



Oregon Department of Environmental Quality

# Draft Fiscal and Racial Equity Impact Statements

Plastic Pollution and Recycling Modernization Act (SB 582, 2021)  
Rulemaking Advisory Committee Meeting 8, Rulemaking 2

April 10, 2024

## Overview

DEQ is undertaking the second of two rulemakings to clarify and implement the Plastic Pollution and Recycling Modernization Act (SB 582, 2021), also referred to as the RMA. The Act requires producers of packaging, paper products and food serveware to support and expand recycling services in Oregon for their products.

The purpose of the proposed rules is for:

1. Clarifying Obligations for Recycling Processors, including:
  - Establishing a Commingled Recycling Processing Permit and Certification Program, including Performance Standards
  - Defining and Clarifying Requirements for Providing Living Wages and Supportive Benefits to Commingled Recycling Processing Facility Workers
  - Establishing the CRPF Permit Fees
  - Clarifying Requirements for Limited-Sort and Reload Facilities
  - Clarifying Responsible End Market Obligations for CRPFs
2. Clarifying Covered Products and Covered Product Exemptions
3. Clarifying Producer Responsibility Organization Obligations; including:
  - Establishing the Processor Commodity Risk Fee
  - Establishing the Contamination Management Fee
  - Establishing the Waste Prevention and Reuse Fee
  - Amending Rules regarding Recycling End Market Obligations
  - Clarifying Compensation to Local Governments for Evaluation of Contamination and Contamination Reduction Programming
  - Clarifying Annual Reporting Requirements for 2024
  - Amending Market Share Rules
4. Clarifying Producer Obligations; including:
  - Clarifying Producer Definitions

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- Clarifying Associated Producers and Designations for Large and Small Producers
  - Clarifying Producer Pre-registration
5. Establishing Standards for Life Cycle Evaluations
  6. Clarifying Local Government Obligations; including:
    - Clarifying the Requirements and Elements for Contamination Reduction Programming
    - Clarifying Requirements for Multifamily Recycling Enclosures
  7. Amending Enforcement rules in Division 12 to align with the proposed rules
  8. Other clarifications and amendments to ensure successful implementation of the Act.

The proposed rules are informed by discussions with, and input provided by, DEQ's RMA Rulemaking Advisory Committee. The advisory committee included members from the regulated community, non-profit and community-based organizations, producers, prospective producer responsibility organizations and other interested parties, including members of the public.

## **Fee Analysis**

These proposed rules would establish new fees. EQC authority to act on the proposed fees is ORS 459A.941, ORS 459A.955, 459A.205 and 459A.235.

### **Brief description of proposed fees**

The proposed rules establish new fees for commingled recycling processing facility owner/operators to pay to DEQ:

#### **Commingled Recycling Processing Facility Permitting Application and Annual Compliance Fees**

The establishment of a new permit program for commingled recycling processing facilities requires the establishment of permit application and annual compliance fees for that permit program.

These rules establish new fees for:

- Permit and Registration Application Fee: \$100-500 depending on anticipated tons received annually by the facility.
- Annual Compliance Fee: \$50-\$1,000 depending on the tons accept annually by the facility.

#### **Waste Prevention and Reuse Fee**

These rules establish a new fee to be funded by the PROs and administered by DEQ for:

- Waste Prevention and Reuse Fee: up to \$15 million annually to fund the materials impact reduction and reuse program. The fee will be the lower of either the \$15 million or 10 percent of the three-year average of all PROs annual expenditures.

## **Reasons**

The proposed fees would address the requirements found in statute requiring DEQ to create the new commingled recycling processing facility permit and waste prevention and reuse fee.

## **Fee proposal alternatives considered**

These fees are required by statute, DEQ did not consider any alternatives.

## **Fee payer**

Owners and operators of commingled recycling processing facilities will pay for the CRPF permit application and compliance fees and PROs will pay for the Waste Prevention and Reuse Fee.

## **Affected party involvement in fee-setting process**

DEQ convened the Rulemaking Advisory Committee, including representatives from commingled recycling processing facilities, producer responsibility organization(s) and non-profit organizations involved in waste reduction and reuse. The committee met on Sept. 19, 2023, to consider the proposed fee for the Waste Prevention and Reuse Fee, and on April 3, 2024, to consider the proposed CRPF permit application and compliance fees.

## **Summary of impacts**

Impacts of the CRPF permit application and compliance fees should be minimal because most of the state's commingled recycling processing facilities are already operating under DEQ's existing Transfer Station/Material Recovery Facility disposal site permit. The fee amounts are identical to the fees proposed for this program, and facilities already operating under the Transfer Station/Material Recovery Facility permit will not be assessed a second time when they are required to obtain the first the CRPF permit.

The producer responsibility organization(s) will be directly impacted and producers of covered products will be indirectly impacted by the creation of the Waste Prevention and Reuse Fee. The PROs will use a portion of the membership fees paid by the producers to fund this program.

## **Fee payer agreement with fee proposal**

The fee proposal for the Waste Prevention and Reuse Fee was introduced to the Rulemaking Advisory Committee during the Sept. 18, 2024 meeting, and included representatives from producer responsibility organization(s) and producers. The committee was supportive of DEQ's approach to establishing the new fund and provided feedback requesting the agency to consider removing the cap or increasing the fund amount.

The fee proposal was introduced to the rulemaking advisory committee at the April 3, 2024 meeting, which included CRPF representatives. The RAC agreed with the proposal.

### How long will the current fee sustain the program?

DEQ regional staff administer the existing Transfer Station/Material Recovery Facility disposal site permit program, and the same staff will administer the new CRPF permit program, including overseeing assessments of the permit’s capture rates and outbound contamination rate performance standards. The one-time permit application and annual compliance fees proposed for the new CRPF permit program will not generate enough funding to cover DEQ’s annual costs of overseeing the assessments. The difference in costs for sustaining the assessment process will be paid using permit tipping fees.

The Waste Prevention and Reuse Fee will be adjusted annually to sustain the program it is establishing. The fee will be calculated based on the lower of a base amount of \$15 million, adjusted upward based on the Consumer Price Index, or, based on 10 percent of the three-year average of all producer responsibility organization(s)’ annual expenditures. Existing DEQ staff will administer the program.

<b>Fee Summary</b>		
	<b>Existing</b>	<b>Proposed- New fees</b>
CRPF Permit Application Fee	N/A	\$100- \$500 depending on anticipated tons received annually
CRPF Annual Compliance Fee	N/A	\$50- \$1,000 depending on the tons accept annually by the facility
Waste Prevention and Reuse Fee	N/A	The lower of: <ul style="list-style-type: none"> <li>• \$15 million annually adjusted upwards based on the Consumer Price Index, or,</li> <li>• 10 percent of the three-year average of all Producer Responsibility Organization(s) annual expenditures summed</li> </ul>

### Fee schedule

The new CRPF permit program will assess the following fees for in-state CRPFs:

- A permit application fee of \$100 – \$500, to be assessed depending on the anticipated tons received annually by the facility.
- An annual permit compliance fee of \$50 – \$1,000, to be assessed depending on the tons accepted annually by the facility.

DEQ does not have the authority to charge fees to out-of-state facilities under the new CRPF certification program, thus there will be no application and annual compliance fees assessed to out of state facilities handling Oregon-originated material.

## **Statement of fiscal and economic impact**

### **Overview**

This proposed rulemaking will clarify and implement portions of the Act, passed in 2021 by the Oregon Legislature. The Act requires producers of covered products to support and expand recycling services for their products in Oregon and requires local governments and the facilities that process commingled (mixed) recyclables to meet several new requirements.

These proposed rules are specific to the following topics:

1. Recycling Processor Obligations
  - Commingled Recycling Processing Permit Program
  - Certification Program for Out-of-State Commingled Recycling Processing Facilities
  - Processor Commodity Risk Fee
  - Contamination Management Fee
  - Living Wages and Supportive Benefits
  - Permit Fees
  - Limited-Sort facilities, Commingled Materials and Reload Facilities
  - Responsible End Market Obligations for CRPFs
2. Covered Products
  - Clarifications to the Definition of Covered Products
  - Covered Product Exemptions
  - Exemptions for Materials Collected Outside of the Opportunity to Recycle
3. Producer Responsibility Organization Obligations
  - Waste Prevention and Reuse Fee
  - Amendments to Recycling End Market Obligation Rules
  - Local Government Compensation for Evaluation of Contamination
  - Local Government Compensation for Contamination Reduction Programming
  - PRO 2024 Annual Reporting
  - Amendments to Market Share Rules
4. Producer Obligations
  - Clarifications to Producer Definitions
  - Associated Producers and Designations for Large and Small Producers
  - Producer Pre-Registration
5. Standards for Life Cycle Evaluations
6. Local Government Obligations
  - Contamination Reduction Programming Elements
  - Multifamily Recycling Enclosures

## 7. Other

- Amendment to Enforcement Rules
- Recycling Acceptance Lists
- Housekeeping Rules

The proposed rules and rule revisions included in the rulemaking are based on discussions with, and input provided by, DEQ's Rulemaking Advisory Committee. The advisory committee included representatives from service providers and commingled recycling processing facilities, local governments, non-profit organizations, waste generators, PROs and producers of covered products.

## **Fiscal and Economic Impact Overview**

Briefly summarize what fiscal impact the proposed rules would or could create.

The proposed rules would address specific topics needed to establish a new statewide system that standardizes the types of materials that will be accepted for recycling, while providing a source of funding to reduce the impacts of covered products through means other than waste recovery. These rules propose the requirements for living wages and supportive benefits for CRPF workers, life cycle evaluation, including methodology and the procedures to be used by producers when evaluating the life cycle environmental impacts of covered products.

### **I. Recycling Processor Obligations**

#### **1) Fiscal Impacts of Commingled Recycling Processing Permit Program and Certification Program for Out-of-State Commingled Recycling Processing Facilities**

These proposed rules create new permitting and certification programs for commingled recycling processing facilities operating inside and outside of Oregon, including new fees for the permitted CRPFs operating in Oregon. There are anticipated fiscal impacts to permitted and certified CRPFs to meet the new capture rates and outbound contamination performance standards, however these costs are eligible expenses that will be funded by the Processor Commodity Risk Fee.

There will be fiscal impacts to DEQ, who is responsible for the associated costs with conducting the first initial evaluation assessment. If follow-up assessments are necessary to determine a facility's compliance with the capture rate and outbound contamination rate performance standards, the costs of those follow-up assessments are not an eligible expense for the Processor Commodity Risk Fee and will be paid for by the CRPF.

There will also be fiscal impacts to DEQ to pay for initial evaluation assessments undertaken at an out-of-state CRPF by a third-party certifier or a contractor to a third-party certifier, which will be paid for using funding from solid waste tipping fees. Any follow-up samplings, including compliance assessment for capture rates and outbound contamination rate performance standards are not eligible for the Processor Commodity Risk Fee and will be paid for by the facility.

## **2) Fiscal Impacts of Living Wages and Supportive Benefits for CRPF Workers**

The proposed rules clarify a CRPF's obligation to pay workers living wages and provide supportive benefits. There will be fiscal impacts related to meeting requirements of these rules, however the costs will be paid through the Processor Commodity Risk Fee. Living wages and supportive benefits were included under the "anticipated program costs" portion of the PRCF to establish the statewide, per-ton average eligible processing cost. The PRCF is funded through the producer membership fees paid to the PROs.

DEQ anticipates several quantifiable and non-quantifiable beneficial fiscal impacts related to providing living wages and supportive benefits to the workers at these facilities. Impacts include, but not limited to, improving health outcomes by providing health insurance, improved stability and reduced stress and improved spending power. CRPFs will not be directly, negatively impacted by the increase in wages and the establishment of supportive benefits because labor is one of the many eligible processing costs covered by the Processor Commodity Risk Fee PRCF funding processors will receive in the new system by producer responsibility organizations. However, there may be indirect impacts of "wage compression" related to increasing wages of lower-paid workers at the facilities. DEQ does not have information to estimate the potential indirect impact.

## **3) Fiscal Impacts of Commingled Recycling Processing Facility Permit Fees**

The proposed rules establish the permit application processing fee and the annual permit compliance fee for permitting of commingled recycling processing facilities operating in Oregon. There are anticipated fiscal impacts to permitted CRPFs but these costs are eligible expenses that will be funded by the Processor Commodity Risk Fee.

## **4) Fiscal Impacts of Limited-Sort Facilities, Commingled Materials and Reload Facilities**

The proposed rules create new permitting requirements for limited sort facilities processing and marketing any amount of Uniform Statewide Collection List-related material collected to meet Opportunity to Recycle requirements. This permit will include new requirements not currently established under the existing Transfer Station/Material Recovery Facility disposal site permit. If a limited sort facility moving material to an end market is already operating under an existing permit, they will need to have their existing permit updated to recognize the new permit requirements. Under the permit limited sort facilities will need to obtain (or have amended), the facility must meet all the requirements of the commingled recycling processing facility permit program, excluding those tied to the capture rates performance standard.

Limited sort facilities will receive no funding from PROs relevant to the Contamination Management fee and the Processor Commodity Risk Fee.

DEQ anticipates fiscal impacts to limited sort facilities for obtaining and complying with the new permit requirements.

## **5) Fiscal Impacts of Responsible End Market Obligations for CRPFs**

DEQ anticipates temporary, but not long-term fiscal impacts on commingled recycling processing facilities because of these proposed rules. Associated expenses will ultimately be paid for by the Processor Commodity Risk Fee, which is funded by the producer fees collected by the PROs. So, costs borne by the CRPFs associated with tracking downstream disposition of their materials, obtaining self-attestations of all downstream facilities that they meet the "responsible" standard, and addressing any non-conformances detected through verifications will ultimately be covered by the PROs.

The proposed rules are also anticipated to provide a positive fiscal impact by reducing duplication of effort between the two entities. The rules propose giving responsibility for the auditing and verification to the PROs, allowing the PROs and CRPFs to coordinate with securing one self-attestation, verification or a certification per end market, and disposition data reporting to the CRPFs.

## **II. Covered Products**

### **1) Fiscal Impacts of Clarifications to the Definitions of Covered Products**

The proposed rules clarify that three types of packaging that may reach the consumer empty—storage items, service packaging, and consumer wraps—are “covered products” under the law and subject to producer fees. They also provide additional clarity on how to distinguish two types of covered products from one another, packaging and food serviceware. For the implementation of the RMA, covered products will be categorized and will be assessed fees in proportion to the costs that the particular products place on the system.

These fiscal impacts on producers are already in statute and these rules do not impose additional fiscal impacts.

### **2) Fiscal Impacts of Covered Product Exemptions**

The proposed rules define five types of packaging that are exempt from the definition of “covered product,” meaning producers of these products will not have to pay fees for them. Producers of these products will have positive fiscal impacts, while producers of other products that remain covered will likely pay slightly higher fees than they would have otherwise, as they will need to cover the system costs associated with the exempt products. There may be minor fiscal impacts to the PROs, who may incur administrative and staffing-related expenses to implement the exemptions.

### **3) Fiscal Impacts of Exemptions for Materials Collected Outside of the Opportunity to Recycle**

The proposed rules provide clarity for producers and PROs to understand what materials could qualify for the statutory exemption at ORS 459A.869(13) for materials collected outside of the Opportunity to Recycle framework. This is a statutory exemption and as such the main fiscal impacts are applied through the statute rather than these clarifying rules. The clarifying rules do require PRO verification or third-party certification to the “responsible” standard of markets that



recycle these materials in order for the producer to qualify for the exemption, As such, the rules may impose some limited fiscal impacts on a producer seeking to claim this exemption—the producer may need to pay a fee to the PRO in order to conduct a verification of the market(s), particularly if no other materials that the PRO is responsible for are being processed at the market(s).

### **III. PRO Obligations**

#### **1) Fiscal Impacts of Processor Commodity Risk Fee**

The draft rules propose a per-ton fee paid to recycling processors to ensure producers share in the costs of fully processing commingled recyclables that are covered products. It is one of the largest costs PROs will incur in the program.

The PRCF includes two major components that determine the monthly per-ton fee PROs pay to commingled recycling processing facilities:

- The statewide, per-ton average eligible processing cost that will be fixed in rule covers eligible processing costs of owning and operating a CRPF, and anticipated additional program costs related to any new requirements of the law. These costs may include new include administrative and software costs, meeting the law's living wages and supportive benefits requirement, equipment or staffing upgrades needed to meet new performance standards associated with the permit program established under ORS 459A.955 and meeting the requirements associated with ORS 459A.959.
- The average commodity value represents the value of outbound recyclable materials processed by CRPFs. This figure will be updated on a monthly basis by DEQ.

The difference between the statewide, per-ton average eligible processing cost and the average commodity value is the per/ton value producer responsibility organizations will be required to pay CRPFs for the eligible tons processed.

DEQ anticipates this fee will create positive fiscal impacts to CRPF owners and operators by providing more stability with respect to fluctuating commodity markets. Funding from the PRCF can also be used toward facility upgrades, if the processor chooses to use funding in that matter. There should also be indirect fiscal impacts to ratepayers, to stabilize rates and reduce the financial impacts on ratepayers by requiring producers to contribute to the costs of this system.

There will be indirect fiscal impacts to the PROs, who will be required to calculate and fund this fee, and directly impacts the producers, who will be paying into the fee via their membership fees.

#### **2) Fiscal Impacts of Contamination Management Fee**

This fee will be paid by PROs to CRPFs to compensate the facilities for the costs of removing and disposing of covered products that are contaminants. There are no direct fiscal impacts to the facilities because the funding source is from the producer membership fees paid to the PROs. There will be indirect fiscal impacts to the PROs, who will be required to calculate and fund this fee and impacts the producers, who will be paying into the fee via their membership fees.

There will be positive fiscal impacts to the CRPFs for managing contamination in the recycling stream, this includes CRPFs receiving CMF funding for covered product contamination that can be properly processed and moved to a responsible end market.

### **3) Fiscal Impacts of Waste Prevention and Reuse Fee**

The new Waste Prevention and Reuse Fee does not create new fees but uses a portion of the membership fees collected by the PROs from the producers of covered products to fulfill statutory requirements to support reduction and reuse efforts. DEQ anticipates a positive fiscal impact for community organizations and others who receive grant funds through the new program DEQ establishes with revenue from these fees.

DEQ anticipates indirect negative impacts to producers of covered products, as a portion of their PRO membership fees will be used to pay into the fund.

### **4) Fiscal Impacts of Amendments to Recycling End Market Obligation Rules**

This is an amendment to rules approved by the Environmental Quality Commission in November 2023. These rules clarified requirements from statute that requires PROs to send materials to responsible end markets and report materials disposition on a quarterly basis to DEQ. The proposed amendment aligns the joint obligation rules among PROs and CRPFs. The proposed rules clarifying disposition reporting requirements may create fiscal impacts on the PROs to set up a system and protocols for tracking materials.

### **5) Fiscal Impacts of Local Government Compensation for Evaluation of Contamination**

These rules clarify local government costs eligible for compensation by the PRO under ORS 459A.890(3), including onboard contamination-monitoring equipment on collection vehicles as an eligible cost. DEQ anticipates these rules could have some positive fiscal impacts for local governments and their designated service providers and some negative fiscal impacts for producers of covered products.

### **6) Fiscal Impacts of Local Government Compensation for Contamination Reduction Programming**

These rules clarify that local governments may request and receive \$3 per capita per fiscal year for eligible contamination reduction programming costs and that local governments may request and receive advance funding. Smaller communities may request and receive up to two years in advance funding. The rules propose the maximum potential fiscal obligation of the PRO to local governments allowed under

ORS 459A.890(4), resulting in a potential positive fiscal impact for local governments, their designated service providers, and other authorized persons, and a potential negative fiscal impact for producers of covered products.

#### **7) Fiscal Impacts of PRO 2024 Annual Reporting**

The proposed rules clarify that PROs must include information on 2024 system costs when submitting their annual report to DEQ for 2025. DEQ anticipates minimal fiscal impacts to the PROs who will need to develop an additional, but simple accounting report for DEQ. The report will allow DEQ to fulfill its statutory obligation of assessing whether the PROs' fee schedules were adequate to cover system costs.

### **IV. Producer Obligations**

#### **1) Fiscal Impacts of Clarification to Producer Definitions**

The proposed rules provide clarity to the producer definition for items sold in packaging at physical retail, enabling more accurate identification of the obligated producer for items produced through contract manufacturing, and for packaging that may reach the consumer empty.

The requirement that producers of packaging pay fees to a PRO is imposed by statute, and as such these rules do not have fiscal impacts; they rather clarify the statute.

#### **2) Fiscal Impacts of Defining Associated Producers and Designations for Large and Small Producers**

The proposed rules require associated producers, such as a parent company and its subsidiaries, to lump together their supply and revenue data for the purposes of applying the "small producer" and "large producer" definitions. The proposed rule is intended to ensure that it will be in fact the largest 25 producers in the state that will bear the additional obligation to evaluate and disclose environmental impacts of 1% of their covered products on a biennial basis, and that producer cannot become exempt from the law by incorporating as multiple smaller corporations and dividing supply and revenue among them.

These proposed rules could impose a very minor fiscal burden on producers and PROs associated with the need to reflect in their data reporting the producers that are associated with one another per the definition in the rules. They will have positive outcomes, however, in terms of equitable application of the large producer obligation and of the small producer exemption.

#### **3) Fiscal Impacts of Producer Pre-Registration**

Under this rule, producers would need to pre-register with and provide supply data to a PRO by March 31, 2025, three months before the start date of the program.

The proposed rule may impose very minor fiscal impacts to producers associated with the need to expend staff and administrative time on compliance three months

prior to the statutory deadline for doing so. But this proposed rule will result in the PRO having a better understanding of the volume of covered product supply into the state, which will allow for more accurate and lower fee setting, which will be a positive fiscal impact for producers.

## **V. Fiscal Impacts of Standards for Life Cycle Evaluations**

Statute requires that large producers evaluate and disclose the environmental impacts of one percent of the covered products they sell into Oregon. The proposed rules establish the methodology, procedures, and requirements to be used by producers when conducting these evaluations. They also propose to clarify the approach to calculating ecomodulation of producer fees, which incentivizes producers to reduce the impacts of their products by offering lower fees to be paid to the PRO.

DEQ anticipates direct fiscal impacts to producers from these proposed rules. Impacts may be related to recordkeeping and documentation to demonstrate that the requirements in statute are being met. Related activities may include data gathering, analysis, results generation, report writing, and potentially development of a custom tool to conduct assessments according to these rules.

Costs associated with performing similar life cycle assessments fall in the range of \$40,000-\$90,000 USD per evaluation, when hiring a third-party consultant, and can be less when performed in-house by staff using commonly available software tools and databases. DEQ anticipates other costs related to third-party verification of the project report (the main output of these rules) and these costs can range between \$5,000-\$10,000 USD. DEQ expects fiscal impacts to be within the above ranges. It's also important to note that performing life cycle evaluations of batches of similar products (something the rules allow) would result in reduced costs per covered product. Finally, DEQ suspects that these costs will decrease over time, as the process will become streamlined and repeatable with practice.

Positive fiscal impacts are anticipated from the resulting information gathered through the life cycle evaluation process, as Oregon's largest 25 producers, and all other member producers will be able to use this information to inform the ecomodulated bonuses they may be eligible to receive if they demonstrably reduce the impacts of their products. Producers that qualify for the substantial impact reduction bonus may particularly realize positive fiscal impacts, as this is the larger of the two ecomodulation bonuses mandated under these rules. The PRO will need to balance for the bonuses that it offers by either giving fee penalties to other producers or by applying a surcharge across all fees, meaning minor negative fiscal impacts will result for those producers that do not qualify for bonuses.

## **VI. Fiscal Impacts of Local Government Obligations**

### **1) Fiscal Impacts of Contamination Reduction Programming Elements**

DEQ anticipates positive fiscal impacts of these rules because they are intended to limit the potential financial impacts and consequences of contamination on customers by creating standardized requirements for contamination reduction communications. This includes consistent and fair application of contamination enforcement and customer service and communication materials that are accessible to a wider audience, inclusive of languages other than English. Costs of compliance

by local governments and their service providers are eligible for PRO compensation under ORS 459A.890(4) and compliance is not required if PRO compensation is not provided.

## **2) Fiscal Impacts of Multifamily Recycling Enclosures**

These rules clarify how and when local governments will comply with ORS 459A.911. Local governments may incur some cost in developing an implementation plan; however, DEQ will provide a template to minimize the administrative burden. Overall, DEQ anticipates net positive fiscal impacts from clarifying the steps local governments must take to comply with the statute.

## **VII. Other**

### **1) Fiscal Impacts of Amendments to Enforcement Rules**

These amendments propose to align the existing rules in Division 12 with the rules proposed in this rulemaking. DEQ does not anticipate any fiscal impacts as a result of these changes.

### **2) Fiscal Impacts of Subscription Service for Materials on PRO Recycling Acceptance List**

These rules clarify that ORS 459A.070(1) "Limitation on amount charged person who source separates recyclable material" does not apply to materials on the PRO Recycling Acceptance List (OAR 340-090-0630(3)). These rules have a positive fiscal impact for companies charging a fee for subscription services to collect materials on the PRO Recycling Acceptance List.

## **Statement of Cost of Compliance**

### **State agencies**

The rules drafted for this rulemaking propose new requirements and programs for the Recycling Modernization Act. The proposed rules that may create compliance costs for state agencies, including DEQ:

- CRPF Permitting and Certification Program:

For the permitting program, DEQ will pay for the initial assessment to assess performance standards, using permitting and permit tipping fee funding to cover those costs. DEQ estimates that the costs associated with conducting these assessments every two years will be \$430,000.

For the certification program, DEQ will pay for the initial conventional evaluation method assessment to assess performance standards, using CRPF assessments. DEQ will use solid waste tipping fee funding to cover those costs.

- Contamination Management Fee:

DEQ will incur new administrative costs associated with the proposed reporting requirements to the CRPFs for the CMF. DEQ will use administrative fees from the PRO to cover these costs.

- **Processor Commodity Risk Fee:**

DEQ will incur new administrative costs associated with the proposed reporting requirements to the CRPFs for the PCR. DEQ will use administrative fees from the PRO to cover these costs.

## **Local governments**

The Act provides funding opportunities for all communities regardless of size, and this rulemaking clarifies some new statutory requirements for contamination evaluation and contamination reduction outreach and education. DEQ anticipates that Local Governments may incur compliance costs, including planning, recordkeeping, and reporting. Rule topics that will incur compliance costs on Local Governments are:

- Contamination reduction programming elements (eligible for PRO compensation)
- Multifamily recycling enclosures

## **Producer Responsibility Organizations**

As defined in ORS 459A.863, a Producer Responsibility Organization is a nonprofit organization established to administer a producer responsibility program. By administering many elements of this Act and to meet the requirements of the proposed rules, PROs will incur compliance costs through funding or reimbursing various fees and expenses described in the proposed rules. Using the fees PROs will collect from producers of covered products, PROs will fund the following requirements that are described in the Act and that are addressed in this rulemaking:

- Contamination Management Fee
- Producer Commodity Risk Fee
- Waste Prevention and Reuse Fee
- Obtaining self-attestation and verifications to meet responsible end market obligations that apply jointly to CRPFs and PROs
- Compensation for the periodic evaluation of the quality and contamination of collected materials
- Compensation for contamination reduction programming

## **Public**

The proposed rules establish no compliance obligations directly on the public.

## **Anticipated Business Impacts**

### **Large businesses - businesses with more than 50 employees**

Large Business/ Sector Type	Business Count
Privately owned reload facilities	Approximately 36 known facilities
Commingled recycling processing facilities	2 known facilities
Producers of covered products	Information unavailable at this time

Proposed rules which may have compliance costs associated with them and which may impact large businesses include:

- The CRPF permitting and certification rules: if a CRPF does not pass the initial performance standards assessment of capture and outbound contamination rates, the facility will be responsible for paying the costs associated with the required follow-up assessments.
- Responsible End Market Obligations: if a CRPF sends covered products to an end market or other downstream facility that does not meet the responsible end market criteria, the CRPF and/or the PRO could be responsible (if the facility does not independently address the non-conformance) for any associated costs with the required follow-up to come into compliance with the requirements.
- Definition of Covered Products:
  - For member producers of the Ag Container Recycling Council to qualify for a proposed exemption, ACRC will need to report annually to DEQ on the performance of its take back program. ACRC will incur a minor fiscal impact to fulfill this obligation, one that may be funded by its producer members, some of which are large businesses.
  - Producers of material that can qualify for the exemption at ORS 459A.869(13) for material recycled outside of Opportunity to Recycle may incur a cost of compliance associated with proving that the material is going to a responsible end market, which may involve commissioning a verification study by a producer responsibility organization.
- Producer Pre-Registration: there will be some limited fiscal impact on all producers, including those that are large businesses, associated with the need to provide records and data to the PRO three months prior to the start date. But these impacts may be offset by the reduction to first year fees that the PRO may be able to implement due to the reduced uncertainty in supply afforded through early producer reporting.
- Life Cycle Evaluation: these rules will impose compliance costs on producers for the evaluation and disclosure of the impacts of their products.

**Small businesses – businesses with 50 or fewer employees**

## ORS 183.336 - Cost of Compliance for Small Businesses

### **a. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.**

The types of small businesses that will incur compliance costs with the proposed rules include commingled recycling processing facilities, reload facilities, and producers of covered products. Currently DEQ does not have employer information to determine how many CRPFs or reload facilities meet the small business definition, and the data that will identify small and large producers will not be available until after July 1, 2025.

### **b. Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.**

The proposed rules will create some additional reporting, recording keeping and self-verification related activities for CRPFs, producers of covered products, and reload facilities.

### **c. Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.**

The proposed rules will require an increase in supplies, labor and increased administration for some small businesses but those expenses will largely be funded through the Processor Commodity Risk Fee or by the PROs.

### **d. Describe how DEQ involved small businesses in developing this proposed rule.**

This rulemaking convened several different advisory groups, including technical workgroups and an advisory panel. Representatives from small businesses and membership groups were included when these groups were convened to assist with the development of the rules, certification and permitting programs. DEQ also issued GovDelivery notices about the rulemaking to everyone who registered for updates, and this list serv included representatives from small businesses.

## **Documents relied on for fiscal and economic impact**

The requirement to list the documents relied on to determine fiscal impact is separate from and in addition to the similar list in the Rules affected, authorities, supporting documents section above.

<b>Document title</b>	<b>Document location</b>
Plastic Pollution and Recycling Modernization Act (Senate Bill 582, 2021)	<a href="#">Oregon Legislature website, SB 582</a>
Processor Commodity Risk Fee/Contamination Management Fee	<a href="#">DEQ Website</a>



## Housing cost

As ORS 183.534 requires, DEQ evaluated whether the proposed rules would have an effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel.

DEQ determined the proposed rules would have little to no effect on the development costs because the proposed rules and related fees would be paid by the PROs, whose producer membership fees are used to fund the new programs and future implementation requirements. One category of producer, for construction materials, may recover their PRO membership fees by passing those costs on to retailers, homebuilders or wholesalers, which in turn may be passed on to the retail customer. However, there is limited data to support the impacts on prices, and DEQ cannot quantify them at this time.

## Racial Equity

ORS 183.335(2)(a)(F) requires state agencies to provide a statement identifying how adoption of this rule will affect racial equity in this state. DEQ anticipates the following proposed rule will affect racial equity:

- Living Wage and Supportive Benefits  
These rules are anticipated to have positive racial equity in Oregon by improving the living and working conditions for a demographic of worker that is disproportionately represented by people who reflect the global majority.
- Contamination Reduction Programming Elements  
The intent of these rules is to ensure that the same methods and financial penalties are being applied to all customers, regardless of location or service provider. To reduce recycling contamination, the Act specified that outreach and educational tools must be developed to reach a wide variety of audiences by being responsive to the needs of diverse populations, including having materials offered in a variety of formats and languages. Clarifying these elements in rule are anticipated to have positive impacts on racial equity by ensuring that a wider audience can understand recycling instructions and participate successfully in Oregon's new recycling system.

## Environmental Justice Considerations

ORS 182.545 requires natural resource agencies to consider the effects of their actions on environmental justice issues.

### Environmental Justice analysis

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, culture, education or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies. DEQ is

committed to incorporating environmental justice best practices into its programs and decision-making, to ensure all people in Oregon have equitable environmental and public health protections.

DEQ used EPA's EJSCREEN tool to evaluate potential human health and environmental disparities for people who live near the existing recycling processing facilities subject to this proposed rulemaking. In that evaluation, DEQ found that the Census tracts adjacent to the facilities tended to have significantly above-average exposures for asthma, diesel particulate and fine particulate matter (PM 2.5). Eight of the ten facilities are in areas where nearby residents experience health disparities in the form of respiratory harm at very high rates, with over 80 percent of adult residents reporting asthma. In addition, the majority of residents within in a one-mile radius from the facilities tended to report low incomes, with eight of the 10 Oregon-based facilities having at least 70 percent of nearby residents reporting an income less than twice the federal poverty level, and five of these facilities in areas where 90 percent or more of the nearby residents are low-income.

These factors are not likely to be directly affected by this proposed rulemaking, as the facilities subject to the requirements of the proposed rulemaking are already processing commingled materials for recycling from Oregon's local governments. Some of the disproportionate environmental and human health outcomes shown in EJSCREEN may also be related to factors outside the scope of this rulemaking, including proximity to transportation corridors and historic prevalence of redlining and other exclusionary zoning practices related to housing discrimination. However, potential increases in volume of materials processed at these facilities may occur as a result of this proposed rulemaking, when Oregon's modernized recycling system increases availability and potential use of the system by more people across the state. Those potential increases could result in more air pollution due to increased truck traffic for the delivery of commingled materials, depending on the fuel sources used to power those vehicles.

DEQ's Materials Management Program will work closely with permitting programs in solid waste and air quality to solicit and consider community concerns about facility operations in future permit conditions. The program will also seek other opportunities for collaborating to reduce the likelihood that people living near these facilities are subjected to increased pollution due to the expansion and modernization of Oregon's recycling systems.

## Contact

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## Non-discrimination statement

DEQ does not discriminate on the basis of race, color, national origin, disability, age or sex in administration of its programs or activities. Visit DEQ's [Civil Rights and Environmental Justice page](#).