



State of Oregon Department of Environmental Quality

Rule Concepts: Oregon's Material Impact Reduction and Reuse Program

Plastic Pollution and Recycling Modernization Act (SB 582, 2021)
Rulemaking Advisory Committee Meeting 2, Rulemaking 2

Aug. 24, 2023

Background

This rule concept summarizes background information and proposes two rule concepts relating to the waste prevention and reuse fee (Fee) and the related program to be established as part of Oregon's Plastic Pollution and Recycling Modernization Act. The rule concepts propose the fee for the program and clarifies items eligible for support by the Fee.

The Act requires DEQ to establish a program to reduce environmental impacts of covered products through activities other than waste recovery, such as waste prevention and reuse. Under the Act, producers of packaging, printed paper, and food serviceware (covered products) will join one or more producer responsibility organizations that will implement a program to provide the responsible management of covered products. Under [ORS 459A.941](#), as part of their obligations, PROs will pay to DEQ a waste prevention and reuse fee.

DEQ will use the Fee to establish Oregon's Material Impact Reduction and Reuse Program (MIRROR) and fund activities that reduce environmental impacts of covered products. Statute caps the fee at 10 percent of the three-year average of the PRO's annual expenditures.

According to statute [ORS 459A.941](#), implementation considerations include:

- The fee charged to any PRO may not exceed 10 percent of the three-year average of the organization's annual expenditures, excluding payments of this fee, as described in the PROs' annual reports which must be submitted to DEQ by July 1 of each year.
- Funds must be used to reduce the environmental impacts of covered products through means other than waste recovery. For example, recycling, composting, and energy recovery would not be eligible.
- During implementation, DEQ may enter into agreements and may provide grants or loans to reduce environmental impacts of covered products. Eligible entities for a grant or loan include public bodies, tribal governments, nonprofit organizations, and private organizations if DEQ determines that funds would be used for public benefit.
- DEQ's grant and loan criteria must include environmental benefits, human health benefits, social and economic benefits, cost-effectiveness, and needs of economically distressed or underserved communities.

Concepts for discussion at September 19, 2023 RAC meeting

DEQ seeks feedback from Rulemaking Advisory Committee members on the following:

I. Rule concept for discussion: Fee

DEQ proposes an annual fee equal to the lesser of a) \$11.5 million or b) 10% of the average of any Producer Responsibility Organization’s annual expenditures for the prior three calendar years, excluding payments of this fee, and as described in the PROs’ annual reports submitted in accordance with ORS 459A.887. If multiple PROs are approved to operate in the state, the fee will be divided between them in proportion to their modified market share as determined by OAR 340-090-0700(2). DEQ will invoice a PRO on or before September 1.

The \$11.5 million value is expressed in 2025 dollars and shall be adjusted upwards each subsequent calendar year based on the Consumer Price Index for All Urban Consumers (CPI-U) as published by the U.S. Bureau of Labor Statistics.

Additionally, 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 of OR 459A.941 in that year while ensuring the fee reasonably covers expenditures of the program.

Consistent with statute, the fee is limited to 10% of the average reported expenditures over the prior three years, excluding payment of this fee. The following table illustrates a hypothetical example of how the fee could be assessed for the first 4 years, assuming other PRO reported expenditures of \$80 million in 2025 and \$100 million annually thereafter.

Year	Example annual expenditures factored into average	Fee Assessed (10% of avg. Annual expenditures from previous 3 years)
Year 1	2023 - \$0	\$2,666,667
	2024 - \$0	
	2025 - \$80,000,000	
Year 2	2024 - \$0	\$6,000,000
	2025 - \$80,000,000	
	2026 - \$100,000,000	
Year 3	2025 - \$80,000,000	\$9,333,333
	2026 - \$100,000,000	
	2027 - \$100,000,000	
Year 4	2026 - \$100,000,000	\$10,000,000
	2027 - \$100,000,000	
	2028 - 100,000,000	

Note: Numbers do not reflect calculated estimates of PRO annual expenditures, they are being used to demonstrate how the fee will steadily increase from the time of initial implementation.

DEQ convened listening sessions with external and internal parties including nonprofits, other agencies, private businesses and members of the public to identify potential projects that may be eligible for these funds. Initial information highlighted viable projects with potential costs in the hundreds of millions of dollars per year. Given the rapidly evolving nature of some of these opportunities, it is premature to make exact forecasts of expenditures. The Fee is calculated to ensure:

- a) It provides revenue that will allow for a reduction in environmental impacts consistent with objectives of the Recycling Modernization Act, and
- b) DEQ may adjust the fee downwards in a given year if DEQ determines a lesser amount is adequate to support established programs.

II. Rule concept for discussion: Items eligible for support by the Fee

DEQ proposes to clarify in rule that the following items that may be supported by the Fee. Funds may be used for a variety of activities to advance these programs including but not limited to:

- DEQ’s administrative expenses including costs in administrating waste prevention and reuse efforts funded under this program; and
- Eligible expenses approved by DEQ to support funding for MIRROR programs such as:
 - Staffing,
 - Capital investments including equipment, buildings, and land (to include remodeling existing infrastructure, construction of new infrastructure or procuring existing infrastructure to support activities related to environmental impact reduction),
 - Reusable items that allow for a reduction in the environmental impacts of covered products,
 - Repair and lifespan extension of covered products,
 - Research, evaluation, surveys, and assessment,
 - Pollution control technology that exceeds regulatory requirements,
 - Feasibility assessments and pilot projects,
 - Technical assistance,
 - Education, outreach, training, and skills development, and
 - Community engagement.

DEQ’s criteria for grants and loans must include but are not limited to environmental benefits, human health benefits, social and economic benefits, cost-effectiveness, and needs of economically distressed or underserved communities as outlined in ORS 4569A.941(3).

DEQ will develop an implementation plan that will identify areas of focus, determine time frames, detail how DEQ will execute the work, and ensure that equitable outcomes are achieved. These will be iterative documents which DEQ will adapt and update through a cyclical process of engagement, planning, implementation, evaluation, and changes in conditions and opportunities.

Funds may be used to reduce environmental impacts of covered products sold into Oregon, even if some of the emissions and resulting impacts occur outside of Oregon. In some cases, emissions associated with the production of covered products sold into Oregon physically originate outside of Oregon, yet still impact Oregon’s environment. DEQ will consider whether a project primarily reduces impacts inside Oregon as part of DEQ’s evaluation.

Discussion Questions

1. What kind of projects could you envision being funded?
2. Is there anything on, or excluded from, the list of eligible items for support by the Fee that would prevent that project from being funded?
3. What types of projects would remote, small, and rural communities be interested in? What are the barriers for them in developing a project and accessing these funds?
4. Do you have any other feedback that could improve these rule concepts?
5. Is there anything that we should consider when drafting rule language or items that could be clarified?

Translation or other formats

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