responsibility organization is not required to perform the step provided by paragraph (a)(A).
(e) DEQ may approve temporary variance to the timelines required by sections (3)(b) and (3)(c) in a producer responsibility program plan.
(f) The producer responsibility verification required by paragraph (a)(B) of this section must contain the following:
(A) A description of how a producer responsibility organization determined that the indicated entity or entities (if final disposition occurred at multiple sites) was the end market;
(B) A list of local, state and national laws and international treaties applicable to the entity as required by section 2(a)(A) of this rule;
(C) Documentation that the end market and all other downstream entities meet all requirements of section 2 of this rule;
(D) Documentation of any noncompliance with the requirements section 2 of this rule.
(E) Documentation of the qualification of the auditor required by section 4 of this rule; and
(F) Certification and signature from the auditor required by section 4 of this rule that the end market meets the requirements of section 2 of this rule.
(g) The detailed verifications required by paragraph (a)(B) of this rule and certification audits required by section 4 of this rule must occur on an annual basis, with the first renewal verification or certification audits occurring within a year of initial certification.
(h) DEQ may approve temporary variance to the required components of the detailed verifications required by paragraph (a)(B) of this rule.
(4) Auditing. To demonstrate compliance with the requirement that materials collected for recycling go to responsible end markets as required by ORS 459A.896(2) and this rule, a producer responsibility organization must conduct auditing and provide audit results in annual reporting to DEQ. These audits must include results of random bale tracking to verify chain of custody and must demonstrate and certify that end markets meet the requirements of section 2 and 3 of this rule. For the purposes of enforcement, DEQ may conduct its own random bale tracking.
(5) Definition of practicable. For purposes of ORS 459A.869(7) and ORS 459A.896(2), practicable actions that may be

undertaken by a producer responsibility organization must be determined in accordance with this rule.
(a) Practicable actions may include, but are not limited to, the following:
(A) Providing financial support to help an existing end market that does not meet the standard for responsible under section 2 of this rule or an existing market that is not in alignment with the hierarchy of materials management options under ORS 459A.015(2), to upgrade or change operations to become responsible or aligned with the hierarchy of materials management.
(B) Providing financial support to divert materials to a different end market that is responsible under section 2 of this rule or in alignment with the hierarchy of materials management.
(C) Directing materials to an alternative end market if materials are directly under producer responsibility organization control.
(D) Offering to buy or take ownership of materials to directly control their flow if materials are not already directly under the control of the producer responsibility organization.
(E) Developing a new market for a material.
(b) If the results of an audit under section 4 of this rule show that an end market does not meet the responsible end market standards in section 2 of this rule, the producer responsibility organization must carry out practicable actions to meet the responsible end market standards in section 2 of this rule.
(c) A producer responsibility organization may not claim that an action is not practicable simply because it results in higher costs for the producer responsibility organization. A claim that an action is not practicable must demonstrate costs that are not justified given the resulting societal benefits. A producer responsibility organization must choose one of the following two methods for showing that costs are not justified given resulting societal benefits:
(A) Evaluate the per-ton transactional costs of all possible solutions against the benchmark for average societal benefit of recycling. The benchmark for average societal benefit of recycling is $2,017 per ton expressed in 2021 dollars, and will be adjusted for inflation no more frequently than once per year. Any adjustment shall be limited to an adjustment using the CPI - U as published by the Bureau of Labor Statistics, using calendar year 2021 as the base year which corresponds to the benchmark value. A per-ton cost lower than the societal benefit benchmark is cost effective and potentially practicable. A per-ton cost higher than the per-ton societal benefit value is not practicable.
(B) Perform an analysis of financial costs and societal benefits customized to the particular materials and practices at hand. A customized approach could be warranted under several circumstances, such as if the material in question has a societal benefit well below the system-wide average.
(d) The department will review and evaluate a producer responsibility organization claim that an action is not practicable due to costs. If the department agrees with the claim, the department will then review the material in question and its inclusion in a recycling acceptance list. If the department's review determines that an action is practicable, then the producer responsibility organization must immediately undertake that action.
(e) DEQ will consult with the Oregon Recycling System Advisory Council prior to deciding if an action is practicable.
(6) Reporting. A producer responsibility organization must append all screening assessments, verification reports, and certification reports conducted in a given quarter to quarterly disposition reports submitted to DEQ pursuant to ORS 459A.887(6).
(7) Application of Oregon's Material Management Hierarchy. In cases of conflict between the elements of Oregon's material management hierarchy under ORS 459.015(2)(c)(C)(i) (preference for recycling pathways that displace more impactful materials) and ORS 459.015(2)(c)(C)(ii) (preference for recycling pathways that best preserve value and molecular structure), DEQ may identify the environmentally preferable option among pathways under consideration.

STATUTORY/OTHER AUTHORITY: ORS 459A.975, 468.020

STATUTES/OTHER IMPLEMENTED: ORS 459A.860 - 459A.975

ADOPT: 340-090-0680

RULE TITLE: Producer Responsibility Organization Coordination

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: New Producer Responsibility Organization Coordination rule for the RMA rules.

RULE TEXT:

(1) Interim coordination.

(a) For the initial program period, if DEQ receives program plans from multiple prospective producer responsibility organizations, DEQ may appoint an interim coordinator to coordinate among the prospective producer responsibility organizations. The interim coordinator will develop an interim coordination plan that meets the criteria of section 2 of this rule. The interim coordinator will serve in its role until December 31, 2026, or until a coordination plan proposed by the producer responsibility organizations has been approved by DEQ, whichever comes sooner.

(b) From March 31, 2024, onward and prior to the approval by DEQ of a coordination plan developed by the producer responsibility organizations, DEQ may assign interim coordination tasks, including but not limited to those listed in sub-section (c) of this rule, to a producer responsibility organization or to a willing applicant producer responsibility organization. When assigning tasks to a producer responsibility organization DEQ will consider the following criteria during the program plan review:

(A) The qualifications of the producer responsibility organization including experience specific to the accomplishment of each interim coordination task;

(B) The producer responsibility organization's access to financial resources and progress toward securing 10% minimum market share;

(C) The initial producer membership of the producer responsibility organization; and

(D) The quality of the program plan submitted by the producer responsibility organization, including the likelihood that plans for interim coordination activities will achieve milestones.

(c) DEQ may assign interim coordination tasks to approved producer responsibility organizations, or to willing applicant producer responsibility organizations. Approved producer responsibility organizations must begin the interim coordination tasks upon DEQ assigning the task. The tasks required by this subsection include the following:

(A) Setting up single accounting point of contact and invoice processing system for required producer responsibility organization compensation payments, including:

(i) Payment of contamination management fees (ORS 459A.920) and processor commodity risk fees (ORS 459A.923) to commingled recycling processing facilities;

(ii) Compensation to (and associated negotiation with) local governments for service expansion on the basis of the needs assessment (ORS 459A.890(5) and (8)).

(iii) Compensation to local governments for expenses besides service expansion (ORS 459A.890 not including subsection (5)); and

(iv) Compensation to existing depots for service expansion to accommodate products on the producer responsibility organization depot list (ORS 459A.896(1)(a)).

(B) Setting up a system to reconcile expenses amongst producer responsibility organizations, in proportion to modified market share as required by OAR 340-090-0700(2).

(C) Establishing and maintaining a depot collection system (per ORS 459A.896(1)) that meets collection targets, convenience standards and performance standards established by the Environmental Quality Commission.

(D) Developing and issuing educational materials that promote the uniform statewide collection list and other requirements pursuant to ORS 459A.893.

(d) The interim coordinator will conduct the following tasks in consultation with DEQ and the producer responsibility organizations:

(A) Calculate the interim, preliminary, and final modified market share of each producer responsibility organization as required by OAR 340-090-0700(2)-(4).

(B) Define the standard product categorization to be used in producer responsibility organization membership fee structures.
(e) The interim coordinator will develop an interim coordination plan meeting the requirements of section 2 of this rule. The interim coordinator will review the draft plan with all prospective producer responsibility organizations and with DEQ, and then produce an updated version for review and approval by DEQ. Once approved by DEQ, producer responsibility organizations must follow the interim plan until it is replaced with a coordination plan submitted jointly by producer responsibility organizations and approved by DEQ.
(f) DEQ's costs in appointing and overseeing an interim coordinator are costs of administering the provisions ORS 459A.860 to 459A.975.
(2) Standards and requirements for coordination plans.
(a) A producer responsibility organization is responsible for the implementation of an approved coordination plan.
(b) A coordination plan must include:
(A) Identification of the producer responsibility organization coordinating body;
(B) A process for designating a new coordinating body and notifying DEQ in advance;
(C) A process for resolving disputes between producer responsibility organizations and between producer responsibility organizations and local governments and their service providers;
(D) A process by which a producer responsibility organization or multiple producer responsibility organizations will assume responsibilities to implement a coordination plan should the coordinating body be unable to implement the coordination plan;
(E) A process to address coordination in the event a producer responsibility organization ceases implementation of a producer responsibility program; and
(F) A plan for how the producer responsibility organizations will coordinate to ensure that their obligations under provisions ORS 459A.860 to 459A.975 are met.
(c) In reviewing a coordination plan submitted for approval, DEQ will consider whether the coordination plan will ensure:
(A) Achievement of the statewide plastics recycling goal established under ORS 459A.926, including development of combined plastic recycling rate projections across all producer responsibility organizations;
(B) Education that promotes the uniform statewide collection list as provided under ORS 459A.893;
(C) A Single-point-of-contact accounting that provides timely funding, reimbursement, and payments required under ORS 459A.860 to 459A.975, including funding, reimbursement and payments related to ORS 459A.890, ORS 459A.896, ORS 459A.920, and 459A.923;
(D) Processes to allocate costs among producer responsibility organizations that are proportional to modified market share as required by OAR 340-090-0700(2);
(E) A consistent statewide system to ensure all Oregon residents can easily identify, understand, and access services provided through ORS 459A.860 to 975, including through consistent messaging and branding, and through a single website listing the services provided by all producer responsibility organizations under ORS 459A.896;
(F) Assurance that all covered products collected for recycling are delivered to responsible end markets and managed according to Oregon's materials management hierarchy, as required by ORS 459A.896(2);
(G) A single point of contact for the coordination body and for each PRO, respectively, for communicating with the Recycling Council and DEQ in coordinated fashion, when appropriate, on topics including Recycling Council recommendations and material lists;
(H) Establishment of a recycling depot system that meets collection targets, convenience standards, and performance standards established in OAR 340-090-0640, OAR 340-090-0650, and OAR 340-090-0660;
(I) A process for aggregating data submitted by producer responsibility organizations to calculate and publish modified market shares, identify and publish a list of large producers, and report market share data to DEQ; and
(J) A list of standard product categories that the producer responsibility organizations will use to establish their membership fees pursuant to ORS 459A.884.

(3) Rules establishing processes for submittal, review, approval or rejection, amendment, and revocation of coordination plans.
(a) Producer responsibility organizations must jointly submit a coordination plan to DEQ by February 1, 2026. Once approved, this plan will replace the interim coordination plan described in section 1 of this rule.
(b) DEQ will approve a coordination plan if it determines that the plan adequately meets all requirements of section 2 of this rule.
(c) The coordination plan review period will consist of the following phases:
(A) DEQ shall approve, approve with conditions, or reject the submittal within 90 days of receiving it. If DEQ rejects the submittal, DEQ will provide comments that discuss the reasons for the rejection.
(B) If DEQ rejects the submittal, the producer responsibility organizations must jointly submit a revised plan no later than 60 days from the date of rejection. The revised submittal must address DEQ's comments on the initial submittal.
(C) DEQ shall approve, approve with conditions, or reject the revised submittal within 90 days of receiving it. If DEQ rejects the revised submittal, DEQ may do the following:
(i) Request that the producer responsibility organizations make further revisions to the plan;
(ii) Direct the producer responsibility organization to make specific revisions to the plan; or
(iii) Issue an order to direct implementation of an alternative coordination plan pursuant to section 4 of this rule.
(D) The producer responsibility organizations must jointly submit a second revised plan, pursuant to paragraph (c)(C)(i) or (ii) of this section, no later than 30 days from the date of second rejection.
(E) If the second revision is not timely or does not meet the coordination plan requirements of section 2 of this rule to DEQ's satisfaction, DEQ may direct specific revisions or issue an order to direct implementation of an alternative coordination plan pursuant to section 4 of this rule. Failure to submit an approvable plan under paragraph D of this this subsection is a violation of these rules for purposes of enforcement. If DEQ directs revisions, the producer responsibility organizations must implement the revisions or request a hearing as provided in ORS chapter 183.
(d) Producer responsibility organizations may only change an approved coordination plan through plan amendments. Producer responsibility organizations must submit a coordination plan amendment to DEQ for approval at least 45 days before the change is to take effect. DEQ will approve or reject the amendment request within 45 days of receiving the request. DEQ may, for good cause, allow the producer responsibility organizations to submit an amendment request less than 45 days before the change is to take effect.
(e) DEQ's rejection of a coordination plan or plan amendment does not relieve the producer responsibility organizations or the coordination body from continuing to implement an approved coordination plan.
(f) In accordance with the applicable provisions of ORS chapter 183 relating to contested case proceedings, DEQ may issue an order to suspend, amend, or revoke a coordination plan in whole or in part if it determines that implementation of the coordination plan would:
(A) Present a risk to the environment or public health, or
(B) Prevent a producer responsibility organization from implementing its producer responsibility program plan in compliance with ORS 459A.860 to 459A.975.
(4) DEQ issuance of an order requiring a coordination plan.
(a) If no coordination plan is submitted within the timelines specified in section 3 of this rule, or if DEQ rejects a revised coordination plan pursuant to section 3 of this rule, DEQ may require the producer responsibility organizations to implement a coordination plan by order.
(b) The order will provide a start date and include any requirements DEQ determines are necessary to implement ORS 459A.860 to 459A.975 and related rules. The order may direct a producer responsibility organization to undertake the role of coordinating body and coordinate the implementation of the order and require that all other producer responsibility organizations collaborate with the coordinating body on implementation of the plan.
(c) Failure to adequately implement or comply with an order issued under this section is a violation of these rules.
(d) Within 20 days of the issuance of an order under this section a producer responsibility organization may request a hearing as provided in ORS chapter 183. If a producer responsibility organization requests such a hearing under ORS

chapter 183 the producer responsibility organizations shall continue to implement the order pending the outcome of legal proceedings.

(5) Coordination rules for the entry of new producer responsibility organizations.

(a) If a new producer responsibility organization enters the program in 2026 or later, the approved producer responsibility organizations coordination plan must be updated by plan amendment. If no producer responsibility organization coordination plan has been approved by DEQ, one must be submitted and finalized within one year, subject to the review process outlined in rule OAR 340-090-0680(3). The timelines and procedures provided in section 1 for interim coordination will apply to a new producer responsibility organization before 2026.

(b) If an updated producer responsibility coordination plan is not approved within the one year DEQ may require the implementation of a coordination plan by order pursuant to section 4 of this rule.

(c) During the plan development and review phase under subsection (a), DEQ may revoke the existing coordination plan and reinstate interim coordination pursuant to section 1.

STATUTORY/OTHER AUTHORITY: ORS 459A.975, 468.020

STATUTES/OTHER IMPLEMENTED: ORS 459A.860 - 459A.975

ADOPT: 340-090-0690

RULE TITLE: Producer Responsibility Organization Fees

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: New Producer Responsibility Organization Fees rules for the RMA rules.

RULE TEXT:

(1) Program Plan Review Fee. Each applicant producer responsibility organization that submits a plan under ORS 459A.875 will pay a fee of $150,000 for DEQ's review of the plan. An applicant producer responsibility organization will pay the fee when it submits the plan to DEQ. A plan will not be considered submitted to DEQ until the fee is paid.

(2) Annual Administration Fee. DEQ will assess an annual administration fee each calendar year in the amount of $4,000,000 for the first four years of the program (2025-2028) and $3,000,000 for all subsequent years of the program.

(a) DEQ will invoice and a producer responsibility organization must pay the annual administration fee as follows:

(A) In the first program year (covering 2025) DEQ will send an applicant producer responsibility organization a provisional invoice on or before September 1, 2024. DEQ will send a producer responsibility organization a final invoice upon completion of the producer responsibility program plan approval process under ORS 459A.878. A producer responsibility organization will pay the first program year's fee within 30-days of DEQ sending it a final invoice.

(B) In each year after the first program year DEQ will invoice a producer responsibility organization on or before September 1 of the preceding program year for payment within 30-days of invoicing.

(b) DEQ may at its discretion reduce the fee in a given year if it determines that the full amount is not required to pay the costs of administering, implementing and enforcing the provisions of ORS 459A.860 to 459A.975 in that year.

(c) If DEQ has approved only one producer responsibility organization plan under ORS 459A.878 for a given year that producer responsibility organization will pay the entirety of the annual administration fee.

(d) If DEQ has approved more than one producer responsibility organization plan under ORS 459A.878 for a given year the annual administration fee will be divided among the producer responsibility organizations as follows:

(A) In the first program year the producer responsibility organizations will pay to DEQ equal shares of the annual administration fee. On or before September 1, 2025, DEQ will notify the producer responsibility organizations of the interim modified market share calculations pursuant to OAR 340-090-0700(3). The producer responsibility organizations will reconcile payment with each other such that each producer responsibility organization pays a total amount of the annual administration fee that is proportional to its modified market share.

(B) In each year after the first program year the fee will be divided between the producer responsibility organizations in proportion to their modified market share as determined by OAR 340-090-0700(2).

(e) Reporting. Each fiscal year DEQ will report its current and projected program expenditures and revenue.

STATUTORY/OTHER AUTHORITY: ORS 459A.975, 468.020

STATUTES/OTHER IMPLEMENTED: ORS 459A.860 - 459A.975

ADOPT: 340-090-0700

RULE TITLE: Market Share

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: New Market Share rule for the RMA rules.

RULE TEXT:

Market share as used in ORS 459A.860 to 968 and related rules is a producer's percentage of all covered products sold in or into this state, as calculated in accordance with this rule.

(1) Methods for Calculating Market Share. Market share will be calculated as follows:

(a) Market share will be denominated by the percentage of weight (mass) of covered product measured in kilograms.

(b) A producer's market share will be calculated by dividing the weight of all covered products reported as sold or distributed by the producer in or into Oregon in a particular program year by the total weight of all covered products reported as sold or distributed by all producers in or into Oregon in that year. The sum of market shares across all producers must equal 1.0000.

(c) A producer responsibility organization's market share will be calculated by dividing the summed weight of all covered products reported as sold or distributed by all of the producer responsibility organization's member producers in or into Oregon in a particular program year by the total weight of all covered products reported as sold or distributed by all producers in or into Oregon in that year. The sum of market shares across all producer responsibility organizations must equal 1.0000.

(d) A producer must on an annual basis submit market data establishing the weight of covered products sold or distributed in or into Oregon to the producer responsibility organization to which it belongs. Producers must submit a description of their methodology for calculating covered product weight to the producer responsibility organization along with the data. Methodology used must be in accordance with applicable best practices. If estimated market data is submitted by a producer and better market data becomes available that demonstrates the estimates were not accurate, the producer must report corrections to the estimated data to the producer responsibility organization before the next annual reporting deadline.

(c) When submitting market data to DEQ in an annual report, a producer responsibility organization will submit the methodological justifications along with the corresponding data.

(2) Purpose of and Method for Calculating Modified Market Share. If DEQ approves more than one producer responsibility organization plan pursuant to ORS 459A.878, financial obligations of implementation of provisions ORS 459A.860 to 459A.975, including the costs of implementing assigned coordination tasks prior to the program start date per OAR 340-090-0680(1)(c), will be allocated among the producer responsibility organizations by modified market share, as provided by this section.

(a) Modified market share will be denominated in percentage of financial burden measured in US dollars.

(b) A producer responsibility organization's modified market share will be calculated as follows:

(A) The material-specific unit factor, described in subsection c of this section, is multiplied by the total weight of covered products of each material reported as sold or distributed in or into Oregon by each member producer;

(B) The results of paragraph A for each material and each member producer of the producer responsibility organizations are summed;

(C) the weight of all covered product of each material reported as sold or distributed in or into Oregon in a given year is multiplied by the material-specific unit factors and the result for each material are summed;

(D) The result of paragraph B is divided by the result of paragraph C.

(E) The result of paragraph D is a producer responsibility organization's modified market share. The sum of modified market shares across all producer responsibility organizations must equal 1.0000.

(c) The method and process for calculating material-specific unit factors for individual materials shall be included in any coordination plan approved by DEQ pursuant to OAR 340-090-0680. During the period of interim coordination pursuant to OAR 340-090-0680(1), DEQ will contract with an independent organization to develop and update as

necessary an index of material-specific unit factors.

(3) Interim Reporting of Market Share. By August 1, 2025, a producer responsibility organization must report information that will be used to calculate "interim market share" and “interim modified market share” for the 2025 program year to DEQ. Interim market share is estimated market share for July 1 - December 31, 2025, calculated from estimates of the weight of covered product sold into Oregon by each member producer, organized by type of material. Interim modified market share is estimated modified market share for July 1 - December 31, 2025, calculated from these same producer estimates. Pursuant to ORS 459A.869(12), a producer responsibility organization’s minimum interim market share is 10%.

(4) Preliminary and Final Reporting of Market Share. By July 1 of each program year, a producer responsibility organization must report information that will be used to calculate “preliminary market share” and “preliminary modified market share” for the previous program year to DEQ. By June 30th of the following program year, a producer responsibility organization must report corrections to estimated data for the second previous program year to DEQ that will be used to calculate “final market share” and “final modified market share.”

STATUTORY/OTHER AUTHORITY: ORS 459A.975, 468.020

STATUTES/OTHER IMPLEMENTED: ORS 459A.860 - 459A.975

ADOPT: 340-090-0710

RULE TITLE: Proprietary Information

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: New Proprietary Information rule for the RMA rules.

RULE TEXT:

(1) For purposes of ORS 459A.860 to 975 “proprietary information” is information protected as a trade secret under the Uniform Trade Secrets Act.

(2) A party providing information to DEQ that it considers proprietary or otherwise confidential must, at the time it provides the information, specify that the information is proprietary or otherwise not subject to disclosure. The claim must be assigned to specific information and not a generalized statement.

(3) DEQ may require at any time that a claimant substantiate its claim that information is proprietary or confidential.

(4) Notwithstanding section 1 of this rule, the following information is not proprietary for purposes of ORS 459A.860 to 975:

(a) Information that is already publicly available and where any potential economic value is derived solely from compilation;

(b) The market shares of producer responsibility organizations;

(c) The list of the top 25 producers in Oregon by market share in alphabetical order, and

(d) The list of end markets of Oregon’s waste including the business or person name; city, state, region, and country; identity of the material received by each business or person; and amount received aggregated by destination country, excluding the names of the commingled recycling processing facilities where the waste originated. This data in its disaggregated form is proprietary information per ORS 459A.955(2)(h)(B), but is not proprietary information at the level of aggregation indicated here.

(5) If necessary for the implementation or enforcement of ORS 459A.860 to 975, DEQ may bring proprietary information to the attention of a producer responsibility organization, provided that the producer responsibility organization agrees to treat the information in accordance with the limitations in statute and rule.

(6) If DEQ has made a decision to bring proprietary information to the attention of a producer responsibility organization, DEQ will notify the disclosing party at least seven days prior to sharing the information.

STATUTORY/OTHER AUTHORITY: ORS 459A.975, 468.020

STATUTES/OTHER IMPLEMENTED: ORS 459A.860 - 459A.975

ADOPT: 340-090-0720

RULE TITLE: Program Calendar

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: New Program Calendar rule for the RMA rules.

RULE TEXT:

(1) The first three-year producer responsibility program plan period will include the 2025, 2026, and 2027 calendar years. It will run from July 1, 2025 (or earlier in 2025, if stipulated in approved program plan) to December 31, 2027.

(2) Subsequent producer responsibility program plan periods will run for five-year increments beginning on January 1 and ending on December 31 (the first set of updated plans will be valid from a start date of January 1, 2028 through to an end date of December 31, 2032).

(3) Prospective new producer responsibility organizations may submit program plans on the same calendar as renewal applicants (180 days before the end of a program period) and may also submit plans at other times (for example, midstream in a program period) upon petitioning DEQ and receiving advance approval.

(4) Any program plan submitted under OAR 340-090-0720(3) must include evidence that the prospective producer responsibility organization is capable of meeting the 10% minimum market share threshold per ORS 459A.869(12).

STATUTORY/OTHER AUTHORITY: ORS 459A.975, 468.020

STATUTES/OTHER IMPLEMENTED: ORS 459A.860 - 459A.975

ADOPT: 340-090-0730

RULE TITLE: Producer responsibility organizations with less than 10 percent market share

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: New Producer responsibility organizations with less than 10 percent market share rule for the RMA rules.

RULE TEXT:
(1) If DEQ determines that a producer responsibility organization's market share has fallen below the 10 percent threshold provided by ORS 459A.869(12), DEQ shall:
(a) Issue notification to the producer responsibility organization of the intent to revoke plan;
(b) Begin a 60-day review process, during which the producer responsibility organization may describe any actions it will undertake to exceed the 10 percent threshold;
(c) After the conclusion of the 60-day review period, issue either an order revoking the producer responsibility organization's program plan or a notification that the plan will not be revoked; and
(2) If DEQ revokes a plan under this rule the producer responsibility organization must notify its producer members. Producer responsibility organization members will have 60 days to transition to another producer responsibility organization.
(3) If DEQ notifies a producer responsibility organization that a plan will not be revoked, pursuant to subsection 1(c) of this rule, DEQ may include any of the actions described by the producer responsibility organization pursuant to subsection 1(b) of this rule as conditions on its decision not to revoke the plan.
(4) An order revoking a plan under this rule may be appealed as provided in ORS chapter 183.
(5) DEQ will provide all other producer responsibility organizations with a copy of the following notifications and decisions described in this section:
(a). A notification of intent to revoke a plan pursuant to subsection (1)(a);
(b) An order revoking a plan or notification that the plan will not be revoked pursuant to subsection (1)(c);
(c) Conditions applied to a producer responsibility plan on its decision to not revoke the plan provided pursuant to section (3); and
(d) A decision by the producer responsibility organization to appeal the DEQ order to revoke the plan pursuant to section (4).

STATUTORY/OTHER AUTHORITY: ORS 459A.975, 468.020

STATUTES/OTHER IMPLEMENTED: ORS 459A.860 - 459A.975

ADOPT: 340-090-0740

RULE TITLE: Reporting for plastic goal

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: New Reporting for plastic goal rule for the RMA rules.

RULE TEXT:

To enable DEQ to assess progress toward the statewide plastic recycling goal, a producer responsibility organization's annual reporting of the weight of plastic packaging and food serviceware sold in Oregon by member producers, required under ORS 459A.887(2)(c), must use a product categorization that aligns with the uniform statewide collection list and PRO recycling acceptance list categorizations of products.

STATUTORY/OTHER AUTHORITY: ORS 459A.975, 468.020

STATUTES/OTHER IMPLEMENTED: ORS 459A.860 - 459A.975

ADOPT: 340-090-0750

RULE TITLE: Program plan amendments and producer responsibility organization fees

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: New Program plan amendments and producer responsibility organization fees rule for the RMA rules.

RULE TEXT:

(1) A producer responsibility organization's routine, annual updating of base fee rate amounts to align with the most recent supply information received from member producers or updated material cost allocations from related studies does not constitute a method change and will not require a program plan amendment.

(2) Alternate approaches to determining membership fees, including changes to the overall criteria for and magnitude of graduated fee adjustments, require a program plan amendment. Changes to the fee adjustments granted to individual producers will not require a program plan amendment.

(3) A producer responsibility organization may request provisional approval of a plan amendment if it needs to implement a fee structure method change rapidly due to financial urgency. If such a request is made, DEQ will respond within 30 days. If provisional approval is granted, the producer responsibility organization may implement the fee schedule method change on a provisional basis while the process for final approval, pursuant to ORS 459A.878, is ongoing. If the plan amendment is ultimately not approved, the producer responsibility organization must correct its member accounts to reverse the provisional change.

STATUTORY/OTHER AUTHORITY: ORS 459A.975, 468.020

STATUTES/OTHER IMPLEMENTED: ORS 459A.860 - 459A.975

ADOPT: 340-090-0760

RULE TITLE: Producer responsibility organization membership fees

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: New Producer responsibility organization membership fees rule for the RMA rules.

RULE TEXT:

A material is accepted by recycling collection programs in this state, for the purpose of ORS 459A.884(3), only if it is designated by rule on the Local Government Recycling Acceptance List, pursuant to OAR 340-090-0630(2), or the Producer Responsibility Organization Recycling Acceptance List, pursuant to OAR 340-090-0630(3), or otherwise has been added to the Uniform Statewide Collection List by the mechanism provided for in ORS 459A.914(4)(b).

STATUTORY/OTHER AUTHORITY: ORS 459A.975, 468.020

STATUTES/OTHER IMPLEMENTED: ORS 459A.860 - 459A.975

ADOPT: 340-090-0770

RULE TITLE: Local Government Transportation Costs Reimbursement

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: New Local Government Transportation Costs Reimbursement rule for the RMA rulemaking.

RULE TEXT:

(1) A producer responsibility organization must pay the costs of transporting covered products from a recycling depot or recycling reload facility to a commingled recycling processing facility or a responsible end market as provided by ORS 459A.890(2) and this rule.

(2) Transportation costs must be based on the actual costs of managing and transporting covered products that must be shipped more than 50 miles.

(3) The 50-mile distance in section 2 of this rule and ORS 459A.890(2)(b)(E) is the shortest driving distance to the nearest commingled recycling processing facility or a responsible end market with capacity to accept the material and applies to covered products as stated in subsections (a) through (d) of this section.

(a) If the material is fully commingled, the distance measured is to the nearest commingled recycling processing facility with capacity to accept the material.

(b) If the material is collected separately (for example glass) or is not fully commingled and requires further sorting or processing before being received by a responsible end market, then the distance is measured to the nearest processing or sorting facility that will prepare the material and send it to a responsible end market.

(c) If the material is collected separately and in a condition that would allow it to be received directly by a responsible end market without additional processing, then the distance is measured to the nearest responsible end market.

(d) If a separated material or a group of materials is initially taken to a commingled recycling processing facility or other processing facility and the material requires additional processing or sorting before it can be accepted by a responsible end market, then the distance is measured to the nearest initial commingled recycling processing facility or other processing facility. The producer responsibility organization is not responsible under this rule for paying the transportation costs associated with the transport of material from the initial commingled recycling processing facility or other processing facility to additional processing facilities or a responsible end market.

(4) Costs to receive, consolidate, load and transport covered products include, but are not limited to, purchasing and maintaining equipment, signage, and other similar costs of operating the recycling depot or recycling reload facility not already covered under other sections of ORS 459A.860 through ORS 459A.975. Costs incurred before the receiving of covered products at a recycling depot or reload facility are not eligible for compensation unless noted elsewhere.

(5) Transportation costs include administrative costs related to the activities described in ORS 459A.890(2). Administrative costs include, but are not limited to, costs related to staffing and the hiring and managing of staff.

(6) Transportation costs do not include the proportion of a shipment of recyclable material that is not covered products, as provided by ORS 459A.890(2)(b)(C). Costs that are not eligible for payment under ORS 459A.890(2)(b)(C) will be determined as stated in subsections (a) through (c) of this section.

(a) Until completion of the study described in subsection (b) of this section, a producer responsibility organization will use data from the 2023 Oregon Solid Waste Characterization and Composition Study to determine the proportion of a shipment of recyclable material that is not covered products.

(b) Starting in 2027, and at least once every five years thereafter, a producer responsibility organization must fund a study to determine the proportion of collected recyclable material that is covered product and is eligible for transportation costs reimbursement. The study will include the following:

(A) The study will provide statewide averages for the proportion of covered material in commingled recyclable material, recyclable material that is collected separately and recyclable material that is not fully commingled. For the latter two categories the study may provide different averages for different materials as appropriate.

(B) Study protocols and timing must be included in the producer responsibility organization's program plan and will be approved as a part of plan approval under ORS 459A.878. If multiple producer responsibility organization program

plans are approved by DEQ, the producer responsibility organizations' coordinating body will undertake one study and submit a joint study protocol to DEQ for approval in the manner provided by DEQ.
(C) Upon completion of a study, a producer responsibility organization, or coordinating body, will use the statewide averages from the study to determine the proportion of a shipment of recyclable material that is not covered products.
(c) If a local government, a local government's service provider or a producer responsibility organization believes that the local commingled recycling stream has a substantially different proportion of recyclable material that is not covered products compared to the statewide average, then a local government, a local government's service provider or a producer responsibility organization may, at their own expense, conduct a study to better determine the proportion of recyclable material that is not covered products in the local collected commingled recycling stream. The party conducting the study will provide the other parties and DEQ at least 30 days to comment on study methods. The dispute resolution process in the producer responsibility organization's approved program plan shall apply to any dispute between the producer responsibility organization, or a coordinating body, and the local government or local government's service provider regarding a study performed under this subsection. Upon completion of the study and subject to dispute resolution and DEQ concurrence, the averages determined in the study will be used by a producer responsibility organization, or a coordinating body, and the local government or local government's service provider that performed the study.
(7) Transportation costs include the cost to receive, consolidate, and load covered products. If a shipment of material contains both covered products and material that is not covered products, the cost a producer responsibility organization, or a coordinating body, must pay to receive, consolidate and load are the costs associated with the covered product. If such costs associated with the covered products cannot be separated from such costs associated with material that is not covered product and a producer responsibility organization and a local government or local government's service provider cannot otherwise agree on the payment of such costs, the producer responsibility organization, or coordinating body, will pay the total cost to receive, consolidate and load the material reduced by the estimated proportion of the material that is not covered product.
(8) For purposes of this rule, material is not fully commingled if a load of recyclable material intended to be transported to a commingled recycling processing facility contains some but not all the material listed on the Uniform Statewide Collection List.

STATUTORY/OTHER AUTHORITY: ORS 459A.975, 468.020

STATUTES/OTHER IMPLEMENTED: ORS 459A.860 - 459A.975

ADOPT: 340-090-0780

RULE TITLE: Method for Determining Payment of Transportation Costs

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: New Method for Determining Payment of Transportation Costs rule for the RMA rulemaking.

RULE TEXT:

(1) A producer responsibility organization must include in a program plan submitted under ORS 459A.875 methods for calculating transportation costs.

(a) Methods may include rate schedules or zonal maps specific to locations and materials, periodic adjustments for fuel prices or other variable factors.

(b) Methods must account for proximity to an appropriate commingled recycling processing facility or responsible end market that has capacity to process or recycle the material and other factors that could affect transportation costs.

(c) Methods must include a voluntary option that allows local governments or service providers and a producer responsibility organization to agree to transfer some or all transportation responsibilities to the producer responsibility organization or coordinating body.

(d) A producer responsibility organization must share a draft approach and seek feedback from local governments and local government service providers to develop the proposed methods.

(e) DEQ will consider feedback from local governments and local government service providers on the method proposed by the producer responsibility organization in determining whether to approve the method as part of the producer responsibility plan under ORS 459A.878. DEQ may require a producer responsibility organization to amend an approved program plan at any time if the department determines that the approved methods are not adequate.

(f) A producer responsibility organization must implement the method for paying transportation costs approved as part of its program plan.

(2) A producer responsibility organization, or a coordinating body, a local government or designated local government's service provider and DEQ may agree in writing to use an alternative method of calculating transportation costs that is not approved as part of the program plan, provided that the alternative method complies with ORS 459A.890(2)(c) and any other applicable requirements.

STATUTORY/OTHER AUTHORITY: ORS 459A.975, 468.020

STATUTES/OTHER IMPLEMENTED: ORS 459A.860 - 459A.975

ADOPT: 340-090-0790

RULE TITLE: Expansion of Service

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: New Expansion of Service rule for the RMA rules.

RULE TEXT:

(1) The program plan must describe how the producer responsibility organization will implement the requirements of ORS 459A.890(5), this section and OAR 340-090-0800. The producer responsibility plan must include:

(a) A schedule for implementing collection program expansions and improvements throughout the state;

(b) For the initial program plan period only (July 2025 through December 2027), a plan for how the producer responsibility organization will implement expansion of collection services according to the following order of priority:

(A) Highest priority shall be given to local governments that are not, or will not be, able to provide the opportunity to recycle as stated in ORS 459A.005 and ORS 459A.007, in the absence of producer responsibility organization funding.

(B) Existing recycling depots to provide for the collection of any materials that were formerly collected on-route by the local government or a local government's service provider, as needed to ensure continuation of recycling opportunities.

(C) Existing recycling depots to provide for the collection of any materials that are not currently or were not formerly collected on-route by the local government or the local government's service provider.

(D) Local governments with populations less than 4,000, according to the Portland State University Population Research Center's most recent Population Estimate Report, or such other estimate approved by the department, regardless of whether they are looking to add new service or expand existing services.

(E) Local governments of any size that are looking to add new on-route or recycling depot service.

(F) All other local governments that are looking to expand existing on-route collection, recycling depots or both, in order of ascending population.

(c) For program plan periods after the initial period described in subsection (b) of this section, DEQ may provide guidance to a producer responsibility organization, or coordinating body, for the inclusion of any priority for implementing the expansion of collection service in a renewed program plan.

(d) A method for determining advanced funding or reimbursement amounts under ORS 459A.890(5), consistent with OAR 340-090-0810.

(e) An estimate of the total amount of funds that will be made available to each local government included in DEQ's needs assessment under ORS 459A.890(5) per year; and

(f) Sample forms with details to be included in reimbursement or advanced funding requests from local governments or a local government's service provider authorized by a local government to provide services under ORS 459A.890.

(2) A producer responsibility organization must submit a new plan or a plan amendment to a producer responsibility program plan according to ORS 459A.881 at the following times:

(a) When responding to a new needs assessment provided by DEQ according to ORS 459A.890(8) and OAR 340-090-0800; and

(b) When an updated estimate of the total amount of funds that will be made available to local governments under ORS 459A.890(5) over the course of the program plan period deviates from the estimated amount of funds in the program plan budget by more than 20%.

STATUTORY/OTHER AUTHORITY: ORS 459A.975, 468.020

STATUTES/OTHER IMPLEMENTED: ORS 459A.860 - 459A.975

ADOPT: 340-090-0800

RULE TITLE: Expansion of Service Funding and Needs Assessment

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: New Expansion of Service Funding and Needs Assessment rule for the RMA rules.

RULE TEXT:

(1) Costs associated with the expansion and provision of recycling collection service for covered products, as provided by ORS 459A.890(5) are eligible costs for funding or reimbursement by a producer responsibility organization.

(a) A producer responsibility organization must provide funding for activities requested by local governments through the periodic needs assessment including, but not limited to:

(A) Adding new services,

(B) Expanding services, or

(C) Adding or expanding recycling depots as needed to provide convenient recycling opportunities.

(b) A producer responsibility organization, or coordinating body, will not provide funding for expansion that is inconsistent with the finalized terms of expansion between the producer responsibility organization, or coordinating body, and the local government or a local government's service provider.

(c) Eligible costs under ORS 459A.890(5) include but are not limited to:

(A) Start-up costs for on-route programs including but not limited to:

(i) Trucks,

(ii) Collection containers, roll carts, or both,

(iii) On-board contamination monitoring equipment and software,

(iv) New program promotional literature,

(v) The process of hiring and training staff,

(vi) Staff safety equipment, and

(vii) Recycling reload facilities for reloading recyclables, including but not limited to any equipment necessary for moving, compacting, baling and loading recyclables for shipment for the recycling reload facility, provided that the facility is necessary, and no other facility is available or existing facilities are inadequate.

(B) Start-up and operational costs for recycling depots, including but not limited to:

(i) If necessary to establish such a location, acquiring, renting or leasing of land,

(ii) Site preparation or other start-up costs,

(iii) Collection containers,

(iv) Signage,

(v) On-site monitoring equipment,

(vi) Equipment to move, compact, bale and load recyclables for shipment,

(vii) Hiring and training staff,

(viii) Staff safety equipment, and

(ix) Operational costs,

(2) DEQ must conduct statewide needs assessments periodically in accordance with ORS 459A.890(8)(a).

(a) Local governments that request services through the periodic needs assessment will commit to providing additional services with an agreement with the producer responsibility organization, or coordinating body, after working with the producer responsibility organization, or coordinating body, to determine the details to be implemented according to 459A.890 (5)(b).

(b) Expansion of service commitments will be implemented by the local government and the local government's service providers, with the producer responsibility organization, or coordinating body, providing financial and educational assistance to the committed effort during the first approved producer responsibility program plan.

(c) DEQ may conduct up to two local government needs assessments for the producer responsibility organization, or coordinating body, to respond to for each subsequent program plan according to ORS 459A.875.

(d) For expansion that is to occur at the beginning of a program plan subsequent to the initial program plan, DEQ will submit information to the producer responsibility organization, or coordinating body, from a local government needs assessment 18 months before the current program plan is due to expire.
(e) For expansion that is to occur mid-program plan, DEQ may submit information from a local government needs assessment at least four years before the current program plan is due to expire.
(f) When DEQ sends a local government needs assessment report to a producer responsibility organization, or coordinating body, within four years of the current program plan expiration, the producer responsibility organization, or coordinating body, must submit a program plan amendment to DEQ to address the service expansion interest from the needs assessment within 180 days.
(A) Upon completion of a request for expansion of service, any unused advanced funding provided by a producer responsibility organization, or coordinating body, to a local government or local government's service provider, for the purposes of funding that expansion request, must be returned to the producer responsibility organization, or coordinating body, within 60 days of completion of the expansion request. An invoice detailing how the local government or local government's service provider used the advanced funding must also be provided.
(B) Upon request of DEQ, a local government or a local government's service provider must demonstrate to DEQ's satisfaction that the funding a local government or a local government's service provider received was used for its intended purpose.
(3) A local government must identify to DEQ service providers that are authorized to receive advanced funding or reimbursement directly, as described in this rule, from the producer responsibility organization, or coordinating body, via a process to be determined by the department. If for any reason a service provider to the local government changes, the local government is responsible for informing DEQ of that change.
(4) A local government and service providers authorized by a local government to provide services, that has received funds for expansion or improvements to recycling collection under ORS 459A.890 and this rule must report to the producer responsibility organization, or coordinating body, when the expansion or improvements have been fully implemented. A local government or a local government's service provider authorized by a local government to provide services must also report the status of implementation to the producer responsibility organization, or coordinating body, on an annual basis for any funded collection program that has not been fully implemented, so that the producer responsibility organization, or coordinating body, may include that information in the annual report required under ORS 459A.887.

STATUTORY/OTHER AUTHORITY: ORS 459A.975, 468.020

STATUTES/OTHER IMPLEMENTED: ORS 459A.860 - 459A.975

ADOPT: 340-090-0810

RULE TITLE: Local Government Compensation and Invoicing

NOTICE FILED DATE: 05/25/2023

RULE SUMMARY: New Local Government Compensation and Invoicing rule for the RMA rules.

RULE TEXT:

(1) A local government, a local government's service provider, or other person authorized by a local government to receive payment, may request advanced funding or reimbursement of costs pursuant to ORS 459A.890.

(a) A producer responsibility organization must include in its program plan the following:

(A) A method for determining advanced funding or reimbursement amounts under ORS 459A.890(5).

(B) A description of the process a local government, a local government service provider or other persons authorized by a local government to receive payment must follow to invoice the producer responsibility organization for reimbursement of costs or advanced funding. The information provided may include sample forms for reimbursement or advanced funding requests.

(b) A local government, a local government's service provider, or other person authorized by a local government to receive payment may not submit a reimbursement invoice to a producer responsibility organization, or coordinating body, more than once per month.

(c) A local government's service provider, or other person authorized by a local government to receive payment, may submit an invoice jointly on behalf of multiple local governments. The local government-authorized entity submitting the joint invoice must list all jurisdictions represented and provide documentation from each jurisdiction that approves of the reimbursement request or otherwise authorizes them to seek funding on the local government's behalf.

(d) If a local government, a local government's service provider, or other person authorized by a local government to receive payment, receives advanced funding pursuant to ORS 459A.890, the local government must return to the producer responsibility organization that provided the funds any funds not used for the purposes for which they were provided within 60 days of completion of the project.

(e) As noted under ORS 459A.890(10), A producer responsibility organization shall remit payment for eligible expenses to a local government or the local government's service provider or other person authorized by the local government to receive payment within 60 days of receiving a request for payment. A producer responsibility organization shall provide written notification to the local government of any payments remitted to a person authorized by the local government to receive payment.

(2) For the purpose of determining the population of a local government pursuant to ORS 459A.890(4)(b), a local government may rely on the Portland State University Population Research Center's most recent, certified Population Estimate Report, or such other estimate approved by the department. A local government, a local government's service provider, or other person authorized by a local government to receive payment, must use the most recent population estimate at the time of its reimbursement request.

STATUTORY/OTHER AUTHORITY: ORS 459A.975, 468.020

STATUTES/OTHER IMPLEMENTED: ORS 459A.860 - 459A.975